

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 881 Session of
1995

INTRODUCED BY ARMSTRONG, LEH, LYNCH, DURHAM, FICHTER, SCHULER,
BIRMELIN, PITTS, STERN, BAKER, E. Z. TAYLOR, HERSHEY, TIGUE,
CLARK, CIVERA, HENNESSEY, TRUE, BATTISTO, CLYMER, FARGO,
PHILLIPS, FEESE, ZIMMERMAN, CALTAGIRONE, LaGROTTA, TRAVAGLIO,
STRITTMATTER, ROHRER, YEWIC AND COY, FEBRUARY 27, 1995

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
DECEMBER 11, 1995

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for the regulation
3 of obscenity, FOR SENTENCING FOR TRAFFICKING DRUGS TO MINORS <—
4 AND FOR REGULATIONS ON DISSEMINATION OF CRIMINAL HISTORY
5 RECORD INFORMATION.

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

8 Section 1. Section 5903(b) ~~and (h)~~, (H) AND (J) of Title 18 <—
9 of the Pennsylvania Consolidated Statutes are amended to read:

10 § 5903. Obscene and other sexual materials and performances.

11 * * *

12 (b) Definitions.--As used in this section the following
13 words and phrases shall have the meanings given to them in this
14 subsection:

15 "Community." For the purpose of applying the "contemporary
16 community standards" in this section, community means [the
17 State] the political subdivision from which persons are drawn to

1 serve as jurors in a criminal proceeding.

2 "Knowing." As used in subsection (a), knowing means having
3 general knowledge of, or reason to know or a belief or ground
4 for belief which warrants further inspection or inquiry of, the
5 character and content of any material or performance described
6 therein which is reasonably susceptible of examination by the
7 defendant.

8 "Material." Any literature, including any book, magazine,
9 pamphlet, newspaper, storypaper, bumper sticker, comic book or
10 writing; any figure, visual representation, or image, including
11 any drawing, photograph, picture, videotape or motion picture.

12 "Nude." Means showing the human male or female genitals,
13 pubic area or buttocks with less than a fully opaque covering,
14 or showing the female breast with less than a fully opaque
15 covering of any portion thereof below the top of the nipple.

16 "Obscene." Any material or performance, if:

17 (1) the average person applying contemporary community
18 standards would find that the subject matter taken as a whole
19 appeals to the prurient interest;

20 (2) the subject matter depicts or describes in a
21 patently offensive way, sexual conduct of a type described in
22 this section; and

23 (3) the subject matter, taken as a whole, lacks serious
24 literary, artistic, political[, educational] or scientific
25 value.

26 "Performance." Means any play, dance or other live
27 exhibition performed before an audience.

28 "Sadomasochistic abuse." Means, in a sexual context,
29 flagellation or torture by or upon a person who is nude or clad
30 in undergarments, a mask or in a bizarre costume or the

1 condition of being fettered, bound or otherwise physically
2 restrained on the part of one who is nude or so clothed.

3 "Sexual conduct." Patently offensive representations or
4 descriptions of ultimate sexual acts, normal or perverted,
5 actual or simulated, including sexual intercourse, anal or oral
6 sodomy and sexual bestiality; and patently offensive
7 representations or descriptions of masturbation, excretory
8 functions, sadomasochistic abuse and lewd exhibition of the
9 genitals.

10 "Transportation facility." Any conveyance, premises or place
11 used for or in connection with public passenger transportation,
12 whether by air, rail, motor vehicle or any other method,
13 including aircraft, watercraft, railroad cars, buses, and air,
14 boat, railroad and bus terminals and stations.

15 * * *

16 (h) Criminal prosecution.--

17 (1) Any person who violates subsection (a), (c), (d) or
18 (f) is guilty of a [misdemeanor of the first degree] felony
19 of the third degree. [Violation of subsection (a) is a felony
20 of the third degree if the offender has previously been
21 convicted of a violation of subsection (a) or if the material
22 was sold, distributed, prepared or published for the purpose
23 of resale.]

24 (2) [Any person who violates subsection (c) or (d) is
25 guilty of a misdemeanor of the first degree. Violation of
26 subsection (c) or (d) is a felony of the third degree if the
27 offender has previously been convicted of a violation of
28 subsection (c) or (d).]

29 (3)] Findings made in an equity action shall not be
30 binding in the criminal proceedings.

* * *

(J) EXEMPTIONS.--

(1) NOTHING IN THIS SECTION SHALL APPLY TO ANY
RECOGNIZED HISTORICAL SOCIETY OR MUSEUM ACCORDED CHARITABLE
STATUS BY THE FEDERAL GOVERNMENT, ANY COUNTY, CITY, BOROUGH,
TOWNSHIP OR TOWN LIBRARY, ANY PUBLIC LIBRARY, ANY LIBRARY OF
ANY SCHOOL, COLLEGE OR UNIVERSITY OR ANY ARCHIVE OR LIBRARY
UNDER THE SUPERVISION AND CONTROL OF THE COMMONWEALTH OR A
POLITICAL SUBDIVISION.

(2) THIS SECTION SHALL NOT APPLY TO THE CURRICULUM OR
MATERIALS OF ANY PUBLIC SCHOOL DISTRICT OR TO THE CURRICULUM,
MATERIALS OR COURSES OF ANY ACCREDITED INSTITUTION OF HIGHER
EDUCATION.

* * *

SECTION 2. SECTION 6314(B) OF TITLE 18 IS AMENDED BY ADDING
PARAGRAPHS TO READ:

§ 6314. SENTENCING AND PENALTIES FOR TRAFFICKING DRUGS TO
MINORS.

* * *

(B) ADDITIONAL PENALTIES.--IN ADDITION TO THE MANDATORY
MINIMUM SENTENCE SET FORTH IN SUBSECTION (A), THE PERSON SHALL
BE SENTENCED TO AN ADDITIONAL MINIMUM SENTENCE OF AT LEAST TWO
YEARS TOTAL CONFINEMENT, NOTWITHSTANDING ANY OTHER PROVISION OF
THIS TITLE OR OTHER STATUTE TO THE CONTRARY, IF THE PERSON DID
ANY OF THE FOLLOWING:

* * *

(4) COMMITTED THE OFFENSE ON A SCHOOL BUS.

(5) COMMITTED THE OFFENSE WITHIN 500 FEET OF A SCHOOL
BUS STOP.

(6) COMMITTED THE OFFENSE WITHIN 500 FEET OF THE REAL

1 PROPERTY ON WHICH IS LOCATED A PUBLIC PLAYGROUND.

2 * * *

3 SECTION 3. SECTION 9121(B) OF TITLE 18 IS AMENDED AND THE
4 SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

5 § 9121. GENERAL REGULATIONS.

6 * * *

7 (B) DISSEMINATION TO NONCRIMINAL JUSTICE AGENCIES AND
8 INDIVIDUALS.--CRIMINAL HISTORY RECORD INFORMATION SHALL BE
9 DISSEMINATED BY A STATE OR LOCAL POLICE DEPARTMENT TO ANY
10 INDIVIDUAL OR NONCRIMINAL JUSTICE AGENCY ONLY UPON REQUEST.

11 EXCEPT AS PROVIDED IN SUBSECTION (B.1):

12 (1) A FEE MAY BE CHARGED BY A STATE OR LOCAL POLICE
13 DEPARTMENT FOR EACH REQUEST FOR CRIMINAL HISTORY RECORD
14 INFORMATION BY AN INDIVIDUAL OR NONCRIMINAL JUSTICE AGENCY.

15 (2) BEFORE A STATE OR LOCAL POLICE DEPARTMENT
16 DISSEMINATES CRIMINAL HISTORY RECORD INFORMATION TO AN
17 INDIVIDUAL OR NONCRIMINAL JUSTICE AGENCY, IT SHALL EXTRACT
18 FROM THE RECORD ALL NOTATIONS OF ARRESTS, INDICTMENTS OR
19 OTHER INFORMATION RELATING TO THE INITIATION OF CRIMINAL
20 PROCEEDINGS WHERE:

21 (I) THREE YEARS HAVE ELAPSED FROM THE DATE OF
22 ARREST;

23 (II) NO CONVICTION HAS OCCURRED; AND

24 (III) NO PROCEEDINGS ARE PENDING SEEKING A
25 CONVICTION.

26 (B.1) EXCEPTION.--SUBSECTION (B)(1) AND (2) SHALL NOT APPLY
27 IF THE REQUEST IS MADE BY A COUNTY CHILDREN AND YOUTH AGENCY OR
28 THE DEPARTMENT OF PUBLIC WELFARE, IN THE PERFORMANCE OF DUTIES
29 RELATING TO CHILDREN AND YOUTH UNDER THE ACT OF JUNE 24, 1937
30 (P.L.2017, NO.396), KNOWN AS THE COUNTY INSTITUTION DISTRICT

1 LAW, THE ACT OF JUNE 13, 1967 (P.L.31, NO.21), KNOWN AS THE
2 PUBLIC WELFARE CODE, 23 PA.C.S. CH. 63 (RELATING TO CHILD
3 PROTECTIVE SERVICES) OR 42 PA.C.S. CH. 63 (RELATING TO JUVENILE
4 MATTERS).

5 * * *

6 Section ~~2~~ 4. If any provision of this act or the application <—
7 thereof to any person or circumstances is held invalid, such
8 invalidity shall not affect other provisions or application of
9 this act which can be given effect without the invalid provision
10 or application, and to this end, the provisions of this act are
11 severable.

12 Section ~~3~~ 5. This act shall take effect in 60 days. <—