

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 928 Session of 2009

INTRODUCED BY GRUCELA, ROHRER, BARRAR, BELFANTI, BRENNAN, BROWN, CAUSER, CLYMER, CREIGHTON, DENLINGER, FLECK, GIBBONS, GOODMAN, HARKINS, HARRIS, HICKERNELL, HORNAMAN, KAUFFMAN, KILLION, LONGIETTI, MAHER, MICOZZIE, MOUL, MUSTIO, OBERLANDER, PALLONE, PETRARCA, READSHAW, REICHLEY, ROAE, BOYD, KORTZ, METCALFE, RAPP, ROCK, SOLOBAY, J. TAYLOR, WANSACZ, SCAVELLO, SIPTROTH, TRUE, WATSON AND HENNESSEY, MARCH 13, 2009

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 13, 2009

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
 2 Consolidated Statutes, in child protective services,
 3 providing for the detection of child rapists and predators;
 4 imposing duties on certain health care practitioners to
 5 determine whether children are 13 years of age or older;
 6 providing for reporting by treating health care
 7 practitioners, for law enforcement, for fetal tissue and DNA
 8 samples, for duties of the Office of Attorney General and for
 9 certain immunity; and imposing penalties.

10 The General Assembly of the Commonwealth of Pennsylvania
 11 hereby enacts as follows:

12 Section 1. Chapter 63 of Title 23 of the Pennsylvania
 13 Consolidated Statutes is amended by adding a subchapter to read:

14 SUBCHAPTER B.1

15 CHILD RAPIST AND PREDATOR DETECTION

16 Sec.

17 6321.1. Short title of subchapter.

18 6321.2. Findings and purpose of subchapter.

1 6321.3. Definitions.

2 6321.4. Pregnancy and sexually transmitted disease as child
3 abuse in children.

4 6321.5. Duty to determine whether child is 13 years of age or
5 older and to report.

6 6321.6. Law enforcement.

7 6321.7. Fetal tissue and DNA samples.

8 6321.8. Evidence.

9 6321.9. Entity assistance.

10 6321.10. Preclusion of confidentiality.

11 6321.11. Immunity.

12 6321.12. Employer responsibility.

13 6321.13. Annual report.

14 6321.14. Criminal penalty.

15 6321.15. Civil remedy.

16 § 6321.1. Short title of subchapter.

17 This subchapter shall be known and may be cited as the Child
18 Rapist and Predator Detection Act.

19 § 6321.2. Findings and purpose of subchapter.

20 The General Assembly finds and declares as follows:

21 (1) The overriding imperatives of public safety and
22 child protection create a compelling State interest in
23 legislation to develop more effective methods for discovering
24 the identities of dangerous predators who rape and sexually
25 abuse preteen children before these dangerous predators can
26 traumatize the lives of other children.

27 (2) Recently enacted legislation has expanded the
28 mandated reporting requirements for child abuse in a manner
29 that requires the reporting of the pregnancies of girls who
30 are under 13 years of age to county agencies, regardless of

1 whether the predator is a perpetrator within the meaning of
2 this subchapter.

3 (3) The failure of physicians and hospital
4 administrators to report the pregnancy of preteens to law
5 enforcement authorities is a punishable offense under 18
6 Pa.C.S. § 5106 (relating to failure to report injuries by
7 firearm or criminal act).

8 (4) Despite the mandatory reporting requirement under
9 existing law, a significant number of child rapists and other
10 child predators avoid detection and punishment when the
11 reporting requirement is circumvented by the failure to make
12 reasonable efforts to confirm the age of child victims.

13 (5) Children under 13 years of age who have a sexually
14 transmitted disease or who are pregnant embody evidence that
15 a felonious sex crime has been committed.

16 (6) The successful criminal prosecution of sexual
17 offenders who prey on preteen children may depend heavily on
18 the preservation of physical evidence, including DNA
19 evidence, in order to identify or confirm the identity of the
20 perpetrator.

21 (7) A law requiring a health care practitioner who
22 treats a minor who is pregnant or who has a sexually
23 transmitted disease to ascertain whether that minor is a
24 preteen will greatly strengthen the Commonwealth's ability to
25 protect children under 13 years of age against child rapists
26 and other sexual predators.

27 § 6321.3. Definitions.

28 The following words and phrases when used in this subchapter
29 shall have the meanings given to them in this section unless the
30 context clearly indicates otherwise:

1 "Abortion facility." A facility or medical facility as
2 defined in 18 Pa.C.S. § 3203 (relating to definitions).

3 "Chief of police." The chief of police or other head of the
4 police department of the municipality in which resides a child
5 who is the subject of a report required under this subchapter.

6 "Child." An individual who is under 13 years of age.

7 "Child predator unit." The Child Predator Unit in the Office
8 of Attorney General.

9 "County agency." As defined under section 6303 (relating to
10 definitions).

11 "Entity." The agency, institution, organization or other
12 entity, including an abortion facility, with which a treating
13 health care practitioner is affiliated for purposes of the
14 reporting requirement under section 6311 (relating to persons
15 required to report suspected child abuse).

16 "Minor." An individual who is under 16 years of age.

17 "Physician." A person licensed to practice medicine in this
18 Commonwealth. The term also includes a medical doctor and a
19 doctor of osteopathy.

20 "Treating health care practitioner." A physician or other
21 health care practitioner who:

22 (1) is primarily responsible for the prenatal care of a
23 pregnant minor;

24 (2) delivers a baby or terminates the pregnancy of a
25 minor; or

26 (3) treats a minor for a sexually transmitted disease.

27 "Unborn child." As defined in 18 Pa.C.S. § 3203 (relating to
28 definitions).

29 § 6321.4. Pregnancy and sexually transmitted disease as child
30 abuse in children.

1 (a) General rule.--The presence of a sexually transmitted
2 disease in or the pregnancy of a child constitutes clear and
3 convincing evidence of a first degree felony offense for
4 purposes of criminal prosecution and of rape under 18 Pa.C.S. §
5 3121(c) (relating to rape) or 3123(b) (relating to involuntary
6 deviate sexual intercourse) and clear and convincing evidence of
7 child abuse for purposes of triggering the requirements of this
8 subchapter.

9 (b) Age of other participant not a defense.--A person
10 required to comply with the requirements of this subchapter
11 shall do so regardless of whether that person possesses any
12 information relating to the age of the other participant in the
13 act causing the pregnancy or sexually transmitted disease.

14 (c) Construction.--Nothing in this subchapter shall be
15 construed to eliminate or diminish the duty to report that any
16 minor is pregnant or has a sexually transmitted disease or is a
17 victim of sexual abuse or exploitation in cases where the person
18 is required to make a report under section 6311 (relating to
19 persons required to report suspected child abuse).

20 § 6321.5. Duty to determine whether child is 13 years of age or
21 older and to report.

22 (a) Sufficiency of evidence.--

23 (1) (i) Where a treating health care practitioner
24 treats a minor with respect to prenatal care, the
25 delivery of a baby, the termination of a pregnancy or a
26 sexually transmitted disease, the treating health care
27 practitioner shall obtain credible written evidence such
28 as a school record, health care record or health
29 insurance record that the minor is 13 years of age or
30 older.

1 (ii) If the written evidence indicates that the
2 minor is a child, the treating health care practitioner
3 shall report this information to the child predator unit
4 in writing by mail, facsimile transmission or e-mail with
5 copies to the county agency. The report shall contain the
6 information specified in section 6313(c) (relating to
7 reporting procedure) to the extent applicable.

8 (iii) Compliance with this paragraph shall
9 constitute compliance with section 6311 (relating to
10 persons required to report suspected child abuse).

11 (2) An uncorroborated statement of a minor being treated
12 or of another person shall not constitute sufficient evidence
13 that the minor is 13 years of age or older.

14 (3) If the treating health care practitioner fails to
15 make a report under paragraph (1), the treating health care
16 practitioner shall make a record of the evidentiary basis for
17 his determination that the minor is 13 years of age or older
18 which shall be preserved by the treating health care
19 practitioner and the entity with which the treating health
20 care practitioner is affiliated and separately by the entity
21 for a period of five years.

22 (4) A treating health care practitioner who fails to
23 obtain credible evidence or to maintain the record shall be
24 deprived of any defense that the treating health care
25 practitioner did not have reasonable cause to suspect that
26 the minor was 13 years of age or older.

27 (b) Violation.--A treating health care practitioner who does
28 not make a report in accordance with this section shall be in
29 violation of this subchapter if the treating health care
30 practitioner has failed to obtain, file and maintain credible

1 evidence that a minor specified in subsection (a) is 13 years of
2 age or older, if the minor was a child at the time of treatment.

3 (c) Duties of county agency.--The chief administrative
4 officer of each county agency shall:

5 (1) Establish a procedure for notifying each health care
6 practitioner who makes a report under this subchapter,
7 including section 6311, that the health care practitioner
8 shall also notify the child predator unit if the nature of
9 that report falls within the scope of subsection (a).

10 (2) Verify, within two business days of receiving a
11 report under subsection (a), that the child predator unit has
12 also received the report, shall transmit or provide for the
13 transmission of the report if the child predator unit has not
14 received the report and shall transmit or provide for the
15 transmission of the report to the county district attorney.

16 (d) No relief from liability.--A violation of subsection (c)
17 by a county agency shall not relieve a health care practitioner
18 of the duty to notify the child predator unit in accordance with
19 subsection (a).

20 (e) Construction.--Nothing in this subchapter shall be
21 construed to prohibit a treating health care practitioner from
22 providing immediate treatment to a minor.

23 § 6321.6. Law enforcement.

24 (a) Furnishing of information to local police department.--
25 Upon receipt of notification pursuant to section 6321.5(a)(1)
26 (ii) (relating to duty to determine whether child is 13 years of
27 age or older and to report), the child predator unit shall
28 furnish the information to the chief of police and the
29 Pennsylvania State Police as to where the child who is the
30 subject of the report required under this section resides, if

1 known.

2 (b) Report to parent or guardian.--A law enforcement agency
3 that receives information regarding the abuse of a child under
4 this subsection shall inform a parent or guardian of the child
5 that the child has been the victim of child abuse.

6 (c) Coordination of work.--The child predator unit shall
7 coordinate with and provide technical and legal assistance to
8 county agencies, district attorneys and police departments in
9 order to further the purposes of this subchapter.

10 § 6321.7. Fetal tissue and DNA samples.

11 (a) Abortion.--

12 (1) A physician who performs an abortion on a child
13 shall collect, in accordance with the instructions of the
14 Pennsylvania State Police, a sample of DNA suitable for
15 testing from the child on whom the abortion was performed and
16 the remains of her unborn child.

17 (2) In the case of the remains of an unborn child, a
18 sample is suitable for testing under paragraph (1) if it
19 consists of properly preserved blood or fetal tissue
20 containing DNA.

21 (b) Delivery of baby.--

22 (1) A physician who delivers or supervises the delivery
23 of a baby conceived by a child shall collect or provide for
24 the collection of a sample of DNA suitable for testing from
25 the baby in accordance with the instructions of the State
26 Police.

27 (2) The sample shall be deemed suitable for testing
28 under paragraph (1) if it consists of properly preserved
29 blood or oral swabbings containing DNA.

30 (c) Forwarding of samples to Pennsylvania State Police.--A

1 sample collected under this section shall be immediately
2 forwarded by the physician to the Pennsylvania State Police for
3 testing in order to identify or confirm the identity of the
4 person who impregnated the child.

5 (d) Duties of Pennsylvania State Police.--The Pennsylvania
6 State Police shall prescribe:

7 (1) The amount and type of fetal tissue and other DNA
8 evidence to be preserved and submitted by a physician under
9 this section.

10 (2) Procedures for the proper preservation of fetal
11 tissue and other DNA evidence for the purpose of DNA testing
12 and examination.

13 (3) Procedures for documenting the chain of custody of
14 fetal tissue and other DNA evidence for use as evidence.

15 (4) Procedures for proper disposal of fetal tissue and
16 other DNA evidence preserved under this section.

17 (5) A uniform reporting instrument mandated for use by
18 physicians who submit fetal tissue or other DNA evidence
19 under this section, which shall include the name of the
20 physician submitting the fetal tissue or other DNA evidence
21 and the name, complete address of residence and name of the
22 parent or legal guardian of the child on whom the abortion
23 was performed or who gave birth, whichever is applicable.

24 (6) Procedures for communication with law enforcement
25 agencies regarding evidence and information obtained under
26 this section.

27 (e) Pennsylvania State Police notice to child predator
28 unit.--The Pennsylvania State Police shall notify the child
29 predator unit whenever it receives fetal tissue or other DNA
30 evidence under the requirements of this section.

1 § 6321.8. Evidence.

2 All evidence derived under the provisions of this subchapter
3 may be used in any prosecution under 18 Pa.C.S. Ch. 31 (relating
4 to sexual offenses) or in any other criminal or civil proceeding
5 arising in connection with pregnancy or sexually transmitted
6 disease, including, but not limited to, any action arising out
7 of a failure to make a report or collect evidence as required
8 under this subchapter.

9 § 6321.9. Entity assistance.

10 The chief administrative officer of an entity shall establish
11 policies and procedures to secure the compliance of treating
12 health care practitioners with the requirements of this
13 subchapter, and the chief administrative officer of the entity
14 shall assist treating health care practitioners in meeting the
15 requirements of this subchapter.

16 § 6321.10. Preclusion of confidentiality.

17 A privileged communication between a treating health care
18 practitioner and his patient shall not apply to a report made
19 under this subchapter regarding a minor which is made in order
20 to assure compliance with this subchapter.

21 § 6321.11. Immunity.

22 The provisions of section 6318 (relating to immunity from
23 liability) shall be applicable to this subchapter.

24 § 6321.12. Employer responsibility.

25 (a) Right of action.--Any person who, under this subchapter,
26 is required to make a report under this subchapter and who, in
27 good faith, makes or causes the report to be made and, as a
28 result thereof, is discharged from his employment or in any
29 other manner is discriminated against with respect to
30 compensation, hire, tenure, terms, conditions or privileges of

1 employment may commence an action in the court of common pleas
2 of the county in which the alleged unlawful discharge or
3 discrimination occurred for appropriate relief.

4 (b) Appropriate relief.--If the court finds that the person
5 is an individual who, under this subchapter, is required to
6 report and who, in good faith, made or caused to be made a
7 report and, as a result thereof, was discharged or discriminated
8 against with respect to compensation, hire, tenure, terms,
9 conditions or privileges of employment, it may issue an order
10 granting appropriate relief, including, but not limited to, back
11 pay.

12 § 6321.13. Annual report.

13 On or before March 30 of each year, the child predator unit
14 shall prepare a report on the enforcement of this subchapter
15 during the preceding calendar year, which shall include the
16 number of reports filed under this subchapter, itemized by
17 county and any disposition resulting from each report and any
18 recommendation, if any, for administrative and legislative
19 reform. The report shall not contain any information that would
20 lead to the disclosure of the identity of the child or the
21 person required to report it. The report shall be filed with the
22 Chief Clerk of the Senate and the Chief Clerk of the House of
23 Representatives, the chair and minority chair of the Law and
24 Justice Committee of the Senate and the chair and minority chair
25 of the Judiciary Committee of the House of Representatives and
26 shall be available for public inspection and copying.

27 § 6321.14. Criminal penalty.

28 Any person who willfully violates sections 6321.5(b)
29 (relating to duty to determine whether child is 13 years of age
30 or older and to report), 6321.6(a) (relating to law enforcement)

1 and 6321.7(a), (b) or (c) (relating to fetal tissue and DNA
2 samples) commits:

3 (1) A misdemeanor of the third degree for a first
4 violation of this subchapter.

5 (2) A misdemeanor of the first degree for a second
6 violation of this subchapter occurring after a first
7 conviction.

8 (3) A felony of the third degree for a third or
9 subsequent violation of this subchapter occurring after a
10 second or subsequent conviction.

11 § 6321.15. Civil remedy.

12 A person who is convicted for a failure to make a report
13 required under section 6321.5 (relating to duty to determine
14 whether child is 13 years of age or older and to report) and any
15 entity with which the person was affiliated in connection with
16 the violation shall be liable to the child for whom the report
17 was required to be made for compensatory and punitive damages
18 and for reasonable attorney fees if the child was the victim of
19 continued rape or involuntary deviate sexual intercourse or a
20 victim of statutory assault by the same perpetrator after the
21 date on which the violation occurred.

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