

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1121 Session of
2009

INTRODUCED BY GREENLEAF, MUSTO, BOSCOLA, TARTAGLIONE, RAFFERTY,
FONTANA AND O'PAKE, OCTOBER 19, 2009

REFERRED TO JUDICIARY, OCTOBER 19, 2009

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in minors, providing for the offense of
4 dissemination of prohibited materials by minors; in criminal
5 history record information, further providing for expungement
6 and for juvenile records; and, in relation to summary
7 offenses, further providing for the scope of the Juvenile
8 Act, for inspection of court files and records and for
9 conduct of hearings.

10 The General Assembly of the Commonwealth of Pennsylvania
11 hereby enacts as follows:

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

14 § 6321. Dissemination of prohibited materials by minors.

15 (a) Offense defined.--No person under 18 years of age shall
16 use a computer or a telecommunications device to knowingly
17 transmit or distribute a photograph or other depiction of
18 himself or herself or of another minor who is at least 13 years
19 of age, in a state of nudity, to another person who is not more
20 than four years younger or more than four years older than the
21 person transmitting or distributing the photograph or other

1 depiction.

2 (b) Applicability.--This section shall not apply to the use
3 of a computer or a telecommunications device to transmit or
4 distribute a photograph or other depiction involving sexual
5 intercourse, deviate sexual intercourse, sadism, masochism or
6 masturbation.

7 (c) Grading.--A person who violates subsection (a) commits a
8 summary offense.

9 (d) Proceedings.--Any proceeding involving a violation of
10 subsection (a) shall be subject to the provisions of 42 Pa.C.S.
11 § 6307 (relating to inspection of court files and records) and §
12 6336(d) (relating to conduct of hearings) insofar as it relates
13 to the exclusion of the general public from the proceeding.

14 (e) Sentence.--If a person is convicted of a violation of
15 subsection (a), as part of the sentence, the magisterial
16 district judge may order the person to participate in an
17 educational program which includes information as provided for
18 under subsection (g).

19 (f) Diversionary program.--The magisterial district judge
20 may refer a person charged with a violation of subsection (a) to
21 an adjudication alternative program under 42 Pa.C.S. § 1520
22 (relating to adjudication alternative program) and the
23 Pennsylvania Rules of Criminal Procedure. As part of the
24 adjudication alternative program, the magisterial district judge
25 may order the person to participate in an educational program
26 which includes information as provided for under subsection (g).

27 (g) Educational program.--The educational program referenced
28 in subsections (e) and (f) shall be developed in consultation
29 with the district attorney and school districts of the county.
30 The educational program shall include information concerning:

1 (1) The legal consequences of and penalties for using a
2 computer or a telecommunications device to share sexually
3 suggestive or explicit materials, including applicable
4 Federal and State laws.

5 (2) The nonlegal consequences of using a computer or a
6 telecommunications device to share sexually suggestive or
7 explicit materials, including the effect on relationships,
8 loss of educational and employment opportunities and the
9 potential for being barred or removed from school programs
10 and extracurricular activities.

11 (3) How the unique characteristics of the Internet,
12 including the ability to search for and to replicate
13 materials and the limitless audience, can produce long-term
14 and unforeseen consequences from sharing sexually suggestive
15 or explicit materials.

16 (4) The connection between bullying, including bullying
17 on the Internet, and juveniles sharing sexually suggestive or
18 explicit materials.

19 (h) Expungement.--Notwithstanding any other provision of
20 law, the records of a person who is convicted of a summary
21 offense under this section shall be expunged as provided for
22 under section 9123 (relating to juvenile records).

23 (i) Definitions.--As used in this section, the following
24 words and phrases shall have the meanings given to them in this
25 subsection:

26 "Computer." As defined in section 7601 (relating to
27 definitions).

28 "Deviate sexual intercourse." As defined in section 3101
29 (relating to definitions).

30 "Nudity." As defined in section 5903(e) (relating to obscene

1 and other sexual materials and performances).

2 "Sexual intercourse." As defined in section 3101 (relating
3 to definitions).

4 "Telecommunications device." As defined in section 7601
5 (relating to definitions).

6 Section 2. Sections 9122(a)(3) and 9123(a) of Title 18 are
7 amended to read:

8 § 9122. Expungement.

9 (a) Specific proceedings.--Criminal history record
10 information shall be expunged in a specific criminal proceeding
11 when:

12 * * *

13 (3) a person 21 years of age or older who has been
14 convicted of a violation of section 6308 (relating to
15 purchase, consumption, possession or transportation of liquor
16 or malt or brewed beverages), which occurred on or after the
17 day the person attained 18 years of age, petitions the court
18 of common pleas in the county where the conviction occurred
19 seeking expungement and the person has satisfied all terms
20 and conditions of the sentence imposed for the violation,
21 including any suspension of operating privileges imposed
22 pursuant to section 6310.4 (relating to restriction of
23 operating privileges). Upon review of the petition, the court
24 shall order the expungement of all criminal history record
25 information and all administrative records of the Department
26 of Transportation relating to said conviction.

27 * * *

28 § 9123. Juvenile records.

29 (a) Expungement of juvenile records.--Notwithstanding the
30 provisions of section 9105 (relating to other criminal justice

1 information) and except upon cause shown, expungement of records
2 of juvenile delinquency cases and cases involving summary
3 offenses committed while the individual was under 18 years of
4 age, wherever kept or retained shall occur after 30 days' notice
5 to the district attorney, whenever the court upon its motion or
6 upon the motion of a child or the parents or guardian finds:

7 (1) a complaint is filed which is not substantiated or
8 the petition which is filed as a result of a complaint is
9 dismissed by the court;

10 (2) six months have elapsed since the final discharge of
11 the person from supervision under a consent decree and no
12 proceeding seeking adjudication or conviction is pending;

13 (2.1) the individual is 18 years of age or older and the
14 individual has satisfied all terms and conditions of the
15 sentence imposed following a conviction for a summary
16 offense, with the exception of a violation of section 6308
17 (relating to purchase consumption, possession or
18 transportation of liquor or malt or brewed beverages),
19 committed while the individual was under 18 years of age and
20 the individual has not been convicted of a felony,
21 misdemeanor or adjudicated delinquent and no proceeding is
22 pending to seek such conviction and adjudication;

23 (2.2) the individual is 18 years of age or older and has
24 been convicted of a violation of section 6308 which occurred
25 while the individual was under 18 years of age and the
26 individual has satisfied all terms and conditions of the
27 sentence imposed for the violation, including any suspension
28 of operating privileges imposed under section 6310.4
29 (relating to restriction of operating privileges).
30 Expungement shall include all criminal history record

information and all administrative records of the Department
of Transportation relating to the conviction;

(3) five years have elapsed since the final discharge of the person from commitment, placement, probation or any other disposition and referral and since such final discharge, the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication; or

(4) the individual is [18] 17 years of age or older, the attorney for the Commonwealth consents to the expungement and a court orders the expungement after giving consideration to the following factors:

(i) the type of offense;

(ii) the individual's age, history of employment, criminal activity and drug or alcohol problems;

(iii) adverse consequences that the individual may suffer if the records are not expunged; and

(iv) whether retention of the record is required for purposes of protection of the public safety.

* * *

Section 3. Sections 6303, 6307 and 6336 of Title 42 are amended by adding subsections to read:

§ 6303. Scope of chapter.

* * *

(c) Summary offenses generally.--In addition to the provisions of subsection (a)(5) and notwithstanding the exclusion of summary offenses generally from the definition of "delinquent act" under section 6302, the provisions of sections 6307 (relating to inspection of court files and records) and 6336(d) (relating to conduct of hearings), insofar as section

1 6336(d) relates to the exclusion of the general public from the
2 proceedings, shall apply to proceedings involving a child
3 charged with a summary offense when the proceedings are before a
4 judge of the minor judiciary.

5 § 6307. Inspection of court files and records.

6 * * *

7 (c) Summary offenses.--The provisions of this section shall
8 apply to proceedings involving a child charged with a summary
9 offense when the proceedings are before a judge of the minor
10 judiciary.

11 § 6336. Conduct of hearings.

12 * * *

13 (g) Summary offenses.--The provisions of subsection (d),
14 insofar as it relates to the exclusion of the general public
15 from the proceedings, shall apply to proceedings involving a
16 child charged with a summary offense when the proceedings are
17 before a judge of the minor judiciary.

18 Section 4. This act shall take effect in 60 days.