

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 CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
SEPTEMBER 26, 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 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a visual depiction of the other minor in a state of nudity where the minor depicted has not given consent or has withdrawn consent for the dissemination.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

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

* * *

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

* * *

§ 9123. Juvenile records.

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

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

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

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

(2) six months have elapsed since the final discharge of the person from supervision under a consent decree or diversion program, including a program under 42 Pa.C.S. § 1520 (relating to adjudication alternative program) and no 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,] the
28 attorney for the Commonwealth consents to the expungement and
29 a court orders the expungement after giving consideration to
30 the following factors:

- 1 (i) the type of offense;
- 2 (ii) the individual's age, history of employment,
- 3 criminal activity and drug or alcohol problems;
- 4 (iii) adverse consequences that the individual may
- 5 suffer if the records are not expunged; and
- 6 (iv) whether retention of the record is required for
- 7 purposes of protection of the public safety.

8 * * *

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

10 § 6301. Short title and purposes of chapter.

11 * * *

12 (b) Purposes.--This chapter shall be interpreted and

13 construed as to effectuate the following purposes:

14 (1) To preserve the unity of the family whenever

15 possible or to provide another alternative permanent family

16 when the unity of the family cannot be maintained.

17 (1.1) To provide for the care, protection, safety and

18 wholesome mental and physical development of children coming

19 within the provisions of this chapter.

20 (2) Consistent with the protection of the public

21 interest, to provide for children committing delinquent acts

22 programs of supervision, care and rehabilitation which

23 provide balanced attention to the protection of the

24 community, the imposition of accountability for offenses

25 committed and the development of competencies to enable

26 children to become responsible and productive members of the

27 community.

28 (3) To achieve the foregoing purposes in a family

29 environment whenever possible, separating the child from

30 parents only when necessary for his welfare, safety or health

or in the interests of public safety.

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

(5) To use the least restrictive sanctions consistent with the protection of the community and the rehabilitation needs of a delinquent child; and to use confinement as a last resort and to impose it for the minimum amount of time that is consistent with the protection of the public and the rehabilitation needs of a delinquent child.

(6) To employ whenever possible evidence-based practices, with fidelity, at every stage of the juvenile justice process.

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

§ 6303. Scope of chapter.

* * *

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

§ 6307. Inspection of court files and records.

* * *

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

5 § 6336. Conduct of hearings.

6 * * *

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

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

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

18 § 6337. Right to counsel.

19 (a) ~~Presumption of indigency~~ COURT TO PROVIDE COUNSEL.-- ←

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

26 ~~(2) All children are presumed indigent for the purposes~~ ←
27 ~~of any proceedings under this chapter. The presumption may be~~
28 ~~rebutted if the court ascertains that the child has the~~
29 ~~financial resources to retain counsel of his choice at his~~
30 ~~own expense. The court shall not consider the financial~~

~~resources of the child's parent, guardian or custodian when
ascertaining whether the child has the financial resources to
retain counsel of his choice at his own expense.~~

~~(3)~~ (2) If a party appears without counsel the court
shall ascertain whether he knows of his right thereto and to
be provided with counsel by the court if applicable. The
court may continue the proceeding to enable a party to obtain
counsel.

~~(b) Waiver. Counsel~~ [COUNSEL must be provided for a child
unless his parent, guardian, or custodian is present in court
and affirmatively {waive} ~~waives~~ it. However, the parent,
guardian, or custodian may not waive counsel for a child when
their interest may be in conflict with the interest or interests
of the ~~child. If CHILD.]~~

(3) IF the interests of two or more parties may
conflict, separate counsel shall be provided for each of
them.

(B) DELINQUENCY CASES.--

(1) IN DELINQUENCY CASES, ALL CHILDREN ARE PRESUMED
INDIGENT. THE PRESUMPTION MAY BE REBUTTED IF THE COURT
ASCERTAINS THAT THE CHILD HAS THE FINANCIAL RESOURCES TO
RETAIN COUNSEL OF HIS CHOICE AT HIS OWN EXPENSE.

(2) THE COURT SHALL NOT CONSIDER THE FINANCIAL RESOURCES
OF THE CHILD'S PARENT, GUARDIAN OR CUSTODIAN WHEN
ASCERTAINING WHETHER THE CHILD HAS THE FINANCIAL RESOURCES TO
RETAIN COUNSEL OF HIS CHOICE AT HIS OWN EXPENSE.

Section 6. This act shall take effect ~~in 60 days.~~ AS
FOLLOWS:

(1) THE ADDITION OF 42 PA.C.S. §§ 6303(C), 6307(C) AND
6336(G) AND (H) SHALL TAKE EFFECT IN 90 DAYS.

1 (2) THE AMENDMENT OF 42 PA.C.S. § 6337 SHALL TAKE EFFECT
2 IMMEDIATELY.
3 (3) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.
4 (4) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
5 DAYS.