

CHAPTER 167
FORMERLY
SENATE SUBSTITUTE NO. 1 FOR
SENATE BILL NO. 13
AS AMENDED BY
SENATE AMENDMENT NO. 1

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:

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

§ 4122 Transition provisions.

(a) Sections 4121 and 4122 of this title shall be retroactively applicable to any person convicted of a registering offense.

(b) Notwithstanding any law, rule or regulation to the contrary, as soon after March 1, 1999, as is practicable, the Attorney General shall apply § 4121 of this title to those persons identified by subsection (a) of this section, and will redesignate those persons to a Risk Assessment Tier pursuant to § 4121 of this title. Upon the redesignation, the Attorney General will provide notice of such redesignation by registered or certified mail to the person's last registered address, or by any other means which creates a reliable record of the receipt by the offender of such notice or of the attempts to provide the offender with the notice. The notice shall advise the person as to the duties and consequences imposed by law upon persons designated to the particular Risk Assessment Tier, and of the person's right to elect a hearing on the issue of the new Risk Assessment Tier designation. The Attorney General shall have the authority to promulgate reasonable regulations to implement this subsection. Such regulations shall be effective and enforceable upon their adoption, and shall not be subject to Chapters 11 and 101 of Title 29.

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

(d) Following receipt of timely notice by the Board of Parole, it shall hold a hearing to determine the appropriateness of the Attorney General's new Risk Assessment Tier designation. The person and the Attorney General shall have the right to be heard at the hearing. The Board of Parole shall have the authority to promulgate reasonable regulations to implement this subsection and subsection (c) of this section. Such regulations shall be effective and enforceable upon their adoption, and shall not be subject to Chapters 11 and 101 of Title 29.

(e) Notwithstanding any law, rule or regulation to the contrary, when considering a request for review pursuant to subsection (c) of this section, the Board of Parole may redesignate the Risk Assessment Tier at its discretion and without regard to the restrictions of 11 Del. C. §4121(d). The Board of Parole may weigh the relevant evidence which bears upon 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 (c) 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 (c) 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 (1) of this subsection, 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.

~~(e)~~ (g) 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 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.

~~(f)~~ (h) Upon Risk Assessment Tier redesignation pursuant to this section §4120 and §4221 of this title shall apply. Until redesignation, §§ 4120 and 4336 of this title shall remain in full force and effect.

Section 2. This Act is intended to provide relief to any person designated as a sex offender after a redesignation pursuant to § 4122 of this title after September 1, 2009, notwithstanding any attempt by that person to seek redesignation before this change to the statute.

Approved August 17, 2015