
 THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 436 Session of
2013

INTRODUCED BY STEPHENS, WATSON, AUMENT, GINGRICH, MALONEY, MOUL,
YOUNGBLOOD, SCHLOSSBERG, HICKERNELL, MUNDY, ROCK, KORTZ,
SACCONE, MAJOR, CUTLER, KAUFFMAN, O'NEILL, BAKER, SWANGER,
R. MILLER, FLECK, C. HARRIS, CLYMER, MILNE, BENNINGHOFF,
MURT, EVERETT, GIBBONS, QUINN, HARKINS, BIZZARRO, FARRY,
CALTAGIRONE AND DEASY, FEBRUARY 14, 2013

SENATOR MENSCH, AGING AND YOUTH, IN SENATE, AS AMENDED,
DECEMBER 3, 2013

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, in child protective services, ~~further~~ <--
3 ~~providing for definitions and for persons required to report~~
4 ~~suspected child abuse; providing for specific persons~~
5 ~~required to report and for required posting of signs; and~~
6 further providing for penalties for failure to report or to
7 refer.

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

10 ~~Section 1. The definition of "school employee" in section~~ <--
11 ~~6303(a) of Title 23 of the Pennsylvania Consolidated Statutes is~~
12 ~~amended and subsection (a) is amended by adding definitions to~~
13 read:

14 ~~§ 6303. Definitions.~~

15 ~~(a) General rule. The following words and phrases when used~~
16 ~~in this chapter shall have the meanings given to them in this~~
17 ~~section unless the context clearly indicates otherwise:~~

1 * * *

2 ~~"Affiliate," "affiliate of" or "person affiliated with." A~~
3 ~~person that directly or indirectly, through one or more~~
4 ~~intermediaries, controls, is controlled by or is under common~~
5 ~~control with a specified person.~~

6 ~~"Business establishment." Includes:~~

7 ~~(1) A retail store, facility or entity in which~~
8 ~~commercial film or photographic print processing takes place.~~

9 ~~(2) A retail store, facility or entity in which~~
10 ~~computers, electronics or other information technology~~
11 ~~equipment and devices are repaired or serviced.~~

12 * * *

13 ~~"Direct contact with children." The possibility of care,~~
14 ~~supervision, guidance or control of children or routine~~
15 ~~interaction with children.~~

16 * * *

17 ~~"Health care facility." As defined in section 802.1 of the~~
18 ~~act of July 19, 1979 (P.L.130, No.48), known as the Health Care~~
19 ~~Facilities Act.~~

20 ~~"Independent contractor." An individual who provides a~~
21 ~~program, activity or service to an agency, institution,~~
22 ~~organization or other entity, including a school or regularly~~
23 ~~established religious organization, that is directly responsible~~
24 ~~for the care, supervision, guidance or control of children. The~~
25 ~~term excludes an individual who, in his capacity as an~~
26 ~~independent contractor, has no direct contact with children.~~

27 * * *

28 ~~"Mandated reporter." A person who is required by this~~
29 ~~chapter to make a report of suspected child abuse.~~

30 * * *

1 ~~"Program, activity or service." A public or private~~
2 ~~educational, athletic or other pursuit in which children~~
3 ~~participate. The term includes, but is not limited to, the~~
4 ~~following:~~

5 ~~(1) A youth camp or program.~~

6 ~~(2) A recreational camp or program.~~

7 ~~(3) A sports or athletic program.~~

8 ~~(4) An outreach program.~~

9 ~~(5) An enrichment program.~~

10 ~~(6) A troop, club or similar organization.~~

11 * * *

12 ~~"School." A facility providing elementary, secondary or~~
13 ~~postsecondary educational services. The term includes every~~
14 ~~public, nonpublic, private and parochial school, including each~~
15 ~~of the following:~~

16 ~~(1) A school or class within a school under the~~
17 ~~supervision of the Department of Education.~~

18 ~~(2) A State related and State owned college or~~
19 ~~university.~~

20 ~~(3) A public or private college or university.~~

21 ~~(4) A community college.~~

22 ~~(5) A vocational technical school.~~

23 ~~(6) An intermediate unit.~~

24 ~~(7) A charter, cyber charter or regional charter school.~~

25 ~~(8) A private school licensed under the act of January~~
26 ~~28, 1988 (P.L.24, No.11), known as the Private Academic~~
27 ~~Schools Act.~~

28 ~~(9) A nonprofit school located in this Commonwealth,~~
29 ~~other than a public school, wherein a resident of this~~
30 ~~Commonwealth may legally fulfill the compulsory school~~

1 ~~attendance requirements of the act of March 10, 1949 (P.L.30,~~
2 ~~No.14), known as the Public School Code of 1949, and which~~
3 ~~meets the requirements of Title VI of the Civil Rights Act of~~
4 ~~1964 (Public Law 88 352, 78 Stat. 241).~~

5 ~~"School employee." An individual who is employed by a~~
6 ~~[public or private school, intermediate unit or area vocational~~
7 ~~technical school. The term includes an independent contractor~~
8 ~~and employees] school or who provides a program, activity or~~
9 ~~service sponsored by a school. The term excludes an individual~~
10 ~~who has no direct contact with [students] children.~~

11 * * *

12 Section 2. ~~Section 6311 of Title 23 is amended to read:~~

13 ~~§ 6311. Persons required to report suspected child abuse.~~

14 ~~[(a) General rule. A person who, in the course of~~
15 ~~employment, occupation or practice of a profession, comes into~~
16 ~~contact with children shall report or cause a report to be made~~
17 ~~in accordance with section 6313 (relating to reporting~~
18 ~~procedure) when the person has reasonable cause to suspect, on~~
19 ~~the basis of medical, professional or other training and~~
20 ~~experience, that a child under the care, supervision, guidance~~
21 ~~or training of that person or of an agency, institution,~~
22 ~~organization or other entity with which that person is~~
23 ~~affiliated is a victim of child abuse, including child abuse by~~
24 ~~an individual who is not a perpetrator. Except with respect to~~
25 ~~confidential communications made to a member of the clergy which~~
26 ~~are protected under 42 Pa.C.S. § 5943 (relating to confidential~~
27 ~~communications to clergymen), and except with respect to~~
28 ~~confidential communications made to an attorney which are~~
29 ~~protected by 42 Pa.C.S. § 5916 (relating to confidential~~
30 ~~communications to attorney) or 5928 (relating to confidential~~

1 ~~communications to attorney), the privileged communication~~
2 ~~between any professional person required to report and the~~
3 ~~patient or client of that person shall not apply to situations~~
4 ~~involving child abuse and shall not constitute grounds for~~
5 ~~failure to report as required by this chapter.~~

6 ~~(b) Enumeration of persons required to report. Persons~~
7 ~~required to report under subsection (a) include, but are not~~
8 ~~limited to, any licensed physician, osteopath, medical examiner,~~
9 ~~coroner, funeral director, dentist, optometrist, chiropractor,~~
10 ~~podiatrist, intern, registered nurse, licensed practical nurse,~~
11 ~~hospital personnel engaged in the admission, examination, care~~
12 ~~or treatment of persons, Christian Science practitioner, member~~
13 ~~of the clergy, school administrator, school teacher, school~~
14 ~~nurse, social services worker, day care center worker or any~~
15 ~~other child care or foster care worker, mental health~~
16 ~~professional, peace officer or law enforcement official.]~~

17 ~~(a) Mandated reporters. The following individuals, 18 years~~
18 ~~of age or older, shall make a report of suspected child abuse or~~
19 ~~cause a report of suspected child abuse to be made, subject to~~
20 ~~subsection (b), if the person has reasonable cause to suspect,~~
21 ~~on the basis of medical, professional or other training and~~
22 ~~experience, that a child is a victim of child abuse:~~

23 ~~(1) A person licensed or certified to practice in any~~
24 ~~health related field under the jurisdiction of the Department~~
25 ~~of State.~~

26 ~~(2) A medical examiner, coroner or funeral director.~~

27 ~~(3) An employee of a health care facility or provider~~
28 ~~licensed by the Department of Health, who is engaged in the~~
29 ~~admission, examination, care or treatment of individuals.~~

30 ~~(4) A school employee.~~

1 ~~(5) An employee of a child care service.~~

2 ~~(6) A clergyman, priest, rabbi, minister, Christian~~
3 ~~Science practitioner, religious healer or spiritual leader of~~
4 ~~any regularly established church or other religious~~
5 ~~organization.~~

6 ~~(7) An individual paid or unpaid, who, on the basis of~~
7 ~~the individual's role as an integral part of a regularly~~
8 ~~scheduled program, activity or service, accepts~~
9 ~~responsibility for a child.~~

10 ~~(8) An employee of a social services agency.~~

11 ~~(9) A peace officer or law enforcement official.~~

12 ~~(10) An attorney.~~

13 ~~(11) An employee of a public library.~~

14 ~~(12) An emergency medical services provider certified by~~
15 ~~the Department of Health.~~

16 ~~(13) An employee supervised or managed by a person~~
17 ~~listed under paragraphs (1) through (12), who has direct~~
18 ~~contact with children in the course of employment.~~

19 ~~(14) An independent contractor.~~

20 ~~(a.1) Limited exemption for certain reporters. A sexual~~
21 ~~assault counselor at a rape crisis center as defined under 42-~~
22 ~~Pa.C.S. § 5945.1(a) (relating to confidential communications~~
23 ~~with sexual assault counselors) or a domestic violence~~
24 ~~counselor/advocate as defined under section 6102 (relating to~~
25 ~~definitions) shall not be required to report a violation of 18-~~
26 ~~Pa.C.S. § 3122.1(a)(1) (relating to statutory sexual assault) as~~
27 ~~child abuse under this chapter if the child who would otherwise~~
28 ~~be the subject of a report of suspected child abuse is 14 years~~
29 ~~of age or older.~~

30 ~~(b) Basis to report. A mandated reporter enumerated in~~

1 ~~subsection (a) shall make a report of suspected child abuse or~~
2 ~~cause a report to be made in accordance with section 6313~~
3 ~~(relating to reporting procedure), if the mandated reporter has~~
4 ~~reasonable cause to suspect that a child is a victim of child~~
5 ~~abuse under any of the following circumstances:~~

6 ~~(1) The mandated reporter comes into contact with the~~
7 ~~child in the course of employment, occupation, practice of a~~
8 ~~profession or through a regularly scheduled program, activity~~
9 ~~or service.~~

10 ~~(2) The mandated reporter is directly responsible for~~
11 ~~the care supervision, guidance or training of the child, or~~
12 ~~is affiliated with an agency, institution, organization,~~
13 ~~school, regularly established church or religious~~
14 ~~organization or other entity that is directly responsible for~~
15 ~~the care supervision, guidance or training of the child.~~

16 ~~(3) A person makes a specific disclosure to the mandated~~
17 ~~reporter that an identifiable child is the victim of child~~
18 ~~abuse.~~

19 ~~(4) An individual 14 years of age or older makes a~~
20 ~~specific disclosure to the mandated reporter that the~~
21 ~~individual has committed child abuse.~~

22 ~~(b.1) Privileged communications.—~~

23 ~~(1) Subject to paragraphs (2), (3), (4) and (5), the~~
24 ~~privileged communications between a mandated reporter and a~~
25 ~~patient or client of the mandated reporter shall not:~~

26 ~~(i) Apply to a situation involving child abuse.~~

27 ~~(ii) Relieve the mandated reporter of the duty to~~
28 ~~make a report of suspected child abuse or cause a report~~
29 ~~of suspected child abuse to be made.~~

30 ~~(2) Confidential communications made to a member of the~~

1 ~~clergy are protected under 42 Pa.C.S. § 5943 (relating to~~
2 ~~confidential communications to clergymen), but only to the~~
3 ~~extent that the member of the clergy is authorized to hear~~
4 ~~the communications under the disciplines, tenets or~~
5 ~~traditions of the religion of the member of the clergy.~~

6 ~~(3) Confidential communications made to an attorney are~~
7 ~~subject to 42 Pa.C.S. §§ 5916 (relating to confidential~~
8 ~~communications to attorney) and 5928 (relating to~~
9 ~~confidential communications to attorney). When an attorney~~
10 ~~representing a nonorganizational client is required to report~~
11 ~~suspected child abuse under the basis provided in subsection~~
12 ~~(b) (3) or (4), the following shall also apply:~~

13 ~~(i) When making a report of suspected child abuse,~~
14 ~~an attorney shall identify information the attorney deems~~
15 ~~to be confidential under the rules of professional~~
16 ~~conduct for attorneys. Notwithstanding the provisions of~~
17 ~~section 6340 (relating to release of information in~~
18 ~~confidential reports), the information the attorney~~
19 ~~deemed to be confidential shall not be disclosed to any~~
20 ~~person other than those responsible for investigating the~~
21 ~~report and providing for the child's safety, or those~~
22 ~~investigating or prosecuting a failure to report under~~
23 ~~section 6319 (relating to penalties for failure to report~~
24 ~~or to refer).~~

25 ~~(ii) Neither the client's disclosure to the attorney~~
26 ~~nor the information the attorney deemed confidential when~~
27 ~~reporting to the department shall be used as evidence in~~
28 ~~any determination made under section 6368 (relating to~~
29 ~~investigation of reports), and the attorney shall not be~~
30 ~~required to provide any information that is asserted as~~

~~confidential under subparagraph (i) for any civil, criminal or administrative proceeding which results from or relates to the report of suspected child abuse. Nothing in this subsection shall prohibit the use of information provided by another source, even if it is substantially similar to that which was provided by the attorney in the report to the department.~~

~~(4) Confidential communications made to a psychiatrist or licensed psychologist are protected under 42 Pa.C.S. § 5944 (relating to confidential communications to psychiatrists and licensed psychologists). When a report is required under the basis provided in subsection (b) (3) or (4), the following shall also apply:~~

~~(i) When making a report of suspected child abuse, a psychiatrist or licensed psychologist shall identify the information the psychiatrist or licensed psychologist deems to be confidential. Notwithstanding the provisions of section 6340, the information the psychiatrist or licensed psychologist deemed to be confidential shall not be disclosed to any person other than those responsible for investigating the report and providing for the child's safety, or those investigating or prosecuting a failure to report under section 6319.~~

~~(ii) Neither the client's disclosure to the psychiatrist or licensed psychologist nor the information the psychiatrist or licensed psychologist deemed confidential when reporting to the department shall be used as evidence in any determination made under section 6368, and the psychiatrist or licensed psychologist shall not be required to provide any information that is~~

~~asserted as confidential under subparagraph (i) for any civil, criminal or administrative proceeding which results from or relates to the report of suspected child abuse. Nothing in this subsection shall prohibit the use of information provided by another source, even if it is substantially similar to that which was provided by the psychiatrist or licensed psychologist in the report to the department.~~

~~(5) Confidential communications between spouses shall not be privileged under this chapter, notwithstanding any grant of privilege under 42 Pa.C.S. § 5914 (relating to confidential communications between spouses) or 5923 (relating to confidential communications between spouses).~~

~~(c) Staff members of institutions, etc. Whenever a person is required to report under subsection (b) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that person shall immediately notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall assume the responsibility and have the legal obligation to report or cause a report to be made in accordance with section 6313. This chapter does not require more than one report from any such institution, school, facility or agency.~~

~~(d) Civil action for discrimination against person filing report. Any person who, under this section, is required to report or cause a report of suspected child abuse to be made and who, in good faith, makes or causes the report to be made and, as a result thereof, is discharged from his employment or in any~~

1 ~~other manner is discriminated against with respect to~~
2 ~~compensation, hire, tenure, terms, conditions or privileges of~~
3 ~~employment, may commence an action in the court of common pleas~~
4 ~~of the county in which the alleged unlawful discharge or~~
5 ~~discrimination occurred for appropriate relief. If the court~~
6 ~~finds that the person is an individual who, under this section,~~
7 ~~is required to report or cause a report of suspected child abuse~~
8 ~~to be made and who, in good faith, made or caused to be made a~~
9 ~~report of suspected child abuse and, as a result thereof, was~~
10 ~~discharged or discriminated against with respect to~~
11 ~~compensation, hire, tenure, terms, conditions or privileges of~~
12 ~~employment, it may issue an order granting appropriate relief,~~
13 ~~including, but not limited to, reinstatement with back pay. The~~
14 ~~department may intervene in any action commenced under this~~
15 ~~subsection.~~

16 Section 3. Title 23 is amended by adding sections to read:
17 § 6312.1. Specific persons encouraged to report.

18 The following persons are encouraged to make a report of
19 suspected child abuse, sexual abuse or exploitation or cause a
20 report of suspected child abuse, sexual abuse or exploitation to
21 be made under this chapter:

22 (1) A commercial film or photographic print processor
23 who discovers any depiction of child abuse, sexual abuse or
24 exploitation in material presented for processing.

25 (2) A person who repairs or services computer,
26 electronic or other information technology equipment and
27 devices and discovers any depiction of child abuse, sexual
28 abuse or exploitation during the provision of those repairs
29 or services.

30 § 6312.2. Required posting of signs.

1 ~~(a) General rule. A business establishment shall post a~~
2 ~~sign containing information regarding the Childline and Abuse~~
3 ~~Registry and any other establishment or business may post such~~
4 ~~sign.~~

5 ~~(b) Manner of posting. A business establishment shall post~~
6 ~~at least one sign in a conspicuous manner clearly visible to the~~
7 ~~employees of the business establishment.~~

8 ~~(c) Size, information and design.~~

9 ~~(1) The sign shall be at least 8 1/2 by 11 inches in~~
10 ~~size.~~

11 ~~(2) The department shall design the sign to include the~~
12 ~~hotline or phone number for reporting suspected child abuse.~~

13 ~~(3) The department may consult with child advocates to~~
14 ~~determine other information that may be included in the sign.~~

15 ~~(4) The department shall design the sign to draw~~
16 ~~attention to the telephone number of the Childline and Abuse~~
17 ~~Registry by showing the number in bold type and large font.~~

18 ~~(5) The sign shall be posted in English, Spanish and any~~
19 ~~other language mandated by the Voting Rights Act of 1965~~
20 ~~(Public Law 89-110, 42 U.S.C. § 1973 et seq.) in the county~~
21 ~~where the sign is required to be posted.~~

22 ~~(6) The department shall make the sign required by~~
23 ~~subsection (a) available on its publicly accessible Internet~~
24 ~~website for business establishments to print as needed.~~

25 ~~(d) Violation. It is a violation of this section for a~~
26 ~~business establishment to fail to post a sign in the manner~~
27 ~~required by subsection (b). The owner, operator or manager of~~
28 ~~the business establishment is responsible for violations of this~~
29 ~~section.~~

30 ~~(e) Complaints. A complaint regarding a possible violation~~

1 ~~of this section may be made to the appropriate law enforcement~~
2 ~~agency.~~

3 ~~(f) Penalties. A person that violates the posting~~
4 ~~requirements of this section commits a summary offense, and~~
5 ~~shall, upon conviction of a first offense, be sentenced to pay a~~
6 ~~fine of not more than \$100. A person convicted of a second or~~
7 ~~subsequent violation of this section shall be sentenced to pay a~~
8 ~~fine of not more than \$250.~~

9 ~~(g) Affirmative defense. Any of the following shall be an~~
10 ~~affirmative defense by an owner, operator or manager to a~~
11 ~~prosecution under this section:~~

12 ~~(1) When the violation occurred, the actual control of~~
13 ~~the business establishment was not exercised by the owner,~~
14 ~~operator or manager, but by a lessee.~~

15 ~~(2) The owner, operator or manager made a good faith~~
16 ~~effort to post the required signs.~~

17 Section 4. Section 6319 of Title 23 is amended to read:

18 SECTION 1. SECTION 6319 OF TITLE 23 OF THE PENNSYLVANIA
19 CONSOLIDATED STATUTES IS AMENDED TO READ:

20 § 6319. Penalties [for failure to report or to refer].

21 [A person or official required by this chapter to report a
22 case of suspected child abuse or to make a referral to the
23 appropriate authorities who willfully fails to do so commits a
24 misdemeanor of the third degree for the first violation and a
25 misdemeanor of the second degree for a second or subsequent
26 violation.]

27 ~~(a) Failure to report or refer. A person or official~~
28 ~~required by this chapter to report a case of suspected child~~
29 ~~abuse or to make a referral to the appropriate authorities~~
30 ~~commits a misdemeanor of the second degree if the person or~~

1 ~~official willfully fails to do so, except that if the child~~
2 ~~abuse constitutes a felony of the first degree or higher, the~~
3 ~~person or official commits a felony of the third degree.~~

4 ~~(b) Prevention of making report or referral. A person who~~
5 ~~intentionally or knowingly prevents or attempts to prevent the~~
6 ~~making of a report or referral of suspected child abuse commits~~
7 ~~a misdemeanor of the first degree, except that if the child~~
8 ~~abuse constitutes a felony of the first degree or higher, the~~
9 ~~person commits a felony of the second degree.~~

10 ~~(c) Concealment of abuse to protect another. A person who~~
11 ~~intentionally or knowingly acts to prevent the discovery under~~
12 ~~this chapter of child abuse in order to protect or insulate any~~
13 ~~person or entity from prosecution or liability for the child~~
14 ~~abuse commits a felony of the third degree, except if the child~~
15 ~~abuse constitutes a felony of the first degree or higher, the~~
16 ~~person commits a felony of the first degree.~~

17 (A) FAILURE TO REPORT OR REFER.--

<--

18 (1) A PERSON OR OFFICIAL REQUIRED BY THIS CHAPTER TO
19 REPORT A CASE OF SUSPECTED CHILD ABUSE OR TO MAKE A REFERRAL
20 TO THE APPROPRIATE AUTHORITIES COMMITS AN OFFENSE IF THE
21 PERSON OR OFFICIAL WILLFULLY FAILS TO DO SO.

22 (2) AN OFFENSE UNDER THIS SECTION IS A FELONY OF THE
23 THIRD DEGREE IF:

24 (I) THE PERSON OR OFFICIAL WILLFULLY FAILS TO
25 REPORT;

26 (II) THE CHILD ABUSE CONSTITUTES A FELONY OF THE
27 FIRST DEGREE OR HIGHER; AND

28 (III) THE PERSON OR OFFICIAL HAS DIRECT KNOWLEDGE OF
29 THE NATURE OF THE ABUSE.

30 (3) AN OFFENSE NOT OTHERWISE SPECIFIED IN PARAGRAPH (2)

1 IS A MISDEMEANOR OF THE SECOND DEGREE.

2 (4) A REPORT OF SUSPECTED CHILD ABUSE TO LAW ENFORCEMENT
3 OR THE APPROPRIATE COUNTY AGENCY BY A MANDATED REPORTER, MADE
4 IN LIEU OF A REPORT TO THE DEPARTMENT, SHALL NOT CONSTITUTE
5 AN OFFENSE UNDER THIS SUBSECTION, PROVIDED THAT THE REPORT
6 WAS MADE IN A GOOD FAITH EFFORT TO COMPLY WITH THE
7 REQUIREMENTS OF THIS CHAPTER.

8 ~~(d)~~ (B) Continuing course of action.--If a person's willful <--
9 failure under subsection (a) continues while the person knows or
10 has reasonable cause to believe the child is actively being
11 subjected to child abuse, the person commits a felony of the <--
12 ~~third~~ MISDEMEANOR OF THE FIRST degree, except that if the child <--
13 abuse constitutes a felony of the first degree or higher, the
14 person commits a felony of the ~~first~~ THIRD degree. <--

15 ~~(e)~~ (C) Multiple offenses.--A person who commits a second or <--
16 subsequent offense under ~~subsections (a), (b), (c) or (d)~~ <--
17 SUBSECTION (A) commits a felony of the ~~second~~ THIRD degree, <--
18 except that if the child abuse constitutes a felony of the first
19 degree or higher, the penalty for the second or subsequent
20 offenses is a felony of the ~~first~~ SECOND degree. <--

21 ~~(f)~~ (D) Statute of limitations.--The statute of limitations <--
22 for an offense under ~~subsections (a), (b), (c), (d) and (e)~~ <--
23 SUBSECTION (A) shall be either the statute of limitations for <--
24 the crime committed against the minor child or five years,
25 whichever is greater.

26 Section 5 2. This act shall take effect in 60 days. <--