

## 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 14, 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 (C), IN A CRIMINAL PROCEEDING [COUNSEL], INCLUDING A GRAND JURY <--  
11 OR INVESTIGATING GRAND JURY PROCEEDING AND A CRIMINAL  
12 INVESTIGATION, THE FOLLOWING SHALL APPLY: <--

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

19 ~~(2) COUNSEL SHALL NOT BE COMPETENT OR PERMITTED TO~~ <--  
20 (B) WORK PRODUCT.--EXCEPT AS SET FOURTH IN SUBSECTION (C), <--  
21 IN A CRIMINAL PROCEEDING, INCLUDING A GRAND JURY OR  
22 INVESTIGATING GRAND JURY PROCEEDING AND A CRIMINAL  
23 INVESTIGATION, COUNSEL SHALL NOT BE COMPELLED TO AND SHALL NOT  
24 BE COMPETENT OR PERMITTED TO TESTIFY OR TO OTHERWISE DISCLOSE  
25 MATERIAL THAT CONTAINS THE COUNSEL'S MENTAL IMPRESSIONS,  
26 CONCLUSIONS, OPINIONS, MEMORANDA, NOTES OR SUMMARIES OR LEGAL  
27 RESEARCH OR THEORIES; NOR SHALL THE CLIENT BE COMPELLED TO  
28 DISCLOSE THE SAME.

29 ~~(B)~~ (C) EXCEPTIONS.-- <--

30 (1) SUBSECTION ~~(A)~~ (1) (A) SHALL NOT APPLY IF: <--

1           (I) THE PRIVILEGE IS WAIVED BY THE CLIENT; OR  
2           (II) THE COMMUNICATIONS WERE MADE FOR THE PURPOSE OF  
3           RECEIVING OR GIVING ADVICE FOR THE COMMISSION OF A CRIME  
4           OR FRAUD.  
5           (2) SUBSECTION ~~(A)-(2)~~ (B) SHALL NOT APPLY IF: <--  
6           (I) THE PRIVILEGE IS WAIVED BY THE CLIENT OR THE  
7           COUNSEL; OR  
8           (II) THE MATERIAL WAS PREPARED FOR THE PURPOSE OF  
9           GIVING ADVICE FOR THE COMMISSION OF A CRIME OR FRAUD.  
10          ~~(C)~~ (D) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING <--  
11          WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
12          SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:  
13          "CLIENT." INCLUDES A GOVERNMENT UNIT AND EACH OF ITS <--  
14          EMPLOYEES.  
15          "COUNSEL." INCLUDES COUNSEL EMPLOYED BY OR UNDER CONTRACT  
16          WITH A GOVERNMENT UNIT.  
17          § 5928. CONFIDENTIAL COMMUNICATIONS TO AND FROM ATTORNEY.  
18          [IN] (A) PRIVILEGE.--EXCEPT AS SET FORTH IN SUBSECTION ~~(B)~~ <--  
19          (C), IN A CIVIL MATTER [COUNSEL], THE FOLLOWING SHALL APPLY: <--  
20          ~~(1)~~ COUNSEL COUNSEL SHALL NOT BE COMPELLED TO AND SHALL NOT <--  
21          BE COMPETENT OR PERMITTED TO TESTIFY TO CONFIDENTIAL  
22          COMMUNICATIONS MADE TO [HIM BY HIS CLIENT] COUNSEL BY THE  
23          COUNSEL'S CLIENT OR BY COUNSEL TO THE COUNSEL'S CLIENT, NOR  
24          SHALL THE CLIENT BE COMPELLED TO DISCLOSE THE SAME[, UNLESS IN  
25          EITHER CASE THIS PRIVILEGE IS WAIVED UPON THE TRIAL BY THE  
26          CLIENT].  
27          ~~(2)~~ COUNSEL SHALL NOT BE COMPETENT OR PERMITTED TO <--  
28          (B) WORK PRODUCT.--EXCEPT AS SET FORTH IN SUBSECTION (C), IN <--  
29          A CIVIL MATTER, COUNSEL SHALL NOT BE COMPELLED TO AND SHALL NOT  
30          BE COMPETENT OR PERMITTED TO TESTIFY OR TO OTHERWISE DISCLOSE

1 MATERIAL THAT CONTAINS THE COUNSEL'S MENTAL IMPRESSIONS,  
2 CONCLUSIONS, OPINIONS, MEMORANDA, NOTES OR SUMMARIES OR LEGAL  
3 RESEARCH OR THEORIES; NOR SHALL THE CLIENT BE COMPELLED TO  
4 DISCLOSE THE SAME.

5 ~~(B)~~ (C) EXCEPTIONS.--

<--

6 (1) SUBSECTION ~~(A)(1)~~ (A) SHALL NOT APPLY IF:

<--

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

8 (II) THE COMMUNICATIONS WERE MADE FOR THE PURPOSE OF  
9 RECEIVING OR GIVING ADVICE FOR THE COMMISSION OF A CRIME  
10 OR FRAUD.

11 (2) SUBSECTION ~~(A)(2)~~ (B) SHALL NOT APPLY IF:

<--

12 (I) THE PRIVILEGE IS WAIVED BY THE CLIENT OR THE  
13 COUNSEL; OR

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

16 ~~(C)~~ (D) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING <--  
17 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
18 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

19 "CLIENT." INCLUDES A GOVERNMENT UNIT AND EACH OF ITS <--  
20 EMPLOYEES.

21 "COUNSEL." INCLUDES COUNSEL EMPLOYED BY OR UNDER CONTRACT  
22 WITH A GOVERNMENT UNIT.

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

25 § 9799.36. Counseling of sexually violent predators.

26 \* \* \*

27 (d) Notification.--A provider of counseling services under  
28 subsection (a) shall notify the district attorney of the county  
29 and the chief law enforcement officer, as defined in section  
30 8951 (relating to definitions), of the municipality in the

1 county and municipality where the provider is located that the  
2 provider is counseling sexually violent predators. Notifications  
3 under this subsection must be submitted in writing by January 15  
4 of each year and shall include the address of the provider.

5 ~~Section 2. This act shall take effect in 60 days.~~ <--

6 ~~SECTION 4. SECTION 208 OF THE ACT OF OCTOBER 15, 1980~~ <--  
7 ~~(P.L.950, NO.164), KNOWN AS THE COMMONWEALTH ATTORNEYS ACT, IS~~  
8 ~~REPEALED TO THE EXTENT IT IS INCONSISTENT WITH THE AMENDMENT OF~~  
9 ~~42 PA.C.S. §§ 5916 AND 5928.~~

10 SECTION 5 4. THIS ACT SHALL TAKE EFFECT AS FOLLOWS: <--

11 (1) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT  
12 IMMEDIATELY:

13 (I) SECTION 1 OF THIS ACT.

14 (II) THIS SECTION.

15 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60  
16 DAYS.