

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 AND ROCK, JANUARY 29, 2013

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 29, 2013

AN ACT

1 Amending Titles 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  
18 protective services) or prosecuting a child abuse case.

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

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

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

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

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

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

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

27       (c) Grading.--

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

30           (i) The actor employs force, violence or deception

1 or threatens to employ force or violence or deception  
2 upon the reporter, witness or victim or, with the  
3 reckless intent or knowledge, upon any other person.

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

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

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

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

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

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

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

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

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

30 (ii) creates a reasonable likelihood of bodily

1 injury or serious bodily injury to the child.

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

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

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

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

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

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

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

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

20 (B) A felony violation of the act of April 14,  
21 1972 (P.L.233, No.64), known as The Controlled  
22 Substance, Drug, Device and Cosmetic Act.

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

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

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

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

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

7       (6) An attempt to engage in any conduct under paragraph  
8       (1), (2), (3) or (4).

9       (7) A failure to act that:

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

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

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

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

19       "Mandated reporter." A person required to report suspected  
20       child abuse under section 6311 (relating to persons required to  
21       report suspected child abuse).

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

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

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

29       Section 2. Title 23 is amended by adding a section to read:  
30       § 6304. Exclusions from child abuse.

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

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

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

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

23         (3) The family shall be referred for general protective  
24 services, if appropriate.

25     (c) Use of force for disciplinary purposes.--Subject to  
26 subsection (d), the use of reasonable force under the  
27 circumstances against a child by a person responsible for a  
28 child's welfare shall not be considered child abuse if any of  
29 the following conditions apply:

30         (1) The use of reasonable force constitutes incidental,

1 minor or reasonable physical contact with the child or other  
2 actions that are designed to maintain order and control.

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

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

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

9 (iii) for self-defense or the defense of another  
10 individual; or

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

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

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

28 (f) Peer-on-peer contact.--No child shall be deemed to be  
29 physically or mentally abused based on injuries that result  
30 solely from a fight or scuffle mutually entered into by mutual

1 consent.

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