

## AMENDMENTS TO HOUSE BILL NO. 2189

Sponsor: REPRESENTATIVE EACHUS

Printer's No. 3372

1 Amend Bill, page 1, lines 1 through 5, by striking out all of  
2 said lines and inserting

3 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
4 Consolidated Statutes, further providing for the offense of  
5 sexual abuse of children; and defining the offense of sexting  
6 by minors.

7 Amend Bill, page 1, lines 8 through 18; pages 2 and 3, lines  
8 1 through 30; page 4, lines 1 through 14, by striking out all of  
9 said lines on said pages and inserting

10 Section 1. Section 6312(f) of Title 18 of the Pennsylvania  
11 Consolidated Statutes is amended to read:  
12 § 6312. Sexual abuse of children.

13 \* \* \*

14 (f) Exceptions.--This section does not apply to any of the  
15 following:

16 (1) Any material that is viewed, possessed, controlled,  
17 brought or caused to be brought into this Commonwealth, or  
18 presented, for a bona fide educational, scientific,  
19 governmental or judicial purpose.

20 (2) Conduct prohibited under section 6321 (relating to  
21 sexting by minors).

22 (3) An individual under the age of 18 years who  
23 knowingly photographs, videotapes, depicts on a computer or  
24 films, or possess or intentionally views a visual depiction  
25 as defined in section 6321 of, himself or herself alone in a  
26 state of simple nudity as defined in section 6321.

27 \* \* \*

28 Section 2. Title 18 is amended by adding a section to read:  
29 § 6321. Sexting by minors.

30 (a) Misdemeanor offense defined.--Except as provided under  
31 subsection (b), an individual commits a misdemeanor of the  
32 second degree if:

33 (1) The individual is a minor and knowingly transmits or  
34 disseminates a visual depiction of himself or herself  
35 engaging in sexually explicit conduct.

1       (2) The individual is a minor and does any of the  
2 following involving another minor actually known to the  
3 individual:

4           (i) knowingly photographs, videotapes, depicts on a  
5 computer or films the minor engaging in sexually explicit  
6 conduct; or

7           (ii) intentionally views or knowingly possesses a  
8 visual depiction which depicts the minor engaging in  
9 sexually explicit conduct.

10       (b) Summary offense defined.--An individual commits a  
11 summary offense if:

12           (1) The individual is a minor and knowingly transmits a  
13 visual depiction of himself or herself engaging in sexually  
14 explicit conduct when all of the following apply:

15           (i) the person intended to receive the visual  
16 depiction is 13 years of age or older and not more than  
17 four years younger nor four years older than the  
18 individual;

19           (ii) the person intended to receive the visual  
20 depiction is actually known to the individual; and

21           (iii) the individual had a reasonable belief at the  
22 time of the transmission that the intended recipient of  
23 the visual depiction was a willing recipient of the  
24 visual depiction.

25           (2) The individual is 19 years of age or younger but at  
26 least 13 years of age and does any of the following involving  
27 a minor who is actually known to the individual and not more  
28 than four years younger or four years older than the  
29 individual:

30           (i) At the request of the minor, knowingly  
31 photographs, videotapes, depicts on a computer or films  
32 the minor engaging in sexually explicit conduct.

33           (ii) Knowingly transmits to the minor, a visual  
34 depiction which depicts the minor engaging in sexually  
35 explicit conduct.

36           (iii) Intentionally views or knowingly possesses a  
37 visual depiction which depicts the minor engaging in  
38 sexually explicit conduct and which was:

39           (A) transmitted or disseminated to the  
40 individual by the minor; or

41           (B) taken, taped, depicted on computer or filmed  
42 by the individual at the request of the minor.

43       (c) Applicability.--This section shall not apply to the  
44 following:

45           (1) A visual depiction of a minor which depicts the  
46 minor engaged in sexual intercourse, deviate sexual  
47 intercourse, masturbation, sadism or masochism or which  
48 depicts the penetration, however slight, of the minor's  
49 genitals or anus with any part of another individual's body.  
50 The photographing, videotaping, filming or depicting on a  
51 computer of a visual depiction which depicts any of these

1 acts involving a minor or the transmission or dissemination  
2 of a visual depiction which depicts any of these acts  
3 involving a minor shall be subject to prosecution under other  
4 provisions of this title, including section 6312.

5 (2) A visual depiction of a minor which depicts the  
6 minor engaging in sexually explicit conduct if the  
7 photograph, videotape, film or depiction was taken, made,  
8 produced, used or intended to be used for or in furtherance  
9 of a commercial purpose. The photographing, videotaping,  
10 filming or depicting on a computer of a visual depiction  
11 which depicts a minor engaging in sexually explicit conduct  
12 for or in furtherance of a commercial purpose or the  
13 transmission or dissemination of a visual depiction which  
14 depicts a minor engaging in sexually explicit conduct for or  
15 in furtherance of a commercial purpose shall be subject to  
16 prosecution under other provisions of this title, including  
17 section 6312.

18 (3) An individual under 18 years of age who views or  
19 possesses a visual depiction of himself or herself which  
20 depicts the individual engaging in sexually explicit conduct,  
21 if no one else is depicted in the photograph, videotape,  
22 depiction or film.

23 (4) A visual depiction of a minor who is married which  
24 depicts only the minor, the minor's spouse, or both, engaging  
25 in sexually explicit conduct or simple nudity and which is  
26 possessed or viewed only by the minor, the minor's spouse, or  
27 both, or which is transmitted only between the minor and the  
28 minor's spouse.

29 (d) Adjudication alternatives.--As appropriate to the  
30 circumstances, if an individual is accused of committing an  
31 offense under this section, consideration shall be given to:

32 (1) diversionary alternatives available prior to a law  
33 enforcement officer's submission of a written allegation of  
34 delinquency to the juvenile probation office or the issuance  
35 of a summary citation;

36 (2) adjudicatory alternatives available subsequent to  
37 the submission of a written allegation of delinquency,  
38 including the opportunity for disposition through informal  
39 adjustment as set forth in 42 Pa.C.S. § 6323 (relating to  
40 informal adjustment) or entry of a consent decree pursuant to  
41 42 Pa.C.S. § 6340 (relating to consent decree); or

42 (3) adjudication alternative programs available under 42  
43 Pa.C.S. § 1520 (relating to adjudication alternative program)  
44 subsequent to the filing or issuance of a summary citation.

45 (e) Proceedings.--Any proceeding involving a violation of  
46 this section shall be subject to all of the following:

47 (1) 42 Pa.C.S. § 6307 (relating to inspection of court  
48 files and records).

49 (2) 42 Pa.C.S. § 6336(d) (relating to conduct of  
50 hearings) insofar as the subsection relates to the exclusion  
51 of the general public from the proceeding.

1       (3) If the person charged is a minor, the charges and  
2       all other documents which are filed shall be captioned and  
3       docketed using only the minor's initials.

4       (4) If an individual is charged solely with violations  
5       of subsection (b) and the individual does not participate in  
6       an adjudication alternative offered under subsection (d), the  
7       individual must personally appear at a proceeding before a  
8       magisterial district judge.

9       (f) Expungement.--For an individual who fulfills the  
10      conditions of a diversionary alternative under subsection  
11      (d)(1), an adjudication alternative program under subsection  
12      (d)(3) or an informal adjustment under 42 Pa.C.S. § 6323, the  
13      record, including fingerprints or photographs taken under 42  
14      Pa.C.S. § 6308(c) (relating to law enforcement records), shall  
15      be expunged under section 9123(a)(1) (relating to juvenile  
16      records). For an individual who has successfully fulfilled the  
17      conditions of a consent decree under 42 Pa.C.S. § 6340, the  
18      record, including fingerprints or photographs taken under 42  
19      Pa.C.S. § 6308(c), shall be expunged under section 9123(a)(2).

20      (g) No secure detention or placement authorized.--A minor  
21      alleged to be delinquent solely on the basis of an offense  
22      committed under subsection (a) may not be detained in a secure  
23      facility under 42 Pa.C.S. § 6327 (relating to place of  
24      detention). A minor adjudicated delinquent where the offense  
25      under subsection (a) is the only offense substantiated under 42  
26      Pa.C.S. § 6341 (relating to adjudication) shall not be subject  
27      to commitment to a secure facility pursuant to a disposition  
28      ordered by the court under 42 Pa.C.S. § 6352 (relating to  
29      disposition of delinquent child).

30      (h) Nature of offense.--An offense under subsection (b)  
31      shall:

- 32           (1) not be a criminal offense of record;  
33           (2) not be reportable as a criminal act; and  
34           (3) not be placed on the criminal record of the  
35           offender.

36      (i) Seizure and forfeiture of electronic device.--An  
37      electronic device used in violation of this section may be  
38      seized and forfeited to the Commonwealth.

39      (j) Definitions.--As used in this section, the following  
40      words and phrases shall have the meanings given to them in this  
41      subsection unless the context clearly indicates otherwise:

42      "Actually known." Possessing firsthand or personal knowledge  
43      about an individual that is acquired through a friendly  
44      relationship with the individual.

45      "Disseminate." To cause or make an electronic communication  
46      from one person, place or electronic communication device to two  
47      or more persons, places or electronic communication devices.  
48      The term does not include the posting on or transfer to an  
49      Internet page or website to which the public has or might gain  
50      access.

51      "Electronic communication." As defined in section 5702

1 (relating to definitions).

2 "Electronic communication device." Any type of instrument,  
3 device, machine or equipment which is capable of transmitting,  
4 acquiring, decrypting or receiving any telephonic, electronic,  
5 data, Internet access, audio, video, microwave or radio  
6 transmissions, signals, communications or services, including  
7 the receipt, acquisition, transmission or decryption of all such  
8 communications, transmissions, signals or services over any  
9 cable television, telephone, satellite, microwave, radio or  
10 wireless distribution system or facility, or any part, accessory  
11 or components thereof, including any computer circuit, security  
12 module, smart card, software, computer chip, electronic  
13 mechanism or other component, accessory or part which is capable  
14 of facilitating the transmission, decryption, acquisition or  
15 reception of all such communications, transmissions, signals or  
16 services.

17 "Minor." An individual 13 years of age or older and under 18  
18 years of age.

19 "Nudity." As defined in section 5903(e) (relating to obscene  
20 and other sexual materials and performances).

21 "Sexual intercourse." As defined in section 3101 (relating  
22 to definitions).

23 "Sexually explicit conduct."

24 (1) Any of the following:

25 (i) Lewd or lascivious exhibition of the genitals,  
26 pubic area, breasts or buttocks.

27 (ii) Nudity, if the nudity is visually depicted for  
28 the purpose of the sexual stimulation or sexual  
29 gratification of a person who might view the depiction.

30 (2) The term shall not include simple nudity.

31 "Simple nudity." Nudity which is visually depicted for a  
32 purpose other than the sexual stimulation or the sexual  
33 gratification of a person who might view the visual depiction.

34 "Transmit." To cause or make an electronic communication  
35 from one person, place or electronic communication device to  
36 only one other person, place or electronic communication device.  
37 The term shall not include the posting on or transfer to an  
38 Internet page or website to which the public has or might gain  
39 access.

40 "Visual depiction." A photograph, videotape, film or  
41 depiction on a computer. The term shall not include a  
42 photograph, videotape, film or depiction on a computer, taken,  
43 taped, filmed, made, produced, used or intended to be used, for  
44 or in furtherance of a commercial purpose or to the transmission  
45 or dissemination of such a visual depiction.

46 Section 3. This act shall take effect in 60 days.