

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2350 Session of
2008

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MOUL, PAYNE, PERRY, QUIGLEY, REICHLEY, ROCK, SAYLOR,
SCHRODER, S. H. SMITH, SONNEY, STERN, VULAKOVICH, SEIP AND
TURZAI, MARCH 17, 2008

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 17, 2008

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, in child protective services,
3 providing for the detection of child rapists and predators;
4 imposing duties on certain health care practitioners to
5 determine whether children are 13 years of age or older;
6 providing for reporting by treating health care
7 practitioners, for law enforcement, for fetal tissue and DNA
8 samples, for duties of the Office of Attorney General and for
9 certain immunity; and imposing penalties.

10 The General Assembly of the Commonwealth of Pennsylvania

11 hereby enacts as follows:

12 Section 1. Chapter 63 of Title 23 of the Pennsylvania

13 Consolidated Statutes is amended by adding a subchapter to read:

14 SUBCHAPTER B.1

15 CHILD RAPIST AND PREDATOR DETECTION

16 Sec.

1 6321.1. Short title of subchapter.
2 6321.2. Findings and purpose of subchapter.
3 6321.3. Definitions.
4 6321.4. Pregnancy and sexually transmitted disease as child
5 abuse in children.
6 6321.5. Duty to determine whether child is 13 years
7 of age or older and to report.
8 6321.6. Law enforcement.
9 6321.7. Fetal tissue and DNA samples.
10 6321.8. Evidence.
11 6321.9. Entity assistance.
12 6321.10. Preclusion of confidentiality.
13 6321.11. Immunity.
14 6321.12. Employer responsibility.
15 6321.13. Annual report.
16 6321.14. Criminal penalty.
17 6321.15. Civil remedy.

18 § 6321.1. Short title of subchapter.

19 This subchapter shall be known and may be cited as the Child
20 Rapist and Predator Detection Act.

21 § 6321.2. Findings and purpose of subchapter.

22 The General Assembly finds and declares as follows:

23 (1) The overriding imperatives of public safety and
24 child protection create a compelling State interest in
25 legislation to develop more effective methods for discovering
26 the identities of dangerous predators who rape and sexually
27 abuse preteen children before these dangerous predators can
28 traumatize the lives of other children.

29 (2) Recently enacted legislation has expanded the
30 mandated reporting requirements for child abuse in a manner

1 that requires the reporting of the pregnancies of girls who
2 are under 13 years of age to county agencies, regardless of
3 whether the predator is a perpetrator within the meaning of
4 this subchapter.

5 (3) The failure of physicians and hospital
6 administrators to report the pregnancy of preteens to law
7 enforcement authorities is a punishable offense under 18
8 Pa.C.S. § 5106 (relating to failure to report injuries by
9 firearm or criminal act).

10 (4) Despite the mandatory reporting requirement under
11 existing law, a significant number of child rapists and other
12 child predators avoid detection and punishment when the
13 reporting requirement is circumvented by the failure to make
14 reasonable efforts to confirm the age of child victims.

15 (5) Children under 13 years of age who have a sexually
16 transmitted disease or who are pregnant embody evidence that
17 a felonious sex crime has been committed.

18 (6) The successful criminal prosecution of sexual
19 offenders who prey on preteen children may depend heavily on
20 the preservation of physical evidence, including DNA
21 evidence, in order to identify or confirm the identity of the
22 perpetrator.

23 (7) A law requiring a health care practitioner who
24 treats a minor who is pregnant or who has a sexually
25 transmitted disease to ascertain whether that minor is a
26 preteen will greatly strengthen the Commonwealth's ability to
27 protect children under 13 years of age against child rapists
28 and other sexual predators.

29 § 6321.3. Definitions.

30 The following words and phrases when used in this subchapter

shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Abortion facility." A facility or medical facility as defined in 18 Pa.C.S. § 3203 (relating to definitions).

"Chief of police." The chief of police or other head of the police department of the municipality in which resides a child who is the subject of a report required under this subchapter.

"Child." An individual who is under 13 years of age.

"Child predator unit." The Child Predator Unit in the Office of Attorney General.

"County agency." As defined under section 6303 (relating to definitions).

"Entity." The agency, institution, organization or other entity, including an abortion facility, with which a treating health care practitioner is affiliated for purposes of the reporting requirement under section 6311 (relating to persons required to report suspected child abuse).

"Minor." An individual who is under 16 years of age.

"Physician." A person licensed to practice medicine in this Commonwealth. The term also includes a medical doctor and a doctor of osteopathy.

"State Police." The Pennsylvania State Police.

"Treating health care practitioner." A physician or other health care practitioner who:

(1) is primarily responsible for the prenatal care of a pregnant minor;

(2) delivers a baby or terminates the pregnancy of a minor; or

(3) treats a minor for a sexually transmitted disease.

"Unborn child." As defined in 18 Pa.C.S. § 3203 (relating to

1 definitions).

2 § 6321.4. Pregnancy and sexually transmitted disease as child
3 abuse in children.

4 (a) General rule.--The presence of a sexually transmitted
5 disease in or the pregnancy of a child constitutes clear and
6 convincing evidence of a first degree felony offense for
7 purposes of criminal prosecution and of rape under 18 Pa.C.S. §
8 3121(c) (relating to rape) or 3123(b) (relating to involuntary
9 deviate sexual intercourse) and clear and convincing evidence of
10 child abuse for purposes of triggering the requirements of this
11 subchapter.

12 (b) Construction.--Nothing in this subchapter shall be
13 construed to eliminate or diminish the duty to report that any
14 minor is pregnant or has a sexually transmitted disease or is a
15 victim of sexual abuse or exploitation in cases where the person
16 is required to make a report under section 6311 (relating to
17 persons required to report suspected child abuse).

18 (c) Age of other participant not a defense.--A person
19 required to comply with the requirements of this subchapter
20 shall do so regardless of whether that person possesses any
21 information relating to the age of the other participant in the
22 act causing the pregnancy or sexually transmitted disease.

23 § 6321.5. Duty to determine whether child is 13 years of age or
24 older and to report.

25 (a) Sufficiency of evidence.--

26 (1) (i) Where a treating health care practitioner
27 treats a minor with respect to prenatal care, the
28 delivery of a baby, the termination of a pregnancy or a
29 sexually transmitted disease, the treating health care
30 practitioner shall obtain credible written evidence such

1 as a school record, health care record or health
2 insurance record that the minor is 13 years of age or
3 older.

4 (ii) If the written evidence indicates that the
5 minor is a child, the treating health care practitioner
6 shall report this information to the child predator unit
7 in writing by mail, facsimile transmission or e-mail with
8 copies to the county agency. The report shall contain the
9 information specified in section 6313(c) (relating to
10 reporting procedure) to the extent applicable.

11 (iii) Compliance with this paragraph shall
12 constitute compliance with section 6311 (relating to
13 persons required to report suspected child abuse).

14 (2) An uncorroborated statement of a minor being treated
15 or of another person shall not constitute sufficient evidence
16 that the minor is 13 years of age or older.

17 (3) If the treating health care practitioner fails to
18 make a report under paragraph (1), the treating health care
19 practitioner shall make a record of the evidentiary basis for
20 his determination that the minor is 13 years of age or older
21 which shall be preserved by the treating health care
22 practitioner and the entity with which the treating health
23 care practitioner is affiliated and separately by the entity
24 for a period of five years.

25 (4) A treating health care practitioner who fails to
26 obtain credible evidence or to maintain the record shall be
27 deprived of any defense that the treating health care
28 practitioner did not have reasonable cause to suspect that
29 the minor was 13 years of age or older.

30 (b) Immediate treatment.--Nothing in this act shall be

1 construed to prohibit a treating health care practitioner from
2 providing immediate treatment to a minor.

3 (c) Violation.--A treating health care practitioner who does
4 not make a report in accordance with this section shall be in
5 violation of this subchapter if the treating health care
6 practitioner has failed to obtain, file and maintain credible
7 evidence that a minor specified in subsection (a) is 13 years of
8 age or older, if the minor was a child at the time of treatment.

9 (d) Duties of county agency.--The chief administrative
10 officer of each county agency shall:

11 (1) Establish a procedure for notifying each health care
12 practitioner who makes a report under this subchapter,
13 including section 6311, that the health care practitioner
14 shall also notify the child predator unit if the nature of
15 that report falls within the scope of subsection (a).

16 (2) Verify, within two business days of receiving a
17 report under subsection (a), that the child predator unit has
18 also received the report, shall transmit or provide for the
19 transmission of the report if the child predator unit has not
20 received the report and shall transmit or provide for the
21 transmission of the report to the county district attorney.

22 (e) No relief from liability.--A violation of subsection (d)
23 by a county agency shall not relieve a health care practitioner
24 of the duty to notify the child predator unit in accordance with
25 subsection (a).

26 § 6321.6. Law enforcement.

27 (a) Furnishing of information to local police department.--
28 Upon receipt of notification pursuant to section
29 6321.5(a)(1)(ii) (relating to duty to determine whether child is
30 13 years of age or older and to report), the child predator unit

1 shall furnish the information to the chief of police and the
2 State Police as to where the child who is the subject of the
3 report required under this section resides, if known.

4 (b) Report to parent or guardian.--A law enforcement agency
5 that receives information regarding the abuse of a child under
6 this subsection shall inform a parent or guardian of the child
7 that the child has been the victim of child abuse.

8 (c) Coordination of work.--The child predator unit shall
9 coordinate with and provide technical and legal assistance to
10 county agencies, district attorneys and police departments in
11 order to further the purposes of this subchapter.

12 § 6321.7. Fetal tissue and DNA samples.

13 (a) Abortion.--

14 (1) A physician who performs an abortion on a child
15 shall collect, in accordance with the instructions of the
16 State Police, a sample of DNA suitable for testing from the
17 child on whom the abortion was performed and the remains of
18 her unborn child.

19 (2) In the case of the remains of an unborn child, a
20 sample is suitable for testing under paragraph (1) if it
21 consists of properly preserved blood or fetal tissue
22 containing DNA.

23 (b) Delivery of baby.--

24 (1) A physician who delivers or supervises the delivery
25 of a baby conceived by a child shall collect or provide for
26 the collection of a sample of DNA suitable for testing from
27 the baby in accordance with the instructions of the State
28 Police.

29 (2) The sample shall be deemed suitable for testing
30 under paragraph (1) if it consists of properly preserved

blood or oral swabbings containing DNA.

(c) Forwarding of samples to State Police.--A sample collected under this section shall be immediately forwarded by the physician to the State Police for testing in order to identify or confirm the identity of the person who impregnated the child.

(d) Duties of State Police.--The State Police shall prescribe:

(1) The amount and type of fetal tissue and other DNA evidence to be preserved and submitted by a physician under this section.

(2) Procedures for the proper preservation of fetal tissue and other DNA evidence for the purpose of DNA testing and examination.

(3) Procedures for documenting the chain of custody of fetal tissue and other DNA evidence for use as evidence.

(4) Procedures for proper disposal of fetal tissue and other DNA evidence preserved under this section.

(5) A uniform reporting instrument mandated for use by physicians who submit fetal tissue or other DNA evidence under this section, which shall include the name of the physician submitting the fetal tissue or other DNA evidence and the name, complete address of residence and name of the parent or legal guardian of the child on whom the abortion was performed or who gave birth, whichever is applicable.

(6) Procedures for communication with law enforcement agencies regarding evidence and information obtained under this section.

(e) State Police notice to child predator unit.--The State Police shall notify the child predator unit whenever it receives

fetal tissue or other DNA evidence under the requirements of this section.

§ 6321.8. Evidence.

All evidence derived under the provisions of this subchapter may be used in any prosecution under 18 Pa.C.S. Ch. 31 (relating to sexual offenses) or in any other criminal or civil proceeding arising in connection with pregnancy or sexually transmitted disease, including, but not limited to, any action arising out of a failure to make a report or collect evidence as required under this subchapter.

§ 6321.9. Entity assistance.

The chief administrative officer of an entity shall establish policies and procedures to secure the compliance of treating health care practitioners with the requirements of this subchapter, and the chief administrative officer of the entity shall assist treating health care practitioners in meeting the requirements of this subchapter.

§ 6321.10. Preclusion of confidentiality.

A privileged communication between a treating health care practitioner and his patient shall not apply to a report made under this subchapter regarding a minor which is made in order to assure compliance with this subchapter.

§ 6321.11. Immunity.

The provisions of section 6318 (relating to immunity from liability) shall be applicable to this subchapter.

§ 6321.12. Employer responsibility.

Any person who, under this subchapter, is required to make a report under this subchapter and who, in good faith, makes or causes the report to be made and, as a result thereof, is discharged from his employment or in any other manner is

discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment may commence an action in the court of common pleas of the county in which the alleged unlawful discharge or discrimination occurred for appropriate relief. If the court finds that the person is an individual who, under this subchapter, is required to report and who, in good faith, made or caused to be made a report and, as a result thereof, was discharged or discriminated against with respect to compensation, hire, tenure, terms, conditions or privileges of employment, it may issue an order granting appropriate relief, including, but not limited to, back pay.

§ 6321.13. Annual report.

On or before March 30 of each year, the child predator unit shall prepare a report on the enforcement of this subchapter during the preceding calendar year, which shall include the number of reports filed under this subchapter, itemized by county and any disposition resulting from each report and any recommendation, if any, for administrative and legislative reform. The report shall not contain any information that would lead to the disclosure of the identity of the child or the person required to report it. The report shall be filed with the Chief Clerk of the Senate and the Chief Clerk of the House of Representatives, the chair and minority chair of the Law and Justice Committee of the Senate and the chair and minority chair of the Judiciary Committee of the House of Representatives and shall be available for public inspection and copying.

§ 6321.14. Criminal penalty.

Any person who willfully violates sections 6321.5(c) (relating to duty to determine whether child is 13 years of age or older and to report), 6321.6(a) (relating to law enforcement)

1 and 6321.7(a), (b) or (c) (relating to fetal tissue and DNA
2 samples) commits:

3 (1) A misdemeanor of the third degree for a first
4 violation of this subchapter.

5 (2) A misdemeanor of the first degree for a second
6 violation of this subchapter occurring after a first
7 conviction.

8 (3) A felony of the third degree for a third or
9 subsequent violation of this subchapter occurring after a
10 second or subsequent conviction.

11 § 6321.15. Civil remedy.

12 A person who is convicted for a failure to make a report
13 required under section 6321.5 (relating to duty to determine
14 whether child is 13 years of age or older and to report), and
15 any entity with which the person was affiliated in connection
16 with the violation shall be liable to the child for whom the
17 report was required to be made for compensatory and punitive
18 damages and for reasonable attorney fees if the child was the
19 victim of continued rape or involuntary deviate sexual
20 intercourse or a victim of statutory assault by the same
21 perpetrator after the date on which the violation occurred.

22 Section 2. This act shall take effect in 60 days.