



SPONSOR: Rep. George
Reps. Gilligan, Hudson, Kowalko, Mitchell, Schooley;
Sens. DeLuca, Peterson, Simpson

HOUSE OF REPRESENTATIVES
145th GENERAL ASSEMBLY

HOUSE BILL NO. 182

AN ACT TO AMEND TITLES 10 AND 11 OF THE DELAWARE CODE RELATING TO CERTAIN OFFENSES.

1 WHEREAS, under Delaware's current sex offender registration statute, 11 *Del. C.* § 4120 *et. seq.*, an individual
2 who is convicted of an offense designated as a "sex offense" is required to register as sex offender; and

3 WHEREAS, sex offenders are assigned a risk assessment level ranging from Tier I, for the least serious offenders,
4 to Tier III, for the most serious offenders, and the risk assessment level Tiers II and III require community notification
5 (including posting of the offenders' pictures on the internet); and

6 WHEREAS, the Delaware Supreme Court recognized in the 2001 *Helman v. State* case that Delaware's sex
7 offender registration laws applied to juveniles as well as adults. 784 A.2d 1058 (Del. 2001); and

8 WHEREAS, Delaware revised its sex offender laws in 2006 to comply with the federal Adam Wash Child
9 Protection and Safety Act, which raised the stakes even higher for juvenile sex offenders age fourteen and older at the time
10 of the offense, and which withholds federal funding from states not in compliance; and

11 WHEREAS, the Delaware Family Court has broad jurisdiction over juvenile offenders and has discretion, in
12 almost all other areas, to treat juvenile offenders differently than adult offenders, and juvenile proceedings are intended to
13 be "in the interest of rather than against the child." 10 *Del. C.* § 1002; and

14 WHEREAS, recent studies have shown that there are significant differences between adult and juvenile criminal
15 sex offenders, including the facts that juveniles are much more likely to respond favorably to sexual offender treatment,
16 have a short history of committing sexual offenses and are less likely to have deviant sexual arousal patterns and are not as
17 practiced in avoiding responsibility for their behavior; and

18 WHEREAS, the Delaware Family Court has no discretion to determine that a child under the age of twelve can
19 consent to any sexual act with another child, even a child of the same age as the victim, which has resulted in some
20 instances in automatic placement of children on the sex offender registry at a very young age; and

21 WHEREAS, the Delaware Family Court has noted repeatedly that the resolution of the problems with unfair
22 application of the sex offender designation and registration statutes to juvenile offenders is a matter that is better left to the

attention of the Delaware Legislature and should be addressed by the Legislature. *See, e.g., State v. Sapps*, 820 A.2d 477 (Del. Fam. Ct. 2002); *Fletcher v. State*, 2008 WL 2912048 (Del. Fam. Ct. June 16, 2008).

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

Section 1. Amend § 1009(c), Title 10 of the Delaware Code by inserting a new paragraph (18) as follows:

“(18) This paragraph (18) applies to any juvenile offender who (i) was less than fourteen years old on the date of the offense; or (ii) was at least fourteen years old on the date of the offense and was not adjudicated delinquent of any of the offenses enumerated in §§ 771-778 of Title 11. Following an adjudication in which the Court declares that a juvenile offender otherwise meeting the criteria set forth in this paragraph is delinquent for any offense which would render the juvenile a ‘sex offender’ pursuant to §§ 4121(a)(4)(a) and (b) of Title 11, the Court shall determine whether designating the juvenile as a ‘sex offender’ is appropriate to best serve the needs of the juvenile and society.”

Section 2. Amend § 4121(a)(4)(b), Title 11 of the Delaware Code by inserting the following after the word "adult" where it appears in that subparagraph:

“unless the Court determines, in its discretion and pursuant to § 1009(c)(18) of Title 10, that designating the juvenile as a sex offender in accordance with this Chapter is not appropriate”.

Section 3. Amend § 4121(d)(6) of Title 11 by inserting a new subparagraph (d), as follows:

“(d) The granting of an expungement as provided in the applicable provisions of Title 10 and of this Title removes all indicia of arrest, including sex offender registry and tier designation.”

Section 4. Amend § 761(j) of Title 11 of the Delaware Code by inserting the following sentence at the end of said subsection: “This subsection does not apply if the offender was less than fourteen years old on the date of the offense.”

SYNOPSIS

This bill provides the Family Court with discretion to determine whether it is appropriate to designate juvenile offenders who are under age fourteen on the date of the offense or who were over age fourteen on the day of the offense but did not commit one of the offenses enumerated in §§ 771-78 of Title 11 (for which registration is required pursuant to the federal Adam Walsh Act) as sex offenders, thus subjecting them to the registration and reporting requirements under Delaware law. This bill also makes clear that a person who receives an expungement of a sex offense conviction can be removed from the sex offender registry. Finally, this bill confers discretion upon the Family Court to determine whether consent occurred in certain offenses committed by offenders who were less than fourteen years old on the date of the offense.