

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## SENATE BILL

No. 850 Session of  
2011

INTRODUCED BY GREENLEAF, BAKER, TARTAGLIONE, FONTANA, COSTA,  
YUDICHAK, BOSCOLA, ALLOWAY, HUGHES AND FARNESE,  
MARCH 16, 2011

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, APRIL 12, 2011

## AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and  
2 Judicial Procedure) of the Pennsylvania Consolidated  
3 Statutes, in minors, providing for the offense of  
4 cyberbullying and sexting by minors; in criminal history  
5 record information, further providing for expungement and for  
6 juvenile records; and, in relation to summary offenses,  
7 further providing for short title and purpose of chapter, for  
8 the scope of the Juvenile Act, for inspection of court files  
9 and records, for conduct of hearings and for right to  
10 counsel.

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

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

15 § 6321. Cyberbullying and sexting by minors.

16 (a) Offense defined.--A minor commits a misdemeanor of the  
17 second THIRD degree if:

18 (1) the minor knowingly transmits or disseminates any  
19 electronic message, including a visual depiction of himself  
20 or any other person in a state of nudity, to another minor  
21 with the knowledge or intent that the message would coerce,



intimidate, torment, harass or otherwise cause emotional distress to the other minor; or

(2) the minor does any of the following involving another minor:

(i) photographs, videotapes, depicts on a computer or films the other minor in a state of nudity without the person's knowledge or consent; or

(ii) transmits, distributes, publishes or disseminates a visual depiction of the other minor in a state of nudity where the minor depicted has not given consent or has withdrawn consent for the dissemination.

(b) Seizure and forfeiture of electronic device.--An electronic device used in violation of this section may be seized by and forfeited to the Commonwealth.

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Disseminate." To cause or make an electronic communication from one person, place or electronic communication device to two or more persons, places or electronic communication devices. The term does not include the posting on or transfer to an Internet page or website to which the public has or might gain access.

"Minor." An individual under 18 years of age.

"Nudity." The showing of the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple or the depiction of covered male genitals in a discernibly turgid state.

"Transmit." To cause or make an electronic communication

1 from one person, place or electronic communication device to  
2 only one other person, place or electronic communication device.  
3 The term shall not include the posting on or transfer to an  
4 Internet page or website to which the public has or might gain  
5 access.

6 "Visual depiction." A photograph, videotape, film or  
7 depiction on a computer. The term shall not include a  
8 photograph, videotape, film or depiction on a computer, taken,  
9 taped, filmed, made, produced, used or intended to be used, for  
10 or in furtherance of a commercial purpose or to the transmission  
11 or dissemination of such a visual depiction.

12 Section 2. Sections 9122(a)(3) and (d) and 9123(a) of Title  
13 18 are amended to read:

14 § 9122. Expungement.

15 (a) Specific proceedings.--Criminal history record  
16 information shall be expunged in a specific criminal proceeding  
17 when:

18 \* \* \*

19 (3) a person 21 years of age or older who has been  
20 convicted of a violation of section 6308 (relating to  
21 purchase, consumption, possession or transportation of liquor  
22 or malt or brewed beverages), which occurred on or after the  
23 day the person attained 18 years of age, petitions the court  
24 of common pleas in the county where the conviction occurred  
25 seeking expungement and the person has satisfied all terms  
26 and conditions of the sentence imposed for the violation,  
27 including any suspension of operating privileges imposed  
28 pursuant to section 6310.4 (relating to restriction of  
29 operating privileges). Upon review of the petition, the court  
30 shall order the expungement of all criminal history record

1 information and all administrative records of the Department  
2 of Transportation relating to said conviction.

3 \* \* \*

4 (d) Notice of expungement.--Notice of expungement shall  
5 promptly be submitted to the central [respository] repository  
6 which shall notify all criminal justice agencies which have  
7 received the criminal history record information to be expunged.

8 \* \* \*

9 § 9123. Juvenile records.

10 (a) Expungement of juvenile records.--Notwithstanding the  
11 provisions of section 9105 (relating to other criminal justice  
12 information) and except upon cause shown, expungement of records  
13 of juvenile delinquency cases and cases involving summary  
14 offenses committed while the individual was under 18 years of  
15 age, wherever kept or retained shall occur after 30 days' notice  
16 to the district attorney, whenever the court upon its own motion  
17 or upon the motion of a child or the parents or guardian finds:

18 (1) a complaint is filed which is not substantiated or  
19 the petition which is filed as a result of a complaint is  
20 dismissed by the court;

21 (1.1) a written allegation is filed which was not  
22 approved for prosecution;

23 (1.2) the individual successfully completed an informal  
24 adjustment and no proceeding seeking adjudication or  
25 conviction is pending;

26 (2) six months have elapsed since the final discharge of  
27 the person from supervision under a consent decree or  
28 diversion program, INCLUDING A PROGRAM UNDER 42 PA.C.S. §  
29 1520 (RELATING TO ADJUDICATION ALTERNATIVE PROGRAM) and no  
30 proceeding seeking adjudication or conviction is pending;



1       (2.1) the individual is 18 years of age or older and the  
2 individual has satisfied all terms and conditions of the  
3 sentence imposed following a conviction for a summary  
4 offense, with the exception of a violation of section 6308  
5 (relating to purchase, consumption, possession or  
6 transportation of liquor or malt or brewed beverages),  
7 committed while the individual was under 18 years of age and  
8 the individual has not been convicted of a felony,  
9 misdemeanor or adjudicated delinquent and no proceeding is  
10 pending to seek such conviction and adjudication;

11       (2.2) the individual is 18 years of age or older and has  
12 been convicted of a violation of section 6308 which occurred  
13 while the individual was under 18 years of age and the  
14 individual has satisfied all terms and conditions of the  
15 sentence imposed for the violation, including any suspension  
16 of operating privileges imposed under section 6310.4  
17 (relating to restriction of operating privileges).  
18 Expungement shall include all criminal history record  
19 information and all administrative records of the Department  
20 of Transportation relating to the conviction;

21       (3) five years have elapsed since the final discharge of  
22 the person from commitment, placement, probation or any other  
23 disposition and referral and since such final discharge, the  
24 person has not been convicted of a felony, misdemeanor or  
25 adjudicated delinquent and no proceeding is pending seeking  
26 such conviction or adjudication; or

27       (4) ~~[the individual is 18 years of age or older]~~ ←  
28 ~~petitions the court for an expungement,~~ ← [the attorney for  
29 the Commonwealth consents to the expungement and a court  
30 orders the expungement after giving consideration to the

1 following factors:

2 (i) the type of offense;

3 (ii) the individual's age, history of employment,  
4 criminal activity and drug or alcohol problems;

5 (iii) adverse consequences that the individual may  
6 suffer if the records are not expunged; and

7 (iv) whether retention of the record is required for  
8 purposes of protection of the public safety.

9 \* \* \*

10 Section 3. Section 6301(b) of Title 42 is amended to read:

11 § 6301. Short title and purposes of chapter.

12 \* \* \*

13 (b) Purposes.--This chapter shall be interpreted and  
14 construed as to effectuate the following purposes:

15 (1) To preserve the unity of the family whenever  
16 possible or to provide another alternative permanent family  
17 when the unity of the family cannot be maintained.

18 (1.1) To provide for the care, protection, safety and  
19 wholesome mental and physical development of children coming  
20 within the provisions of this chapter.

21 (2) Consistent with the protection of the public  
22 interest, to provide for children committing delinquent acts  
23 programs of supervision, care and rehabilitation which  
24 provide balanced attention to the protection of the  
25 community, the imposition of accountability for offenses  
26 committed and the development of competencies to enable  
27 children to become responsible and productive members of the  
28 community.

29 (3) To achieve the foregoing purposes in a family  
30 environment whenever possible, separating the child from

1 parents only when necessary for his welfare, safety or health  
2 or in the interests of public safety.

3 (4) To provide means through which the provisions of  
4 this chapter are executed and enforced and in which the  
5 parties are assured a fair hearing and their constitutional  
6 and other legal rights recognized and enforced.

7 (5) To use the least restrictive ~~punitive~~ sanctions ←  
8 consistent with the protection of the community and the  
9 ~~rehabilitative~~ REHABILITATION needs of the A DELINQUENT ←  
10 child; and to use confinement as a last resort and to impose  
11 it for the minimum amount of time that is consistent with the  
12 protection of the public and the ~~rehabilitative~~ ←  
13 REHABILITATION needs of the A DELINQUENT child. ←

14 (6) To employ WHENEVER POSSIBLE evidence-based ←  
15 practices, with fidelity, at every stage of the juvenile  
16 justice process.

17 Section 4. Sections 6303, 6307 and 6336 of Title 42 are  
18 amended by adding subsections to read:

19 § 6303. Scope of chapter.

20 \* \* \*

21 (c) Summary offenses generally.--In addition to the  
22 provisions of subsection (a) (5) and notwithstanding the  
23 exclusion of summary offenses generally from the definition of  
24 "delinquent act" under section 6302, the provisions of sections  
25 6307 (relating to inspection of court files and records) and  
26 6336(d) (relating to conduct of hearings), insofar as section  
27 6336(d) relates to the exclusion of the general public from the  
28 proceedings, shall apply to proceedings involving a child  
29 charged with a summary offense when the proceedings are before a  
30 judge of the minor judiciary.

1 § 6307. Inspection of court files and records.

2 \* \* \*

3 (c) Summary offenses.--The provisions of this section shall  
4 apply to proceedings involving a child charged with a summary  
5 offense when the proceedings are before a judge of the minor  
6 judiciary.

7 § 6336. Conduct of hearings.

8 \* \* \*

9 (g) Summary offenses.--The provisions of subsection (d),  
10 insofar as it relates to the exclusion of the general public  
11 from the proceedings, shall apply to proceedings involving a  
12 child charged with a summary offense when the proceedings are  
13 before a judge of the minor judiciary.

14 (h) Adjudication alternative.--The magisterial district  
15 judge may refer a child charged with a summary offense to an  
16 adjudication alternative program under section 1520 (relating to  
17 adjudication alternative program) and the Pennsylvania Rules of  
18 Criminal Procedure.

19 Section 5. Section 6337 of Title 42 is amended to read:

20 § 6337. Right to counsel.

21 (a) Presumption of indigency.--

22 (1) Except as provided in section 6311 (relating to  
23 guardian ad litem for child in court proceedings), a party is  
24 entitled to representation by legal counsel at all stages of  
25 any proceedings under this chapter and if he is without  
26 financial resources or otherwise unable to employ counsel, to  
27 have the court provide counsel for him.

28 (2) All children are presumed indigent for the purposes  
29 of any proceedings under this chapter. The presumption may be  
30 rebutted if the court ascertains that the child has the



1 financial resources to retain counsel of his choice at his  
2 own expense. THE COURT SHALL NOT CONSIDER THE FINANCIAL  
3 RESOURCES OF THE CHILD'S PARENT, GUARDIAN OR CUSTODIAN WHEN  
4 ASCERTAINING WHETHER THE CHILD HAS THE FINANCIAL RESOURCES TO  
5 RETAIN COUNSEL OF HIS CHOICE AT HIS OWN EXPENSE.

6 (3) If a party appears without counsel the court shall  
7 ascertain whether he knows of his right thereto and to be  
8 provided with counsel by the court if applicable. The court  
9 may continue the proceeding to enable a party to obtain  
10 counsel.

11 (b) Waiver.--Counsel must be provided for a child unless his  
12 parent, guardian, or custodian is present in court and  
13 affirmatively [waive] waives it. However, the parent, guardian,  
14 or custodian may not waive counsel for a child when their  
15 interest may be in conflict with the interest or interests of  
16 the child. If the interests of two or more parties may conflict,  
17 separate counsel shall be provided for each of them.

18 Section 6. This act shall take effect in 60 days.