

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2189 Session of 2010

INTRODUCED BY GROVE, QUINN, BAKER, BEAR, BOYD, CARROLL, CLYMER, D. COSTA, CUTLER, GEIST, GINGRICH, GOODMAN, KAUFFMAN, MAHONEY, MOUL, MURT, READSHAW, SIPTROTH, TRUE, WATERS, YOUNGBLOOD, MAJOR AND SAYLOR, JANUARY 5, 2010

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MARCH 16, 2010

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, FURTHER PROVIDING FOR THE OFFENSE OF
3 SEXUAL ABUSE OF CHILDREN; AND defining the offense of
4 dissemination of prohibited materials by minors via
5 electronic communications.



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

8 Section 1. Title 18 of the Pennsylvania Consolidated
9 Statutes is amended by adding a section to read:



10 SECTION 1. SECTION 6312(F) OF TITLE 18 OF THE PENNSYLVANIA
11 CONSOLIDATED STATUTES IS AMENDED TO READ:



12 § 6312. SEXUAL ABUSE OF CHILDREN.

13 * * *

14 (F) EXCEPTIONS.--THIS SECTION DOES NOT APPLY TO ANY MATERIAL
15 THAT IS VIEWED, POSSESSED, CONTROLLED, BROUGHT OR CAUSED TO BE
16 BROUGHT INTO THIS COMMONWEALTH, OR PRESENTED FOR A BONA FIDE
17 EDUCATIONAL, SCIENTIFIC, GOVERNMENTAL OR JUDICIAL PURPOSE. IN
18 ADDITION, THIS SECTION SHALL NOT APPLY TO THE DISSEMINATION OF

1 PROHIBITED MATERIALS BY MINORS VIA ELECTRONIC COMMUNICATIONS AS
2 SET FORTH IN SECTION 6321 (RELATING TO DISSEMINATION OF
3 PROHIBITED MATERIALS BY MINORS VIA ELECTRONIC COMMUNICATIONS).

4 * * *

5 SECTION 2. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ:

6 § 6321. Dissemination of prohibited materials by minors via
7 electronic communications.

8 (a) Offense defined.--Any minor who knowingly transmits in
9 an electronic communication, as defined in section 5702 ←
10 (relating to definitions), OR DISSEMINATES a depiction of ←
11 himself or herself or of another minor who is 13 years of age or ←
12 older in a state of nudity as defined in subsection 5903(e)
13 (relating to obscene and other sexual materials and
14 performances) OR POSSESSES A DEPICTION OF ANOTHER MINOR ENGAGING ←
15 IN SEXUALLY EXPLICIT CONDUCT commits a misdemeanor of the second
16 degree.

17 (b) Applicability.--This section shall not apply to
18 electronic communications that depict either sexual intercourse
19 or deviate sexual intercourse, as defined in section 3101 ←
20 (relating to definitions), or the penetration, however slight,
21 of the genitals or anus of a minor with any part of a person's
22 body, masturbation, sadism or masochism. THE TRANSMISSION OF AN ←
23 ELECTRONIC COMMUNICATION DEPICTING ANY OF THESE ACTS SHALL BE
24 SUBJECT TO PROSECUTION UNDER SECTION 6312 (RELATING TO SEXUAL
25 ABUSE OF CHILDREN).

26 (C) ADJUDICATION ALTERNATIVES.--AS APPROPRIATE TO THE
27 CIRCUMSTANCES, IF A MINOR IS ACCUSED OF VIOLATING THIS SECTION,
28 CONSIDERATION SHALL BE GIVEN TO:

29 (1) DIVERSIONARY ALTERNATIVES AVAILABLE PRIOR TO A LAW
30 ENFORCEMENT OFFICER'S SUBMISSION OF A WRITTEN ALLEGATION OF

1 DELINQUENCY TO THE JUVENILE PROBATION OFFICE; OR

2 (2) ADJUDICATORY ALTERNATIVES AVAILABLE SUBSEQUENT TO
3 THE SUBMISSION OF A WRITTEN ALLEGATION OF DELINQUENCY,
4 INCLUDING THE OPPORTUNITY FOR DISPOSITION THROUGH INFORMAL
5 ADJUSTMENT AS SET FORTH IN 42 PA.C.S. § 6323 (RELATING TO
6 INFORMAL ADJUSTMENT) OR ENTRY OF A CONSENT DECREE PURSUANT TO
7 42 PA.C.S. § 6340 (RELATING TO CONSENT DECREE).

8 (D) EXPUNGEMENT.--FOR JUVENILES WHO FULFILL THE CONDITIONS
9 OF A DIVERSIONARY ALTERNATIVE PURSUANT TO SUBSECTION (C) (1) OR
10 AN INFORMAL ADJUSTMENT PURSUANT TO 42 PA.C.S. § 6323, THE
11 RECORD, INCLUDING ANY FINGERPRINTS OR PHOTOGRAPHS TAKEN UNDER 42
12 PA.C.S. § 6308(C) (RELATING TO LAW ENFORCEMENT RECORDS), SHALL
13 BE EXPUNGED PURSUANT TO SECTION 9123(A) (1) (RELATING TO JUVENILE
14 RECORDS). FOR JUVENILES WHO HAVE SUCCESSFULLY FULFILLED THE
15 CONDITIONS OF A CONSENT DECREE PURSUANT TO 42 PA.C.S. § 6340 THE
16 RECORD, INCLUDING ANY FINGERPRINTS OR PHOTOGRAPHS TAKEN PURSUANT
17 TO 42 PA.C.S. § 6308(C), SHALL BE EXPUNGED PURSUANT TO SECTION
18 9123(A) (2).

19 (E) NO SECURE DETENTION OR PLACEMENT AUTHORIZED.--A MINOR
20 ALLEGED TO BE DELINQUENT SOLELY ON THE BASIS OF THE OFFENSE
21 CANNOT BE DETAINED IN A SECURE FACILITY UNDER 42 PA.C.S. § 6327
22 (RELATING TO PLACE OF DETENTION). A MINOR ADJUDICATED DELINQUENT
23 WHERE THIS OFFENSE IS THE ONLY OFFENSE SUBSTANTIATED UNDER 42
24 PA.C.S. § 6341 (RELATING TO ADJUDICATION) SHALL NOT BE SUBJECT
25 TO COMMITMENT TO A SECURE FACILITY PURSUANT TO A DISPOSITION
26 ORDERED BY THE COURT UNDER 42 PA.C.S. § 6352 (RELATING TO
27 DISPOSITION OF DELINQUENT CHILD).

28 (F) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
29 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
30 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

1 "ELECTRONIC COMMUNICATION." AS DEFINED IN SECTION 5702
2 (RELATING TO DEFINITIONS).

3 "MINOR." ANY PERSON 13 YEARS OF AGE OR OLDER AND UNDER 18
4 YEARS OF AGE.

5 "NUDITY." AS DEFINED IN SECTION 5903(E) (RELATING TO OBSCENE
6 AND OTHER SEXUAL MATERIALS AND PERFORMANCES).

7 "SEXUALLY EXPLICIT CONDUCT." A LEWD OR LASCIVIOUS EXHIBITION
8 OF THE MINOR'S GENITALS, PUBIC AREA, BREASTS OR BUTTOCKS OR
9 NUDITY IF SUCH NUDITY IS DEPICTED FOR THE PURPOSE OF SEXUAL
10 STIMULATION OR GRATIFICATION OF ANY PERSON WHO MIGHT VIEW SUCH
11 DEPICTION.

12 "SEXUAL INTERCOURSE." AS DEFINED IN SECTION 3101 (RELATING
13 TO DEFINITIONS).

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

