

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 815 Session of
2011

INTRODUCED BY GROVE, AUMENT, BAKER, BOBACK, CARROLL, CLYMER,
D. COSTA, CUTLER, DALEY, GEIST, KAUFFMAN, MILLER, MOUL,
O'NEILL, REICHLLEY, ROCK, SAYLOR AND MURT, FEBRUARY 24, 2011

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 3, 2011

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 sexting
4 by minors.

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

7 Section 1. Section 6312(f) of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 6312. Sexual abuse of children.

10 * * *

11 (f) Exceptions.--This section does not apply to any of the
12 following:

13 (1) Any material that is viewed, possessed, controlled,
14 brought or caused to be brought into this Commonwealth, or
15 presented, for a bona fide educational, scientific,
16 governmental or judicial purpose.

17 (2) Conduct prohibited under section 6321 (relating to
18 sexting by minors).

1 (3) An individual under 18 years of age who knowingly
2 photographs, videotapes, depicts on a computer or films or
3 possesses or intentionally views a visual depiction as
4 defined in section 6321 of himself ~~or herself~~ alone in a ←
5 state of simple nudity as defined in section 6321.

6 * * *

7 Section 2. Title 18 is amended by adding a section to read:
8 § 6321. Sexting by minors.

9 (a) Offense defined.--A minor who knowingly transmits an
10 electronic communication or disseminates a depiction of himself
11 ~~or herself~~ or another minor, or possesses a depiction of another ←
12 minor, engaging in sexually explicit conduct commits a
13 misdemeanor of the second degree.

14 (b) Applicability.--This section shall not apply to the
15 following:

16 (1) Electronic communications that depict either sexual
17 intercourse or deviate sexual intercourse or the penetration,
18 however slight, of the genitals or anus of a minor with any
19 part of a person's body, masturbation, sadism or masochism.
20 The transmission of an electronic communication depicting any
21 of these acts shall be subject to prosecution under other
22 provisions of this title, including section 6312 (relating to
23 sexual abuse of children).

24 (2) A visual depiction of a minor which depicts the
25 minor engaging in sexually explicit conduct if the
26 photograph, videotape, film or depiction was taken, made,
27 produced, used or intended to be used for or in furtherance
28 of a commercial purpose. The photographing, videotaping,
29 filming or depicting on a computer of a visual depiction
30 which depicts the minor engaging in sexually explicit conduct

1 for or in furtherance of a commercial purpose shall be
2 subject to prosecution under other provisions of this title,
3 including section 6312.

4 (c) Adjudication alternatives.--As appropriate to the
5 circumstances, if a minor is accused of violating this section,
6 consideration shall be given to:

7 (1) Diversionary alternatives available prior to a law
8 enforcement officer's submission of a written allegation of
9 delinquency to the juvenile probation office.

10 (2) Adjudicatory alternatives available subsequent to
11 the submission of a written allegation of delinquency,
12 including the opportunity for disposition through informal
13 adjustment as set forth in 42 Pa.C.S. § 6323 (relating to
14 informal adjustment) or entry into a consent decree pursuant
15 to 42 Pa.C.S. § 6340 (relating to consent decree).

16 (d) Expungement.--For juveniles who fulfill the conditions
17 of a diversionary alternative pursuant to subsection (c)(1) or
18 informal adjustment pursuant to 42 Pa.C.S. § 6323, the record,
19 including any fingerprints or photographs taken under 42 Pa.C.S.
20 § 6308(c) (relating to law enforcement records), shall be
21 expunged pursuant to section 9123(a)(1) (relating to juvenile
22 records). For juveniles who have successfully fulfilled the
23 conditions of a consent decree pursuant to 42 Pa.C.S. § 6340,
24 the record, including any fingerprints or photographs taken
25 pursuant to 42 Pa.C.S. § 6308(c), shall be expunged pursuant to
26 section 9123(a)(2).

27 (e) No secure detention or placement authorized.--A minor
28 alleged to be delinquent solely on the basis of an offense
29 committed under subsection (a) may not be detained in a secure
30 placement facility under 42 Pa.C.S. § 6327 (relating to place of

1 detention). A minor adjudicated delinquent where the offense
2 under subsection (a) is the only offense substantiated under 42
3 Pa.C.S. § 6341 (relating to adjudication) shall not be subject
4 to commitment to a secure facility pursuant to a disposition
5 ordered by the court under 42 Pa.C.S. § 6352 (relating to
6 disposition of delinquent child).

7 (f) Seizure and forfeiture of electronic device.--An
8 electronic device used in violation of this section may be
9 seized and forfeited to the Commonwealth.

10 (g) Definitions.--As used in this section, the following
11 words and phrases shall have the meanings given to them in this
12 subsection unless the context clearly indicates otherwise:

13 "Electronic communication." As defined in section 5702
14 (relating to definitions).

15 "Minor." A person 13 years of age or older and under 18
16 years of age.

17 "Nudity." As defined in section 5903(e) (relating to obscene
18 and other sexual materials and performances).

19 "Sexual intercourse." As defined in section 3101 (relating
20 to definitions).

21 "Sexually explicit conduct." A lewd or lascivious exhibition
22 of the minor's genitals, pubic area, breasts or buttocks or
23 nudity if such nudity is depicted for the purpose of sexual
24 stimulation or gratification of any person who might view such
25 depiction. The term does not include simple nudity.

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