

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 1874 Session of  
2013

INTRODUCED BY FARRY, ROZZI, KOTIK, KORTZ, SANTARSIERO, DAVIS,  
SNYDER, HARHART, C. HARRIS, WATSON, BAKER, MILLARD, READSHAW,  
GINGRICH, M. K. KELLER, YOUNGBLOOD, GILLEN, DeLUCA, QUINN,  
EVERETT, MARSICO AND MURT, DECEMBER 9, 2013

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, OCTOBER 7, 2014

## AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 CONFIDENTIALITY ISSUES IN THE AREAS OF ATTORNEY-CLIENT <--  
4 PRIVILEGE AND FOR counseling of sexually violent predators; <--  
5 AND MAKING A RELATED REPEAL.

6 The General Assembly of the Commonwealth of Pennsylvania  
7 hereby enacts as follows:

8 ~~Section 1. Section 9799.36 of Title 42 of the Pennsylvania~~ <--  
9 ~~Consolidated Statutes is amended by adding a subsection to read:~~

10 SECTION 1. THE GENERAL ASSEMBLY FINDS AND DECLARES AS <--  
11 FOLLOWS:

12 (1) CONFIDENTIALITY REPRESENTS A SERIOUS ISSUE IN THE  
13 ADMINISTRATION OF JUSTICE.

14 (2) THE ISSUE UNDER PARAGRAPH (1) AFFECTS:

15 (I) LEGAL REPRESENTATION;

16 (II) CRIMINAL INVESTIGATION; AND

17 (III) THE AUTHORITY OF THE ATTORNEY GENERAL.

18 (3) THE PURPOSE OF THIS ACT IS TO ADDRESS THE AREAS

1 UNDER PARAGRAPH (2).

2 (4) THE AMENDMENT OF 42 PA.C.S. §§ 5916 AND 5928 SHALL  
3 NOT BE CONSTRUED TO BE AN EXPANSION OF THE APPLICABILITY OF  
4 THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE  
5 COMMONWEALTH ATTORNEYS ACT.

6 SECTION 2. SECTIONS 5916 AND 5928 OF TITLE 42 OF THE  
7 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

8 § 5916. CONFIDENTIAL COMMUNICATIONS TO AND FROM ATTORNEY.

9 [IN] (A) PRIVILEGE.--EXCEPT AS SET FORTH IN SUBSECTION (B),  
10 IN A CRIMINAL PROCEEDING [COUNSEL], INCLUDING A GRAND JURY OR  
11 INVESTIGATING GRAND JURY PROCEEDING AND A CRIMINAL  
12 INVESTIGATION, THE FOLLOWING SHALL APPLY:

13 (1) COUNSEL SHALL NOT BE COMPETENT OR PERMITTED TO  
14 TESTIFY TO CONFIDENTIAL COMMUNICATIONS MADE TO [HIM BY HIS  
15 CLIENT] COUNSEL BY THE COUNSEL'S CLIENT OR BY COUNSEL TO THE  
16 COUNSEL'S CLIENT, NOR SHALL THE CLIENT BE COMPELLED TO  
17 DISCLOSE THE SAME[, UNLESS IN EITHER CASE THIS PRIVILEGE IS  
18 WAIVED BY THE CLIENT].

19 (2) COUNSEL SHALL NOT BE COMPETENT OR PERMITTED TO  
20 TESTIFY OR TO OTHERWISE DISCLOSE MATERIAL THAT CONTAINS THE  
21 COUNSEL'S MENTAL IMPRESSIONS, CONCLUSIONS, OPINIONS,  
22 MEMORANDA, NOTES OR SUMMARIES OR LEGAL RESEARCH OR THEORIES;  
23 NOR SHALL THE CLIENT BE COMPELLED TO DISCLOSE THE SAME.

24 (B) EXCEPTIONS.--

25 (1) SUBSECTION (A) (1) SHALL NOT APPLY IF:

26 (I) THE PRIVILEGE IS WAIVED BY THE CLIENT; OR

27 (II) THE COMMUNICATIONS WERE MADE FOR THE PURPOSE OF  
28 RECEIVING OR GIVING ADVICE FOR THE COMMISSION OF A CRIME  
29 OR FRAUD.

30 (2) SUBSECTION (A) (2) SHALL NOT APPLY IF:

1           (I) THE PRIVILEGE IS WAIVED BY THE CLIENT OR THE  
2           COUNSEL; OR

3           (II) THE MATERIAL WAS PREPARED FOR THE PURPOSE OF  
4           GIVING ADVICE FOR THE COMMISSION OF A CRIME OR FRAUD.

5           (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
6           WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
7           SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

8           "CLIENT." INCLUDES A GOVERNMENT UNIT AND EACH OF ITS  
9           EMPLOYEES.

10          "COUNSEL." INCLUDES COUNSEL EMPLOYED BY OR UNDER CONTRACT  
11          WITH A GOVERNMENT UNIT.

12          § 5928. CONFIDENTIAL COMMUNICATIONS TO AND FROM ATTORNEY.

13          [IN] (A) PRIVILEGE.--EXCEPT AS SET FORTH IN SUBSECTION (B),  
14          IN A CIVIL MATTER [COUNSEL], THE FOLLOWING SHALL APPLY:

15               (1) COUNSEL SHALL NOT BE COMPETENT OR PERMITTED TO  
16               TESTIFY TO CONFIDENTIAL COMMUNICATIONS MADE TO [HIM BY HIS  
17               CLIENT] COUNSEL BY THE COUNSEL'S CLIENT OR BY COUNSEL TO THE  
18               COUNSEL'S CLIENT, NOR SHALL THE CLIENT BE COMPELLED TO  
19               DISCLOSE THE SAME[, UNLESS IN EITHER CASE THIS PRIVILEGE IS  
20               WAIVED UPON THE TRIAL BY THE CLIENT].

21               (2) COUNSEL SHALL NOT BE COMPETENT OR PERMITTED TO  
22               TESTIFY OR TO OTHERWISE DISCLOSE MATERIAL THAT CONTAINS THE  
23               COUNSEL'S MENTAL IMPRESSIONS, CONCLUSIONS, OPINIONS,  
24               MEMORANDA, NOTES OR SUMMARIES OR LEGAL RESEARCH OR THEORIES;  
25               NOR SHALL THE CLIENT BE COMPELLED TO DISCLOSE THE SAME.

26          (B) EXCEPTIONS.--

27               (1) SUBSECTION (A) (1) SHALL NOT APPLY IF:

28                       (I) THE PRIVILEGE IS WAIVED BY THE CLIENT; OR

29                       (II) THE COMMUNICATIONS WERE MADE FOR THE PURPOSE OF  
30               RECEIVING OR GIVING ADVICE FOR THE COMMISSION OF A CRIME

1           OR FRAUD.

2           (2) SUBSECTION (A) (2) SHALL NOT APPLY IF:

3               (I) THE PRIVILEGE IS WAIVED BY THE CLIENT OR THE  
4           COUNSEL; OR

5               (II) THE MATERIAL WAS PREPARED FOR THE PURPOSE OF  
6           GIVING ADVICE FOR THE COMMISSION OF A CRIME OR FRAUD.

7           (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
8           WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
9           SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

10          "CLIENT." INCLUDES A GOVERNMENT UNIT AND EACH OF ITS  
11          EMPLOYEES.

12          "COUNSEL." INCLUDES COUNSEL EMPLOYED BY OR UNDER CONTRACT  
13          WITH A GOVERNMENT UNIT.

14          SECTION 3. SECTION 9799.36 OF TITLE 42 IS AMENDED BY ADDING  
15          A SUBSECTION TO READ:

16          § 9799.36. Counseling of sexually violent predators.

17          \* \* \*

18          (d) Notification.--A provider of counseling services under  
19          subsection (a) shall notify the district attorney of the county  
20          and the chief law enforcement officer, as defined in section  
21          8951 (relating to definitions), of the municipality in the  
22          county and municipality where the provider is located that the  
23          provider is counseling sexually violent predators. Notifications  
24          under this subsection must be submitted in writing by January 15  
25          of each year and shall include the address of the provider.

26          ~~Section 2. This act shall take effect in 60 days.~~

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27          SECTION 4. SECTION 208 OF THE ACT OF OCTOBER 15, 1980  
28          (P.L.950, NO.164), KNOWN AS THE COMMONWEALTH ATTORNEYS ACT, IS  
29          REPEALED TO THE EXTENT IT IS INCONSISTENT WITH THE AMENDMENT OF  
30          42 PA.C.S. §§ 5916 AND 5928.

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1       SECTION 5.   THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

2           (1)   THE FOLLOWING PROVISIONS SHALL TAKE EFFECT  
3   IMMEDIATELY:

4           (I)   SECTION 1 OF THIS ACT.

5           (II)  THIS SECTION.

6           (2)   THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60  
7   DAYS.