

CHAPTER 318
FORMERLY
SENATE BILL NO. 229

AN ACT TO AMEND TITLE 11 OF THE DELAWARE CODE RELATING TO CRIMES
AGAINST CHILDREN AND SPECIFIC OFFENSES.

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

Section 1. Amend § 761(e), Title 11 of the Delaware Code by striking that subsection in its entirety and by substituting in lieu thereof the following:

"(e) 'Position of trust, authority or supervision over a child' includes, but is not limited to:

- (1) Familial, guardianship or custodial authority or supervision; or
- (2) A teacher, coach, counselor, advisor, mentor or any other person providing instruction or educational services to a child or children, whether such person is compensated or acting as a volunteer; or
- (3) A babysitter, child care provider, or child care aide, whether such person is compensated or acting as a volunteer; or
- (4) A health professional, meaning any person who is licensed or who holds himself or herself out to be licensed or who otherwise provides professional physical or mental health services, diagnosis, treatment or counseling which shall include, but not be limited to, doctors of medicine and osteopathy, dentists, nurses, physical therapists, chiropractors, psychologists, social workers, medical technicians, mental health counselors, substance abuse counselors, marriage and family counselors or therapists and hypnotherapists, whether such person is compensated or acting as a volunteer; or
- (5) Clergy, including but not limited to any minister, pastor, rabbi, lay religious leader, pastoral counselor or any other person having regular direct contact with children through affiliation with a church or religious institution, whether such person is compensated or acting as a volunteer; or
- (6) Any law-enforcement officer, as that term is defined in section 222 of this title, and including any person acting as an officer or counselor at a correctional or counseling institution, facility or organization, whether such person is compensated or acting as a volunteer; or
- (7) Any other person who because of that person's familial relationship, profession, employment, vocation, avocation or volunteer service has regular direct contact with a child or children and in the course thereof assumes responsibility, whether temporarily or permanently, for the care or supervision of a child or children."

Section 2. Amend § 776, Title 11 of the Delaware Code by striking the word "exploitation" as it appears in the final sentence of the section and by substituting in lieu thereof the word "extortion".

Section 3. Amend § 778(b), Title 11 of the Delaware Code by striking the phrase "or § 1108" as it appears in that subsection and by substituting in lieu thereof the phrase "777A, § 778, § 778A or § 1108".

Section 4. Amend § 778, Title 11 of the Delaware Code by adding a new subsection "(d)" thereto as follows:

"(d) Continuous sexual abuse of a child is a class B felony."

Section 5. Amend § 779(a), Title 11 of the Delaware Code by striking the phrase "or §§ 1108-1112A" as it appears in that subsection and by substituting in lieu thereof the phrase ", § 777A, §§ 778-778A, or §§ 1108-1112A".

Section 6. Amend Chapter 5, Title 11 of the Delaware Code by redesignating current sections "§ 776, § 777, § 778, § 779, and § 779A" thereto as sections "§ 774, § 775, § 776, § 777, and § 777A" thereto and by inserting new sections "§ 778 and § 778A" thereto as follows:

"§ 778. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree; penalties.

A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree when the person:

(a) Intentionally engages in sexual intercourse with a child who has not yet reached his or her sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(b) Intentionally engages in sexual penetration with a child who has not yet reached his or her sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(c) Intentionally engages in sexual intercourse or sexual penetration with a child who has reached his or her sixteenth birthday but has not yet reached his or her eighteenth birthday when the person is at least 4 years older than the child and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(d) Intentionally engages in sexual intercourse or sexual penetration with a child and the victim has reached his or her sixteenth birthday but has not yet reached his or her eighteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(e) Engages in an act of sexual extortion, as defined in § 774 of this title, against a child who has not yet reached his or her sixteenth birthday and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(f) (1) a. Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in subsection (a) of this section is a class A felony.

b. Notwithstanding any law to the contrary, a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this subsection shall be sentenced to life imprisonment without benefit of probation, parole or any other reduction if:

1. at the time of the offense the person inflicts serious physical injury on the victim; or

2. the person intentionally causes serious and prolonged disfigurement to the victim permanently, or intentionally destroys, amputates or permanently disables a member or organ of the victim's body; or

3. the person is convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in this subsection against 3 or more separate victims; or

4. the person has previously been convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree, unlawful sexual intercourse in the first degree, rape in the second degree or rape in the first degree, or any equivalent offense under the laws of this State, any other state or the United States.

(2) Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in subsection (b) of this section is a class B felony. Notwithstanding any provision of this title to the contrary, the minimum sentence for a person convicted of sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in subsection (b) of this section shall be 10 years at Level V.

(3) Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in subsection (c) of this section is a class B felony.

(4) Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in subsection (d) of this section is a class C felony.

(5) Sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree as set forth in subsection (e) of this section is a class D felony.

(g) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code.

§ 778A. Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree; penalties.

A person is guilty of sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree when the person:

(a) Intentionally has sexual contact with a child who has not yet reached his or her sixteenth birthday or causes the child to have sexual contact with the person or a third person and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(b) (1) Is a male who intentionally exposes his genitals or buttocks to a child who has not yet reached his or her sixteenth birthday under circumstances in which he knows his conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and he stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(2) Is a female who intentionally exposes her genitals, breast or buttocks to a child who has not yet reached his or her sixteenth birthday under circumstances in which she knows her conduct is likely to cause annoyance, affront, offense or alarm when the person is at least 4 years older than the child and she stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(c) Suggests, solicits, requests, commands, importunes or otherwise attempts to induce a child who has not yet reached his or her sixteenth birthday to have sexual contact or sexual intercourse or unlawful sexual penetration with the person or a third person, knowing that the person is thereby likely to cause annoyance, affront, offense or alarm to the child or another when the person is at least 4 years older than the child and the person stands in a position of trust, authority or supervision over the child, or is an invitee or designee of a person who stands in a position of trust, authority or supervision over the child.

(d) (1) Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree as set forth in subsection (a) of this section is a class D felony.

(2) Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree as set forth in subsection (b) of this section is a class F felony.

(3) Sexual abuse of a child by a person in a position of trust, authority or supervision in the second degree as set forth in subsection (c) of this section is a class G felony.

(e) Nothing contained in this section shall preclude a separate charge, conviction and sentence for any other crime set forth in this title, or in the Delaware Code."

Section 7. Amend Chapter 5, Title 11 of the Delaware Code by striking from that chapter § 773(a)(6), § 772(a)(2)(h), § 771(a)(3), § 770(a)(4) and § 769(a)(2) as each provision appears in that chapter.

Section 8. Amend §771(b), Title 11 of the Delaware Code by deleting the phrase "Paragraphs (a)(2) and (a)(3) of this section do" as it appears in that subsection and by substituting in lieu thereof the phrase "Paragraph (a)(2) of this section does".

Section 9. Amend §770(b), Title 11 of the Delaware Code by deleting the phrase "Subsections (a)(3) and (a)(4) of this section do" as it appears in that subsection and by substituting in lieu thereof the phrase "Subsection (a)(3) of this section does".

Section 10. Amend § 1112(b)(4)(a), Title 11 of the Delaware Code by striking the phrase "§ 775" as it appears in that subparagraph and by substituting in lieu thereof the phrase "§ 776, § 777, § 777A, § 778, § 778A".

Section 11. Amend § 4121(d)(1)(a), Title 11 of the Delaware Code by inserting the phrase "Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree, Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the Second Degree if the offense involved a child under the age of 13," between the phrases "Unlawful Sexual Contact in the First Degree," and "Continuous Sexual Abuse of a Child" as they appear in that subparagraph.

Section 12. Amend § 4121(d)(2)(a), Title 11 of the Delaware Code by inserting the phrase "Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the Second Degree unless the offense involved a child under 12, "between the phrases "Rape in the Fourth Degree," and "Unlawful Sexual Contact in the Second Degree" as they appear in that subparagraph.

Section 13. Amend § 4201(c), Title 11 of the Delaware Code by striking the phrases "774 Repealed, 775 Repealed, 776 Sexual Extortion, 777 Bestiality, 778 Continuous Sexual Abuse of Child, 779 Dangerous Crime Against a Child, 779A Sex Offender Unlawful Sexual Conduct Against a Child" as they appear in that subsection and by substituting in lieu thereof the phrases "774 Sexual Extortion, 775 Bestiality, 776 Continuous Sexual Abuse of Child, 777 Dangerous Crime Against a Child, 777A Sex Offender Unlawful Sexual Conduct Against a Child, 778 Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree, 778A Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the Second Degree,".

Section 14. Amend § 4205A(a), Title 11 of the Delaware Code by striking the phrase "§ 778, or § 779" as it appears in that subsection and by substituting in lieu thereof the phrase "§ 777, § 777A, § 778(a), or § 778(b)".

Section 15. Amend § 4214(b), Title 11 of the Delaware Code by inserting the phrase "778(a), 778(b) or 778(c) Sexual Abuse of a Child by a Person in a Position of Trust, Authority or Supervision in the First Degree" between the phrases "773 Rape First Degree" and "Title 16, Section Crime" as they appear in that subsection.

Section 16. If any provision of this Act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the Act which can be given effect without the invalid provision or application, and to that end the provisions of this Act are declared to be severable.

Section 17. The repeal or amendment of any statute by this Act shall not have the effect of releasing or extinguishing any penalty, forfeiture or liability incurred under such statute, and such statute shall be treated as remaining in full force and effect for the purpose of sustaining any proper action or prosecution for enforcement of such penalty, forfeiture or liability. Any action, case, prosecution trial or other legal proceeding in progress under or pursuant to any statute repealed or amended by this Act shall be preserved and shall not become illegal or terminated irrespective of the stage of such proceedings. For the purpose of such proceedings, the prior law shall remain in full force and effect.

Approved June 30, 2010