

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 850 Session of
2011

INTRODUCED BY GREENLEAF, BAKER, TARTAGLIONE, FONTANA, COSTA,
YUDICHAK, BOSCOLA, ALLOWAY AND HUGHES, MARCH 16, 2011

REFERRED TO JUDICIARY, MARCH 16, 2011

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 cyberbullying and sexting by minors; in criminal history
5 record information, further providing for expungement and for
6 juvenile records; and, in relation to summary offenses,
7 further providing for short title and purpose of chapter, for
8 the scope of the Juvenile Act, for inspection of court files
9 and records, for conduct of hearings and for right to
10 counsel.

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

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

15 § 6321. Cyberbullying and sexting by minors.

16 (a) Offense defined.--A minor commits a misdemeanor of the
17 second degree if:

18 (1) the minor knowingly transmits or disseminates any
19 electronic message, including a visual depiction of himself
20 or any other person in a state of nudity, to another minor
21 with the knowledge or intent that the message would coerce,
22 intimidate, torment, harass or otherwise cause emotional

1 distress to the other minor; or

2 (2) the minor does any of the following involving
3 another minor:

4 (i) photographs, videotapes, depicts on a computer
5 or films the other minor in a state of nudity without the
6 person's knowledge or consent; or

7 (ii) transmits, distributes, publishes or
8 disseminates a visual depiction of the other minor in a
9 state of nudity where the minor depicted has not given
10 consent or has withdrawn consent for the dissemination.

11 (b) Seizure and forfeiture of electronic device.--An
12 electronic device used in violation of this section may be
13 seized by and forfeited to the Commonwealth.

14 (c) Definitions.--As used in this section, the following
15 words and phrases shall have the meanings given to them in this
16 subsection:

17 "Disseminate." To cause or make an electronic communication
18 from one person, place or electronic communication device to two
19 or more persons, places or electronic communication devices. The
20 term does not include the posting on or transfer to an Internet
21 page or website to which the public has or might gain access.

22 "Minor." An individual under 18 years of age.

23 "Nudity." The showing of the human male or female genitals,
24 pubic area or buttocks with less than a fully opaque covering,
25 the showing of the female breast with less than a fully opaque
26 covering of any portion thereof below the top of the nipple or
27 the depiction of covered male genitals in a discernibly turgid
28 state.

29 "Transmit." To cause or make an electronic communication
30 from one person, place or electronic communication device to

1 only one other person, place or electronic communication device.
2 The term shall not include the posting on or transfer to an
3 Internet page or website to which the public has or might gain
4 access.

5 "Visual depiction." A photograph, videotape, film or
6 depiction on a computer. The term shall not include a
7 photograph, videotape, film or depiction on a computer, taken,
8 taped, filmed, made, produced, used or intended to be used, for
9 or in furtherance of a commercial purpose or to the transmission
10 or dissemination of such a visual depiction.

11 Section 2. Sections 9122(a)(3) and (d) and 9123(a) of Title
12 18 are amended to read:

13 § 9122. Expungement.

14 (a) Specific proceedings.--Criminal history record
15 information shall be expunged in a specific criminal proceeding
16 when:

17 * * *

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

1 of Transportation relating to said conviction.

2 * * *

3 (d) Notice of expungement.--Notice of expungement shall
4 promptly be submitted to the central [repository] repository
5 which shall notify all criminal justice agencies which have
6 received the criminal history record information to be expunged.

7 * * *

8 § 9123. Juvenile records.

9 (a) Expungement of juvenile records.--Notwithstanding the
10 provisions of section 9105 (relating to other criminal justice
11 information) and except upon cause shown, expungement of records
12 of juvenile delinquency cases and cases involving summary
13 offenses committed while the individual was under 18 years of
14 age, wherever kept or retained shall occur after 30 days' notice
15 to the district attorney, whenever the court upon its own motion
16 or upon the motion of a child or the parents or guardian finds:

17 (1) a complaint is filed which is not substantiated or
18 the petition which is filed as a result of a complaint is
19 dismissed by the court;

20 (1.1) a written allegation is filed which was not
21 approved for prosecution;

22 (1.2) the individual successfully completed an informal
23 adjustment and no proceeding seeking adjudication or
24 conviction is pending;

25 (2) six months have elapsed since the final discharge of
26 the person from supervision under a consent decree or
27 diversion program and no proceeding seeking adjudication or
28 conviction is pending;

29 (2.1) the individual is 18 years of age or older and the
30 individual has satisfied all terms and conditions of the

1 sentence imposed following a conviction for a summary
2 offense, with the exception of a violation of section 6308
3 (relating to purchase, consumption, possession or
4 transportation of liquor or malt or brewed beverages),
5 committed while the individual was under 18 years of age and
6 the individual has not been convicted of a felony,
7 misdemeanor or adjudicated delinquent and no proceeding is
8 pending to seek such conviction and adjudication;

9 (2.2) the individual is 18 years of age or older and has
10 been convicted of a violation of section 6308 which occurred
11 while the individual was under 18 years of age and the
12 individual has satisfied all terms and conditions of the
13 sentence imposed for the violation, including any suspension
14 of operating privileges imposed under section 6310.4
15 (relating to restriction of operating privileges).
16 Expungement shall include all criminal history record
17 information and all administrative records of the Department
18 of Transportation relating to the conviction;

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

25 (4) the individual [is 18 years of age or older]
26 petitions the court for an expungement, the attorney for the
27 Commonwealth consents to the expungement and a court orders
28 the expungement after giving consideration to the following
29 factors:

30 (i) the type of offense;

- 1 (ii) the individual's age, history of employment,
2 criminal activity and drug or alcohol problems;
3 (iii) adverse consequences that the individual may
4 suffer if the records are not expunged; and
5 (iv) whether retention of the record is required for
6 purposes of protection of the public safety.

7 * * *

8 Section 3. Section 6301(b) of Title 42 is amended to read:

9 § 6301. Short title and purposes of chapter.

10 * * *

11 (b) Purposes.--This chapter shall be interpreted and
12 construed as to effectuate the following purposes:

13 (1) To preserve the unity of the family whenever
14 possible or to provide another alternative permanent family
15 when the unity of the family cannot be maintained.

16 (1.1) To provide for the care, protection, safety and
17 wholesome mental and physical development of children coming
18 within the provisions of this chapter.

19 (2) Consistent with the protection of the public
20 interest, to provide for children committing delinquent acts
21 programs of supervision, care and rehabilitation which
22 provide balanced attention to the protection of the
23 community, the imposition of accountability for offenses
24 committed and the development of competencies to enable
25 children to become responsible and productive members of the
26 community.

27 (3) To achieve the foregoing purposes in a family
28 environment whenever possible, separating the child from
29 parents only when necessary for his welfare, safety or health
30 or in the interests of public safety.

1 (4) To provide means through which the provisions of
2 this chapter are executed and enforced and in which the
3 parties are assured a fair hearing and their constitutional
4 and other legal rights recognized and enforced.

5 (5) To use the least restrictive punitive sanctions
6 consistent with the protection of the community and the
7 rehabilitative needs of the child; and to use confinement as
8 a last resort and to impose it for the minimum amount of time
9 that is consistent with the protection of the public and the
10 rehabilitative needs of the child.

11 (6) To employ evidence-based practices, with fidelity,
12 at every stage of the juvenile justice process.

13 Section 4. Sections 6303, 6307 and 6336 of Title 42 are
14 amended by adding subsections to read:

15 § 6303. Scope of chapter.

16 * * *

17 (c) Summary offenses generally.--In addition to the
18 provisions of subsection (a)(5) and notwithstanding the
19 exclusion of summary offenses generally from the definition of
20 "delinquent act" under section 6302, the provisions of sections
21 6307 (relating to inspection of court files and records) and
22 6336(d) (relating to conduct of hearings), insofar as section
23 6336(d) relates to the exclusion of the general public from the
24 proceedings, shall apply to proceedings involving a child
25 charged with a summary offense when the proceedings are before a
26 judge of the minor judiciary.

27 § 6307. Inspection of court files and records.

28 * * *

29 (c) Summary offenses.--The provisions of this section shall
30 apply to proceedings involving a child charged with a summary

1 offense when the proceedings are before a judge of the minor
2 judiciary.

3 § 6336. Conduct of hearings.

4 * * *

5 (g) Summary offenses.--The provisions of subsection (d),
6 insofar as it relates to the exclusion of the general public
7 from the proceedings, shall apply to proceedings involving a
8 child charged with a summary offense when the proceedings are
9 before a judge of the minor judiciary.

10 (h) Adjudication alternative.--The magisterial district
11 judge may refer a child charged with a summary offense to an
12 adjudication alternative program under section 1520 (relating to
13 adjudication alternative program) and the Pennsylvania Rules of
14 Criminal Procedure.

15 Section 5. Section 6337 of Title 42 is amended to read:

16 § 6337. Right to counsel.

17 (a) Presumption of indigency.--

18 (1) Except as provided in section 6311 (relating to
19 guardian ad litem for child in court proceedings), a party is
20 entitled to representation by legal counsel at all stages of
21 any proceedings under this chapter and if he is without
22 financial resources or otherwise unable to employ counsel, to
23 have the court provide counsel for him.

24 (2) All children are presumed indigent for the purposes
25 of any proceedings under this chapter. The presumption may be
26 rebutted if the court ascertains that the child has the
27 financial resources to retain counsel of his choice at his
28 own expense.

29 (3) If a party appears without counsel the court shall
30 ascertain whether he knows of his right thereto and to be

1 provided with counsel by the court if applicable. The court
2 may continue the proceeding to enable a party to obtain
3 counsel.

4 (b) Waiver.--Counsel must be provided for a child unless his
5 parent, guardian, or custodian is present in court and
6 affirmatively [waive] waives it. However, the parent, guardian,
7 or custodian may not waive counsel for a child when their
8 interest may be in conflict with the interest or interests of
9 the child. If the interests of two or more parties may conflict,
10 separate counsel shall be provided for each of them.

11 Section 6. This act shall take effect in 60 days.