

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, REICHLEY, ROCK, SAYLOR, MURT AND CALTAGIRONE, FEBRUARY 24, 2011

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED, OCTOBER 2, 2012

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 PROVIDING FOR THE OFFENSE OF TRANSMISSION OF
5 SEXUALLY EXPLICIT IMAGES BY MINOR.



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

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

10 § 6312. Sexual abuse of children.

11 \* \* \*

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

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

1           (2) Conduct prohibited under section 6321 (relating to  
2 sexting by minors). TRANSMISSION OF SEXUALLY EXPLICIT IMAGES ←  
3 BY MINOR), UNLESS THE CONDUCT IS SPECIFICALLY EXCLUDED BY  
4 SECTION 6321(D).

5           (3) An individual under 18 years of age who knowingly  
6 VIEWES, photographs, videotapes, depicts on a computer or ←  
7 films or possesses or intentionally views a visual depiction  
8 as defined in section 6321 of himself alone in a state of  
9 simple nudity as defined in section 6321. ←

10       \* \* \*

11       Section 2. Title 18 is amended by adding a section to read:

12 ~~§ 6321. Sexting by minors.~~ ←

13       ~~(a) Offense defined. A minor who knowingly transmits an~~  
14 ~~electronic communication or disseminates a depiction of himself~~  
15 ~~or another minor, or possesses a depiction of another minor,~~  
16 ~~engaging in sexually explicit conduct commits a misdemeanor of~~  
17 ~~the second degree.~~

18       ~~(b) Applicability. This section shall not apply to the~~  
19 ~~following:~~

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

28           ~~(2) A visual depiction of a minor which depicts the~~  
29 ~~minor engaging in sexually explicit conduct if the~~  
30 ~~photograph, videotape, film or depiction was taken, made,~~

1 ~~produced, used or intended to be used for or in furtherance~~  
2 ~~of a commercial purpose. The photographing, videotaping,~~  
3 ~~filming or depicting on a computer of a visual depiction~~  
4 ~~which depicts the minor engaging in sexually explicit conduct~~  
5 ~~for or in furtherance of a commercial purpose shall be~~  
6 ~~subject to prosecution under other provisions of this title,~~  
7 ~~including section 6312.~~

8 ~~(c) Adjudication alternatives. As appropriate to the~~  
9 ~~circumstances, if a minor is accused of violating this section,~~  
10 ~~consideration shall be given to:~~

11 ~~(1) Diversionary alternatives available prior to a law~~  
12 ~~enforcement officer's submission of a written allegation of~~  
13 ~~delinquency to the juvenile probation office.~~

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

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

1 ~~(e) No secure detention or placement authorized. A minor~~  
2 ~~alleged to be delinquent solely on the basis of an offense~~  
3 ~~committed under subsection (a) may not be detained in a secure~~  
4 ~~placement facility under 42 Pa.C.S. § 6327 (relating to place of~~  
5 ~~detention). A minor adjudicated delinquent where the offense~~  
6 ~~under subsection (a) is the only offense substantiated under 42~~  
7 ~~Pa.C.S. § 6341 (relating to adjudication) shall not be subject~~  
8 ~~to commitment to a secure facility pursuant to a disposition~~  
9 ~~ordered by the court under 42 Pa.C.S. § 6352 (relating to~~  
10 ~~disposition of delinquent child).~~

11 ~~(f) Seizure and forfeiture of electronic device. An~~  
12 ~~electronic device used in violation of this section may be~~  
13 ~~seized and forfeited to the Commonwealth.~~

14 ~~(g) Definitions. As used in this section, the following~~  
15 ~~words and phrases shall have the meanings given to them in this~~  
16 ~~subsection unless the context clearly indicates otherwise:~~

17 ~~"Electronic communication." As defined in section 5702~~  
18 ~~(relating to definitions).~~

19 ~~"Minor." A person 13 years of age or older and under 18~~  
20 ~~years of age.~~

21 ~~"Nudity." As defined in section 5903(e) (relating to obscene~~  
22 ~~and other sexual materials and performances).~~

23 ~~"Sexual intercourse." As defined in section 3101 (relating~~  
24 ~~to definitions).~~

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

30 ~~§ 6321. TRANSMISSION OF SEXUALLY EXPLICIT IMAGES BY MINOR.~~



1 (A) SUMMARY OFFENSE.--EXCEPT AS PROVIDED IN SECTION 6312  
2 (RELATING TO SEXUAL ABUSE OF CHILDREN), A MINOR COMMITS A  
3 SUMMARY OFFENSE WHEN THE MINOR:

4 (1) KNOWINGLY TRANSMITS, DISTRIBUTES, PUBLISHES OR  
5 DISSEMINATES AN ELECTRONIC COMMUNICATION CONTAINING A  
6 SEXUALLY EXPLICIT IMAGE OF HIMSELF.

7 (2) KNOWINGLY POSSESSES OR KNOWINGLY VIEWS A SEXUALLY  
8 EXPLICIT IMAGE OF A MINOR WHO IS 12 YEARS OF AGE OR OLDER.

9 (B) MISDEMEANOR OF THE THIRD DEGREE.--EXCEPT AS PROVIDED IN  
10 SECTION 6312, A MINOR COMMITS A MISDEMEANOR OF THE THIRD DEGREE  
11 WHEN THE MINOR KNOWINGLY TRANSMITS, DISTRIBUTES, PUBLISHES OR  
12 DISSEMINATES AN ELECTRONIC COMMUNICATION CONTAINING A SEXUALLY  
13 EXPLICIT IMAGE OF ANOTHER MINOR WHO IS 12 YEARS OF AGE OR OLDER.

14 (C) MISDEMEANOR OF THE SECOND DEGREE.--EXCEPT AS PROVIDED IN  
15 SECTION 6312, A MINOR COMMITS A MISDEMEANOR OF THE SECOND DEGREE  
16 WHEN, WITH THE INTENT TO COERCE, INTIMIDATE, TORMENT, HARASS OR  
17 OTHERWISE CAUSE EMOTIONAL DISTRESS TO ANOTHER MINOR, THE MINOR:

18 (1) MAKES A VISUAL DEPICTION OF ANY MINOR IN A STATE OF  
19 NUDITY WITHOUT THE KNOWLEDGE AND CONSENT OF THE DEPICTED  
20 MINOR; OR

21 (2) TRANSMITS, DISTRIBUTES, PUBLISHES OR DISSEMINATES A  
22 VISUAL DEPICTION OF ANY MINOR IN A STATE OF NUDITY WITHOUT  
23 THE KNOWLEDGE AND CONSENT OF THE DEPICTED MINOR.

24 (D) APPLICATION OF SECTION.--THIS SECTION SHALL NOT APPLY TO  
25 THE FOLLOWING:

26 (1) CONDUCT THAT INVOLVES IMAGES THAT DEPICT SEXUAL  
27 INTERCOURSE, DEVIATE SEXUAL INTERCOURSE OR PENETRATION,  
28 HOWEVER SLIGHT, OF THE GENITALS OR ANUS OF A MINOR,  
29 MASTURBATION, SADISM, MASOCHISM OR BESTIALITY.

30 (2) CONDUCT THAT INVOLVES A SEXUALLY EXPLICIT IMAGE OF A

1 MINOR, IF THE IMAGE WAS TAKEN, MADE, USED OR INTENDED TO BE  
2 USED FOR OR IN FURTHERANCE OF A COMMERCIAL PURPOSE.

3 (E) FORFEITURE.--ANY ELECTRONIC COMMUNICATION DEVICE USED IN  
4 VIOLATION OF THIS SECTION SHALL BE SUBJECT TO FORFEITURE TO THE  
5 COMMONWEALTH AND NO PROPERTY RIGHT SHALL EXIST IN IT.

6 (F) DIVERSIONARY PROGRAM.--THE MAGISTERIAL DISTRICT JUDGE OR  
7 ANY JUDICIAL AUTHORITY WITH JURISDICTION OVER THE VIOLATION MAY  
8 REFER A PERSON CHARGED WITH A VIOLATION OF SUBSECTION (A) TO A  
9 DIVERSIONARY PROGRAM UNDER 42 PA.C.S. § 1520 (RELATING TO  
10 ADJUDICATION ALTERNATIVE PROGRAM) AND THE PENNSYLVANIA RULES OF  
11 CRIMINAL PROCEDURE. AS PART OF THE DIVERSIONARY PROGRAM, THE  
12 MAGISTERIAL DISTRICT JUDGE OR ANY JUDICIAL AUTHORITY WITH  
13 JURISDICTION OVER THE VIOLATION MAY ORDER THE PERSON TO  
14 PARTICIPATE IN AN EDUCATIONAL PROGRAM WHICH INCLUDES THE LEGAL  
15 AND NONLEGAL CONSEQUENCES OF SHARING SEXUALLY EXPLICIT IMAGES.  
16 IF THE PERSON SUCCESSFULLY COMPLETES THE DIVERSIONARY PROGRAM,  
17 THE PERSON'S RECORDS OF THE CHARGE OF VIOLATING SUBSECTION (A)  
18 SHALL BE EXPUNGED AS PROVIDED FOR UNDER PA.R.C.P. NO. 320  
19 (RELATING TO EXPUNGEMENT UPON SUCCESSFUL COMPLETION OF ARD  
20 PROGRAM) .

21 (G) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING  
22 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS  
23 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

24 "DISSEMINATE." TO CAUSE OR MAKE AN ELECTRONIC OR ACTUAL  
25 COMMUNICATION FROM ONE PERSON, PLACE OR ELECTRONIC COMMUNICATION  
26 DEVICE TO TWO OR MORE OTHER PERSONS, PLACES OR ELECTRONIC  
27 COMMUNICATION DEVICES.

28 "DISTRIBUTE." TO DELIVER OR PASS OUT.

29 "ELECTRONIC COMMUNICATION." AS DEFINED IN SECTION 5702  
30 (RELATING TO DEFINITIONS).

1 "KNOWINGLY POSSESSES." THE DELIBERATE, PURPOSEFUL, VOLUNTARY  
2 POSSESSION OF A SEXUALLY EXPLICIT IMAGE OF ANOTHER MINOR WHO IS  
3 12 YEARS OF AGE OR OLDER. THE TERM SHALL NOT INCLUDE THE  
4 ACCIDENTAL OR INADVERTENT POSSESSION OF SUCH AN IMAGE.

5 "KNOWINGLY VIEWS." THE DELIBERATE, PURPOSEFUL, VOLUNTARY  
6 VIEWING OF A SEXUALLY EXPLICIT IMAGE OF ANOTHER MINOR WHO IS 12  
7 YEARS OF AGE OR OLDER. THE TERM SHALL NOT INCLUDE THE ACCIDENTAL  
8 OR INADVERTENT VIEWING OF SUCH AN IMAGE.

9 "MINOR." AN INDIVIDUAL UNDER 18 YEARS OF AGE.

10 "NUDITY." THE SHOWING OF THE HUMAN MALE OR FEMALE GENITALS,  
11 PUBIC AREA OR BUTTOCKS WITH LESS THAN A FULLY OPAQUE COVERING,  
12 THE SHOWING OF THE FEMALE BREAST WITH LESS THAN A FULLY OPAQUE  
13 COVERING OF ANY PORTION THEREOF BELOW THE TOP OF THE NIPPLE OR  
14 THE DEPICTION OF COVERED MALE GENITALS IN A DISCERNIBLY TURGID  
15 STATE.

16 "PUBLISH." TO ISSUE FOR DISTRIBUTION.

17 "SEXUALLY EXPLICIT IMAGE." A LEWD OR LASCIVIOUS VISUAL  
18 DEPICTION OF A MINOR'S GENITALS, PUBIC AREA, BREAST OR BUTTOCKS  
19 OR NUDITY, IF SUCH NUDITY IS DEPICTED FOR THE PURPOSE OF SEXUAL  
20 STIMULATION OR GRATIFICATION OF ANY PERSON WHO MIGHT VIEW SUCH  
21 NUDITY.

22 "TRANSMIT." TO CAUSE OR MAKE AN ELECTRONIC COMMUNICATION  
23 FROM ONE PERSON, PLACE OR ELECTRONIC COMMUNICATION DEVICE TO  
24 ONLY ONE OTHER PERSON, PLACE OR ELECTRONIC COMMUNICATION DEVICE.

25 "VISUAL DEPICTION." A REPRESENTATION BY PICTURE, INCLUDING,  
26 BUT NOT LIMITED TO, A PHOTOGRAPH, VIDEOTAPE, FILM OR COMPUTER  
27 IMAGE.

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