



§ 4120 § 4120A § 4121 § 4122

TITLE 11

Crimes and Criminal Procedure

Criminal Procedure Generally

CHAPTER 41. FINES, COSTS, PENALTIES AND FORFEITURES

Subchapter III. Registration of Sexual Offenders

§ 4120. Registration of sex offenders.

(a) Unless otherwise indicated, the definitions set forth in § 4121(a) of this title shall apply to this section. In addition, when used in this section, the phrase "custodial institution" includes any Level IV or V facility operated by or for the Department of Correction, the Division of Youth Rehabilitative Services or the Delaware Psychiatric Center, or any like institution, and the phrase "temporary resident" shall include any person who is for more than 7 days or for more than an aggregate of 30 days in any 12-month period, employed or works in Delaware, or who is a full or part-time student in Delaware. A student is any person who attends or enrolls in any public or private educational facility, including, but not limited to, colleges or universities.

(b)(1) Any sex offender who is released, discharged or paroled from any Level IV or Level V facility or other custodial institution after that sex offender has completed a sentence imposed following a conviction for any offense specified in § 4121(a)(4) of this title shall be required to register as a sex offender. The registration shall be completed during the Level IV or V sentence, but not more than 90 days, nor less than 45 days, prior to the offender's release, discharge or parole. The registration information shall be collected from the sex offender by the agency having custody over the sex offender at the time specified herein for registration. This subsection shall apply to any sex offender who is sentenced to serve any portion of the sex offender's sentence at Level IV or V, unless such sentence is suspended in its entirety, in which case subsection (c) of this section shall apply. The registration required by this subsection shall be required whenever the sex offender is released from any Level V facility to any Level IV facility, and again when the offender is released from the Level IV facility.

(2) If an offender is released to a treatment program by the Division of Youth Rehabilitative Services and the date of release could not have been determined 45 days prior to release, registration shall be completed within 48 hours of determining the release date, or upon release, whichever is earlier.

(3) If an offender is attending school, the offender shall inform the principal of the school upon enrollment of the offender's registration.

(c) Any sex offender who is sentenced to Level IV home confinement, or to a period of probation at Level III or below, or who is required to pay a fine of any amount following a conviction for any offense specified in § 4121(a)(4) of this title shall be required to register as a sex offender. The registration information shall be collected from the sex offender by the sentencing court following the conviction, but no later than the time of sentencing.

(d)(1) Registration information shall be collected by the agency or court specified in subsections (b) and (c) of this section on registration forms provided by the Superintendent of the Delaware State Police. The original copy of the completed and executed registration form shall be forwarded by the registering agency or court to the Superintendent of the Delaware State Police within 3 business days following the completion of the form. The completed registration form shall be signed by the sex offender and by a witness to the signature representing the registering agency or court. The Superintendent of the Delaware State Police shall notify the chief law-enforcement officer having jurisdiction over the sex offender's residence, place of employment, and/or study. The notice shall include, but is not limited to, all available registration information pertaining to the sex offender as set forth herein. The registration information shall be immediately entered into DELJIS by the registering agency or court, unless such agency or court does not have access to DELJIS in which case the completed registration form shall be immediately forwarded to the Superintendent of the Delaware State Police who shall immediately enter the registration information into DELJIS. Registration information entered into DELJIS pursuant to this subsection shall be entered into a database of registered sex offenders which shall be developed and maintained by DELJIS. Nothing herein shall prevent the use of the registered sex offender database for any lawful purpose. The Superintendent of the Delaware State Police shall have the authority to audit the registration forms and information, and shall have the authority to require the sex offender to provide revised or additional information, photographs, fingerprints or exemplars if those submitted are deemed to be insufficient, and the sex offender may be

required to appear at a Delaware State Police facility for such purposes.

(2) The registration forms shall include, but are not limited to, the following information: the sex offender's legal name, any previously used names, aliases or nicknames, Social Security number, e-mail address or addresses, Internet identifiers, and the age, gender, race and physical description of the sex offender. The registration form shall also include all other known identifying factors, the offense history and the sex offender's current residences or anticipated place of future residences, places of study and/or places of employment, and the registration plate numbers and descriptions of any vehicles owned or operated by the offender, including any watercraft or aircraft with the locations where such vehicles are docked, parked or otherwise stored, copies of that offender's passport, any licenses to engage in an occupation or to carry out a trade or business, and the offender's home telephone number and any cellular telephone numbers. The forms shall also include a statement of any relevant conditions of release, discharge, parole or probation applicable to the sex offender. Additionally, the form shall identify the age of the victim or victims of the offense or offenses and describe the victim's relationship to the offender. The form shall also indicate on its face that false statements therein are punishable by law. A photograph of the offender taken at the time of registration shall be appended to the registration form. Notwithstanding any provision to the contrary, a DNA sample will also be taken from the offender. The resulting DNA profile will be submitted for entry into the Combined DNA Index System (CODIS). All information collected pursuant to this paragraph shall be kept in digitized form in an electronic database maintained by the designated Delaware Police facility responsible for registration.

(e)(1) Any person convicted of any offense specified in the laws of another state, commonwealth, territory, or other jurisdiction of the United States or any foreign government, which is the same as, or equivalent to, any of the offenses set forth in § 4121(a)(4) of this title; or any person convicted of any federal or military offense enumerated in 42 U.S.C. § 16911(5)(A)(iii) and (iv), who is a permanent or temporary resident of the State on the date of that person's conviction shall register as a sex offender within 3 business days of conviction, unless the person is confined in a penal institution located outside the State at the time of conviction, in which case the person shall register as a sex offender within 3 business days of that person's first return to the State of Delaware after release from custody. Any such person shall register at a designated Delaware State Police facility, and the Delaware State Police shall be deemed to be the registering agency.

(2) Any person convicted of any offense specified in the laws of another state, the United States or any territory of the United States, or any foreign government, which is the same as, or equivalent to, any of the offenses set forth in § 4121(a)(4) of this title; or any person convicted of any federal or military offense enumerated in 42 U.S.C. § 16911(5)(A)(iii) and (iv), who is not a permanent or temporary resident of the State on the date of that person's conviction, and who thereafter becomes a permanent or temporary resident of the State shall register as a sex offender within 3 business days of establishing permanent or temporary residency within the State. Any such person shall register at a designated Delaware State Police facility, and the Delaware State Police shall be deemed to be the registering agency.

(3) Any person convicted as described in paragraph (1) or paragraph (2) of this subsection, who is thereafter released on probation, parole or any form of early release which is supervised or monitored by the Department of Correction or the Division of Youth Rehabilitative Services shall be registered pursuant to this subsection. The Department of Correction or the Division of Rehabilitative Services shall ensure and verify such registration.

(f)(1) Any sex offender who is required to register pursuant to this section who thereafter changes the sex offender's own name, residence address or place of employment and/or study shall reregister with the Delaware State Police by appearing in person within 3 business days of the change. The sex offender shall be required to provide adequate verification of residence at the stated address. The Superintendent of the Delaware State Police shall be deemed to be the registering agency and shall comply with the requirements of subsection (d) of this section.

(2) Within 3 business days of receiving a re-registration as provided in paragraph (1) of this subsection, the Superintendent of the Delaware State Police shall notify the chief law enforcement officer having jurisdiction over the sex offender's prior residence, place of employment or study and the chief law enforcement officer having jurisdiction over the offender's new residence, or place of employment or study. The notice shall include, but is not limited to, all available registration information pertaining to the sex offender as set forth in subsection (d) of this section.

(3) Whenever a sex offender re-registers pursuant to this subsection, notification shall be provided pursuant to the requirements of § 4121 of this title.

(4) Any agency or court which collects registration information from a sex offender pursuant to this section shall, at the time of registration, provide written notice to the sex offender of the offender's duty to re-register pursuant to this section. The written notice shall also inform the offender that if the offender changes residence to another State, such new address must be registered with the Delaware State Police, with the law enforcement agency having jurisdiction over the offender's new residence, and that the offender must comply with any sex offender registration requirement in the new state of residence. The written notice shall also inform the offender that the offender must also comply with any sex offender registration requirement in any state where the offender is employed, carries on a vocation, or is a student. The written notice shall be provided on forms provided by the Superintendent of the Delaware State Police. Receipt of this

written notice shall be acknowledged by the sex offender, who shall sign the original copy of the written notice. The original copy of the written notice shall be forwarded to the Superintendent of the Delaware State Police along with the registration form. Failure of the registering agency to provide such written notice shall not constitute a defense to any prosecution based upon a violation of this section.

(5) The requirements of this subsection shall apply regardless of whether the sex offender's new residence is located within or without the State.

(6) Any sex offender who is required to re-register pursuant to this subsection, who is serving a sentence at Level II, III or IV at the time of such re-registration, may re-register with the agency supervising that sex offender's sentence within 3 business days of the change of address.

(g) Any person required to register as a sex offender pursuant to this section shall be required periodically to verify that the person continues to reside at the address provided at the time of registration. The frequency of periodic address verification shall be:

(1) Every 90 days for life following the date of completion of the initial registration form if the person is designated to Risk Assessment Tier III pursuant to § 4121 of this title. A Tier III offender shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registry information every 90 days for life; or

(2) Every 6 months after the completion of the initial registration form, if the person is designated to Risk Assessment Tier II pursuant to § 4121 of this title. A Tier II offender shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registry information every 6 months unless relieved of registration obligations.

(3) Every year after the completion of the initial registration form, if the person is designated to Risk Assessment Tier I pursuant to § 4121 of this title. A Tier I offender shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registry information every 12 months unless relieved of registration obligations.

There shall be assessed an annual administrative fee in the amount of \$30 collected from the offender by January 31 of each year payable at the time of verification.

(h) Any sex offender required to register pursuant to this section who seeks relief or redesignation must petition the Superior Court for release from the registration requirements as set forth in § 4121(e)(2) of this title.

(i) Any agency responsible for complying with this section may promulgate reasonable regulations, policies and procedures for the purpose of implementing this section. Such rules, regulations, policies and procedures shall be effective and enforceable upon their adoption by the agency, and shall not be subject to Chapter 11 or Chapter 101 of Title 29.

(j) All elected and appointed public officials, public employees or public agencies including but not limited to the members of the Sex Offender Management Board, are immune from civil liability for any discretionary decision to release relevant information, unless it is shown that the official, employee or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees or officials or to the general public. There shall be no civil legal remedies available as a cause of action against any public official, public employee or public agency for failing to release information as authorized in this section.

(k) A warrant shall issue for any sex offender who knowingly or recklessly fails to register or re-register or provide verification on the date on which it is required pursuant to this section or § 4121 of this title or to otherwise comply with any of the provisions of this section or § 4121 of this title, and any sex offender doing so shall be guilty of a class G felony.

(l) Any registration or re-registration information collected by the Superintendent of the Delaware State Police pursuant to this section shall be promptly forwarded to the Federal Bureau of Investigation for use pursuant to 42 U.S.C. § 14072.

(m) Notwithstanding any law, rule or regulation to the contrary, any law enforcement agency may release relevant information collected pursuant to this section where it is necessary to protect the public concerning a sex offender required to register pursuant to this section, except that the identity of a victim of the offense, any arrests not resulting in conviction, the offender's social security number and travel and/or immigration document numbers shall not be released.

69 Del. Laws, c. 282, § 1</sessionlaws/ga137/chp282.shtml>; 70 Del. Laws, c. 186, § 1</sessionlaws/ga138/chp186.shtml>; 70 Del. Laws, c. 397, §§ 1-19, 23[24], 24[25], 25[26], 23[27]</sessionlaws/ga138/chp397.shtml>; 71 Del. Laws, c. 203, §§ 1-5</sessionlaws/ga139/chp203.shtml>; 71 Del. Laws, c. 429</sessionlaws/ga139/chp429.shtml>; 73 Del. Laws, c. 122, §§ 2, 3</sessionlaws/ga141/chp122.shtml>; 73 Del. Laws, c. 245, §§ 1-3</sessionlaws/ga141/chp245.shtml>; 73 Del. Laws, c. 418, §§ 1,

2</sessionlaws/ga141/chp418.shtml>; 76 Del. Laws, c. 25, §§ 1-8</sessionlaws/ga144/chp025.shtml>; 76 Del. Laws, c. 88, § 4</sessionlaws/ga144/chp088.shtml>; 76 Del. Laws, c. 374, §§ 1-3</sessionlaws/ga144/chp374.shtml>; 77 Del. Laws, c. 148, §§ 1-11.</sessionlaws/ga145/chp148.shtml>;

§ 4120A. Intent and purpose.

(a) The General Assembly hereby declares that the comprehensive evaluation, identification, classification, treatment, and continued monitoring of sex offenders who are subject to the supervision of the criminal justice system is necessary in order to work toward the reduction of recidivism by such offenders. Therefore, the General Assembly hereby creates a Board which shall develop and standardize the evaluation, identification, classification, treatment, and continued monitoring of sex offenders at each stage of the criminal justice system so that such offenders will curtail recidivistic behavior and the protection of victims and potential victims will be enhanced. The General Assembly hereby recognizes that some sex offenders cannot or will not respond to treatment and that, in creating the Board described in this section, the General Assembly does not intend to imply that all sex offenders can be successful in treatment. Further, the General Assembly mandates that each member agency as outlined below must act in accordance with the standards established by the Board.

(b) Definitions. -- As used in this section, unless the context otherwise requires, the following words and phrases shall have the meaning ascribed to them in this section:

(1) "Board" means the Sex Offender Management Board created in this § 4120A.

(2) "Sex offender" or "offender" means any person who has ever been convicted or adjudicated of an offense as defined in Title 11, §§ 761 and 4121(a)(4) of this title.

(3) "Treatment" means therapy, monitoring, and supervision of any sex offender which conforms to the standards created by the State's Sex Offender Management Board.

(c) Creation of the Sex Offender Management Board. --

(1) There is hereby created, in the Delaware Department of Safety and Homeland Security, a Sex Offender Management Board which shall consist of the following members:

a. The President Judge of the Delaware Superior Court, or the President Judge's designee;

b. The Commissioner of the Delaware Department of Correction, or the Commissioner's designee;

c. A representative from the Office of Probation and Parole appointed by the Commissioner of the Delaware Department of Correction;

d. The Chairperson of the Board of Parole or the Chairperson's designee;

e. A representative from the Division of Prevention and Behavioral Health Services appointed by the Secretary for the Delaware Department of Children, Youth and Their Families;

f. One licensed mental health professional with experience in treatment of adult sex offenders appointed by the Governor, and who shall serve on the Board for a term of 4 years;

g. One member at-large who can represent sex abuse victims, victims' rights organizations, and/or the community at large appointed by the Governor, and who shall serve on the Board for a term of 4 years;

h. The Secretary for the Delaware Department of Health and Social Services, or the Secretary's designee;

i. The Superintendent of the Delaware State Police, or the Superintendent's designee;

j. One member who is a recognized expert in the treatment of juvenile sex offenders, appointed by the Governor, and who shall serve on the Board for a term of 4 years;

k. The Attorney General for the State, or the Attorney General's designee;

- I. The Public Defender of the State of Delaware, or the Public Defender's designee;
- m. The Chairperson of the Police Chief's Council of Delaware, or the Chairperson's designee;
- n. Two members appointed by the Governor who are recognized experts in the field of sexual abuse and who can represent sexual abuse victims and victims' rights organizations, and who shall serve on the Board for a term of 4 years;
- o. A member of the Delaware State Police Sex Offender Registry appointed by the Superintendent of the Delaware State Police;
- p. The Executive Director of Delaware Criminal Justice Information System (DELJIS), or the Executive Director's designee;
- q. A representative from Youth Rehabilitative Services appointed by the Secretary for the Delaware Department of Children, Youth and Their Families;
- r. One member from the Delaware Department of Education who has experience in dealing with juvenile sex offenders in the public school system appointed by the Secretary for the Delaware Department of Education;
- s. The Chief Judge of Family Court or the Chief Judge's designee; and,
- t. The Secretary for the Delaware Department of Safety and Homeland Security, or the Secretary's designee.

(2) Members shall serve without compensation.

(3) The Secretary of the Delaware Department of Safety and Homeland Security shall preside as Chairperson of the Board or shall appoint a presiding officer for the Board from among the members appointed in paragraph (c)(1) of this section who shall preside over the Board as Chairperson for a period not to exceed 2 years.

(4) The Board shall elect from amongst its membership, a Vice Chair, who shall become the Chairperson of the Board upon the expiration of the Chairperson's term.

(5) The Board shall meet on a regular basis. Meetings shall be subject to all relevant open-meeting laws and regulations.

(6) The Sex Offender Management Board shall adopt bylaws, within 6 months from the enactment of this section, to govern itself. Such bylaws shall include, at a minimum, the factors outlined within this section.

(7) The Board may, as needed and appropriate, create subcommittees, task forces, or working groups to explore specific issues or opportunities or to provide subject matter expertise in the promulgation of the rules and regulations and the development of standards and programs as they relate to the evaluation, identification, classification, treatment and continued monitoring of sex offenders within the criminal justice system.

(8) The Board shall adopt rules and regulations to effectuate compliance by all affected agencies.

(d) The duties and authority of the Sex Offender Management Board shall be as follows:

(1) Prior to January 1, 2011, the Board shall develop and prescribe a standardized procedure for the evaluation, identification, and classification of adult and juvenile sex offenders. Such procedure shall provide for an evaluation, identification, and classification of the offender and recommend behavior management, monitoring, and treatment based upon the knowledge that some sex offenders are extremely habituated and that there is no known cure for the propensity to commit sexual abuse. The Board shall develop and implement measures of success based upon a no-cure policy for intervention. The Board shall develop and implement methods of intervention for sex offenders which have as a priority the physical and psychological safety of victims and potential victims and which are appropriate to the needs of the particular offender, so long as there is no reduction of the safety of victims and potential victims.

(2) Prior to January 1, 2011, the Board shall develop guidelines and standards for a system of programs for the treatment of sex offenders which can be utilized by offenders who are incarcerated or under the supervision of the Department of Correction or the Board of Parole. The programs developed pursuant to this subsection shall be as flexible as possible so that such programs may be utilized by each offender to prevent the offender from harming victims and potential victims. Such programs shall be structured in such a manner that the programs provide a continuing monitoring process as well as a continuum of treatment programs for each offender as that offender proceeds through the criminal justice system and

may include, but shall not be limited to, group counseling, individual counseling, outpatient treatment, inpatient treatment, or treatment in a therapeutic community. Also, such programs shall be developed in such a manner that, to the extent possible, the programs continue to be accessible by all offenders in the criminal justice system.

(3) On or before January 1, 2011, the Board shall consult on and approve the risk assessment screening instrument to assist any sentencing authority in determining the likelihood that an offender would commit 1 or more sex offenses. In carrying out this duty, the Board shall consider sex offender risk assessment research and shall consider as 1 element the risk posed by a sex offender who suffers from a mental abnormality, psychosis, or personality disorder that makes the person more likely to engage in sexually violent predatory offenses.

(4) The Board shall develop criteria for measuring a sex offender's progress in treatment. The criteria shall be designed to assist the Courts and the State Board of Parole in determining whether a sex offender would pose an undue public safety threat to the community if that sex offender were released from incarceration, released to a reduced level of supervision, or discharged from probation or parole. The criteria shall not limit the decision-making authority of the courts or the State Board of Parole.

(5) The Board shall research and analyze the effectiveness of the monitoring and tracking, evaluation, identification, classification, and treatment procedures and programs developed pursuant to this section. The Board shall also develop and prescribe a system for implementation of the guidelines and standards developed pursuant to this § 4120A and for tracking offenders who have been subjected to evaluation, identification, classification, and treatment pursuant to this section. The Board shall implement the guidelines and standards so developed in this § 4120A by no later than January 1, 2012.

(6) The Board shall research and analyze the safety issues raised by living arrangements for and the location of sex offenders within the community, including but not limited to shared or structured living arrangements. At a minimum, the Board shall consider the issues raised by the location of sex offender residences, especially in proximity to public or private schools and child care facilities, and public notification of the location of sex offender residences. On or before July 15, 2010, the Board shall prepare and submit a report concerning the research and analysis conducted pursuant to this paragraph and any related legislative recommendations. The Board shall submit the report to the Public Safety, Judiciary and Corrections Committees of the House of Representatives and the Senate. On or before January 1, 2012, the Board shall adopt such guidelines as it may deem appropriate regarding the living arrangements and location of sex offenders. The Board shall accomplish the requirements specified in this paragraph within existing appropriations.

(7) Prior to January 1, 2012, the Board, in collaboration with law-enforcement agencies, victim advocacy organizations, the Department of Education, and the Department of Safety and Homeland Security, shall develop, for use by schools, educational materials regarding general information about sex offenders, safety concerns related to sex offenders, and other relevant material. The Board shall provide these materials to the Department of Education, and the Department of Education shall make these materials available to schools in the State.

(8) The Board and the individual members thereof shall be immune from any liability, whether civil or criminal, for the good faith performance of the duties of the Board as specified in this section except when such performance constitutes wilful or wanton conduct or gross negligence.

(e) Each sex offender sentenced by a court for an offense committed on or after January 1, 2010, shall be required, as a part of any sentence to probation, community corrections, or incarceration with the Department of Correction, to undergo treatment to the extent appropriate to such offender based upon the recommendations of the evaluation and identification.

(f) Each sex offender placed on parole by the State Board of Parole on or after January 1, 2010, shall be required, as a condition of such parole, to undergo treatment based upon the recommendations of the evaluation and identification regarding such offender during the offender's incarceration or any period of parole.

(g) The Board shall require any person who applies for placement, including any person who applies for continued placement, on the list of persons who may provide sex offender treatment and sex offender services pursuant to this section, to submit fingerprints and other necessary information in order to obtain the following:

(1) A report of the applicant's entire criminal history record from the State Bureau of Identification or a statement from the State Bureau of Identification that the State Bureau of Identification Central Repository contains no such information relating to that person.

(2) A report of the applicant's entire federal criminal history record pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. § 534). The State Bureau of Identification shall be the intermediary for the purposes of this section and the Board shall be the screening point for the receipt of said federal

criminal history records.

(3) The Board may obtain such other information and recommendations from third parties which may be relevant to the applicant's fitness to provide sex offender treatment and sex offender services pursuant to this section.

(h) The Board shall use the information obtained from the State and national criminal history record check and the current background investigation in determining whether to place or continue the placement of the person on the approved provider list.

76 Del. Laws, c. 88, § 1</sessionlaws/ga144/chp088.shtml>; 70 Del. Laws, c. 186, § 1</sessionlaws/ga138/chp186.shtml>; 77 Del. Laws, c. 148, §§ 30-32</sessionlaws/ga145/chp148.shtml>; 77 Del. Laws, c. 327, § 210.</sessionlaws/ga145/chp327.shtml>;

§ 4121. Community notification of sex offenders on probation, parole, conditional release or release from confinement.

(a) When used in this subchapter:

(1) "Community notification" means notice which is provided by any method devised specifically to notify members of the public who are likely to encounter a sex offender. Methods of notification may include, but not be limited to, door-to-door appearances, mail, electronic mail, telephone, fax, newspapers or notices, or any combination thereof, to schools, licensed day care facilities, public libraries, any other organization, company or individual upon request, and other accessible public facilities within the community. "Community notification" also includes notice provided through an alert system added to the Delaware State Police Sex Offender Registry Internet Web Site that allows governmental agencies, public officials (such as county or municipal Executives, Mayors, Commissioners, or Council Members), and members of the general public to register to receive updates by geographical region whenever a sex offender is added to, deleted from, or has any change in status on the registry created pursuant to § 4120 of this title. Community notification shall include where possible all information required to be included in the searchable records pursuant to paragraph (3) of this subsection.

(2) "Conviction" and "convicted" shall include, in addition to their ordinary meanings, adjudications of delinquency and persons who enter a plea of guilty, or are found guilty but mentally ill or not guilty by reason of insanity, as provided in § 401 of this title.

(3) "Searchable records available to the public" means records regarding every sex offender who has been convicted and who is thereafter designated to Risk Assessment Tier II or III pursuant to this section. Such records shall also include the last verified addresses for the offender, and shall identify the specific sex offense or offenses for which the offender was convicted, the date or dates of the convictions and all information required for registration pursuant to § 4120(d)(2) of this title as is practicable given the method of community notification, except that relationship to the victim shall not be a searchable record and age of victim shall be searchable only by age ranges birth to 11 years, 12 to 15 years, 16 to 17 years, and 18 and above. The records may also include other information designated for public access by the Superintendent of the Delaware State Police. Exempt from the records are the identity of the victims, the Social Security number of the offender, and arrests that did not result in conviction. The public access records shall include a warning that information should not be used to unlawfully injure, harass, or commit a crime against any individual named in the registry or residing or working at any reported address. The warning shall note that any such action could result in civil or criminal penalties. These records shall be searchable by the name of the sex offender, by suitable geographic criteria, and by as many other required data elements as is technically feasible. These records shall be made available upon request through police agencies, public libraries, public schools and the Internet. The records shall be maintained by the Superintendent of the Delaware State Police, as set forth in § 4120 of this title, and elsewhere in this section. They shall be updated as often as practicable, but not less than every 3 months.

(4) "Sex offender" means any person who is, or has been:

a. Convicted of any of the offenses specified in §§ 765 through 780, § 787(b)(2), § 1100, §§ 1108 through 1112A, § 1335(a)(6), § 1335(a)(7), § 1352(2), § 1353(2) or § 1361(b) of this title, or of any attempt or conspiracy to commit any of the aforementioned offenses; or

b. Any juvenile who is adjudicated delinquent of any offense which would constitute any of the offenses set forth in paragraph (a)(4)a. of this section if that juvenile delinquent had been charged as an adult; or

c. Convicted of any offense specified in the laws of another state, commonwealth, territory, or other jurisdiction of the United States requiring registration in that jurisdiction, or a conviction in any foreign government, which is the same as, or equivalent to, any of the offenses set forth in paragraph (a)(4)a., (a)(4)b. or (a)(4)d. of this section; or convicted of any

federal or military offense enumerated in 42 U.S.C. § 16911(5)(A)(iii) and (iv); or

d. Convicted of a violation of § 783(4) or § 783(6) or § 783A(4) or § 783A(6) of this title; or

e. Charged by complaint, petition, information or indictment with any of the offenses set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)c. or (a)(4)d. of this section, and who thereafter pleads guilty to any offense included in the originally charged offense, as provided in § 206 of this title, if the person is thereafter designated as a sex offender by the sentencing judge pursuant to subsection (e) of this section; or

f. Convicted of any of the offenses set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)c. or (a)(4)d. of this section, or of any offense which is the same as or equivalent to such offenses as the same existed and were defined under the laws of this State existing at the time of such conviction; or

g. Any person convicted after June 27, 1994, of a violation of § 764 of this title if the person had previously been convicted of the same offense or any other offense set forth in this paragraph, and the previous conviction occurred within 5 years of the date of the conviction for the current offense.

(b) Upon a person's conviction or adjudication of delinquency or at the time of sentencing for any offense set forth in paragraph (a)(4)a., (a)(4)b., (a)(4)d., (a)(4)e., (a)(4)f., or (a)(4)g. of this section, the court shall inform the person that the person shall be designated as a sex offender and that a Risk Assessment Tier will be assigned to that person by the court.

(c) Following the sentencing of a person convicted or adjudicated delinquent for any offense described in paragraph (a)(4)e. of this section, or following a finding by the sentencing court that the person has violated the terms of that person's own probation or parole as set forth in paragraph (a)(4)f. of this section, the sentencing court shall assign the defendant to the Risk Assessment Tier applicable for the originally charged offense.

(d) Sex offenders shall be assigned to a Risk Assessment Tier as follows:

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

a. Rape in the First Degree, Rape in the Second Degree, Rape in the Third Degree if the offense involved a child under the age of 13 or the offense involved force or threat of physical violence, or was without consent, Unlawful Sexual Contact in the First Degree, Unlawful Sexual Intercourse in the First or Second Degree, Unlawful Sexual Penetration in the First or Second Degree, Unlawful Sexual Contact in the First Degree, 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, Continuous Sexual Abuse of a Child, Sexual Exploitation of a Child, Trafficking in Persons where the victim is under the age of 13 or the offense involved sexual servitude of a minor through force or threat of force, Sexual Extortion if the offense involved force or threat of force, Dangerous Crime Against a Child if the offense involved force or the threat of force; or

b. Kidnapping in the First or Second Degree, if the purpose of the crime was to facilitate the commission of any offense set forth in paragraph (a)(4) or (a)(6) [sic] of this section, where the defendant is not a parent, step parent or guardian of the victim; or

c. Federal offenses found at 18 U.S.C. § 2241, § 2242, § 2244, or any comparable military offense specified by the Secretary of Defense under § 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note); or

d. Any attempt or conspiracy to commit any of the offenses set forth in paragraph (d)(1)a. or (d)(1)b. of this section; or

e. Any offense specified in the laws of another state, any territory of the United States or any foreign government, which is the same as, or equivalent to, any offense set forth in paragraphs (d)(1)a. through (d)(1)e. of this section; or

f. Upon motion of the State, any person convicted of any felony set forth in §§ 761 through 777 or §§ 1108 through 112A of this title which is not otherwise set forth in paragraphs (d)(1)a. through (d)(1)c. of this section, if the victim of the offense had not yet reached that victim's sixteenth birthday at the time of the crime, and if the sentencing court determines by a preponderance of the evidence, after it weighs all relevant evidence which bears upon the particular facts and circumstances of the offense and the character and propensities of the offender, that public safety will be enhanced by assigning the offender to Risk Assessment Tier III.

(2) 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, Possession of Child Pornography, 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
- b. Federal offenses found at 18 U.S.C. § 2243, § 2244, § 2251, § 2251A, § 2252, § 2252A, § 2260, § 2421, § 2422(b), § 2423(a); or
- c. Any comparable military offense specified by the Secretary of Defense under § 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note); or
- d. Any attempt or conspiracy to commit any of the offenses set forth in paragraph (d)(2)a. of this section; or
- e. Any offense specified in the laws of another state, the United States, any territory of the United States or any foreign government, which is the same as, or equivalent to, any of the offenses set forth in paragraph (d)(2)a. and b. of this section; or
- f. Upon motion of the State, any person convicted of any offense set forth in §§ 761 through 767 or §§ 1108 through 1111 or § 1321(5) or § 1352(2) or § 1353(2) of this title which is not otherwise specified in this paragraph, or in paragraph (d)(1) of this section, if the sentencing court determines by a preponderance of the evidence after it weighs all relevant evidence which bears upon the particular facts and circumstances or details of the commission of the offense and the character and propensities of the offender, that public safety will be enhanced by assigning the offender to Risk Assessment Tier II; or
- g. Any person described in paragraph (a)(4)f. of this section.

(3) Risk Assessment Tier I. Any sex offender not otherwise designated to Risk Assessment Tier II or III in accord with paragraphs (d)(1) and (2) of this section shall be designated by the court to Risk Assessment Tier I. Moreover, offenders convicted of the following federal offenses shall register under Tier I: 18 U.S.C. § 1591; § 1801; § 2252(CP) [sic]; § 2252B; § 2252C; § 2422(a); § 2423(b), (c); § 2424; § 2425; or any comparable military offense specified by the Secretary of Defense under § 115(a)(8)(C)(i) of Public Law 105-119 (10 U.S.C. § 951 note).

(4) Notwithstanding any provision of this section to the contrary, any sex offender who has previously been convicted of any offense set forth in paragraph (1) or paragraph (2) of this subsection and who is thereafter convicted of any second or subsequent offense set forth in paragraph (1) or paragraph (2) of this subsection shall be designated to Risk Assessment Tier III.

(5) Notwithstanding any provision in this section to the contrary, any sex offender who has previously been convicted of any offense set forth in paragraph (d)(3) of this section and who is thereafter convicted of an offense which would otherwise result in a designation to Risk Assessment Tier I shall be designated to Risk Assessment Tier II if the conviction for the subsequent offense occurred within 5 years of the previous conviction.

(6) Notwithstanding any provision in this section or in § 4120 of this title to the contrary, any person who would otherwise be designated as a sex offender pursuant to this section and to § 4120 of this title may petition the sentencing court for relief from such designation, and from all obligations imposed by this section and § 4120 of this title if:

- a. The Tier II or Tier III offense for which the person was convicted was a misdemeanor and the victim was not a child under 13 years of age; and
- b. The person has not previously been convicted of a violent felony, or any other offense set forth in paragraph (a)(4) of this section, or of any offense specified in the laws of another state, the United States or any territory of the United States, or any offense in a foreign jurisdiction which is the same as, or equivalent to, such offenses; and
- c. The sentencing court determines by a preponderance of the evidence that such person is not likely to pose a threat to public safety if released from the obligations imposed by this section, and by § 4120 of this title.

Notwithstanding anything in this paragraph to the contrary, no person designated as a Tier II or Tier III sex offender shall be afforded relief from designation as a sex offender if the victim of any of the offenses for which the person was convicted were less than 12 years old at the time of the crime, unless the person was also less than 18 years old at the time of the crime in which case the prohibition set forth in this sentence shall not apply. Any person seeking relief from designation as a sex offender under this paragraph shall file a petition with the sentencing court prior to sentencing requesting such relief. The petition shall be granted or denied by the sentencing court after it weighs all relevant evidence which bears upon the particular facts and circumstances of the offense, and the character and propensities of the offender.

(7) In any case in which the State seeks to have the offender designated to a Risk Assessment Tier higher than the presumptive tier, the motion required by this subsection shall be filed by the State before sentencing, provided that such a motion shall be unnecessary if any written plea agreement relating to the conviction clearly informs the defendant of the State's intention to request a higher Tier designation.

(e)(1) Any person designated as a sex offender pursuant to this section shall comply with the registration provisions of § 4120 of this title as follows:

a. For life, if the sex offender is designated to Risk Assessment Tier III, or if the person is designated to Risk Assessment Tier I or II, and has previously been convicted of any of the offenses specified in paragraph (a)(4)a., (a)(4)c. or (a)(4)d. of this section;

b. For 25 years following the sex offender's release from Level V custody, or for 25 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Risk Assessment Tier II, and is not otherwise required to register for life pursuant to this subsection, except that any time spent at any subsequent period of Level V custody shall not be counted against such 25-year period; or

c. For 15 years following the sex offender's release from Level V custody, or for 15 years following the effective date of any sentence to be served at Level IV or below, if the person is designated to Risk Assessment Tier I, and is not otherwise required to register for life pursuant to this subsection, except that any time spent at any subsequent period of Level V custody shall not be counted against such 15-year period.

(2) Notwithstanding any provision in this section to the contrary:

a. Any sex offender designated to Risk Assessment Tier III may petition to the Superior Court for redesignation to Risk Assessment Tier II if 25 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State, has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 25 years have elapsed from the date of the subsequent conviction or finding of a violation, during which time no additional convictions or findings of violation can have occurred. Notwithstanding any provision of this section or § 4120 of this title to the contrary, any sex offender who is redesignated from Risk Assessment Tier III to Risk Assessment Tier II shall continue to comply with the registration and re-registration requirements imposed by § 4120(g) upon Tier III offenders for life. Any re-designation from Risk Assessment Tier III to Risk Assessment Tier II shall not release the offender from the requirement of lifetime registration or address verification every 90 days pursuant to § 4120(g)(1)(a) of this title and paragraph (e)(1) of this section.

b. Any sex offender designated to Risk Assessment Tier II may petition the Superior Court for redesignation to Risk Assessment Tier I if the victim was not a child under 18 years of age and 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can have occurred.

c. Any sex offender designated to Risk Assessment Tier I may petition the Superior Court for relief from designation as a sex offender, and from all obligations imposed pursuant to this section and § 4120 of this title, if 10 years have elapsed from the last day of any Level IV or V sentence imposed at the time of the original conviction, or from the date of sentencing if no Level IV or V sentence was imposed, and if the offender has successfully completed an appropriate sex offender treatment program certified by the State and has not been convicted of any crime (other than a motor vehicle

offense) during such time. If the offender has been convicted of any subsequent offense (other than a motor vehicle offense) or has been otherwise found to have violated the terms of any probation, parole or conditional release relating to the sentence originally imposed following the conviction for the underlying sex offense, no petition or redesignation shall be permitted until 10 years have elapsed from the date of the subsequent conviction or finding of violation, during which time no additional convictions or findings of violation can have occurred.

d. The Superior Court shall not grant a petition for redesignation or relief filed pursuant to this subsection unless:

1. The sex offender establishes, by a preponderance of the evidence, that the public safety no longer requires preservation of the original designation; and

2. The Court provides the Attorney General with notice of the petition and with a reasonable period of time to be heard upon the matter.

e. When considering a petition for redesignation, the Court shall weigh all the relevant evidence which bears upon the character and propensities of the offender, and the facts and circumstances of that offender's prior offenses. The Court may in its discretion hold a hearing on the petition. If the Court grants the petition, it shall promptly notify the Sex Offender registry.

(f) Whenever a sex offender is released, discharged or paroled from any Level IV or V or other custodial institution after that sex offender has completed a Level IV or V sentence imposed following a conviction for any offense specified in paragraph (a)(4) of this section, the agency having custody over the sex offender at the time of the release, discharge or parole shall provide written notice of the release, discharge or parole to the Superintendent of the Delaware State Police, to the chief law-enforcement officer having jurisdiction over the offender's intended residence, to the original arresting law-enforcement agency and to the Attorney General. Such notice shall be provided not more than 90 days, and not less than 45 days, prior to the offender's release, discharge or parole. The notice shall include, but is not limited to, the sex offender's legal name, and any previously used names, aliases or nicknames, and the age, gender, race and physical characteristics of the sex offender, a photograph of the offender taken within 90 days of that offender's release, along with any other known identifying factors, the person's offense history and that person's place of anticipated future residence, school and/or employment. The notice shall also include a statement of any relevant conditions of release, discharge, parole or probation applicable to the offender. Additionally, the form shall identify or describe that offender's relationship to the victim. Notwithstanding any law, rule or regulation to the contrary, no person shall be released from any Level V facility unless and until that person has made a good faith effort to cooperate with the appropriate authorities pursuant to this section except that no such person shall be held at Level V pursuant to this subsection beyond the maximum period of such custody originally ordered by the sentencing court. The notice required by this subsection shall be required whenever the offender is released from any Level V facility to any Level IV facility, and again when such offender is released from the Level IV facility.

(g) Whenever a sex offender is sentenced to a period of probation at Level III or below, or is required to pay a fine in any amount following a conviction for any offense specified in paragraph (a)(4) of this section, the sentencing court shall provide the notice specified in subsection (f) of this section to the entities specified therein. This subsection shall not apply whenever a sex offender is sentenced to serve a portion of that sex offender's sentence at Level IV or Level V, unless such sentence is suspended in its entirety. Notice pursuant to this subsection shall be provided within 3 business days of sentencing.

(h) Upon receipt of the notice specified in subsections (f) and (g) of this section, the Attorney General shall use any reasonable means to notify the victim or victims of the crime or crimes for which the sex offender was convicted of the release or sentencing unless the victim has requested not to be notified. Such notice may include any information provided pursuant to subsections (f) and (g) of this section.

(i) When a sex offender assigned to Risk Assessment Tier II or III provides registration information as provided by § 4120 of this title, the chief law-enforcement officer of the local jurisdiction where the offender intends to reside, or the Superintendent of the State Police if no local police agency exists, shall provide public notification as follows:

(1) For sex offenders assigned to Risk Assessment Tier II, notification shall consist of searchable records available to the public, and may also consist of community notification pursuant to paragraph (l)(3) of this section; or

(2) For sex offenders assigned to Risk Assessment Tier III, notification shall consist of searchable records available to the public as well as community notification.

(3) For sex offenders assigned to Tier II or III, notice shall be given to any school the offender plans to attend and/or to the chief law-enforcement officer of the local jurisdiction where the offender plans to study or be employed.

(j) A complete register of all persons convicted of any of the offenses specified in paragraph (a)(4) of this section, who are thereafter designated sex offenders pursuant to this section, shall be created, maintained and routinely updated and audited by the Delaware State Police. The register shall be immediately accessible by the use of DELJIS computer by all law-enforcement agencies. The register shall be searchable by the name of the sex offender and by suitable geographic criteria.

(k) Notwithstanding any law, rule or regulation to the contrary, if after the exercise of due diligence by the sex offender, the offender is unable to secure an anticipated place of future residence, for the purposes of this subsection the offender shall be designated as "homeless." "Homeless persons" must report their habitual locale, park or locations during the day and night, public buildings, restaurants, and libraries frequented. The term "homeless" shall also include any person who anticipates a future place of residence in or at any temporary homeless shelter or other similar place of temporary residence for 7 or more days. The fact that a sex offender has secured an anticipated place of future residence at a homeless shelter or other similar place of temporary residence shall be reported by the court or agency having custody of the offender, along with the name and address of the shelter or residence as required by subsections (h) and (i) of this section, but such information shall not be included in any public notification required or permitted by subsection (i) or subsection (j) of this section, except that such information shall be provided to the agency, organization or entity having supervisory or operational authority over such shelter or similar place of temporary residence. Notwithstanding any law, rule or regulation to the contrary, any sex offender who is designated as "homeless" pursuant to this section shall verify the sex offender's own registration information as follows:

(1) A Tier III sex offender designated as "homeless" shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registration information every week following the date of completion of the initial registration form;

(2) A Tier II sex offender designated as "homeless" shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registration information every 30 days following the date of completion of the initial registration form;

(3) A Tier I sex offender designated as "homeless" shall appear in person at locations designated by the Superintendent of the Delaware State Police to verify all registration information every 90 days following the date of completion of the initial registration form.

(l)(1) All elected public officials, public employees and public agencies are immune from civil liability for any discretionary decision to release relevant information unless it is shown that the official, employee or agency acted with gross negligence or in bad faith. The immunity provided under this section applies to the release of relevant information to other employees, officials or public agencies as well as to the general public.

(2) There shall be no civil legal remedies available as a cause of action against any public official, public employee or public agency for failing to release information as authorized in this section.

(3) Any information contained in searchable records available to the public may be used in any manner by any person or by any public, governmental or private entity, organization or official, or any agent thereof, for any purpose consistent with the enhancement of public safety.

(m) Notwithstanding any law, rule or regulation to the contrary, upon a finding of probable cause that a sex offender has failed to comply with any provision of § 4120 of this title, the sex offender may be designated to Risk Assessment Tier III until such time as the agency or court to which the sex offender is obligated to provide notice determines that the sex offender is again in compliance with § 4120 of this title. In such cases, the agency or court which investigates the alleged noncompliance shall, upon a finding of probable cause that a violation has occurred, immediately notify the Superintendent of the Delaware State Police that a violation of the provisions of § 4120 of this title has occurred and that, as a result, the sex offender is redesignated to Risk Assessment Tier III until such time as the offender complies fully with § 4120 of this title. The agency or court shall also immediately notify the Superintendent of the Delaware State Police when the sex offender is again in compliance with § 4120 of this title, at which time the sex offender will be returned to that sex offender's originally designated Risk Assessment Tier.

(n) Notwithstanding any provision of this section to the contrary, any sex offender convicted of any offense specified in paragraph (a)(4)c. of this section shall be designated to a Risk Assessment Tier by the court. The designation shall be in accord with the provisions of subsection (d) of this section.

(o) When a sex offender is designated to a Risk Assessment Tier pursuant to this section, that fact shall be made a part of any written or electronic sentencing order produced by the sentencing court, and shall be entered into the DELJIS system by the sentencing court. The agency responsible for registering the offender shall have the information entered into the DELJIS system for any offender designated pursuant to subsection (n) of this section.

(p) Any agency responsible for complying with this section shall be permitted to promulgate reasonable regulations, policies and procedures to implement this statute. Such rules, regulations, policies and procedures shall be effective and enforceable upon their adoption by the agency, and shall not be subject to Chapter 11 or Chapter 101 of Title 29.

(q) This section shall be effective notwithstanding any law, rule or regulation to the contrary.

(r) Any sex offender who knowingly or recklessly fails to comply with any provision of this section shall be guilty of a class G felony.

(s) Subject to § 4122 of this title, this section shall apply to all persons convicted.

(t)(1) If a school, school district or licensed child care provider receives community notification, the community notification must be placed in a binder and kept in the administrative office available to view upon request by adults and juveniles with adult supervision. No community notification may be removed from the binder unless the school or child care provider is notified of an address change informing them that the offender has moved from the community. The school, school district or licensed child care provider shall notify parents and staff frequently through their regular communications of the availability and location of the community notification binder.

(2) The physical posting of community notifications in public school buildings and licensed child care facilities is prohibited.

(3) Schools shall ensure that students are taught personal safety and awareness skills in an age-appropriate manner consistent with the Delaware Health Education Curriculum Framework.

(u) Notwithstanding any provision of this section or title to the contrary, any Tier III sex offender being monitored at Level IV, III, II or I, shall as a condition of their probation, wear a GPS locator ankle bracelet paid for by the probationer.

(v) If any provision of this subchapter or any amendment hereto, or the application thereof to any person, thing or circumstances is held invalid, such invalidity shall not affect the provisions or application of this subchapter or such amendments that can be given effect without the invalid provision