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Hoffner, Mantzavinos, Pettyjohn, Poore, Richardson,  
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HOUSE OF REPRESENTATIVES  
152nd GENERAL ASSEMBLY

HOUSE BILL NO. 182

AN ACT TO AMEND TITLE 11, TITLE 13, TITLE 16, AND TITLE 31 OF THE DELAWARE CODE RELATING TO  
CHILD ABUSE.

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

1           Section 1. Amend § 1103, Title 11 of the Delaware Code by making deletions as shown by strike through and  
2     insertions as shown by underline as follows:

3           § 1103. Child abuse in the ~~third~~ fourth degree; class A misdemeanor.

4           (a) A person is guilty of child abuse in the third degree when:

5                     (1) ~~The person recklessly or intentionally causes physical injury to a child through an act of abuse and/or~~  
6     ~~neglect of such child; or~~

7                     (2) ~~The person recklessly or intentionally causes physical injury to a child when the person has engaged in a~~  
8     ~~previous pattern of abuse and/or neglect of such child.~~

9           (a) A person is guilty of child abuse in the fourth degree when the person intentionally or recklessly causes  
10   physical injury to a child.

11          (b) ~~This offense shall be~~ Child abuse in the fourth degree is a class A misdemeanor.

12          Section 2. Amend § 1103A, Title 11 of the Delaware Code by making deletions as shown by strike through and  
13     insertions as shown by underline as follows:

14          § 1103A. Child abuse in the ~~second~~ third degree; class ~~G~~ D felony.

15          (a) A person is guilty of child abuse in the second degree when:

16                     (1) ~~The person intentionally or recklessly causes physical injury to a child who is 3 years of age or younger; or~~

17                     (2) ~~The person intentionally or recklessly causes physical injury to a child who has significant intellectual or~~  
18     ~~developmental disabilities;~~

19                     (3) ~~The person intentionally or recklessly causes physical injury to a child by means of a deadly weapon or~~  
20     ~~dangerous instrument.~~

21          (b) ~~This offense shall be~~ a class G felony.

(a) A person is guilty of child abuse in the third degree when the person intentionally or recklessly causes physical injury to a child and any one of the following applies:

(1) The child is less than 6 years of age.

(2) The child has an intellectual, developmental, or physical disability.

(3) The injury was caused by means of a deadly weapon or dangerous instrument.

(b) For an offense under this section, it is not a defense that the person did not know the child's age or that the person reasonably believed the child to be 6 years of age or older.

(c) For an offense under this section, it is not a defense that the person did not know the child has an intellectual, developmental, or physical disability or that the person reasonably believed the child did not have an intellectual, developmental, or physical disability.

(d) Child abuse in the third degree is a Class D felony.

Section 3. Amend § 1103B, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1103B. Child abuse in the ~~first~~ second degree; class B felony.

~~A person is guilty of child abuse in the first degree when the person recklessly or intentionally causes serious physical injury to a child:~~

~~(1) Through an act of abuse and/or neglect of such child; or~~

~~(2) When the person has engaged in a previous pattern of abuse and/or neglect of such child.~~

~~Child abuse in the first degree is a class B felony.~~

(a) A person is guilty of child abuse in the second degree when the person intentionally or recklessly causes serious physical injury to a child.

(b) Child abuse in the second degree is a class B felony.

(c) Notwithstanding any provision of this title to the contrary, any person who commits child abuse in the second degree must receive a minimum sentence of 5 years at Level V if any one of the following applies:

(1) The child is less than 6 years of age at the time of offense.

(2) The child has an intellectual, developmental, or physical disability.

(3) The injury was caused by means of a deadly weapon or dangerous instrument.

(d) For an offense under this section, it is not a defense that the person did not know the child's age or that the person reasonably believed the child to be 6 years of age or older.

(e) For an offense under this section, it is not a defense that the person did not know the child has an intellectual, developmental, or physical disability or that the person reasonably believed the child did not have an intellectual, developmental, or physical disability.

Section 4. Amend Subchapter V, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1103C. Child abuse in the first degree; class A felony.

(a) A person is guilty of child abuse in the first degree when the person intentionally or recklessly causes serious physical injury to a child and that injury causes permanent disfigurement, permanent impairment of health, or permanent loss or impairment of a bodily organ.

(b) Child abuse in the first degree is a class A felony.

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

§ 1103D. Child torture; class B felony.

(a) As used in this section:

(1) "Torture" means a course of conduct consisting of 1 or more instances of any of the following acts which occur over a period of more than 24 hours and are done with malice or an extreme indifference to the well-being of the child:

a. Child abuse under §§ 1103, 1103A, 1103B, and 1103C of this title.

b. Maltreatment or emotional abuse of a child.

c. Deprivation of, or failure to provide, necessary care such as food, water, clothing, shelter, or medical care.

(2) "Torture" includes unreasonable or extended confinement or restraint, cruel punishment, or intentional or reckless failure to provide for the health, safety, medical, or nutritional needs of a child.

(b) A person is guilty of child torture if all of the following conditions are satisfied:

(1) The child is under the person's care, custody, or control, or the person is charged by law with or has assumed responsibility for the child's care.

(2) The person intentionally or recklessly commits or allows another person to commit torture to the child.

(c) Child torture is a class B felony.

(d) A charge under this section does not limit or preclude any other charge being brought against the person.

(e) The crime of child torture does not require any proof that the child suffered physical pain or physical injury.

Section 6. Amend Subchapter V, Chapter 5, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1103E. Continuous child abuse; class G or B felony.

(a) A person is guilty of continuous child abuse when the person intentionally or recklessly engages in 3 or more acts of child abuse under §§ 1103, 1103A, 1103B, 1103C, or 1103D of this title over a period of time not less than 3 weeks in duration.

(b)(1) Except as provided under paragraph (b)(2) of this section, continuous child abuse is a class G felony.

(2) When 3 or more of the acts of child abuse committed under subsection (a) of this section are acts under §§ 1103A, 1103B, 1103C, or 1103D of this title, continuous child abuse is a class B felony.

Section 7. Amend § 1102, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 1102. Endangering the welfare of a child; class A misdemeanor; class E or G felony.

(a) A person is guilty of endangering the welfare of a child when:

(4) The person commits any violent felony, or reckless endangering second degree, assault third degree, terroristic threatening, unlawful imprisonment second degree, or child abuse third or fourth degree against a victim, knowing that such felony or misdemeanor was witnessed, either by sight or sound, by a child less than 18 years of age who is a member of the person's family or the victim's family; or

Section 8. Amend § 2107, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows and redesignating accordingly:

§ 2107. Determining the amount of bail [Effective until fulfillment of the contingency in 83 Del. Laws, c. 72, § 3].

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

(20) Child abuse in the ~~first~~ second degree, in violation of § 1103B of this title.

(21) Child torture, in violation of § 1103D of this title.

Section 9. Amend § 2702, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 2702. Jurisdiction of the Justice of the Peace Court of offenses contained in Chapter 5 of this title.

(b) The Justice of the Peace Court shall not have jurisdiction over the following misdemeanors created in Chapter 5 of this title:

(36) Section 1103 of this title (child abuse in the ~~third~~ fourth degree);

Section 10. 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) The following felonies shall be designated as violent felonies:

Title 11, Section	Crime
846	Extortion
<u>1103B</u>	<u>Child Abuse in the Second Degree</u>
<u>1103C</u>	<u>Child Abuse in the First Degree</u>
1108	Sexual Exploitation of a Child

Section 11. Amend § 9401, Title 11 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 9401. Definitions.

As used in this chapter, unless the context otherwise requires:

(2) "Crime" means an act or omission committed by a person, whether or not competent or an adult, which, if committed by a competent adult, is punishable by incarceration and which violates 1 or more of the following sections of this title:

OFFENSES RELATING TO CHILDREN AND ~~INCOMPETENTS~~ VULNERABLE ADULTS

1101. Abandonment of child; class A misdemeanor.

1102. Endangering the welfare of a child; class A ~~misdemeanor~~; misdemeanor or higher.

1103. Child abuse in the ~~third~~ fourth degree; class A misdemeanor.

1103A. Child abuse in the ~~second~~ third degree; class ~~G~~ D felony.

1103B. Child abuse in the ~~first~~ second degree; class B felony.

1103C. Child abuse in the first degree; class A felony.

1103D. Child torture; a class B felony.

1103E. Continuous child abuse; class G or B felony.

1105. Crime against a vulnerable adult; class A misdemeanor or higher.

1108. Sexual exploitation of a child; class B felony.

1112A. Sexual solicitation of a child; class C felony; class B felony.

1112B. Promoting sexual solicitation of a child; class C felony; class B felony.

Section 12. Amend § 703A, Title 13 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 703A. Definitions.

(b) “Perpetrator of domestic violence” means any individual who has been convicted of committing any of the following criminal offenses in the State, or any comparable offense in another jurisdiction, against the child at issue in a custody or visitation proceeding, against the other parent of the child, or against any other adult or minor child living in the home:

(8) Child abuse in the ~~third~~ fourth degree.

Section 13. 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:

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

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: offensive touching, menacing, reckless endangering in the second degree, assault in the third degree, child abuse in the ~~third~~ fourth degree, terroristic threatening, unlawful administration of drugs or controlled substances, indecent exposure in the first or second degree, sexual harassment, unlawful imprisonment in the second degree, abandonment of a child, or misdemeanor endangering the welfare of a child.

(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:

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, unlawfully dealing in child pornography, 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.

Section 14. Amend § 309, Title 31 of the Delaware Code by making deletions as shown by strike through and insertions as shown by underline as follows:

§ 309. Background checks for child-serving entities and other organizations.

(b) Definitions. — For purposes of this section:

(10) “Felony convictions involving physical or sexual assault crimes” shall include: §§ 604-607, 612-613, 626, 629-636, 645, 651, 768-780, 782-783A, 785, 787, 802, 803, 1100A-1102, ~~1103A-1103B~~, 1103A-1103D, 1105, 1108-1112B of Title 11, felony convictions of § 1103E of Title 11, felony convictions of § 1136 of Title 16, and felony convictions of § 3913(c) of Title 31.

(13) “Misdemeanor convictions against children” shall include: §§601-603, 611, 621, 625-628A, 763, 764, 765, 766, 767, 781, 785, 1102, 1103, 1106, 1107 of Title 11, misdemeanor convictions of § 1103E of Title 11, and misdemeanor convictions of § 1136 of Title 16.

#### SYNOPSIS

Sections 1 through 6 of this Act revise the State's existing child abuse laws as follows:

(1) Revises Child Abuse in the Third Degree by removing extraneous language and redesignating it as Child Abuse in the Fourth Degree.

(2) Revises Child Abuse in the Second Degree by redesignating it as Child Abuse in the Third Degree and making it a class D felony.

(3) Revises Child Abuse in the First Degree by removing extraneous language, adding a sentence enhancement for certain aggravating factors, and redesignating it as Child Abuse in the Second Degree.

(4) Creates a new crime of Child Abuse in the First Degree, a class A felony, when a person intentionally or recklessly causes serious physical injury to a child and that injury causes permanent disfigurement, permanent impairment of health, or permanent loss or impairment of a bodily organ.

(5) Creates a new crime of Child Torture, a class B felony.

(6) Creates a new crime of Continuous Child Abuse when a person intentionally or recklessly engages in 3 or more acts of child abuse or child torture over a period of time not less than 3 weeks in duration.

Sections 7 through 9 and 11 through 14 of this Act make conforming amendments to the Delaware Code based on the revisions made by Sections 1 through 6 of this Act.

Section 10 of this Act designates Child Abuse in the First Degree and Child Abuse in the Second Degree as violent felonies.