

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1402 Session of
2002

INTRODUCED BY D. WHITE, CORMAN, ERICKSON, BELL, BOSCOLA,
BRIGHTBILL, DENT, ORIE, HOLL, HUGHES, LAVALLE, LEMMOND,
LOGAN, C. WILLIAMS, MUSTO, O'PAKE, RHOADES, TARTAGLIONE,
TOMLINSON, WAUGH, CONTI AND STACK, APRIL 29, 2002

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
NOVEMBER 26, 2002

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for the ~~offense of~~ <—
3 OFFENSES OF RAPE, INVOLUNTARY DEVIATE SEXUAL INTERCOURSE, <—
4 AGGRAVATED INDECENT ASSAULT AND forgery; AND PROVIDING FOR <—
5 COMPUTER OFFENSES AND FOR PENALTIES.

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

8 ~~Section 1. Section 4101(b) of Title 18 of the Pennsylvania~~ <—
9 ~~Consolidated Statutes is amended to read:~~

10 SECTION 1. SECTION 3101 OF TITLE 18 OF THE PENNSYLVANIA <—
11 CONSOLIDATED STATUTES IS AMENDED BY ADDING A DEFINITION TO READ:
12 § 3101. DEFINITIONS.

13 SUBJECT TO ADDITIONAL DEFINITIONS CONTAINED IN SUBSEQUENT
14 PROVISIONS OF THIS CHAPTER WHICH ARE APPLICABLE TO SPECIFIC
15 PROVISIONS OF THIS CHAPTER, THE FOLLOWING WORDS AND PHRASES WHEN
16 USED IN THIS CHAPTER SHALL HAVE, UNLESS THE CONTEXT CLEARLY
17 INDICATES OTHERWISE, THE MEANINGS GIVEN TO THEM IN THIS SECTION:

1 * * *

2 "SERIOUS BODILY INJURY." AS DEFINED IN SECTION 2301
3 (RELATING TO DEFINITIONS).

4 * * *

5 SECTION 1.1. SECTIONS 3121, 3123 AND 3125 OF TITLE 18 ARE
6 AMENDED TO READ:

7 § 3121. RAPE.

8 (A) OFFENSE DEFINED.--A PERSON COMMITS A FELONY OF THE FIRST
9 DEGREE WHEN [HE OR SHE] THE PERSON ENGAGES IN SEXUAL INTERCOURSE
10 WITH A COMPLAINANT:

11 (1) BY FORCIBLE COMPULSION.

12 (2) BY THREAT OF FORCIBLE COMPULSION THAT WOULD PREVENT
13 RESISTANCE BY A PERSON OF REASONABLE RESOLUTION.

14 (3) WHO IS UNCONSCIOUS OR WHERE THE PERSON KNOWS THAT
15 THE COMPLAINANT IS UNAWARE THAT THE SEXUAL INTERCOURSE IS
16 OCCURRING.

17 (4) WHERE THE PERSON HAS SUBSTANTIALLY IMPAIRED THE
18 COMPLAINANT'S POWER TO APPRAISE OR CONTROL HIS OR HER CONDUCT
19 BY ADMINISTERING OR EMPLOYING, WITHOUT THE KNOWLEDGE OF THE
20 COMPLAINANT, DRUGS, INTOXICANTS OR OTHER MEANS FOR THE
21 PURPOSE OF PREVENTING RESISTANCE.

22 (5) WHO SUFFERS FROM A MENTAL DISABILITY WHICH RENDERS
23 THE COMPLAINANT INCAPABLE OF CONSENT.

24 (6) WHO IS LESS THAN 13 YEARS OF AGE.

25 (B) ADDITIONAL PENALTIES.--IN ADDITION TO THE PENALTY
26 PROVIDED FOR BY SUBSECTION (A), A PERSON MAY BE SENTENCED TO AN
27 ADDITIONAL TERM NOT TO EXCEED TEN YEARS' CONFINEMENT AND AN
28 ADDITIONAL AMOUNT NOT TO EXCEED \$100,000 WHERE THE PERSON
29 ENGAGES IN SEXUAL INTERCOURSE WITH A COMPLAINANT AND HAS
30 SUBSTANTIALLY IMPAIRED THE COMPLAINANT'S POWER TO APPRAISE OR

1 CONTROL HIS OR HER CONDUCT BY ADMINISTERING OR EMPLOYING,
2 WITHOUT THE KNOWLEDGE OF THE COMPLAINANT, ANY SUBSTANCE FOR THE
3 PURPOSE OF PREVENTING RESISTANCE THROUGH THE INDUCEMENT OF
4 EUPHORIA, MEMORY LOSS AND ANY OTHER EFFECT OF THIS SUBSTANCE.

5 (C) RAPE OF A CHILD.--A PERSON COMMITS THE OFFENSE OF RAPE
6 OF A CHILD WHEN THE PERSON ENGAGES IN SEXUAL INTERCOURSE WITH A
7 COMPLAINANT WHO IS LESS THAN 13 YEARS OF AGE.

8 (D) RAPE OF A CHILD WITH SERIOUS BODILY INJURY.--A PERSON
9 COMMITS THE OFFENSE OF RAPE OF A CHILD RESULTING IN SERIOUS
10 BODILY INJURY WHEN THE PERSON VIOLATES THIS SECTION AND THE
11 COMPLAINANT IS UNDER 13 YEARS OF AGE AND SUFFERS SERIOUS BODILY
12 INJURY IN THE COURSE OF THE OFFENSE.

13 (E) SENTENCES.--NOTWITHSTANDING THE PROVISIONS OF SECTION
14 1103 (RELATING TO SENTENCE OF IMPRISONMENT FOR FELONY), A PERSON
15 CONVICTED OF AN OFFENSE UNDER:

16 (1) SUBSECTION (C) SHALL BE SENTENCED TO A TERM OF
17 IMPRISONMENT WHICH SHALL BE FIXED BY THE COURT AT NOT MORE
18 THAN 40 YEARS.

19 (2) SUBSECTION (D) SHALL BE SENTENCED UP TO A MAXIMUM
20 TERM OF LIFE IMPRISONMENT.

21 § 3123. INVOLUNTARY DEVIATE SEXUAL INTERCOURSE.

22 (A) OFFENSE DEFINED.--A PERSON COMMITS A FELONY OF THE FIRST
23 DEGREE WHEN [HE OR SHE] THE PERSON ENGAGES IN DEVIATE SEXUAL
24 INTERCOURSE WITH A COMPLAINANT:

25 (1) BY FORCIBLE COMPULSION;

26 (2) BY THREAT OF FORCIBLE COMPULSION THAT WOULD PREVENT
27 RESISTANCE BY A PERSON OF REASONABLE RESOLUTION;

28 (3) WHO IS UNCONSCIOUS OR WHERE THE PERSON KNOWS THAT
29 THE COMPLAINANT IS UNAWARE THAT THE SEXUAL INTERCOURSE IS
30 OCCURRING;

1 (4) WHERE THE PERSON HAS SUBSTANTIALLY IMPAIRED THE
2 COMPLAINANT'S POWER TO APPRAISE OR CONTROL HIS OR HER CONDUCT
3 BY ADMINISTERING OR EMPLOYING, WITHOUT THE KNOWLEDGE OF THE
4 COMPLAINANT, DRUGS, INTOXICANTS OR OTHER MEANS FOR THE
5 PURPOSE OF PREVENTING RESISTANCE;

6 (5) WHO SUFFERS FROM A MENTAL DISABILITY WHICH RENDERS
7 HIM OR HER INCAPABLE OF CONSENT;

8 (6) WHO IS LESS THAN 13 YEARS OF AGE; OR

9 (7) WHO IS LESS THAN 16 YEARS OF AGE AND THE PERSON IS
10 FOUR OR MORE YEARS OLDER THAN THE COMPLAINANT AND THE
11 COMPLAINANT AND PERSON ARE NOT MARRIED TO EACH OTHER.

12 (B) INVOLUNTARY DEVIATE SEXUAL INTERCOURSE WITH A CHILD.--A
13 PERSON COMMITS INVOLUNTARY DEVIATE SEXUAL INTERCOURSE WITH A
14 CHILD WHEN THE PERSON ENGAGES IN DEVIATE SEXUAL INTERCOURSE WITH
15 A COMPLAINANT WHO IS LESS THAN 13 YEARS OF AGE.

16 (C) INVOLUNTARY DEVIATE SEXUAL INTERCOURSE WITH A CHILD WITH
17 SERIOUS BODILY INJURY.--A PERSON COMMITS AN OFFENSE UNDER THIS
18 SECTION WITH A CHILD RESULTING IN SERIOUS BODILY INJURY WHEN THE
19 PERSON VIOLATES THIS SECTION AND THE COMPLAINANT IS LESS THAN 13
20 YEARS OF AGE AND THE COMPLAINANT SUFFERS SERIOUS BODILY INJURY
21 IN THE COURSE OF THE OFFENSE.

22 (D) SENTENCES.--NOTWITHSTANDING THE PROVISIONS OF SECTION
23 1103 (RELATING TO SENTENCE OF IMPRISONMENT FOR FELONY), A PERSON
24 CONVICTED OF AN OFFENSE UNDER:

25 (1) SUBSECTION (B) SHALL BE SENTENCED TO A TERM OF
26 IMPRISONMENT WHICH SHALL BE FIXED BY THE COURT AT NOT MORE
27 THAN 40 YEARS.

28 (2) SUBSECTION (C) SHALL BE SENTENCED UP TO A MAXIMUM
29 TERM OF LIFE IMPRISONMENT.

30 [(B)] (E) DEFINITION.--AS USED IN THIS SECTION, THE TERM

1 "FORCIBLE COMPULSION" INCLUDES, BUT IS NOT LIMITED TO,
2 COMPULSION RESULTING IN ANOTHER PERSON'S DEATH, WHETHER THE
3 DEATH OCCURRED BEFORE, DURING OR AFTER THE SEXUAL INTERCOURSE.
4 § 3125. AGGRAVATED INDECENT ASSAULT.

5 (A) OFFENSES DEFINED.--EXCEPT AS PROVIDED IN SECTIONS 3121
6 (RELATING TO RAPE), 3122.1 (RELATING TO STATUTORY SEXUAL
7 ASSAULT), 3123 (RELATING TO INVOLUNTARY DEVIATE SEXUAL
8 INTERCOURSE) AND 3124.1 (RELATING TO SEXUAL ASSAULT), A PERSON
9 WHO ENGAGES IN PENETRATION, HOWEVER SLIGHT, OF THE GENITALS OR
10 ANUS OF A COMPLAINANT WITH A PART OF THE PERSON'S BODY FOR ANY
11 PURPOSE OTHER THAN GOOD FAITH MEDICAL, HYGIENIC OR LAW
12 ENFORCEMENT PROCEDURES COMMITS AGGRAVATED INDECENT ASSAULT, [A
13 FELONY OF THE SECOND DEGREE,] IF:

14 (1) THE PERSON DOES SO WITHOUT THE COMPLAINANT'S
15 CONSENT;

16 (2) THE PERSON DOES SO BY FORCIBLE COMPULSION;

17 (3) THE PERSON DOES SO BY THREAT OF FORCIBLE COMPULSION
18 THAT WOULD PREVENT RESISTANCE BY A PERSON OF REASONABLE
19 RESOLUTION;

20 (4) THE COMPLAINANT IS UNCONSCIOUS OR THE PERSON KNOWS
21 THAT THE COMPLAINANT IS UNAWARE THAT THE PENETRATION IS
22 OCCURRING;

23 (5) THE PERSON HAS SUBSTANTIALLY IMPAIRED THE
24 COMPLAINANT'S POWER TO APPRAISE OR CONTROL HIS OR HER CONDUCT
25 BY ADMINISTERING OR EMPLOYING, WITHOUT THE KNOWLEDGE OF THE
26 COMPLAINANT, DRUGS, INTOXICANTS OR OTHER MEANS FOR THE
27 PURPOSE OF PREVENTING RESISTANCE;

28 (6) THE COMPLAINANT SUFFERS FROM A MENTAL DISABILITY
29 WHICH RENDERS HIM OR HER INCAPABLE OF CONSENT;

30 (7) THE COMPLAINANT IS LESS THAN 13 YEARS OF AGE; OR

1 (8) THE COMPLAINANT IS LESS THAN 16 YEARS OF AGE AND THE
2 PERSON IS FOUR OR MORE YEARS OLDER THAN THE COMPLAINANT AND
3 THE COMPLAINANT AND THE PERSON ARE NOT MARRIED TO EACH OTHER.

4 (B) AGGRAVATED INDECENT ASSAULT OF A CHILD.--A PERSON
5 COMMITTS AGGRAVATED INDECENT ASSAULT OF A CHILD WHEN THE PERSON
6 VIOLATES SUBSECTION (A)(1), (2), (3), (4), (5) OR (6) AND THE
7 COMPLAINANT IS LESS THAN 13 YEARS OF AGE.

8 (C) GRADING AND SENTENCES.--

9 (1) AN OFFENSE UNDER SUBSECTION (A) IS A FELONY OF THE
10 SECOND DEGREE.

11 (2) AN OFFENSE UNDER SUBSECTION (B) IS A FELONY OF THE
12 FIRST DEGREE.

13 SECTION 1.2. SECTION 3933 OF TITLE 18 IS REPEALED.

14 SECTION 1.3. SECTION 4101(B) OF TITLE 18 IS AMENDED TO READ:

15 § 4101. Forgery.

16 * * *

17 (b) Definition.--As used in this section, the word "writing"
18 includes printing or any other method of recording information,
19 money, coins, tokens, stamps, seals, credit cards, badges,
20 trademarks, electronic signatures and other symbols of value,
21 right, privilege, or identification.

22 * * *

23 SECTION 2. ~~SECTIONS 3933 AND 7330~~ SECTION 7330 OF TITLE 18 <—
24 ~~ARE~~ IS REPEALED. <—

25 SECTION 3. TITLE 18 IS AMENDED BY ADDING A CHAPTER TO READ:

26 CHAPTER 76
27 COMPUTER OFFENSES

28 SUBCHAPTER

29 A. GENERAL PROVISIONS

30 B. HACKING AND SIMILAR OFFENSES

1 C. INTERNET CHILD PORNOGRAPHY

2 E. ELECTRONIC MAIL

3 SUBCHAPTER A

4 GENERAL PROVISIONS

5 SEC.

6 7601. DEFINITIONS.

7 7602. JURISDICTION.

8 7603. RESTITUTION.

9 7604. CONCURRENT JURISDICTION.

10 7605. DEFENSE.

11 7606. CONSTRUCTION.

12 § 7601. DEFINITIONS.

13 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
14 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
15 CONTEXT CLEARLY INDICATES OTHERWISE:

16 "ACCESS." TO INTERCEPT, INSTRUCT, COMMUNICATE WITH, STORE
17 DATA IN, RETRIEVE DATA FROM OR OTHERWISE MAKE USE OF ANY
18 RESOURCES OF A COMPUTER, COMPUTER SYSTEM, COMPUTER NETWORK OR
19 DATABASE.

20 "COMPUTER." AN ELECTRONIC, MAGNETIC, OPTICAL, HYDRAULIC,
21 ORGANIC OR OTHER HIGH SPEED DATA PROCESSING DEVICE OR SYSTEM
22 WHICH PERFORMS LOGIC, ARITHMETIC OR MEMORY FUNCTIONS AND
23 INCLUDES ALL INPUT, OUTPUT, PROCESSING, STORAGE, SOFTWARE OR
24 COMMUNICATION FACILITIES WHICH ARE CONNECTED OR RELATED TO THE
25 DEVICE IN A SYSTEM OR NETWORK.

26 "COMPUTER DATA." A REPRESENTATION OF INFORMATION, KNOWLEDGE,
27 FACTS, CONCEPTS OR INSTRUCTIONS WHICH IS BEING PREPARED OR HAS
28 BEEN PREPARED AND IS INTENDED TO BE PROCESSED, IS BEING
29 PROCESSED OR HAS BEEN PROCESSED IN A COMPUTER OR COMPUTER
30 NETWORK, AND MAY BE IN ANY FORM, WHETHER READABLE ONLY BY A

1 COMPUTER OR ONLY BY A HUMAN OR BY EITHER, INCLUDING, BUT NOT
2 LIMITED TO, COMPUTER PRINTOUTS, MAGNETIC STORAGE MEDIA, PUNCHED
3 CARD OR STORED INTERNALLY IN THE MEMORY OF THE COMPUTER.

4 "COMPUTER NETWORK." THE INTERCONNECTION OF TWO OR MORE
5 COMPUTERS THROUGH THE USAGE OF SATELLITE, MICROWAVE, LINE OR
6 OTHER COMMUNICATION MEDIUM.

7 "COMPUTER OPERATION." ARITHMETIC, LOGICAL, MONITORING,
8 STORAGE OR RETRIEVAL FUNCTIONS AND ANY COMBINATION THEREOF,
9 INCLUDING, BUT NOT LIMITED TO, COMMUNICATION WITH, STORAGE OF
10 DATA TO, OR RETRIEVAL OF DATA FROM ANY DEVICE OR HUMAN HAND
11 MANIPULATION OF ELECTRONIC OR MAGNETIC IMPULSES. IN REFERENCE TO
12 A PARTICULAR COMPUTER THE TERM ALSO INCLUDES ANY FUNCTION FOR
13 WHICH THAT COMPUTER WAS GENERALLY DESIGNED.

14 "COMPUTER PROGRAM." AN ORDERED SET OF INSTRUCTIONS OR
15 STATEMENTS AND RELATED DATA THAT, WHEN AUTOMATICALLY EXECUTED IN
16 ACTUAL OR MODIFIED FORM IN A COMPUTER SYSTEM, CAUSES IT TO
17 PERFORM SPECIFIED FUNCTIONS.

18 "COMPUTER SOFTWARE." A SET OF COMPUTER PROGRAMS, PROCEDURES
19 OR ASSOCIATED DOCUMENTATION CONCERNED WITH THE OPERATION OF A
20 COMPUTER SYSTEM.

21 "COMPUTER SYSTEM." A SET OF RELATED, CONNECTED OR
22 UNCONNECTED COMPUTER EQUIPMENT, DEVICES AND SOFTWARE.

23 "COMPUTER VIRUS." A COMPUTER PROGRAM COPIED TO, CREATED ON
24 OR INSTALLED TO A COMPUTER, COMPUTER NETWORK, COMPUTER PROGRAM,
25 COMPUTER SOFTWARE OR COMPUTER SYSTEM WITHOUT THE INFORMED
26 CONSENT OF THE OWNER OF THE COMPUTER, COMPUTER NETWORK, COMPUTER
27 PROGRAM, COMPUTER SOFTWARE OR COMPUTER SYSTEM THAT MAY REPLICATE
28 ITSELF AND THAT CAUSES OR CAN CAUSE UNAUTHORIZED ACTIVITIES
29 WITHIN OR BY THE COMPUTER, COMPUTER NETWORK, COMPUTER PROGRAM,
30 COMPUTER SOFTWARE OR COMPUTER SYSTEM.

1 "DATABASE." A REPRESENTATION OF INFORMATION, KNOWLEDGE,
2 FACTS, CONCEPTS OR INSTRUCTIONS WHICH ARE BEING PREPARED OR
3 PROCESSED OR HAVE BEEN PREPARED OR PROCESSED IN A FORMALIZED
4 MANNER AND ARE INTENDED FOR USE IN A COMPUTER, COMPUTER SYSTEM
5 OR COMPUTER NETWORK, INCLUDING, BUT NOT LIMITED TO, COMPUTER
6 PRINTOUTS, MAGNETIC STORAGE MEDIA, PUNCHED CARDS OR DATA STORED
7 INTERNALLY IN THE MEMORY OF THE COMPUTER.

8 "DENIAL-OF-SERVICE ATTACK." AN EXPLICIT ATTEMPT TO PREVENT
9 LEGITIMATE USERS OF A SERVICE FROM USING THAT SERVICE,
10 INCLUDING, BUT NOT LIMITED TO:

11 (1) FLOODING A NETWORK, THEREBY PREVENTING LEGITIMATE
12 NETWORK TRAFFIC;

13 (2) DISRUPTING CONNECTIONS BETWEEN TWO COMPUTERS,
14 THEREBY PREVENTING ACCESS TO A SERVICE;

15 (3) PREVENTING A PARTICULAR PERSON FROM ACCESSING A
16 SERVICE; OR

17 (4) DISRUPTING SERVICE TO A SPECIFIC COMPUTER SYSTEM OR
18 PERSON.

19 "DEPRIVE." TO WITHHOLD PROPERTY OF ANOTHER PERMANENTLY OR
20 FOR SO EXTENDED A PERIOD AS TO APPROPRIATE A MAJOR PORTION OF
21 ITS ECONOMIC VALUE, OR WITH INTENT TO RESTORE ONLY UPON PAYMENT
22 OF REWARD OR OTHER COMPENSATION, OR TO DISPOSE OF THE PROPERTY
23 SO AS TO MAKE IT UNLIKELY THAT THE OWNER WILL RECOVER IT.

24 "ECONOMIC VALUE." THE MARKET VALUE OF PROPERTY OR AN
25 INSTRUMENT WHICH CREATES, RELEASES, DISCHARGES OR OTHERWISE
26 AFFECTS A VALUABLE LEGAL RIGHT, PRIVILEGE OR OBLIGATION AT THE
27 TIME AND PLACE OF THE CRIME, OR IF SUCH CANNOT BE SATISFACTORILY
28 ASCERTAINED, THE COST OF REPLACEMENT OF THE PROPERTY OR
29 INSTRUMENT WITHIN A REASONABLE TIME AFTER THE CRIME.

30 "ELECTRONIC MAIL SERVICE PROVIDER." A PERSON WHO IS AN

1 INTERMEDIARY IN SENDING OR RECEIVING ELECTRONIC MAIL OR WHO
2 PROVIDES TO END-USERS OF ELECTRONIC MAIL SERVICES THE ABILITY TO
3 SEND OR RECEIVE ELECTRONIC MAIL.

4 "ELECTRONIC MAIL TRANSMISSION INFORMATION." INFORMATION USED
5 TO IDENTIFY THE ORIGIN OR DESTINATION OF A TRANSMISSION OR TO
6 AID IN ITS ROUTING, INCLUDING INFORMATION RECORDED AS PART OF
7 ELECTRONIC MAIL, WHETHER OR NOT SUCH INFORMATION IS DISPLAYED
8 INITIALLY TO THE USER UPON RECEIPT OF ELECTRONIC MAIL, THAT
9 PURPORTS TO REPRESENT THE INFORMATION USED TO IDENTIFY THE
10 ORIGIN OR DESTINATION OF A TRANSMISSION OR TO AID IN ITS
11 ROUTING.

12 "ESTABLISHED BUSINESS RELATIONSHIP." A PRIOR OR EXISTING
13 RELATIONSHIP FORMED BY A VOLUNTARY TWO-WAY COMMUNICATION
14 INITIATED BY A PERSON OR ENTITY AND A RECIPIENT WITH OR WITHOUT
15 AN EXCHANGE OF CONSIDERATION, ON THE BASIS OF AN INQUIRY,
16 APPLICATION PURCHASE OR TRANSACTION BY THE RECIPIENT REGARDING
17 PRODUCTS OR SERVICES OFFERED BY SUCH PERSONS OR ENTITY. IN
18 REGARD TO AN INQUIRY, THE PERSON OR ENTITY SHALL OBTAIN THE
19 CONSENT OF A RECIPIENT BEYOND THE INITIAL INQUIRY. AN
20 ESTABLISHED BUSINESS RELATIONSHIP DOES NOT EXIST IF THE
21 RECIPIENT REQUESTS TO BE REMOVED FROM THE DISTRIBUTION LISTS OF
22 AN INITIATOR.

23 "FAX." THE TRANSMISSION OF THE FACSIMILE OF A DOCUMENT
24 THROUGH A CONNECTION WITH A TELEPHONE OR COMPUTER NETWORK.

25 "FINANCIAL INSTRUMENT." INCLUDES, BUT IS NOT LIMITED TO, ANY
26 CHECK, DRAFT, WARRANT, MONEY ORDER, NOTE, CERTIFICATE OF
27 DEPOSIT, LETTER OF CREDIT, BILL OF EXCHANGE, CREDIT OR DEBIT
28 CARD, TRANSACTION AUTHORIZATION MECHANISM, MARKETABLE SECURITY
29 OR ANY COMPUTER SYSTEM REPRESENTATION THEREOF.

30 "INTERNET SERVICE PROVIDER." A PERSON WHO FURNISHES A

1 SERVICE THAT ENABLES USERS TO ACCESS CONTENT, INFORMATION,
2 ELECTRONIC MAIL OR OTHER SERVICES OFFERED OVER THE INTERNET.

3 "PERSON." ANY INDIVIDUAL, CORPORATION, PARTNERSHIP,
4 ASSOCIATION, ORGANIZATION OR ENTITY CAPABLE OF HOLDING A LEGAL
5 OR BENEFICIAL INTEREST IN PROPERTY.

6 "PROPERTY." INCLUDES, BUT IS NOT LIMITED TO, FINANCIAL
7 INSTRUMENTS, COMPUTER SOFTWARE AND PROGRAMS IN EITHER MACHINE OR
8 HUMAN READABLE FORM, AND ANYTHING OF VALUE, TANGIBLE OR
9 INTANGIBLE.

10 "TELECOMMUNICATION DEVICE." ANY TYPE OF INSTRUMENT, DEVICE,
11 MACHINE OR EQUIPMENT WHICH IS CAPABLE OF TRANSMITTING,
12 ACQUIRING, DECRYPTING OR RECEIVING ANY TELEPHONIC, ELECTRONIC,
13 DATA, INTERNET ACCESS, AUDIO, VIDEO, MICROWAVE OR RADIO
14 TRANSMISSIONS, SIGNALS, COMMUNICATIONS OR SERVICES, INCLUDING
15 THE RECEIPT, ACQUISITION, TRANSMISSION OR DECRYPTION OF ALL SUCH
16 COMMUNICATIONS, TRANSMISSIONS, SIGNALS OR SERVICES OVER ANY
17 CABLE TELEVISION, TELEPHONE, SATELLITE, MICROWAVE, RADIO OR
18 WIRELESS DISTRIBUTION SYSTEM OR FACILITY, OR ANY PART, ACCESSORY
19 OR COMPONENT THEREOF, INCLUDING ANY COMPUTER CIRCUIT, SECURITY
20 MODULE, SMART CARD, SOFTWARE, COMPUTER CHIP, ELECTRONIC
21 MECHANISM OR OTHER COMPONENT, ACCESSORY OR PART WHICH IS CAPABLE
22 OF FACILITATING THE TRANSMISSION, DECRYPTION, ACQUISITION OR
23 RECEPTION OF ALL SUCH COMMUNICATIONS TRANSMISSIONS, SIGNALS OR
24 SERVICES.

25 "WIRELESS ADVERTISEMENT." THE INITIATION OF A TELEPHONE CALL
26 OR A MESSAGE CAPABLE OF PROVIDING TEXT, GRAPHIC OR IMAGE
27 MESSAGES BY A COMMERCIAL MOBILE SERVICE PROVIDER, UNLICENSED
28 WIRELESS SERVICES PROVIDER OR COMMON CARRIER WIRELESS EXCHANGE
29 ACCESS SERVICE PROVIDER FOR THE PURPOSE OF MARKETING GOODS OR
30 SERVICES. THE TERM DOES NOT INCLUDE A CALL OR MESSAGE TO A

1 PERSON WITH THAT PERSON'S PRIOR EXPRESS INVITATION OR PERMISSION
2 OR TO A PERSON WITH WHOM THE CALLER HAS AN ESTABLISHED BUSINESS
3 RELATIONSHIP.

4 "WORLD WIDE WEB." INCLUDES, BUT IS NOT LIMITED TO, A
5 COMPUTER SERVER-BASED FILE ARCHIVE ACCESSIBLE, OVER THE
6 INTERNET, USING A HYPERTEXT TRANSFER PROTOCOL, FILE TRANSFER
7 PROTOCOL OR OTHER SIMILAR PROTOCOLS.

8 § 7602. JURISDICTION.

9 AN OFFENSE UNDER THIS CHAPTER MAY BE DEEMED TO HAVE BEEN
10 COMMITTED EITHER AT THE PLACE WHERE CONDUCT CONSTITUTING AN
11 ELEMENT OF THE OFFENSE OCCURRED OR AT THE PLACE WHERE THE RESULT
12 WHICH IS AN ELEMENT OF THE OFFENSE OCCURRED WITHIN THIS
13 COMMONWEALTH, IN ACCORDANCE WITH SECTION 102 (RELATING TO
14 TERRITORIAL APPLICABILITY). IT SHALL BE NO DEFENSE TO A
15 VIOLATION OF THIS CHAPTER THAT SOME OF THE ACTS CONSTITUTING THE
16 OFFENSE OCCURRED OUTSIDE OF THIS COMMONWEALTH.

17 § 7603. RESTITUTION.

18 UPON CONVICTION OF AN OFFENSE UNDER SECTION 7611 (RELATING TO
19 UNLAWFUL USE OF COMPUTER AND OTHER COMPUTER CRIMES), 7612
20 (RELATING TO DISRUPTION OF SERVICE) OR 7616 (RELATING TO
21 DISTRIBUTION OF COMPUTER VIRUS), THE SENTENCE SHALL INCLUDE AN
22 ORDER FOR RESTITUTION TO THE VICTIM FOR:

23 (1) THE COST OF REPAIRING OR REPLACING THE AFFECTED
24 COMPUTER, COMPUTER SYSTEM, COMPUTER NETWORK, COMPUTER
25 SOFTWARE, COMPUTER PROGRAM, COMPUTER DATABASE, WORLD WIDE WEB
26 SITE OR TELECOMMUNICATION DEVICE;

27 (2) LOST PROFITS FOR THE PERIOD THAT THE COMPUTER,
28 COMPUTER SYSTEM, COMPUTER NETWORK, COMPUTER SOFTWARE,
29 COMPUTER PROGRAM, COMPUTER DATABASE, WORLD WIDE WEB SITE OR
30 TELECOMMUNICATION DEVICE IS NOT USABLE; OR

1 (3) THE COST OF REPLACING OR RESTORING THE DATA LOST OR
2 DAMAGED AS A RESULT OF A VIOLATION OF SECTION 7611, 7612 OR
3 7616.

4 § 7604. CONCURRENT JURISDICTION.

5 THE ATTORNEY GENERAL SHALL HAVE CONCURRENT PROSECUTORIAL
6 JURISDICTION WITH THE COUNTY DISTRICT ATTORNEY FOR VIOLATIONS OF
7 THIS ~~SECTION~~ CHAPTER. NO PERSON CHARGED WITH A VIOLATION OF THIS ←
8 SECTION BY THE ATTORNEY GENERAL SHALL HAVE STANDING TO CHALLENGE
9 THE AUTHORITY OF THE ATTORNEY GENERAL TO PROSECUTE THE CASE,
10 AND, IF ANY SUCH CHALLENGE IS MADE, THE CHALLENGE SHALL BE
11 DISMISSED AND NO RELIEF SHALL BE AVAILABLE IN THE COURTS OF THIS
12 COMMONWEALTH TO THE PERSON MAKING THE CHALLENGE.

13 § 7605. DEFENSE.

14 IT IS A DEFENSE TO AN ACTION BROUGHT PURSUANT TO SUBCHAPTER B
15 (RELATING TO HACKING AND SIMILAR OFFENSES) THAT THE ACTOR:

16 (1) WAS ENTITLED BY LAW OR CONTRACT TO ENGAGE IN THE
17 CONDUCT CONSTITUTING THE OFFENSE; OR

18 (2) REASONABLY BELIEVED THAT HE HAD THE AUTHORIZATION OR
19 PERMISSION OF THE OWNER, LESSEE, LICENSEE, AUTHORIZED HOLDER,
20 AUTHORIZED POSSESSOR OR AGENT OF THE COMPUTER, COMPUTER
21 NETWORK, COMPUTER SOFTWARE, COMPUTER SYSTEM, DATABASE OR
22 TELECOMMUNICATION DEVICE OR THAT THE OWNER OR AUTHORIZED
23 HOLDER WOULD HAVE AUTHORIZED OR PROVIDED PERMISSION TO ENGAGE
24 IN THE CONDUCT CONSTITUTING THE OFFENSE. AS USED IN THIS
25 SECTION, THE TERM "AUTHORIZATION" INCLUDES EXPRESS OR IMPLIED
26 CONSENT, INCLUDING BY TRADE USAGE, COURSE OF DEALING, COURSE
27 OF PERFORMANCE OR COMMERCIAL PROGRAMMING PRACTICES.

28 § 7606. CONSTRUCTION.

29 NOTHING IN SUBCHAPTER B (RELATING TO HACKING AND SIMILAR
30 OFFENSES) SHALL BE CONSTRUED TO INTERFERE WITH OR PROHIBIT TERMS

1 OR CONDITIONS IN A CONTRACT OR LICENSE RELATED TO A COMPUTER,
2 COMPUTER NETWORK, COMPUTER SOFTWARE, COMPUTER SYSTEM, DATABASE
3 OR TELECOMMUNICATION DEVICE OR SOFTWARE OR HARDWARE DESIGNED TO
4 ALLOW A COMPUTER, COMPUTER NETWORK, COMPUTER SOFTWARE, COMPUTER
5 SYSTEM, DATABASE OR TELECOMMUNICATIONS DEVICE TO OPERATE IN THE
6 ORDINARY COURSE OF A LAWFUL BUSINESS OR THAT IS DESIGNED TO
7 ALLOW AN OWNER OR AUTHORIZED HOLDER OF INFORMATION TO PROTECT
8 DATA INFORMATION OR RIGHTS IN IT.

9 SUBCHAPTER B

10 HACKING AND SIMILAR OFFENSES

11 SEC.

12 7611. UNLAWFUL USE OF COMPUTER AND OTHER COMPUTER CRIMES.

13 7612. DISRUPTION OF SERVICE.

14 7613. COMPUTER THEFT.

15 7614. UNLAWFUL DUPLICATION.

16 7615. COMPUTER TRESPASS.

17 7616. DISTRIBUTION OF COMPUTER VIRUS.

18 § 7611. UNLAWFUL USE OF COMPUTER AND OTHER COMPUTER CRIMES.

19 (A) OFFENSE DEFINED.--A PERSON COMMITS THE OFFENSE OF
20 UNLAWFUL USE OF A COMPUTER IF HE:

21 (1) ACCESSES OR EXCEEDS AUTHORIZATION TO ACCESS, ALTERS,
22 DAMAGES OR DESTROYS ANY COMPUTER, COMPUTER SYSTEM, COMPUTER
23 NETWORK, COMPUTER SOFTWARE, COMPUTER PROGRAM, COMPUTER
24 DATABASE, WORLD WIDE WEB SITE OR TELECOMMUNICATION DEVICE OR
25 ANY PART THEREOF WITH THE INTENT TO INTERRUPT THE NORMAL
26 FUNCTIONING OF A PERSON OR TO DEVISE OR EXECUTE ANY SCHEME OR
27 ARTIFICE TO DEFRAUD OR DECEIVE OR CONTROL PROPERTY OR
28 SERVICES BY MEANS OF FALSE OR FRAUDULENT PRETENSES,
29 REPRESENTATIONS OR PROMISES;

30 (2) INTENTIONALLY AND WITHOUT AUTHORIZATION ACCESSES OR

1 EXCEEDS AUTHORIZATION TO ACCESS, ALTERS, INTERFERES WITH THE
2 OPERATION OF, DAMAGES OR DESTROYS ANY COMPUTER, COMPUTER
3 SYSTEM, COMPUTER NETWORK, COMPUTER SOFTWARE, COMPUTER
4 PROGRAM, COMPUTER DATABASE, WORLD WIDE WEB SITE OR
5 TELECOMMUNICATION DEVICE OR ANY PART THEREOF; OR

6 (3) INTENTIONALLY OR KNOWINGLY AND WITHOUT AUTHORIZATION
7 GIVES OR PUBLISHES A PASSWORD, IDENTIFYING CODE, PERSONAL
8 IDENTIFICATION NUMBER OR OTHER CONFIDENTIAL INFORMATION ABOUT
9 A COMPUTER, COMPUTER SYSTEM, COMPUTER NETWORK, COMPUTER
10 DATABASE, WORLD WIDE WEB SITE OR TELECOMMUNICATION DEVICE.

11 (B) GRADING.--AN OFFENSE UNDER THIS SECTION SHALL CONSTITUTE
12 A FELONY OF THE THIRD DEGREE.

13 (C) PROSECUTION NOT PROHIBITED.--PROSECUTION FOR AN OFFENSE
14 UNDER THIS SECTION SHALL NOT PROHIBIT PROSECUTION UNDER ANY
15 OTHER SECTION OF THIS TITLE.

16 § 7612. DISRUPTION OF SERVICE.

17 (A) OFFENSE DEFINED.--A PERSON COMMITS AN OFFENSE IF HE
18 INTENTIONALLY OR KNOWINGLY ENGAGES IN A SCHEME OR ARTIFICE,
19 INCLUDING, BUT NOT LIMITED TO, A DENIAL OF SERVICE ATTACK UPON
20 ANY COMPUTER, COMPUTER SYSTEM, COMPUTER NETWORK, COMPUTER
21 SOFTWARE, COMPUTER PROGRAM, COMPUTER SERVER, COMPUTER DATABASE,
22 WORLD WIDE WEB SITE OR TELECOMMUNICATION DEVICE OR ANY PART
23 THEREOF THAT IS DESIGNED TO BLOCK, IMPEDE OR DENY THE ACCESS OF
24 INFORMATION OR INITIATION OR COMPLETION OF ANY SALE OR
25 TRANSACTION BY USERS OF THAT COMPUTER, COMPUTER SYSTEM, COMPUTER
26 NETWORK, COMPUTER SOFTWARE, COMPUTER PROGRAM, COMPUTER SERVER OR
27 DATABASE OR ANY PART THEREOF.

28 (B) GRADING.--AN OFFENSE UNDER THIS SECTION SHALL CONSTITUTE
29 A FELONY OF THE THIRD DEGREE.

30 § 7613. COMPUTER THEFT.

1 (A) OFFENSE DEFINED.--A PERSON COMMITS AN OFFENSE IF HE
2 UNLAWFULLY ACCESSES OR EXCEEDS HIS AUTHORIZATION TO ACCESS ANY
3 DATA FROM A COMPUTER, COMPUTER SYSTEM OR COMPUTER NETWORK OR
4 TAKES OR COPIES ANY SUPPORTING DOCUMENTATION WHETHER EXISTING OR
5 RESIDING INTERNAL OR EXTERNAL TO A COMPUTER, COMPUTER SYSTEM OR
6 COMPUTER NETWORK OF ANOTHER WITH THE INTENT TO DEPRIVE HIM
7 THEREOF.

8 (B) GRADING.--AN OFFENSE UNDER THIS SECTION SHALL CONSTITUTE
9 A FELONY OF THE THIRD DEGREE.

10 § 7614. UNLAWFUL DUPLICATION.

11 (A) OFFENSE DEFINED.--A PERSON COMMITS THE OFFENSE OF
12 UNLAWFUL DUPLICATION IF HE MAKES OR CAUSES TO BE MADE AN
13 UNAUTHORIZED COPY, IN ANY FORM, INCLUDING, BUT NOT LIMITED, TO,
14 ANY PRINTED OR ELECTRONIC FORM OF COMPUTER DATA, COMPUTER
15 PROGRAMS OR COMPUTER SOFTWARE RESIDING IN, COMMUNICATED BY OR
16 PRODUCED BY A COMPUTER OR COMPUTER NETWORK.

17 (B) GRADING.--AN OFFENSE UNDER SUBSECTION (A) SHALL BE
18 GRADED AS FOLLOWS:

19 (1) AN OFFENSE UNDER THIS SECTION SHALL CONSTITUTE A
20 FELONY OF THE THIRD DEGREE.

21 (2) IF THE ECONOMIC VALUE OF THE DUPLICATED MATERIAL IS
22 GREATER THAN \$2,500, THE GRADING OF THE OFFENSE SHALL BE ONE
23 GRADE HIGHER THAN SPECIFIED IN PARAGRAPH (1).

24 § 7615. COMPUTER TRESPASS.

25 (A) OFFENSE DEFINED.--A PERSON COMMITS THE OFFENSE OF
26 COMPUTER TRESPASS IF HE KNOWINGLY AND WITHOUT AUTHORITY, OR IN
27 EXCESS OF GIVEN AUTHORITY, USES A COMPUTER OR COMPUTER NETWORK
28 WITH THE INTENT TO:

29 (1) TEMPORARILY OR PERMANENTLY REMOVE COMPUTER DATA,
30 COMPUTER PROGRAMS OR COMPUTER SOFTWARE FROM A COMPUTER OR

1 COMPUTER NETWORK;

2 (2) CAUSE A COMPUTER TO MALFUNCTION, REGARDLESS OF THE
3 AMOUNT OF TIME THE MALFUNCTION PERSISTS;

4 (3) ALTER OR ERASE ANY COMPUTER DATA, COMPUTER PROGRAMS
5 OR COMPUTER SOFTWARE;

6 (4) EFFECT THE CREATION OR ALTERATION OF A FINANCIAL
7 INSTRUMENT OR OF AN ELECTRONIC TRANSFER OF FUNDS; OR

8 (5) CAUSE PHYSICAL INJURY TO THE PROPERTY OF ANOTHER.

9 (B) GRADING.--AN OFFENSE UNDER THIS SECTION SHALL CONSTITUTE
10 A FELONY OF THE THIRD DEGREE.

11 § 7616. DISTRIBUTION OF COMPUTER VIRUS.

12 (A) OFFENSE DEFINED.--A PERSON COMMITS AN OFFENSE IF THE
13 PERSON INTENTIONALLY OR KNOWINGLY SELLS, GIVES OR OTHERWISE
14 DISTRIBUTES OR POSSESSES WITH THE INTENT TO SELL, GIVE OR
15 DISTRIBUTE COMPUTER SOFTWARE OR A COMPUTER PROGRAM THAT IS
16 DESIGNED OR HAS THE CAPABILITY TO:

17 (1) PREVENT, IMPEDE, CONTROL, DELAY OR DISRUPT THE
18 NORMAL OPERATION OR USE OF A COMPUTER, COMPUTER PROGRAM,
19 COMPUTER SOFTWARE, COMPUTER SYSTEM, COMPUTER NETWORK,
20 COMPUTER DATABASE, WORLD WIDE WEB SITE OR TELECOMMUNICATION
21 DEVICE; OR

22 (2) DEGRADE, DISABLE, DAMAGE OR DESTROY THE PERFORMANCE
23 OF A COMPUTER, COMPUTER PROGRAM, COMPUTER SOFTWARE, COMPUTER
24 SYSTEM, COMPUTER NETWORK, COMPUTER DATABASE, WORLD WIDE WEB
25 SITE OR TELECOMMUNICATION DEVICE OR ANY COMBINATION THEREOF.

26 (B) GRADING.--AN OFFENSE UNDER THIS SECTION SHALL CONSTITUTE
27 A FELONY OF THE THIRD DEGREE.

28 SUBCHAPTER C

29 INTERNET CHILD PORNOGRAPHY

30 SEC.

- 1 7621. DEFINITIONS.
- 2 7622. DUTY OF INTERNET SERVICE PROVIDER.
- 3 7623. PROTECTION OF PRIVACY.
- 4 7624. PENALTY.
- 5 7625. JURISDICTION FOR PROSECUTION.
- 6 7626. APPLICATION FOR ORDER TO REMOVE OR DISABLE ITEMS.
- 7 7627. ORDER TO REMOVE OR DISABLE CERTAIN ITEMS FROM INTERNET
- 8 SERVICE PROVIDER'S SERVICE.
- 9 7628. NOTIFICATION PROCEDURE.
- 10 7629. DESIGNATED AGENT.
- 11 7630. REPORT TO GENERAL ASSEMBLY.

12 § 7621. DEFINITIONS.

13 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS SUBCHAPTER
14 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
15 CONTEXT CLEARLY INDICATES OTHERWISE:

16 "CHILD PORNOGRAPHY." AS DESCRIBED IN SECTION 6312 (RELATING
17 TO SEXUAL ABUSE OF CHILDREN).

18 "INTERNET." THE MYRIAD OF COMPUTER AND TELECOMMUNICATIONS
19 FACILITIES, INCLUDING EQUIPMENT AND OPERATING SOFTWARE, WHICH
20 COMPRISE THE INTERCONNECTED WORLDWIDE NETWORK OF NETWORKS THAT
21 EMPLOY THE TRANSMISSION CONTROL PROTOCOL/INTERNET PROTOCOL OR
22 ANY PREDECESSOR OR SUCCESSOR PROTOCOLS TO SUCH PROTOCOL TO
23 COMMUNICATE INFORMATION OF ALL KINDS BY WIRE OR RADIO.

24 "INTERNET SERVICE PROVIDER." A PERSON WHO PROVIDES A SERVICE
25 THAT ENABLES USERS TO ACCESS CONTENT, INFORMATION, ELECTRONIC
26 MAIL OR OTHER SERVICES OFFERED OVER THE INTERNET.

27 § 7622. DUTY OF INTERNET SERVICE PROVIDER.

28 AN INTERNET SERVICE PROVIDER SHALL REMOVE OR DISABLE ACCESS
29 TO CHILD PORNOGRAPHY ITEMS RESIDING ON OR ACCESSIBLE THROUGH ITS
30 SERVICE IN A MANNER ACCESSIBLE TO PERSONS LOCATED WITHIN THIS

1 COMMONWEALTH WITHIN FIVE BUSINESS DAYS OF WHEN THE INTERNET
2 SERVICE PROVIDER IS NOTIFIED BY THE ATTORNEY GENERAL PURSUANT TO
3 SECTION 7628 (RELATING TO NOTIFICATION PROCEDURE) THAT CHILD
4 PORNOGRAPHY ITEMS RESIDE ON OR ARE ACCESSIBLE THROUGH ITS
5 SERVICE.

6 § 7623. PROTECTION OF PRIVACY.

7 NOTHING IN THIS SUBCHAPTER MAY BE CONSTRUED AS IMPOSING A
8 DUTY ON AN INTERNET SERVICE PROVIDER TO ACTIVELY MONITOR ITS
9 SERVICE OR AFFIRMATIVELY SEEK EVIDENCE OF ILLEGAL ACTIVITY ON
10 ITS SERVICE.

11 § 7624. PENALTY.

12 NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO THE CONTRARY,
13 ANY INTERNET SERVICE PROVIDER WHO VIOLATES SECTION 7622
14 (RELATING TO DUTY OF INTERNET SERVICE PROVIDER) COMMITS:

15 (1) A MISDEMEANOR OF THE THIRD DEGREE FOR A FIRST
16 OFFENSE PUNISHABLE BY A FINE OF \$5,000.

17 (2) A MISDEMEANOR OF THE SECOND DEGREE FOR A SECOND
18 OFFENSE PUNISHABLE BY A FINE OF \$20,000.

19 (3) A FELONY OF THE THIRD DEGREE FOR A THIRD OR
20 SUBSEQUENT OFFENSE PUNISHABLE BY A FINE OF \$30,000 AND
21 IMPRISONMENT FOR A MAXIMUM OF SEVEN YEARS.

22 § 7625. JURISDICTION FOR PROSECUTION.

23 THE ATTORNEY GENERAL SHALL HAVE CONCURRENT PROSECUTORIAL
24 JURISDICTION WITH THE COUNTY DISTRICT ATTORNEY FOR VIOLATIONS OF
25 THIS SUBCHAPTER. NO PERSON CHARGED WITH A VIOLATION OF THIS
26 SUBCHAPTER BY THE ATTORNEY GENERAL SHALL HAVE STANDING TO
27 CHALLENGE THE AUTHORITY OF THE ATTORNEY GENERAL TO PROSECUTE THE
28 CASE. IF A CHALLENGE IS MADE, THE CHALLENGE SHALL BE DISMISSED
29 AND NO RELIEF SHALL BE AVAILABLE IN THE COURTS OF THIS
30 COMMONWEALTH TO THE PERSON MAKING THE CHALLENGE.

1 § 7626. APPLICATION FOR ORDER TO REMOVE OR DISABLE ITEMS.

2 AN APPLICATION FOR AN ORDER OF AUTHORIZATION TO REMOVE OR
3 DISABLE ITEMS RESIDING ON OR ACCESSIBLE THROUGH AN INTERNET
4 SERVICE PROVIDER'S SERVICE SHALL BE MADE TO THE COURT OF COMMON
5 PLEAS HAVING JURISDICTION IN WRITING UPON THE PERSONAL OATH OR
6 AFFIRMATION OF THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY OF
7 THE COUNTY WHEREIN THE ITEMS HAVE BEEN DISCOVERED AND, IF
8 AVAILABLE, SHALL CONTAIN ALL OF THE FOLLOWING INFORMATION:

9 (1) A STATEMENT OF THE AUTHORITY OF THE APPLICANT TO
10 MAKE THE APPLICATION.

11 (2) A STATEMENT OF THE IDENTITY OF THE INVESTIGATIVE OR
12 LAW ENFORCEMENT OFFICER THAT HAS, IN THE OFFICIAL SCOPE OF
13 THAT OFFICER'S DUTIES, DISCOVERED THE CHILD PORNOGRAPHY
14 ITEMS.

15 (3) A STATEMENT BY THE INVESTIGATIVE OR LAW ENFORCEMENT
16 OFFICER WHO HAS KNOWLEDGE OF RELEVANT INFORMATION JUSTIFYING
17 THE APPLICATION.

18 (4) THE UNIFORM RESOURCE LOCATOR PROVIDING ACCESS TO THE
19 ITEMS.

20 (5) THE IDENTITY OF THE INTERNET SERVICE PROVIDER USED
21 BY THE LAW ENFORCEMENT OFFICER.

22 (6) A SHOWING THAT THERE IS PROBABLE CAUSE TO BELIEVE
23 THAT THE ITEMS CONSTITUTE A VIOLATION OF SECTION 6312
24 (RELATING TO SEXUAL ABUSE OF CHILDREN).

25 (7) A PROPOSED ORDER OF AUTHORIZATION FOR CONSIDERATION
26 BY THE JUDGE.

27 (8) CONTACT INFORMATION FOR THE OFFICE OF ATTORNEY
28 GENERAL, INCLUDING THE NAME, ADDRESS AND TELEPHONE NUMBER OF
29 ANY DEPUTY OR AGENT AUTHORIZED BY THE ATTORNEY GENERAL TO
30 SUBMIT NOTIFICATION.

1 (9) ADDITIONAL TESTIMONY OR DOCUMENTARY EVIDENCE IN
2 SUPPORT OF THE APPLICATION AS THE JUDGE MAY REQUIRE.

3 § 7627. ORDER TO REMOVE OR DISABLE CERTAIN ITEMS FROM INTERNET
4 SERVICE PROVIDER'S SERVICE.

5 UPON CONSIDERATION OF AN APPLICATION, THE COURT MAY ENTER AN
6 ORDER, INCLUDING AN EX PARTE ORDER, AS REQUESTED, ADVISING THE
7 ATTORNEY GENERAL OR A DISTRICT ATTORNEY THAT THE ITEMS
8 CONSTITUTE PROBABLE CAUSE EVIDENCE OF A VIOLATION OF SECTION
9 6312 (RELATING TO SEXUAL ABUSE OF CHILDREN) AND THAT SUCH ITEMS
10 SHALL BE REMOVED OR DISABLED FROM THE INTERNET SERVICE
11 PROVIDER'S SERVICE. THE COURT MAY INCLUDE SUCH OTHER INFORMATION
12 IN THE ORDER AS THE COURT DEEMS RELEVANT AND NECESSARY.

13 § 7628. NOTIFICATION PROCEDURE.

14 (A) DUTY OF ATTORNEY GENERAL.--THE ATTORNEY GENERAL SHALL
15 HAVE EXCLUSIVE JURISDICTION TO NOTIFY INTERNET SERVICE PROVIDERS
16 UNDER THIS SUBCHAPTER. THE ATTORNEY GENERAL SHALL INITIATE
17 NOTIFICATION UNDER THIS SUBCHAPTER IF REQUESTED IN WRITING BY A
18 DISTRICT ATTORNEY WHO HAS PROVIDED THE ATTORNEY GENERAL WITH A
19 COPY OF AN APPLICATION MADE UNDER SECTION 7626 (RELATING TO
20 APPLICATION TO REMOVE OR DISABLE ITEMS) AND A COPY OF THE ORDER
21 ISSUED UNDER SECTION 7627 (RELATING TO ORDER TO REMOVE OR
22 DISABLE CERTAIN ITEMS FROM INTERNET SERVICE PROVIDER'S SERVICE)
23 OR UPON THE ISSUANCE OF AN ORDER BASED UPON AN APPLICATION FILED
24 BY THE ATTORNEY GENERAL.

25 (B) TIMELY NOTIFICATION.--FOR PURPOSES OF THIS SECTION, AN
26 INTERNET SERVICE PROVIDER OR THE PERSON DESIGNATED BY THE
27 INTERNET SERVICE PROVIDER AS PROVIDED FOR IN SECTION 7629
28 (RELATING TO DESIGNATED AGENT) SHALL BE NOTIFIED IN WRITING BY
29 THE ATTORNEY GENERAL WITHIN THREE BUSINESS DAYS OF THE ATTORNEY
30 GENERAL'S RECEIPT OF AN ORDER.

1 (C) CONTENTS.--THE NOTICE SHALL INCLUDE THE FOLLOWING
2 INFORMATION:

3 (1) A COPY OF THE APPLICATION MADE UNDER SECTION 7626.

4 (2) A COPY OF THE COURT ORDER ISSUED UNDER SECTION 7627.

5 (3) NOTIFICATION THAT THE INTERNET SERVICE PROVIDER MUST
6 REMOVE OR DISABLE THE ITEMS RESIDING ON OR ACCESSIBLE THROUGH
7 ITS SERVICE WITHIN FIVE BUSINESS DAYS OF THE DATE OF RECEIPT
8 OF THE NOTIFICATION.

9 (4) CONTACT INFORMATION FOR THE OFFICE OF ATTORNEY
10 GENERAL, INCLUDING THE NAME, ADDRESS AND TELEPHONE NUMBER OF
11 ANY DEPUTY OR AGENT AUTHORIZED BY THE ATTORNEY GENERAL TO
12 SUBMIT NOTIFICATION PURSUANT TO THIS SUBSECTION.

13 § 7629. DESIGNATED AGENT.

14 AN INTERNET SERVICE PROVIDER MAY DESIGNATE AN AGENT TO
15 RECEIVE NOTIFICATION PROVIDED UNDER SECTION 7628 (RELATING TO
16 NOTIFICATION PROCEDURE).

17 § 7630. REPORT TO GENERAL ASSEMBLY.

18 THE ATTORNEY GENERAL SHALL MAKE AN ANNUAL REPORT TO THE
19 CHAIRMAN AND MINORITY CHAIRMAN OF THE JUDICIARY COMMITTEE OF THE
20 SENATE AND TO THE CHAIRMAN AND MINORITY CHAIRMAN OF THE
21 JUDICIARY COMMITTEE OF THE HOUSE OF REPRESENTATIVES PROVIDING
22 INFORMATION ON THE NUMBER OF NOTIFICATIONS ISSUED AND THE
23 PROSECUTIONS MADE UNDER THIS SUBCHAPTER AND MAKING ANY
24 RECOMMENDATIONS FOR AMENDATORY LANGUAGE.

25 SUBCHAPTER E

26 ELECTRONIC MAIL

27 SEC.

28 7661. UNLAWFUL TRANSMISSION OF ELECTRONIC MAIL.

29 § 7661. UNLAWFUL TRANSMISSION OF ELECTRONIC MAIL.

30 (A) OFFENSE DEFINED.--A PERSON COMMITS THE OFFENSE OF

1 UNLAWFUL TRANSMISSION OF ELECTRONIC MAIL IF HE:

2 (1) USES A COMPUTER OR COMPUTER NETWORK WITHOUT
3 AUTHORITY AND WITH THE INTENT TO FALSIFY OR FORGE ELECTRONIC
4 MAIL TRANSMISSION INFORMATION OR OTHER ROUTINE INFORMATION IN
5 ANY MANNER IN CONNECTION WITH THE TRANSMISSION OF UNSOLICITED
6 ELECTRONIC MAIL THROUGH OR INTO THE COMPUTER NETWORK OF AN
7 ELECTRONIC MAIL SERVICE PROVIDER, INTERNET SERVICE PROVIDER
8 OR ITS SUBSCRIBERS.

9 (2) SELLS, GIVES OR OTHERWISE DISTRIBUTES OR POSSESSES
10 WITH THE INTENT TO SELL, GIVE OR DISTRIBUTE COMPUTER SOFTWARE
11 WHICH:

12 (I) IS PRIMARILY DESIGNED OR PRODUCED FOR THE
13 PURPOSE OF FACILITATING OR ENABLING THE FALSIFICATION OF
14 ELECTRONIC MAIL TRANSMISSION INFORMATION OR OTHER ROUTING
15 INFORMATION;

16 (II) HAS ONLY LIMITED COMMERCIALY SIGNIFICANT
17 PURPOSE OR USE OTHER THAN TO FACILITATE OR TO ENABLE THE
18 FALSIFICATION OF ELECTRONIC MAIL TRANSMISSION INFORMATION
19 OR OTHER ROUTING INFORMATION; OR

20 (III) IS MARKETED BY THAT PERSON OR ANOTHER PERSON
21 ACTING IN CONCERT WITH THAT PERSON WITH THAT PERSON'S
22 KNOWLEDGE FOR THE USE IN FACILITATING OR ENABLING THE
23 FALSIFICATION OF ELECTRONIC MAIL TRANSMISSION INFORMATION
24 OR OTHER ROUTING INFORMATION.

25 (B) GRADING.--

26 (1) EXCEPT AS PROVIDED IN PARAGRAPHS (2) AND (3),
27 UNLAWFUL TRANSMISSION OF ELECTRONIC MAIL IS A MISDEMEANOR OF
28 THE THIRD DEGREE PUNISHABLE BY A FINE OF NOT MORE THAN
29 \$2,500.

30 (2) IF THERE IS DAMAGE TO THE PROPERTY OF ANOTHER VALUED

1 AT \$2,500 OR MORE CAUSED BY THAT PERSON'S RECKLESS DISREGARD
2 FOR THE CONSEQUENCES OF HIS ACT IN VIOLATION OF THIS SECTION,
3 UNLAWFUL TRANSMISSION OF ELECTRONIC MAIL IS A MISDEMEANOR OF
4 THE FIRST DEGREE PUNISHABLE BY A FINE OF NOT MORE THAN
5 \$10,000.

6 (3) IF THERE IS DAMAGE TO THE PROPERTY OF ANOTHER VALUED
7 AT \$2,500 OR MORE CAUSED BY THAT PERSON'S MALICIOUS ACT IN
8 VIOLATION OF THIS SECTION, UNLAWFUL TRANSMISSION OF
9 ELECTRONIC MAIL IS A FELONY OF THE THIRD DEGREE PUNISHABLE BY
10 A FINE OF NOT MORE THAN \$15,000.

11 (C) RIGHTS PRESERVED.--NOTHING IN THIS SECTION SHALL BE
12 CONSTRUED TO:

13 (1) ESTABLISH ANY LIABILITY BY REASON OF TERMS OR
14 CONDITIONS ADOPTED BY, OR TECHNICAL MEASURES IMPLEMENTED BY,
15 AN ELECTRONIC MAIL SERVICE PROVIDER OR INTERNET SERVICE
16 PROVIDER DOING BUSINESS IN THIS COMMONWEALTH TO PREVENT THE
17 TRANSMISSION OF UNSOLICITED ELECTRONIC MAIL IN VIOLATION OF
18 THIS SECTION.

19 (2) INTERFERE WITH OR PROHIBIT TERMS OR CONDITIONS IN A
20 CONTRACT OR LICENSE RELATED TO COMPUTERS, COMPUTER DATA,
21 COMPUTER NETWORKS, COMPUTER OPERATIONS, COMPUTER PROGRAMS,
22 COMPUTER SERVICES OR COMPUTER SOFTWARE.

23 (D) DEFINITIONS.--AS USED IN THIS SECTION, THE TERM
24 "ELECTRONIC MAIL" SHALL INCLUDE FACSIMILES AND WIRELESS
25 ADVERTISEMENTS IN ADDITION TO OTHER ELECTRONIC MAIL.

26 Section ~~2~~ 4. This act shall take effect in 60 days. <—