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DELAWARE STATE SENATE
149th GENERAL ASSEMBLY

SENATE BILL NO. 177

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO REGISTRATION OF SEXUAL OFFENDERS.

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

1 Section 1. Amend § 4122 Title 11, of the Delaware Code by making deletions as shown by strike through and
2 insertions as shown by underline as follows:

3 § 4122 Transition provisions.

4 (c) Any sex offender redesignated to a Risk Assessment Tier pursuant to this section shall have the right to
5 request that the ~~Board of Parole~~ Superior Court review and finally determine such designation. The request shall be made in
6 writing and delivered to the ~~Board of Parole~~ Superior Court within 10 days of the receipt by the offender of the notice
7 described in subsection (b) of this section. The ~~Board of Parole~~ Superior Court shall promptly forward a copy of the request
8 to the Attorney General. Failure of the offender to deliver the request to the ~~Board of Parole~~ Superior Court within the time
9 limits specified shall constitute a waiver of the offender's right to review.

10 (d) Following receipt of timely notice by the ~~Board of Parole~~ Superior Court, it shall hold a hearing to determine
11 the appropriateness of the Attorney General's new Risk Assessment Tier designation. The person and the Attorney General
12 shall have the right to be heard at the hearing. This hearing shall not be held unless written notice of the hearing is provided
13 to the Attorney General at least 30 days prior to the scheduled hearing date. A copy of the application for review shall be
14 provided to the Attorney General along with written notice of the hearing date. The Board of Parole shall have the authority
15 to promulgate reasonable regulations to implement this subsection and subsection (c) of this section. Such regulations shall
16 be effective and enforceable upon their adoption, and shall not be subject to Chapters 11 and 101 of Title 29.

17 (e) ~~Notwithstanding any law, rule or regulation to the contrary, when considering a request for review pursuant to~~
18 ~~subsection (c) of this section, the Board of Parole may redesignate the Risk Assessment Tier at its discretion and without~~
19 ~~regard to the restrictions of § 4121(d) of this title. The Board of Parole may weigh the relevant evidence which bears upon~~
20 ~~the character and propensities of the offender, and the facts and the circumstances of that offender's prior offenses. This~~

evidence may include the lack of subsequent criminal offenses, the completion of treatment, and the passage of time since the registering offense.

~~(f) In any case where the Board of Parole has redesignated the Risk Assessment Tier pursuant to subsection (e) of this section, the Superior Court shall retain jurisdiction to review the redesignation.~~

~~(1) Following the receipt of any application for review of redesignation pursuant to subsection (e) of this section, the Board of Parole shall hold a hearing under the provisions of § 4350(a) of this title for the purpose of making a recommendation to the trial court as to the approval or disapproval of the application. This hearing shall not be held unless written notice of the hearing is provided to the Attorney General's office at least 30 days prior to scheduled hearing date. A copy of the application for review shall be provided to the Attorney General's office along with written notice of the hearing date.~~

~~(2) Following the hearing described in paragraph (f)(1) of this section, the Board of Parole may reject an application for review if it determines that the application is not based on good cause. Notwithstanding any provisions of this section to the contrary, any application rejected pursuant to this paragraph shall not be forwarded to the Superior Court.~~

~~(g)(c)~~ Whenever an offender fails to elect a hearing in a timely fashion, the Attorney General shall forward notice of the redesignated Risk Assessment Tier to the Superintendent of the Delaware State Police and to the chief law enforcement officer of the jurisdiction where the person is residing at the time of the redesignation. In the event the person requests a hearing, at the conclusion of the hearing, the Attorney General and upon rendering its decision in the matter, the Board of Parole shall forward a notice of the redesignated Risk Assessment Tier to the Superintendent of the Delaware State Police and to the chief law enforcement officer of the jurisdiction where the person is residing at the time of the redesignation. The Superintendent of the Delaware State Police shall enter information pertaining to any redesignation pursuant to this section into the DELJIS computer system.

~~(h)(f)~~ Upon Risk Assessment Tier redesignation pursuant to this section, §§ 4120 and 4121 of this title shall apply. Until redesignation, §§ 4120 and 4336 of this title shall remain in full force and effect.

SYNOPSIS

This Act brings Delaware sex offender registration laws into compliance with the federal Sex Offender Registration and Notification Act ("SORNA") by standardizing the tier designation of sex offenders are assigned based upon offense of conviction. This Act removes discretion previously granted to the Board of Parole to redesignate sex offenders and standardizes designation in a manner consistent with established Superior Court precedent. See *State v. Brown*, 2013 WL 2149882 (Del. Super. 2013); *Lane v. Board of Parole*, 2012 WL 5509711 (Del. Super. 2012). Finally, this Act streamlines the designation process by directing review to the Superior Court in the first instance.

Author: Senator Ennis