

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 404 Session of
2013

INTRODUCED BY MARSICO, ROZZI, KAUFFMAN, M. K. KELLER, GRELL,
SCHLOSSBERG, BAKER, MILLARD, SWANGER, HICKERNELL, STERN,
TALLMAN, STEPHENS, MILLER, GINGRICH, NEUMAN, HARHART, TOEPEL,
O'NEILL, PETRI, GODSHALL, PICKETT, MAJOR, YOUNGBLOOD,
D. COSTA, KORTZ, WATSON, C. HARRIS, CLYMER, HESS, GROVE,
ROCK, MURT, FLECK, HACKETT, STEVENSON AND TOOHL,
JANUARY 29, 2013

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, FEBRUARY 6, 2013

AN ACT

1 Amending ~~Titles~~ TITLE 18 (Crimes and Offenses) ~~and 23 (Domestic~~ <--
2 ~~Relations)~~ of the Pennsylvania Consolidated Statutes, in
3 falsification and intimidation, providing for the offense of
4 intimidation or retaliation in child abuse cases; ~~and, in~~ <--
5 ~~child protective services, providing for exclusions from~~
6 ~~child abuse.~~

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

9 Section 1. Title 18 of the Pennsylvania Consolidated
10 Statutes is amended by adding a section to read:
11 § 4958. Intimidation or retaliation in child abuse cases.

12 (a) Intimidation.--A person commits an offense if:

13 (1) The person has knowledge or intends that the
14 person's conduct under paragraph (2) will obstruct, impede,
15 impair, prevent or interfere with the making of a child abuse
16 report or the conducting of an investigation into suspected
17 child abuse under 23 Pa.C.S. Ch. 63 (relating to child

1 protective services) or prosecuting a child abuse case.

2 (2) The person intimidates or attempts to intimidate any
3 reporter, victim or witness to engage in any of the following
4 actions:

5 (i) Refrain from making a report of suspected child
6 abuse or causing a report of suspected child abuse to be
7 made.

8 (ii) Refrain from providing or withhold information,
9 documentation, testimony or evidence to any person
10 regarding a child abuse investigation or proceeding.

11 (iii) Give false or misleading information,
12 documentation, testimony or evidence to any person
13 regarding a child abuse investigation or proceeding.

14 (iv) Elude, evade or ignore any request or legal
15 process summoning the reporter, victim or witness to
16 appear to testify or supply evidence regarding a child
17 abuse investigation or proceeding.

18 (v) Fail to appear at or participate in a child
19 abuse proceeding or meeting involving a child abuse
20 investigation to which the reporter, victim or witness
21 has been legally summoned.

22 (b) Retaliation.--A person commits an offense if the person
23 harms another person by any unlawful act or engages in a course
24 of conduct or repeatedly commits acts which threaten another
25 person in retaliation for anything that the other person has
26 lawfully done in the capacity of a reporter, witness or victim
27 of child abuse.

28 (c) Grading.--

29 (1) An offense under this section is a felony of the
30 second degree if:

1 (i) The actor employs force, violence or deception
2 or threatens to employ force or violence or deception
3 upon the reporter, witness or victim or, with the
4 reckless intent or knowledge, upon any other person.

5 (ii) The actor offers pecuniary or other benefit to
6 the reporter, witness or victim.

7 (iii) The actor's conduct is in furtherance of a
8 conspiracy to intimidate or retaliate against the
9 reporter, witness or victim.

10 (iv) The actor accepts, agrees or solicits another
11 person to accept any pecuniary benefit to intimidate or
12 retaliate against the reporter, witness or victim.

13 (v) The actor has suffered a prior conviction for a
14 violation of this section or has been convicted under a
15 Federal statute or statute of any other state of an act
16 which would be a violation of this section if committed
17 in this Commonwealth.

18 (2) All offenses other than those under paragraph (1)
19 are a misdemeanor of the second degree.

20 (d) Definitions.--The following words and phrases when used
21 in this section shall have the meanings given to them in this
22 subsection unless the context clearly indicates otherwise:

23 "Child abuse." Except as otherwise provided in 23 Pa.C.S.
24 § 6304 (relating to exclusions from child abuse), any of the
25 following with respect to a child:

26 (1) A reckless or intentional act against the child that
27 has occurred within two years of the date of the report to
28 the department or county agency and that:

29 (i) causes bodily injury or serious bodily injury to
30 the child; or

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~~(ii) creates a reasonable likelihood of bodily injury or serious bodily injury to the child.~~

~~(2) Recklessly or intentionally engaging in any of the following conduct that has occurred within two years of the date of the report to the department or county agency:~~

~~(i) Kicking, burning, biting, stabbing, cutting or throwing the child in a manner that may endanger the child.~~

~~(ii) Unreasonably confining or restraining the child, based upon consideration of the method, location or the duration of the confinement or restraint.~~

~~(iii) Forcefully shaking the child if the child is under the age of one year.~~

~~(iv) Forcefully slapping the child if the child is under the age of one year.~~

~~(v) Interfering with the breathing of the child.~~

~~(vi) Causing the child to be present at a location where any of the following is occurring:~~

~~(A) A violation of 18 Pa.C.S. § 7508.2 (relating to operation of methamphetamine laboratory).~~

~~(B) A felony violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.~~

~~(vii) Operating a vehicle in which the child is a passenger while a violation of 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance) is occurring.~~

~~(viii) Leaving the child alone with an individual who is 14 years of age or older and subject to registration under 42 Pa.C.S. Ch. 97 Subch. H (relating~~

~~to registration of sexual offenders).~~

~~(3) An act or series of acts that causes or significantly contributes to serious mental injury to the child.~~

~~(4) A reckless or intentional act against the child that causes sexual abuse or exploitation of the child.~~

~~(5) Causing serious physical neglect of the child.~~

~~(6) An attempt to engage in any conduct under paragraph (1), (2), (3) or (4).~~

~~(7) A failure to act that:~~

~~(i) has occurred within two years of the date of the report to the department or county agency; and~~

~~(ii) causes any harm or injury, or creates a reasonable likelihood of any harm or injury, as set forth in paragraph (1) or (2).~~

~~(8) A failure to act that causes any harm or injury as set forth in paragraph (3) or (4).~~

~~(9) A reckless or intentional act against the child that results in the death of the child.~~

"CHILD ABUSE." AS DEFINED IN 23 PA.C.S. § 6303 (RELATING TO <--
DEFINITIONS).

"Mandated reporter." A person required to report suspected
child abuse under section 6311 23 PA.C.S. § 6311 (relating to <--
persons required to report suspected child abuse).

"Reporter." A person, including a mandated reporter, having
reasonable cause to suspect that a child under 18 years of age
is a victim of child abuse.

"Witness." A person having knowledge of the existence or
nonexistence of facts or information relating to child abuse or
suspected child abuse.

1 "Victim." A child who has been subjected to child abuse.

2 Section 2. Title 23 is amended by adding a section to read: <--

3 ~~§ 6304. Exclusions from child abuse.~~

4 ~~(a) Environmental factors. No child shall be deemed to be~~
5 ~~physically or mentally abused based on injuries that result~~
6 ~~solely from environmental factors that are beyond the control of~~
7 ~~the parent or person responsible for the child's welfare, such~~
8 ~~as inadequate housing, furnishings, income, clothing and medical~~
9 ~~care.~~

10 ~~(b) Practice of religious beliefs. If, upon investigation,~~
11 ~~the county agency determines that a child has not been provided~~
12 ~~needed medical or surgical care because of seriously held~~
13 ~~religious beliefs of the child's parents or person responsible~~
14 ~~for the child's welfare, which beliefs are consistent with those~~
15 ~~of a bona fide religion, the child shall not be deemed to be~~
16 ~~physically or mentally abused. In such cases the following~~
17 ~~shall apply:~~

18 ~~(1) The county agency shall closely monitor the child~~
19 ~~and shall seek court ordered medical intervention when the~~
20 ~~lack of medical or surgical care threatens the child's life~~
21 ~~or long term health.~~

22 ~~(2) All correspondence with a subject of the report and~~
23 ~~the records of the department and the county agency shall not~~
24 ~~reference "child abuse" and shall acknowledge the religious~~
25 ~~basis for the child's condition.~~

26 ~~(3) The family shall be referred for general protective~~
27 ~~services, if appropriate.~~

28 ~~(c) Use of force for disciplinary purposes. Subject to~~
29 ~~subsection (d), the use of reasonable force under the~~
30 ~~circumstances against a child by a person responsible for a~~

~~child's welfare shall not be considered child abuse if any of the following conditions apply:~~

~~(1) The use of reasonable force constitutes incidental, minor or reasonable physical contact with the child or other actions that are designed to maintain order and control.~~

~~(2) The use of reasonable force is necessary:~~

~~(i) to quell a disturbance or remove the child from the scene of a disturbance that threatens physical injury to persons or damage to property;~~

~~(ii) to prevent the child from self-inflicted physical harm;~~

~~(iii) for self defense or the defense of another individual; or~~

~~(iv) to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are on the child or within the control of the child.~~

~~(d) Effect on rights of parents. Notwithstanding subsection (c), this chapter does not restrict the generally recognized existing rights of parents to use reasonable supervision and control when raising their children, subject to the provisions of 18 Pa.C.S. § 509 (relating to use of force by persons with special responsibility for care, discipline or safety of others).~~

~~(e) Participation in events that involve physical contact with child. An individual participating in a practice or competition in an interscholastic sport, physical education or an extracurricular activity that involves physical contact with a child does not, in itself, constitute contact that is subject to the reporting requirements of this chapter.~~

1 ~~(f) Peer on peer contact. No child shall be deemed to be~~
2 ~~physically or mentally abused based on injuries that result~~
3 ~~solely from a fight or scuffle mutually entered into by mutual~~
4 ~~consent.~~

5 Section 3 2. This act shall take effect in 60 days.

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