

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1874 Session of 2013

INTRODUCED BY FARRY, ROZZI, KOTIK, KORTZ, SANTARSIERO, DAVIS, SNYDER, HARHART, C. HARRIS, WATSON, BAKER, MILLARD, READSHAW, GINGRICH, M. K. KELLER, YOUNGBLOOD, GILLEN, DeLUCA, QUINN, EVERETT, MARSICO AND MURT, DECEMBER 9, 2013

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, OCTOBER 7, 2014

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 CONFIDENTIALITY ISSUES IN THE AREAS OF ATTORNEY-CLIENT <--
4 PRIVILEGE AND FOR counseling of sexually violent predators; <--
5 AND MAKING A RELATED REPEAL.

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

8 ~~Section 1. Section 9799.36 of Title 42 of the Pennsylvania~~ <--
9 ~~Consolidated Statutes is amended by adding a subsection to read:~~

10 SECTION 1. THE GENERAL ASSEMBLY FINDS AND DECLARES AS <--

11 FOLLOWS:

12 (1) CONFIDENTIALITY REPRESENTS A SERIOUS ISSUE IN THE
13 ADMINISTRATION OF JUSTICE.

14 (2) THE ISSUE UNDER PARAGRAPH (1) AFFECTS:

15 (I) LEGAL REPRESENTATION;

16 (II) CRIMINAL INVESTIGATION; AND

17 (III) THE AUTHORITY OF THE ATTORNEY GENERAL.

18 (3) THE PURPOSE OF THIS ACT IS TO ADDRESS THE AREAS

1 UNDER PARAGRAPH (2).

2 (4) THE AMENDMENT OF 42 PA.C.S. §§ 5916 AND 5928 SHALL
3 NOT BE CONSTRUED TO BE AN EXPANSION OF THE APPLICABILITY OF
4 THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN AS THE
5 COMMONWEALTH ATTORNEYS ACT.

6 SECTION 2. SECTIONS 5916 AND 5928 OF TITLE 42 OF THE
7 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

8 § 5916. CONFIDENTIAL COMMUNICATIONS TO AND FROM ATTORNEY.

9 [IN] (A) PRIVILEGE.--EXCEPT AS SET FORTH IN SUBSECTION (B),
10 IN A CRIMINAL PROCEEDING [COUNSEL], INCLUDING A GRAND JURY OR
11 INVESTIGATING GRAND JURY PROCEEDING AND A CRIMINAL
12 INVESTIGATION, THE FOLLOWING SHALL APPLY:

13 (1) COUNSEL SHALL NOT BE COMPETENT OR PERMITTED TO
14 TESTIFY TO CONFIDENTIAL COMMUNICATIONS MADE TO [HIM BY HIS
15 CLIENT] COUNSEL BY THE COUNSEL'S CLIENT OR BY COUNSEL TO THE
16 COUNSEL'S CLIENT, NOR SHALL THE CLIENT BE COMPELLED TO
17 DISCLOSE THE SAME[, UNLESS IN EITHER CASE THIS PRIVILEGE IS
18 WAIVED BY THE CLIENT].

19 (2) COUNSEL SHALL NOT BE COMPETENT OR PERMITTED TO
20 TESTIFY OR TO OTHERWISE DISCLOSE MATERIAL THAT CONTAINS THE
21 COUNSEL'S MENTAL IMPRESSIONS, CONCLUSIONS, OPINIONS,
22 MEMORANDA, NOTES OR SUMMARIES OR LEGAL RESEARCH OR THEORIES;
23 NOR SHALL THE CLIENT BE COMPELLED TO DISCLOSE THE SAME.

24 (B) EXCEPTIONS.--

25 (1) SUBSECTION (A) (1) SHALL NOT APPLY IF:

26 (I) THE PRIVILEGE IS WAIVED BY THE CLIENT; OR

27 (II) THE COMMUNICATIONS WERE MADE FOR THE PURPOSE OF
28 RECEIVING OR GIVING ADVICE FOR THE COMMISSION OF A CRIME
29 OR FRAUD.

30 (2) SUBSECTION (A) (2) SHALL NOT APPLY IF:

1 (I) THE PRIVILEGE IS WAIVED BY THE CLIENT OR THE
2 COUNSEL; OR

3 (II) THE MATERIAL WAS PREPARED FOR THE PURPOSE OF
4 GIVING ADVICE FOR THE COMMISSION OF A CRIME OR FRAUD.

5 (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
6 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
7 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

8 "CLIENT." INCLUDES A GOVERNMENT UNIT AND EACH OF ITS
9 EMPLOYEES.

10 "COUNSEL." INCLUDES COUNSEL EMPLOYED BY OR UNDER CONTRACT
11 WITH A GOVERNMENT UNIT.

12 § 5928. CONFIDENTIAL COMMUNICATIONS TO AND FROM ATTORNEY.

13 [IN] (A) PRIVILEGE.--EXCEPT AS SET FORTH IN SUBSECTION (B),
14 IN A CIVIL MATTER [COUNSEL], THE FOLLOWING SHALL APPLY:

15 (1) COUNSEL SHALL NOT BE COMPETENT OR PERMITTED TO
16 TESTIFY TO CONFIDENTIAL COMMUNICATIONS MADE TO [HIM BY HIS
17 CLIENT] COUNSEL BY THE COUNSEL'S CLIENT OR BY COUNSEL TO THE
18 COUNSEL'S CLIENT, NOR SHALL THE CLIENT BE COMPELLED TO
19 DISCLOSE THE SAME[, UNLESS IN EITHER CASE THIS PRIVILEGE IS
20 WAIVED UPON THE TRIAL BY THE CLIENT].

21 (2) COUNSEL SHALL NOT BE COMPETENT OR PERMITTED TO
22 TESTIFY OR TO OTHERWISE DISCLOSE MATERIAL THAT CONTAINS THE
23 COUNSEL'S MENTAL IMPRESSIONS, CONCLUSIONS, OPINIONS,
24 MEMORANDA, NOTES OR SUMMARIES OR LEGAL RESEARCH OR THEORIES;
25 NOR SHALL THE CLIENT BE COMPELLED TO DISCLOSE THE SAME.

26 (B) EXCEPTIONS.--

27 (1) SUBSECTION (A) (1) SHALL NOT APPLY IF:

28 (I) THE PRIVILEGE IS WAIVED BY THE CLIENT; OR

29 (II) THE COMMUNICATIONS WERE MADE FOR THE PURPOSE OF
30 RECEIVING OR GIVING ADVICE FOR THE COMMISSION OF A CRIME

1 OR FRAUD.

2 (2) SUBSECTION (A) (2) SHALL NOT APPLY IF:

3 (I) THE PRIVILEGE IS WAIVED BY THE CLIENT OR THE
4 COUNSEL; OR

5 (II) THE MATERIAL WAS PREPARED FOR THE PURPOSE OF
6 GIVING ADVICE FOR THE COMMISSION OF A CRIME OR FRAUD.

7 (C) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
8 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
9 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

10 "CLIENT." INCLUDES A GOVERNMENT UNIT AND EACH OF ITS
11 EMPLOYEES.

12 "COUNSEL." INCLUDES COUNSEL EMPLOYED BY OR UNDER CONTRACT
13 WITH A GOVERNMENT UNIT.

14 SECTION 3. SECTION 9799.36 OF TITLE 42 IS AMENDED BY ADDING
15 A SUBSECTION TO READ:

16 § 9799.36. Counseling of sexually violent predators.

17 * * *

18 (d) Notification.--A provider of counseling services under
19 subsection (a) shall notify the district attorney of the county
20 and the chief law enforcement officer, as defined in section
21 8951 (relating to definitions), of the municipality in the
22 county and municipality where the provider is located that the
23 provider is counseling sexually violent predators. Notifications
24 under this subsection must be submitted in writing by January 15
25 of each year and shall include the address of the provider.

26 ~~Section 2. This act shall take effect in 60 days.~~

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27 SECTION 4. SECTION 208 OF THE ACT OF OCTOBER 15, 1980
28 (P.L.950, NO.164), KNOWN AS THE COMMONWEALTH ATTORNEYS ACT, IS
29 REPEALED TO THE EXTENT IT IS INCONSISTENT WITH THE AMENDMENT OF
30 42 PA.C.S. §§ 5916 AND 5928.

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1 SECTION 5. THIS ACT SHALL TAKE EFFECT AS FOLLOWS:

2 (1) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT
3 IMMEDIATELY:

4 (I) SECTION 1 OF THIS ACT.

5 (II) THIS SECTION.

6 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
7 DAYS.