

LAWS OF DELAWARE
VOLUME 85
CHAPTER 294
153rd GENERAL ASSEMBLY
FORMERLY
HOUSE BILL NO. 166

AN ACT TO AMEND TITLE 11 AND TITLE 16 OF THE DELAWARE CODE RELATING TO CHILD SEXUAL ABUSE MATERIAL.

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

Section 1. Amend § 787, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 787. Trafficking an individual, forced labor and sexual servitude; class D felony; class C felony; class B felony; class A felony.

(a) For the purposes of this section:

(25) “Sexually explicit performance” means a live public act or show, production of pornography or child sexual abuse material, or the digital transfer of any of such, intended to arouse or satisfy the sexual desires or appeal to the prurient interest of viewers;

Section 2. Amend § 1109, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1109. Dealing in child ~~pornography~~; sexual abuse material; class B or D felony.

A person is guilty of dealing in child ~~pornography~~ sexual abuse material when:

(1) The person knowingly ships, transmits, mails or transports by any means, including by computer or any other electronic or digital method, any book, magazine, periodical, pamphlet, video or film depicting a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly ships, transmits, mails or transports by any means, including by computer or any other electronic or digital method, any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act;

(2) The person knowingly receives for the purpose of selling or sells any magazine, photograph or film which depicts a child engaging in a prohibited sexual act or in the simulation of such an act, or knowingly receives for the purpose of selling or sells any other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act;

(3) The person knowingly distributes or disseminates, by means of computer or any other electronic or digital method, or by shows or viewings, any motion picture, video or other visual depiction of a child engaging in a prohibited sexual act or the simulation of such an act. The possession or showing of such motion pictures shall create a rebuttable presumption of ownership thereof for the purposes of distribution or dissemination;

(4) The person, intentionally compiles, enters, accesses, transmits, receives, exchanges, disseminates, stores, makes, prints, reproduces or otherwise possesses any photograph, image, file, data or other visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act. For the purposes of this subsection, conduct occurring outside the State shall be sufficient to constitute this offense if such conduct is within the terms of § 204 of this title, or if such photograph, image, file or data was compiled, entered, accessed, transmitted, received, exchanged, disseminated, stored, made, printed, reproduced or otherwise possessed by, through or with any computer located within Delaware and the person was aware of circumstances which rendered the presence of such computer within Delaware a reasonable possibility; or

(5) The person knowingly advertises, promotes, presents, describes, transmits or distributes any visual depiction, exhibition, display or performance with intent to create or convey the impression that such visual depiction, exhibition, display or performance is or contains a depiction of a child engaging in a prohibited sexual act or in the simulation of such an act.

Unlawfully dealing in child ~~pornography~~ sexual abuse material is a class B felony unless the prohibited sex act is “partial nudity” as defined in § 1100 of this title, then it is a class D felony.

Section 3. Amend § 1110A, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1110A. Exclusion for §§ 1108 and 1109 of this title.

Where the underlying prohibited sexual act is “partial nudity” as defined in § 1100 of this title, a person can only be guilty of sexual exploitation of a child under § 1108 of this title or dealing in child ~~pornography~~ sexual abuse material under § 1109 of this title if the person is 18 years of age or older.

Section 4. Amend § 1111, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1111. Possession of child ~~pornography~~; sexual abuse material; class F felony.

A person is guilty of possession of child ~~pornography~~ sexual abuse material when:

(1) The person knowingly possesses any visual depiction of a child engaging in a prohibited sexual act or in the simulation of such an act; or

(2) The person knowingly possesses any visual depiction which has been created, adapted, modified or edited so as to appear that a child is engaging in a prohibited sexual act or in the simulation of such an act.

Possession of child ~~pornography~~ sexual abuse material is a class F felony.

Section 5. Amend § 2107, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2107. Determining the amount of bail [Effective until fulfillment of the contingencies in 83 Del. Laws, c 72, § 3, as amended by 84 Del. Laws, c. 473, § 18, and in 84 Del. Laws, c. 473, § 17].

(c) Notwithstanding any provision of this title to the contrary, for a defendant charged with committing:

(23) Unlawful dealing in child ~~pornography~~; sexual abuse material, in violation of § 1109 of this title.

the presumption is that the court will set conditions of release bond guaranteed by financial terms in an amount within or above the guidelines published by the Delaware Sentencing Accountability Commission (SENTAC) for that offense and secured by cash only.

Section 6. Amend § 2116, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2116. Preventive detention [Effective upon fulfillment of the contingency in 84 Del. Laws, c. 473, § 17].

(b) (1) *Eligibility.* —

A detention-eligible defendant is a defendant charged with committing or attempting to commit any of the following:

v. Unlawful dealing in child ~~pornography~~; sexual abuse material, in violation of § 1109 of this title.

Section 7. 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.

(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:

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

a. Rape in the third degree unless the offense involved a child under 12 or the offense involved force or the threat of physical violence, rape in the fourth degree, 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, unlawful sexual contact in the second degree, unlawful sexual intercourse in the third degree, unlawful sexual penetration in the third degree, sexual extortion unless the offense involved force or the threat of force, bestiality, dangerous crime against a child unless the offense involved force or the threat of force, unlawfully dealing in child ~~pornography~~; sexual abuse material, possession of child ~~pornography~~; sexual abuse material, providing obscene materials to a person under the age of 18, sexual solicitation of a child, trafficking in persons where the offense involved sexual servitude of a minor aged 13 to 17 years old unless the offense involved force or threat of force, promoting prostitution in the second degree, promoting prostitution in the first degree; or

Section 8. Amend § 4201, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 4201. Transition provisions.

(c) (1) The following felonies shall be designated as violent felonies:

1109 Unlawfully Dealing in Child ~~Pornography~~ Sexual Abuse Material

Section 9. Amend § 6703, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6703. “Violent crime” defined.

For purposes of this chapter, the words “violent crime” shall mean: abuse of an adult who is impaired; abuse of a patient in a nursing facility; abuse of a patient causing injury; abuse of a patient causing death; adulteration causing death; adulteration causing injury; aggravated intimidation; arson in the first degree; arson in the second degree; assault in the first degree; assault in the second degree; assault in the third degree; assault in the first degree on K-9 dog causing, injury or death to the dog; assault on a K-9 dog with risk of injury to the dog; assault in a detention facility which causes injury; assault in a detention facility; assault on a sports official; bestiality; home invasion; burglary in the first degree; carjacking; carrying a concealed deadly weapon (firearm or projectile weapon offense); continuous sexual abuse of child; criminally negligent homicide; ~~dealing with child pornography,~~ in child sexual abuse material, second offense; possession of a destructive weapon; reckless endangering; escape after conviction; escape in the second degree; extortion; possession of an explosive device; unlawful imprisonment; incest; kidnapping in the first degree; kidnapping in the second degree; manslaughter; manufacture or use or possession of explosives or an incendiary device; murder in the first degree, murder in the second degree; organized crime and racketeering; possession of a deadly weapon during the commission of a felony; possession of a destructive weapon; possession of a firearm or projectile weapon during the commission of a felony; promoting prison contraband (weapon); promoting prostitution in the first degree; racketeering; reckless endangering first degree; reckless endangering in the second degree; riot; robbery in the first degree; robbery in the second degree; continued sexual abuse of child; unlawful sexual contact in the first degree; unlawful sexual contact in the second degree; unlawful sexual contact in the third degree; sexual exploitation of a child; sexual extortion; rape in the first degree; rape in the second degree; rape in the third degree; rape in the fourth degree; unlawful sexual intercourse in the first degree; unlawful sexual intercourse in the second degree; unlawful sexual intercourse in the third degree; unlawful sexual penetration in the first degree; unlawful sexual penetration in the second degree; unlawful sexual penetration in the third degree; stalking; terroristic threatening; unlawful firearm transactions (second or subsequent offense); unlawful imprisonment in the first degree; unlawful transportation of a firearm to commit a felony; vehicular assault in the first degree; vehicular assault in the second degree; vehicular homicide in the first degree; vehicular homicide in the second degree; wearing body armor during felony.

Section 10. Amend § 923, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 923. Child Protection Levels.

(b) The following paragraphs describe the 4 child protection levels:

(4) *Child Protection Level IV.* — A person who is substantiated for abuse or neglect for any of the following must be designated to Child Protection Level IV:

a. An incident of abuse or neglect presenting the highest risk of future harm to children, including but not limited to serious physical injury, sexual abuse, torture, criminally negligent treatment, or abandonment of a child 12 years of age or younger (but not including the voluntary surrender of a baby pursuant to the Safe Arms for Babies program as provided in § 907A of this title); or

b. Conviction of any of the following crimes when based on the same incident of abuse or neglect as alleged in the Notice of Intent to Substantiate pursuant to § 924 of this title: vehicular assault, vehicular homicide, criminally negligent homicide, assault in the first degree, assault in the second degree, reckless endangering in the first degree, unlawful imprisonment in the first degree, child abuse in the first degree, child abuse in the second degree, child abuse in the third degree, child torture, continuous child abuse, murder, manslaughter, murder by abuse or neglect, incest, rape, unlawful sexual contact, sexual extortion, sexual solicitation of a child, felony sex offender unlawful sexual conduct against a child, felony sexual abuse of a child by a person in a position of trust, authority or supervision in the first degree or second degree, trafficking of persons and involuntary servitude, bestiality, continuous sexual abuse of a child, possession of child ~~pornography,~~ sexual abuse material, unlawfully dealing in child ~~pornography,~~ sexual abuse material, felony endangering the welfare of a child, dangerous crime against a child, kidnapping, coercion, dealing in children, unlawful dealing with a child, sexual exploitation of a child, or promoting suicide.

A person who is substantiated for abuse or neglect at Child Protection Level IV must be reported as “substantiated for abuse” or “substantiated for neglect” in response to a Child Protection Registry check made pursuant to Chapter 85 of

Title 11 or Chapter 3 of Title 31. The person is ineligible for employment in a child-serving entity as defined in Chapter 3 of Title 31 or health-care facility as defined in Chapter 85 of Title 11. In addition, the person may not be removed from the Registry and must be reported in a Registry check for the incident or conviction, except as provided in § 929(c) of this title.

Section 11. Amend § 6712, Title 16 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 6712. Certification of ambulance attendants and emergency medical technicians; criminal background checks.

(b) Upon application, the Commission or its governmental designee shall acquire and review the state and federal criminal history records for the applicant and may interview the applicant. If the Commission determines that the applicant meets the requirements of this section and of its regulations, then it shall issue a certificate to the applicant, subject to the following provisions:

(1) Certification must be denied to an applicant convicted of the following crimes:

b. A felony involving the sexual or physical abuse of a child or of a person who is elderly or impaired, such as sexual misconduct with a child, sexual exploitation of a child, making or distributing child ~~pornography~~, sexual abuse material, incest involving a child, or assault on a person who is elderly or impaired;

Approved June 24, 2026