

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL  
No. 1333 Session of  
2001

INTRODUCED BY BUXTON, BIRMELIN, BLAUM, GANNON, BEBKO-JONES,  
CALTAGIRONE, CAPPABIANCA, CAPPELLI, CLARK, CLYMER, CORRIGAN,  
COY, EGOLF, FICHTER, FRANKEL, GEORGE, HARHAI, HENNESSEY,  
HERSHEY, KENNEY, LAUGHLIN, MARSICO, McNAUGHTON, MELIO,  
METCALFE, MUNDY, READSHAW, ROONEY, SATHER, SCHRODER, SHANER,  
STERN, TIGUE, TULLI, WANSACZ, WILT, DeLUCA, CREIGHTON, SURRA,  
VANCE, GRUCELA, PALLONE, KELLER, LEDERER, COLEMAN, THOMAS,  
STEELMAN, MCGILL, WOJNAROSKI, J. WILLIAMS AND PISTELLA,  
MAY 29, 2001

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,  
DECEMBER 4, 2001

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, providing for Internet child  
3 pornography.

4 The General Assembly of the Commonwealth of Pennsylvania  
5 hereby enacts as follows:

6 Section 1. Title 18 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a section to read:

8 § 7330. Internet child pornography.

9 (a) General rule.--An Internet service provider shall remove  
10 or disable access to child pornography items residing on its  
11 service in a manner accessible to persons located within this  
12 Commonwealth. The child pornography items shall be disabled or <—  
13 removed within 15 business days of when the Internet service  
14 provider is notified by the Attorney General or a county <—

~~district attorney in accordance with~~ PURSUANT TO subsection (e) <—  
that child pornography items reside on its service.

(b) Protection of privacy.--Nothing in this section may be  
construed as imposing a duty on an Internet service provider to  
actively monitor its network or affirmatively seek evidence of  
illegal activity on its network.

(c) Penalty.--Any Internet service provider who violates  
subsection (a) commits a felony of the third degree. <—

~~(d) Concurrent jurisdiction to prosecute. The Attorney  
General shall have concurrent prosecutorial jurisdiction with  
the district attorney for violations under this section and any  
crime arising out of the activity prohibited by this section. No  
person charged with a violation of this section by the Attorney  
General shall have standing to challenge the authority of the  
Attorney General to prosecute the case, and if any such  
challenge is made, the challenge shall be dismissed and no  
relief shall be available in the courts of this Commonwealth to  
the person making the challenge.~~

~~(e) Notification procedure. For purposes of this section,  
an Internet service provider shall be notified by the Attorney  
General or county district attorney only if it receives a  
written notice that:~~

~~(1) identifies the child pornography items;~~

~~(2) provides information sufficient to permit the  
Internet service provider to locate the items on its network;  
and~~

~~(3) contains contact information for the notifying  
agency, including the name, address, telephone number of the  
agency and officer submitting the notification. MISDEMEANOR <—~~

~~OF THE THIRD DEGREE FOR A FIRST OFFENSE PUNISHABLE BY A FINE~~

1 OF \$5,000; A MISDEMEANOR OF THE FIRST DEGREE FOR A SECOND  
2 OFFENSE PUNISHABLE BY A FINE OF \$20,000; AND A FELONY OF THE  
3 THIRD DEGREE FOR A THIRD OR SUBSEQUENT OFFENSE PUNISHABLE BY  
4 A FINE OF \$30,000.

5 (D) JURISDICTION FOR NOTIFICATION AND PROSECUTION.--

6 (1) THE ATTORNEY GENERAL SHALL HAVE EXCLUSIVE  
7 JURISDICTION FOR NOTIFICATION PURSUANT TO SUBSECTION (E). THE  
8 ATTORNEY GENERAL SHALL HAVE CONCURRENT PROSECUTORIAL  
9 JURISDICTION WITH THE COUNTY DISTRICT ATTORNEY FOR VIOLATIONS  
10 OF THIS SECTION. FOR PURPOSES OF THIS SECTION, THE ATTORNEY  
11 GENERAL SHALL BE REQUIRED TO INITIATE NOTIFICATION PURSUANT  
12 TO SUBSECTION (E) IF REQUESTED BY A COUNTY DISTRICT ATTORNEY.

13 (2) NO PERSON CHARGED WITH A VIOLATION OF THIS SECTION  
14 BY THE ATTORNEY GENERAL SHALL HAVE STANDING TO CHALLENGE THE  
15 AUTHORITY OF THE ATTORNEY GENERAL TO PROSECUTE THE CASE, AND  
16 IF ANY SUCH CHALLENGE IS MADE, THE CHALLENGE SHALL BE  
17 DISMISSED AND NO RELIEF SHALL BE AVAILABLE IN THE COURTS OF  
18 THIS COMMONWEALTH TO THE PERSON MAKING THE CHALLENGE.

19 (E) APPLICATION FOR ORDER TO DISABLE OR REMOVE MATERIALS.--  
20 AN APPLICATION FOR AN ORDER OF AUTHORIZATION TO DISABLE OR  
21 REMOVE MATERIALS FROM AN INTERNET SERVICE PROVIDER SHALL BE MADE  
22 TO THE COURT OF COMMON PLEAS HAVING JURISDICTION IN WRITING UPON  
23 THE PERSONAL OATH OR AFFIRMATION OF THE ATTORNEY GENERAL OR A  
24 DISTRICT ATTORNEY OF THE COUNTY WHEREIN THE MATERIAL HAS BEEN  
25 DISCOVERED AND SHALL CONTAIN ALL OF THE FOLLOWING INFORMATION IF  
26 AVAILABLE:

27 (1) A STATEMENT OF THE AUTHORITY OF THE APPLICANT TO  
28 MAKE SUCH APPLICATION.

29 (2) A STATEMENT OF THE IDENTITY OF THE INVESTIGATIVE OR  
30 LAW ENFORCEMENT OFFICER THAT HAS, IN THE OFFICIAL SCOPE THAT

1 OFFICER'S DUTIES, DISCOVERED THE CHILD PORNOGRAPHY ITEMS.

2 (3) A STATEMENT BY THE INVESTIGATIVE OR LAW ENFORCEMENT  
3 OFFICER WHO HAS KNOWLEDGE OF RELEVANT INFORMATION JUSTIFYING  
4 THE APPLICATION.

5 (4) THE UNIFORM RESOURCE LOCATOR PROVIDING ACCESS TO  
6 SUCH MATERIALS.

7 (5) THE IDENTITY OF THE INTERNET SERVICE PROVIDER USED  
8 BY THE LAW ENFORCEMENT OFFICER.

9 (6) A SHOWING THAT THERE IS PROBABLE CAUSE TO BELIEVE  
10 THAT SUCH MATERIALS CONSTITUTE A VIOLATION OF SECTION 6312  
11 (RELATING TO SEXUAL ABUSE OF CHILDREN).

12 (7) A PROPOSED ORDER OF AUTHORIZATION FOR CONSIDERATION  
13 BY THE JUDGE.

14 (8) SUCH ADDITIONAL TESTIMONY OR DOCUMENTARY EVIDENCE IN  
15 SUPPORT OF THE APPLICATION AS THE JUDGE MAY REQUIRE.

16 (F) NOTIFICATION PROCEDURE.--

17 (1) THE ATTORNEY GENERAL SHALL HAVE EXCLUSIVE  
18 JURISDICTION TO NOTIFY INTERNET SERVICE PROVIDERS UNDER THIS  
19 SECTION. THE ATTORNEY GENERAL SHALL INITIATE NOTIFICATION  
20 PURSUANT TO THIS SECTION IF REQUESTED IN WRITING BY A  
21 DISTRICT ATTORNEY WHO HAS PROVIDED THE ATTORNEY GENERAL WITH  
22 AN APPLICATION FILED PURSUANT TO SUBSECTION (E).

23 (2) FOR PURPOSES OF THIS SUBSECTION, AN INTERNET SERVICE  
24 PROVIDER, OR THE PERSON DESIGNATED BY THE INTERNET SERVICE  
25 PROVIDER, SHALL BE NOTIFIED IN WRITING BY THE ATTORNEY  
26 GENERAL WITHIN THREE DAYS OF THE ATTORNEY GENERAL'S RECEIPT  
27 OF AN APPLICATION BY A DISTRICT ATTORNEY.

28 (3) THE NOTICE SHALL INCLUDE THE FOLLOWING INFORMATION:

29 (I) A COPY OF THE APPLICATION MADE PURSUANT TO  
30 SUBSECTION (E).

1           (II) THE UNIFORM RESOURCE LOCATOR PROVIDING ACCESS  
2           TO THE CHILD PORNOGRAPHY MATERIALS IF INCLUDED IN THE  
3           APPLICATION.

4           (III) NOTIFICATION THAT THE INTERNET SERVICE  
5           PROVIDER MUST DISABLE OR REMOVE THE MATERIALS FROM ITS  
6           SERVICE WITHIN 15 DAYS OF THE DATE THE APPLICATION WAS  
7           FILED WITH THE COURT PURSUANT TO SUBSECTION (E).

8           (IV) CONTACT INFORMATION FOR THE OFFICE OF THE  
9           ATTORNEY GENERAL INCLUDING THE NAME, ADDRESS AND  
10          TELEPHONE NUMBER OF ANY DEPUTY OR AGENT, AUTHORIZED BY  
11          THE ATTORNEY GENERAL TO THE NOTIFICATION.

12          (G) ORDER TO REMOVE OR DISABLE CERTAIN MATERIAL FROM  
13          INTERNET SERVICE PROVIDER.--

14           (1) UPON CONSIDERATION OF AN APPLICATION, THE COURT MAY  
15           ENTER AN ORDER, INCLUDING AN EX PARTE ORDER, AS REQUESTED,  
16           ADVISING THE ATTORNEY GENERAL THAT SUCH MATERIALS CONSTITUTE  
17           PROBABLE CAUSE EVIDENCE OF A VIOLATION OF SECTION 6312. UPON  
18           RECEIPT BY THE ATTORNEY GENERAL, SUCH ORDER SHALL BE  
19           FORWARDED TO THE INTERNET SERVICE PROVIDER, OR THE PERSON  
20           DESIGNATED BY THE INTERNET SERVICE PROVIDER, WITHIN THREE  
21           DAYS OF ITS RECEIPT.

22           (2) EACH ORDER AUTHORIZING THE REMOVAL OR DISABLING OF  
23           ANY CHILD PORNOGRAPHY ITEMS FROM AN INTERNET SERVICE PROVIDER  
24           SHALL INCLUDE THE FOLLOWING:

25           (I) THE UNIFORM RESOURCE LOCATOR PROVIDING ACCESS TO  
26           SUCH MATERIALS IF INCLUDED IN THE APPLICATION PURSUANT TO  
27           SUBSECTION (F).

28           (II) THE IDENTITY OF THE INTERNET SERVICE PROVIDER  
29           USED BY THE LAW ENFORCEMENT OFFICER IN THE OFFICIAL SCOPE  
30           OF THAT OFFICER'S DUTIES TO GAIN ACCESS TO SUCH

1           MATERIALS.

2           (III) A STATEMENT THAT THERE IS PROBABLE CAUSE TO  
3           BELIEVE THAT SUCH MATERIALS CONSTITUTE A PRIMA FACIE  
4           VIOLATION OF SECTION 6312.

5           (IV) SUCH OTHER INFORMATION AS THE COURT DEEMS  
6           RELEVANT AND NECESSARY.

7           (H) DESIGNATED AGENT.--AN INTERNET SERVICE PROVIDER MAY  
8           DESIGNATE AN AGENT TO RECEIVE NOTIFICATION PURSUANT TO  
9           SUBSECTION (E).

10          (I) REPORT TO THE GENERAL ASSEMBLY.--THE ATTORNEY GENERAL  
11          SHALL MAKE AN ANNUAL REPORT TO THE CHAIRMAN AND MINORITY  
12          CHAIRMAN OF THE JUDICIARY COMMITTEE OF THE SENATE AND THE  
13          CHAIRMAN AND MINORITY CHAIRMAN OF THE JUDICIARY COMMITTEE OF THE  
14          HOUSE OF REPRESENTATIVES PROVIDING INFORMATION ON THE NUMBER OF  
15          NOTICES ISSUED AND THE PROSECUTIONS MADE UNDER THIS SECTION AND  
16          MAKING ANY RECOMMENDATIONS FOR AMENDATORY LEGISLATION.

17          ~~(f)~~ (J) Definitions.--As used in this section, the following <—  
18          words and phrases shall have the meanings given to them in this  
19          subsection:

20          "Child pornography." As described in section 6312 (relating  
21          to sexual abuse of children).

22          "Internet." The myriad of computer and telecommunications  
23          facilities, including equipment and operating software, which  
24          comprise the interconnected worldwide network of networks that  
25          employ the transmission control protocol/Internet protocol, or  
26          any predecessor or successor protocols to such protocol, to  
27          communicate information of all kinds by wire or radio.

28          "Internet service provider." A person who provides a service  
29          that enables users to access content, information, electronic  
30          mail or other services offered over the Internet.

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