

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 321 Session of 2013

INTRODUCED BY TOEPEL, GRELL, O'NEILL, PICKETT, O'BRIEN, STEPHENS, MAJOR, SCHLOSSBERG, KORTZ, YOUNGBLOOD, D. COSTA, RAPP, KAUFFMAN, M. K. KELLER, MILLARD, C. HARRIS, MOUL, SWANGER, PETRI, TALLMAN, HAHN, GINGRICH, V. BROWN, CLYMER, LAWRENCE, WATSON, GROVE, ROCK, MARSICO, DeLUCA, GILLEN, DENLINGER, DAY, CALTAGIRONE AND DAVIDSON, JANUARY 24, 2013

SENATOR GREENLEAF, JUDICIARY, REPORTED AS AMENDED, IN SENATE, NOVEMBER 19, 2013

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, IN SEXUAL OFFENSES, FURTHER PROVIDING FOR <--
4 DEFINITIONS; IN MINORS, further providing for the offense of
5 sexual abuse of children; and, IN SENTENCING, providing for <--
6 sentencing for offenses involving child pornography SEXUAL <--
7 ABUSE OF CHILDREN.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 ~~Section 1. Section 6312 of Title 18 of the Pennsylvania~~ <--
11 ~~Consolidated Statutes is amended by adding a subsection to read:~~

12 SECTION 1. THE DEFINITION OF "INDECENT CONTACT" IN SECTION <--
13 3101 OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS
14 AMENDED TO READ:

15 § 3101. DEFINITIONS.

16 SUBJECT TO ADDITIONAL DEFINITIONS CONTAINED IN SUBSEQUENT
17 PROVISIONS OF THIS CHAPTER WHICH ARE APPLICABLE TO SPECIFIC

1 PROVISIONS OF THIS CHAPTER, THE FOLLOWING WORDS AND PHRASES WHEN
2 USED IN THIS CHAPTER SHALL HAVE, UNLESS THE CONTEXT CLEARLY
3 INDICATES OTHERWISE, THE MEANINGS GIVEN TO THEM IN THIS SECTION:

4 * * *

5 "INDECENT CONTACT." ANY TOUCHING OF THE SEXUAL OR OTHER
6 INTIMATE PARTS OF THE PERSON FOR THE PURPOSE OF AROUSING OR
7 GRATIFYING SEXUAL DESIRE, IN [EITHER] ANY PERSON.

8 * * *

9 SECTION 2. SECTION 6312(B), (C) AND (D) OF TITLE 18 ARE
10 AMENDED AND THE SECTION IS AMENDED BY ADDING A SUBSECTION TO
11 READ:

12 § 6312. Sexual abuse of children.

13 ~~* * *~~

<--

14 ~~(d.1) Multiple offenses. A person who at the time of~~
15 ~~sentencing has been convicted of another offense under this~~
16 ~~section shall be sentenced to the penalties associated with~~
17 ~~second or subsequent violations of this section. For purposes of~~
18 ~~this subsection, a person shall be deemed to have been convicted~~
19 ~~of another offense under this section whether or not judgment of~~
20 ~~sentence has been imposed for that violation.~~

21 (B) PHOTOGRAPHING, VIDEOTAPING, DEPICTING ON COMPUTER OR
22 FILMING SEXUAL ACTS.--

<--

23 (1) ANY PERSON WHO CAUSES OR KNOWINGLY PERMITS A CHILD
24 UNDER THE AGE OF 18 YEARS TO ENGAGE IN A PROHIBITED SEXUAL
25 ACT OR IN THE SIMULATION OF SUCH ACT [IS GUILTY OF A FELONY
26 OF THE SECOND DEGREE] COMMITTS AN OFFENSE IF SUCH PERSON
27 KNOWS, HAS REASON TO KNOW OR INTENDS THAT SUCH ACT MAY BE
28 PHOTOGRAPHED, VIDEOTAPED, DEPICTED ON COMPUTER OR FILMED.

29 (2) ANY PERSON WHO KNOWINGLY PHOTOGRAPHS, VIDEOTAPES,
30 DEPICTS ON COMPUTER OR FILMS A CHILD UNDER THE AGE OF 18

1 YEARS ENGAGING IN A PROHIBITED SEXUAL ACT OR IN THE
2 SIMULATION OF SUCH AN ACT [IS GUILTY OF A FELONY OF THE
3 SECOND DEGREE] COMMITTS AN OFFENSE.

4 (C) DISSEMINATION OF PHOTOGRAPHS, VIDEOTAPES, COMPUTER
5 DEPICTIONS AND FILMS.--

6 [(1)] ANY PERSON WHO KNOWINGLY SELLS, DISTRIBUTES,
7 DELIVERS, DISSEMINATES, TRANSFERS, DISPLAYS OR EXHIBITS TO
8 OTHERS, OR WHO POSSESSES FOR THE PURPOSE OF SALE,
9 DISTRIBUTION, DELIVERY, DISSEMINATION, TRANSFER, DISPLAY OR
10 EXHIBITION TO OTHERS, ANY BOOK, MAGAZINE, PAMPHLET, SLIDE,
11 PHOTOGRAPH, FILM, VIDEOTAPE, COMPUTER DEPICTION OR OTHER
12 MATERIAL DEPICTING A CHILD UNDER THE AGE OF 18 YEARS ENGAGING
13 IN A PROHIBITED SEXUAL ACT OR IN THE SIMULATION OF SUCH ACT
14 COMMITTS AN OFFENSE.

15 [(2) A FIRST OFFENSE UNDER THIS SUBSECTION IS A FELONY
16 OF THE THIRD DEGREE, AND A SECOND OR SUBSEQUENT OFFENSE UNDER
17 THIS SUBSECTION IS A FELONY OF THE SECOND DEGREE.]

18 (D) CHILD PORNOGRAPHY.--

19 [(1)] ANY PERSON WHO INTENTIONALLY VIEWS OR KNOWINGLY
20 POSSESSES OR CONTROLS ANY BOOK, MAGAZINE, PAMPHLET, SLIDE,
21 PHOTOGRAPH, FILM, VIDEOTAPE, COMPUTER DEPICTION OR OTHER
22 MATERIAL DEPICTING A CHILD UNDER THE AGE OF 18 YEARS ENGAGING
23 IN A PROHIBITED SEXUAL ACT OR IN THE SIMULATION OF SUCH ACT
24 COMMITTS AN OFFENSE.

25 [(2) A FIRST OFFENSE UNDER THIS SUBSECTION IS A FELONY
26 OF THE THIRD DEGREE, AND A SECOND OR SUBSEQUENT OFFENSE UNDER
27 THIS SUBSECTION IS A FELONY OF THE SECOND DEGREE.]

28 (D.1) GRADING.--THE OFFENSES SHALL BE GRADED AS FOLLOWS:

29 (1) EXCEPT AS PROVIDED IN PARAGRAPH (3), AN OFFENSE
30 UNDER SUBSECTION (B) IS A FELONY OF THE SECOND DEGREE.

1 (2) (I) EXCEPT AS PROVIDED IN PARAGRAPH (3), A FIRST
2 OFFENSE UNDER SUBSECTION (C) OR (D) IS A FELONY OF THE
3 THIRD DEGREE.

4 (II) A SECOND OR SUBSEQUENT OFFENSE UNDER SUBSECTION
5 (C) OR (D) IS A FELONY OF THE SECOND DEGREE.

6 (3) WHEN A PERSON COMMITS AN OFFENSE GRADED UNDER
7 PARAGRAPH (1) OR (2) (I) AND INDECENT CONTACT WITH THE CHILD
8 AS DEFINED IN SECTION 3101 (RELATING TO DEFINITIONS) IS
9 DEPICTED, THE GRADING OF THE OFFENSE SHALL BE ONE GRADE
10 HIGHER THAN THE GRADE SPECIFIED IN PARAGRAPH (1) OR (2) (I).

11 * * *

12 Section ~~2~~ 3. Title 42 is amended by adding a section to <--
13 read:

14 § 9720.5. Sentencing for offenses involving ~~child pornography~~ <--
15 SEXUAL ABUSE OF CHILDREN. <--

16 ~~In addition to any minimum term of imprisonment authorized or~~ <--
17 ~~established by law for the offense, the~~ THE Pennsylvania <--
18 Commission on Sentencing, in accordance with section 2154
19 (relating to adoption of guidelines for sentencing), shall
20 provide for a sentence enhancement within its guidelines for an
21 offense under 18 Pa.C.S. § 6312 (relating to sexual abuse of
22 children), specifying variations from the range of sentences
23 applicable based on such aggravating circumstances as the age of
24 the child OR A DETERMINATION OF PREPUBESCENCE, the number of <--
25 images possessed by the defendant and the nature and character
26 of the abuse depicted in the images.

27 Section ~~3~~ 4. This act shall take effect ~~in 60 days~~ JANUARY <--
28 1, 2014, OR IMMEDIATELY, WHICHEVER OCCURS LATER.