
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1586 Session of
1998

INTRODUCED BY HART, GREENLEAF, BRIGHTBILL, EARLL, WHITE, WENGER,
ROBBINS, CONTI, CORMAN, AFFLERBACH, MOWERY, MUSTO, TOMLINSON,
HOLL, SLOCUM, WOZNIAK, KASUNIC AND RHOADES, NOVEMBER 16, 1998

REFERRED TO JUDICIARY, NOVEMBER 16, 1998

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for obscene and
3 other sexual materials and performances.

4 The General Assembly finds and declares as follows:

5 (1) The Internet is an increasingly valuable medium for
6 communication and the dissemination and collection of
7 information.

8 (2) The children of this Commonwealth utilize the
9 Internet for entertainment, education and commerce.

10 (3) Many children in this Commonwealth have access to
11 electronic mail accounts through their parents' accounts,
12 shared accounts or their own personal accounts.

13 (4) Increasingly advertisers use the Internet to market
14 obscene materials to millions of users of the Internet.

15 (5) One of the frequently used vehicles for the
16 marketing of obscene materials via the Internet is
17 unsolicited electronic mail messages.

18 (6) These unsolicited obscene advertisements are sent to

1 computers in Commonwealth households allowing children to
2 view or have access to pornographic materials.

3 (7) Although there are an increasing number of Internet
4 filtering software titles that parents can use to block
5 access to obscene World Wide Web sites, these filtering
6 software titles are ineffective against obscene material that
7 is sent via electronic mail.

8 (8) There is no universal method of identifying
9 electronic mail messages that market obscene materials.

10 (9) Despite the best efforts of parents to protect their
11 children from obscene material via electronic mail messages,
12 they are unable to do so because there is no method by which
13 they can separate and filter out inappropriate messages from
14 appropriate messages.

15 (10) The Commonwealth has a compelling interest in
16 protecting children from obscenity.

17 (11) In doing so, government must enact a narrowly
18 tailored remedy to avoid interfering with the growth or
19 accessibility of this important medium and with the rights of
20 adult users of the Internet under the first amendment to the
21 Constitution of the United States.

22 (12) This act empowers parents to decide what type of
23 messages are inappropriate for their children and effectively
24 block those messages from their children's electronic mail
25 accounts.

26 (13) This act does not restrict or prevent the senders
27 of unsolicited obscene electronic mail messages from sending
28 those messages to any and all prospective recipients.

29 The General Assembly of the Commonwealth of Pennsylvania

1 hereby enacts as follows:

2 Section 1. Section 5903(a) and (b) of Title 18 of the
3 Pennsylvania Consolidated Statutes are amended and the section
4 is amended by adding subsections to read:

5 § 5903. Obscene and other sexual materials and performances.

6 (a) Offenses defined.--No person, knowing the obscene
7 character of the materials or performances involved, shall:

8 (1) display or cause or permit the display of any
9 explicit sexual materials as defined in subsection (c) in or
10 on any window, showcase, newsstand, display rack, billboard,
11 display board, viewing screen, motion picture screen, marquee
12 or similar place in such manner that the display is visible
13 from any public street, highway, sidewalk, transportation
14 facility or other public thoroughfare, or in any business or
15 commercial establishment where minors, as a part of the
16 general public or otherwise, are or will probably be exposed
17 to view all or any part of such materials;

18 (2) sell, lend, distribute, exhibit, give away or show
19 any obscene materials to any person 18 years of age or older
20 or offer to sell, lend, distribute, exhibit or give away or
21 show, or have in his possession with intent to sell, lend,
22 distribute, exhibit or give away or show any obscene
23 materials to any person 18 years of age or older, or
24 knowingly advertise any obscene materials in any manner;

25 (3) design, copy, draw, photograph, print, utter,
26 publish or in any manner manufacture or prepare any obscene
27 materials;

28 (4) write, print, publish, utter or cause to be written,
29 printed, published or uttered any advertisement or notice of
30 any kind giving information, directly or indirectly, stating

1 or purporting to state where, how, from whom, or by what
2 means any obscene materials can be purchased, obtained or
3 had;

4 (5) produce, present or direct any obscene performance
5 or participate in a portion thereof that is obscene or that
6 contributes to its obscenity;

7 (6) hire, employ, use or permit any minor child to do or
8 assist in doing any act or thing mentioned in this
9 subsection;

10 (7) knowingly take or deliver in any manner any obscene
11 material into a State correctional institution, county
12 prison, regional prison facility or any other type of
13 correctional facility;

14 (8) possess any obscene material while such person is an
15 inmate of any State correctional institution, county prison,
16 regional prison facility or any other type of correctional
17 facility; [or]

18 (9) knowingly permit any obscene material to enter any
19 State correctional institution, county prison, regional
20 prison facility or any other type of correctional facility if
21 such person is a prison guard or other employee of any
22 correctional facility described in this paragraph[.]; or

23 (10) transmit or cause to be transmitted via an
24 electronic communication system to one or more persons within
25 this Commonwealth an unsolicited advertisement that contains
26 obscene material or performances or a uniform resource
27 locator to a World Wide Web site that contains obscene
28 material or performances without including in the electronic
29 communication the term "ADV-ADULT" at the beginning of the
30 subject line of the electronic communication.

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

4 "Community." For the purpose of applying the "contemporary
5 community standards" in this section, community means the State.

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

12 "Material." Any literature, including any book, magazine,
13 pamphlet, newspaper, storypaper, bumper sticker, comic book or
14 writing; any figure, visual representation, or image, including
15 any drawing, photograph, picture, videotape or motion picture.

16 "Nude." Means showing the human male or female genitals,
17 pubic area or buttocks with less than a fully opaque covering,
18 or showing the female breast with less than a fully opaque
19 covering of any portion thereof below the top of the nipple.

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

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

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

27 (3) the subject matter, taken as a whole, lacks serious
28 literary, artistic, political, educational or scientific
29 value.

30 "Performance." Means any play, dance or other live

1 exhibition performed before an audience.

2 "Sadomasochistic abuse." Means, in a sexual context,
3 flagellation or torture by or upon a person who is nude or clad
4 in undergarments, a mask or in a bizarre costume or the
5 condition of being fettered, bound or otherwise physically
6 restrained on the part of one who is nude or so clothed.

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

14 "Subject line." The area of an electronic communication that
15 contains a summary description of the content of the message.

16 "Transportation facility." Any conveyance, premises or place
17 used for or in connection with public passenger transportation,
18 whether by air, rail, motor vehicle or any other method,
19 including aircraft, watercraft, railroad cars, buses, and air,
20 boat, railroad and bus terminals and stations.

21 "Uniform resource locator." An Internet address for a
22 resource, object or information that is accessible via the
23 Internet.

24 "World Wide Web site." A web page or collection of web pages
25 that is organized around a central theme or purpose. Each web
26 page is a single computer file that may contain text, images and
27 other multimedia materials to present information that can be
28 viewed via the World Wide Web.

29 * * *

30 (1) Penalty for attempt to evade prosecution.--Any person

1 who violates subsection (a)(10) and attempts to avoid
2 prosecution by knowingly including false or misleading
3 information in the return address portion of the electronic mail
4 message such that the recipient would be unable to send a reply
5 message to the original, authentic sender shall, in addition to
6 any other penalty imposed, upon conviction, be sentenced to pay
7 a fine of not less than \$100 nor more than \$500 per message or
8 to imprisonment for not more than 90 days, or both, for a first
9 offense and a fine of not less than \$500 nor more than \$1,000 or
10 to imprisonment for not more than one year, or both, for a
11 second offense.

12 (m) Concurrent jurisdiction to prosecute.--The Attorney
13 General shall have the concurrent prosecutorial jurisdiction
14 with the district attorney for cases arising under subsection
15 (a)(10) and may refer to the district attorney, with the
16 district attorney's consent, any violation or alleged violation
17 of subsection (a)(10) which may come to the Attorney General's
18 attention.

19 Section 2. This act shall take effect in 60 days.