

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 31 Session of 2013

INTRODUCED BY FONTANA, FOLMER, WASHINGTON, ERICKSON, STACK, BREWSTER, FERLO, TEPLITZ, BAKER, RAFFERTY, YUDICHAK, KASUNIC, TARTAGLIONE, WILLIAMS, SMITH, FARNESE, WAUGH, MENSCH, HUGHES, BROWNE, WARD, VANCE, PILEGGI, BOSCOLA, COSTA, ALLOWAY, SCHWANK AND DINNIMAN, MARCH 15, 2013

SENATOR FOLMER, EDUCATION, AS AMENDED, JUNE 11, 2013

AN ACT

1 Amending Title 23 (Domestic Relations) of the Pennsylvania
2 Consolidated Statutes, in child protective services, further
3 providing for definitions, for persons required to report
4 suspected child abuse and for reporting procedure; and
5 repealing provisions relating to definitions, school
6 employees, administration, investigation, responsibilities of
7 county agency for child protective services and report
8 information.

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

11 Section 1. The definitions of "FOUNDED REPORT," "founded <--
12 report for school employee," "general protective services,"
13 "indicated report," "indicated report for school employee,"
14 "individual residing in the same home as the child," "near
15 fatality" and "school employee" in section 6303(a) of Title 23
16 of the Pennsylvania Consolidated Statutes are amended and the
17 subsection is amended by adding definitions to read:

18 § 6303. Definitions.

19 (a) General rule.--The following words and phrases when used

1 in this chapter shall have the meanings given to them in this
2 section unless the context clearly indicates otherwise:

3 * * *

4 "Bodily injury." Impairment of physical condition or
5 substantial pain.

6 * * *

7 "Child with a disability." A child:

8 (1) who meets the definition of child with a disability
9 under the Individuals with Disabilities Education Act (Public
10 Law 91-230, 20 U.S.C. § 1400 et seq.);

11 (2) who meets the definition of handicapped person under
12 section 504 of the Rehabilitation Act of 1973 (Public Law 93-
13 112, 29 U.S.C. § 794) and its implementing regulations at 34
14 CFR § 104.3 (relating to definitions);

15 (3) for whom an evaluation is pending under either the
16 Individuals with Disabilities Education Act or the
17 Rehabilitation Act of 1973; or

18 (4) who is not yet eligible for special education and
19 related services as described in section 615(k)(5)(A) of the
20 Individuals with Disabilities Education Act (20 U.S.C. § 1415
21 (k)(5)(A)).

22 * * *

23 "Disability." The term shall have the same meaning as the
24 term is given in section 3 of the Americans with Disabilities
25 Act of 1990 (Public Law 101-336, 42 U.S.C. § 12102(2)).

26 * * *

27 "Founded report." [A child abuse report made pursuant to
28 this chapter if there has been any judicial adjudication based
29 on a finding that a child who is a subject of the report has
30 been abused, including the entry of a plea of guilty or nolo

1 contendere or a finding of guilt to a criminal charge involving
2 the same factual circumstances involved in the allegation of
3 child abuse.] A child abuse report involving a perpetrator that
4 is made pursuant to this chapter, if any of the following
5 applies:

6 (1) There has been a judicial adjudication based on a
7 finding that a child who is a subject of the report has been
8 abused and the adjudication involves the same factual
9 circumstances involved in the allegation of child abuse. The
10 judicial adjudication may include any of the following:

11 (i) The entry of a plea of guilty or nolo
12 contendere.

13 (ii) A finding of guilt to a criminal charge.

14 (iii) A finding of dependency or delinquency under
15 42 Pa.C.S. § 6341 (relating to adjudication), IF THE <--
16 COURT HAS ENTERED A FINDING THAT A CHILD WHO IS THE
17 SUBJECT OF THE REPORT HAS BEEN ABUSED.

18 (2) There has been an acceptance into an accelerated
19 rehabilitative disposition program and the reason for the
20 acceptance involves the same factual circumstances involved
21 in the allegation of child abuse.

22 (3) There has been a consent decree entered in a
23 juvenile proceeding under 42 Pa.C.S. Ch. 63 (relating to
24 juvenile matters) and, the decree involves the same factual <--
25 circumstances involved in the allegation of child abuse-, AND <--
26 THE TERMS AND CONDITIONS THEREOF INCLUDE AN ACKNOWLEDGMENT,
27 ADMISSION OR FINDING THAT A CHILD WHO IS THE SUBJECT OF THE
28 REPORT HAS BEEN ABUSED BY THE CHILD WHO IS ALLEGED TO BE
29 DELINQUENT.

30 (4) A final protection from abuse order has been granted

1 under section 6108 (relating to relief), when the child who
2 is a subject of the report is also one of the individuals
3 protected under the protection from abuse order and:

4 (i) only one individual is charged with the abuse in
5 the protection from abuse action;

6 (ii) only that individual defends against the
7 charge; and

8 (iii) the protection from abuse adjudication finds
9 that the abuse occurred and prohibits further contact
10 between the individual and the child.

11 * * *

<--

12 ["FOUNDED REPORT FOR SCHOOL EMPLOYEE." A REPORT UNDER
13 SUBCHAPTER C.1 (RELATING TO STUDENTS IN PUBLIC AND PRIVATE
14 SCHOOLS) IF THERE HAS BEEN ANY JUDICIAL ADJUDICATION BASED ON A
15 FINDING THAT THE VICTIM HAS SUFFERED SERIOUS BODILY INJURY OR
16 SEXUAL ABUSE OR EXPLOITATION, INCLUDING THE ENTRY OF A PLEA OF
17 GUILTY OR NOLO CONTENDERE OR A FINDING OF GUILT TO A CRIMINAL
18 CHARGE INVOLVING THE SAME FACTUAL CIRCUMSTANCES INVOLVED IN THE
19 ALLEGATIONS OF THE REPORT.]

<--

20 "General protective services." Those services and activities
21 provided by each county agency for [nonabuse] cases requiring
22 protective services, as defined by the [Department of Public
23 Welfare] department in regulations.

24 "Indicated report." [A child abuse report made pursuant to
25 this chapter if an investigation by the county agency or the
26 Department of Public Welfare determines that substantial
27 evidence of the alleged abuse exists based on any of the
28 following:

29 (1) Available medical evidence.

30 (2) The child protective service investigation.

1 (3) An admission of the acts of abuse by the
2 perpetrator.]

3 (1) Subject to ~~paragraph~~ PARAGRAPHS (2) AND (3), a <--
4 report of child abuse made pursuant to this chapter if an
5 investigation by the department or county agency determines
6 that substantial evidence of the alleged abuse by a
7 perpetrator exists based on any of the following:

8 (i) Available medical evidence.

9 (ii) The child protective service investigation.

10 (iii) An admission of the acts of abuse by the
11 perpetrator.

12 (2) A report may be indicated under paragraph (1)(i) or
13 (ii) for any child in need of child protective services,
14 regardless of the number of alleged perpetrators or the
15 inability to identify the specific perpetrator among two or
16 more alleged perpetrators.

17 (3) A REPORT MAY BE INDICATED BY A COUNTY AGENCY UNDER <--
18 PARAGRAPH (1) ONLY UPON THE APPROVAL OF THE COUNTY AGENCY
19 ADMINISTRATOR, OR DESIGNEE, AND A COUNTY AGENCY SOLICITOR.

20 ["Indicated report for school employee." A report made under
21 Subchapter C.1 (relating to students in public and private
22 schools) if an investigation by the county agency determines
23 that substantial evidence of serious bodily injury or sexual
24 abuse or exploitation exists based on any of the following:

25 (1) Available medical evidence.

26 (2) The county agency's investigation.

27 (3) An admission of the acts of abuse by the school
28 employee.

29 "Individual residing in the same home as the child." An
30 individual who is 14 years of age or older and who resides in

1 the same home as the child.]

2 "Mandated reporter." A person required to report suspected
3 child abuse under section 6311 (relating to persons required to
4 report suspected child abuse).

5 "Near fatality." [An act that, as certified by a physician,
6 places a child in serious or critical condition.] A child's
7 serious or critical condition, as certified by a physician,
8 where that child is a subject of the report of child abuse.

9 * * *

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

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

16 ~~(2) A State related and State owned college or~~
17 ~~university.~~

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

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

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

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

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

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

27 ~~(9) A nonprofit school located in this Commonwealth,~~
28 ~~other than a public school, wherein a resident of this~~
29 ~~Commonwealth may legally fulfill the compulsory school~~
30 ~~attendance requirements of the act of March 10, 1949 (P.L.30,~~

~~No.14), known as the Public School Code of 1949, and which
meets the requirements of Title VI of the Civil Rights Act of
1964 (Public Law 88-352, 78 Stat. 241).~~

"SCHOOL." A FACILITY PROVIDING ELEMENTARY, SECONDARY OR
POSTSECONDARY EDUCATIONAL SERVICES. THE TERM INCLUDES THE
FOLLOWING:

- (1) ANY SCHOOL OF A SCHOOL DISTRICT.
- (2) AN AREA VOCATIONAL-TECHNICAL SCHOOL.
- (3) A JOINT SCHOOL.
- (4) AN INTERMEDIATE UNIT.
- (5) A CHARTER SCHOOL OR REGIONAL CHARTER SCHOOL.
- (6) A CYBER CHARTER SCHOOL.
- (7) A PRIVATE SCHOOL LICENSED UNDER THE ACT OF JANUARY
28, 1988 (P.L.24, NO.11), KNOWN AS THE PRIVATE ACADEMIC
SCHOOLS ACT.
- (8) A PRIVATE SCHOOL ACCREDITED BY AN ACCREDITING
ASSOCIATION APPROVED BY THE STATE BOARD OF EDUCATION.
- (9) A NONPUBLIC SCHOOL.
- (10) A COMMUNITY COLLEGE WHICH IS AN INSTITUTION NOW OR
HEREAFTER CREATED PURSUANT TO ARTICLE XIX-A OF THE ACT OF
MARCH 10, 1949 (P.L.30, NO.14), KNOWN AS THE PUBLIC SCHOOL
CODE OF 1949, OR THE FORMER ACT OF AUGUST 24, 1963 (P.L.1132,
NO.484), KNOWN AS THE COMMUNITY COLLEGE ACT OF 1963.
- (11) AN INDEPENDENT INSTITUTION OF HIGHER EDUCATION
WHICH IS AN INSTITUTION OF HIGHER EDUCATION WHICH IS OPERATED
NOT FOR PROFIT, LOCATED IN AND INCORPORATED OR CHARTERED BY
THE COMMONWEALTH, ENTITLED TO CONFER DEGREES AS SET FORTH IN
24 PA.C.S. § 6505 (RELATING TO POWER TO CONFER DEGREES) AND
ENTITLED TO APPLY TO ITSELF THE DESIGNATION "COLLEGE" OR
"UNIVERSITY" AS PROVIDED FOR BY STANDARDS AND QUALIFICATIONS

1 PRESCRIBED BY THE STATE BOARD OF EDUCATION PURSUANT TO 24
2 PA.C.S. CH. 65 (RELATING TO PRIVATE COLLEGES, UNIVERSITIES
3 AND SEMINARIES).

4 (12) A STATE-OWNED UNIVERSITY.

5 (13) A STATE-RELATED UNIVERSITY.

6 (14) A PRIVATE SCHOOL LICENSED UNDER THE ACT OF DECEMBER
7 15, 1986 (P.L.1585, NO.174), KNOWN AS THE PRIVATE LICENSED
8 SCHOOLS ACT.

9 (15) HIRAM G. ANDREWS CENTER.

10 "School employee." An individual who is employed by a
11 [public or private school, intermediate unit or area vocational-
12 technical] school or who provides a program, activity or service
13 in a school. The term includes an independent contractor that
14 provides a program, activity or service in a school and the
15 employees of the independent contractor that is directly
16 responsible for the care, supervision, guidance or training of
17 the child. [The term excludes an individual who has no direct
18 contact with students.]

19 * * *

20 ~~Section 2. Section 6311(c) of Title 23 is amended and the~~ <--
21 ~~section is amended by adding a subsection to read:~~

22 SECTION 2. SECTIONS 6311(C) AND 6313(C) OF TITLE 23 ARE <--
23 AMENDED:

24 § 6311. Persons required to report suspected child abuse.

25 * * *

26 (c) Staff members of institutions, etc.--Whenever a person
27 is required to report under subsection (b) in the capacity as a
28 member of the staff of a medical or other public or private
29 institution, school, facility or agency, that person shall
30 immediately report or cause a report to be made in accordance

1 with section 6313. The person required to report shall also
2 notify the person in charge of the institution, school, facility
3 or agency or the designated agent of the person in charge. [Upon
4 notification, the person in charge or the designated agent, if
5 any, shall assume the responsibility and have the legal
6 obligation to report or cause a report to be made in accordance
7 with section 6313.] This chapter does not require more than one
8 report from any such institution, school, facility or agency.

9 ~~(c.1) School employees. A school employee who has~~ <--
10 ~~reasonable cause to suspect, on the basis of professional or~~
11 ~~other training or expertise, that a student coming before the~~
12 ~~school employee in the employee's professional or official~~
13 ~~capacity is a victim of bodily injury, sexual abuse or sexual~~
14 ~~exploitation shall immediately report or cause a report to be~~
15 ~~made in accordance with section 6313. The person mandated to~~
16 ~~report shall also notify the administrator.~~

17 * * *

18 ~~Section 3. Section 6313(c) of Title 23 is amended to read:~~ <--
19 § 6313. Reporting procedure.

20 * * *

21 (c) Written reports.--Written reports from persons required
22 to report under section 6311 shall be made to the appropriate
23 county agency in a manner and on forms the department prescribes
24 by regulation. The written reports shall include the following
25 information if available:

26 (1) The [names and addresses of the child and the
27 parents or other person responsible for the care of the child
28 if known.] name, age, gender, address, school and status of
29 the child with a disability.

30 (1.1) The name and address of the child's parent or

1 guardian.

2 (2) Where the suspected abuse occurred and the nature of
3 the alleged offense.

4 [(3) The age and sex of the subjects of the report.]

5 (4) The nature and extent of the suspected child abuse,
6 including any evidence of prior abuse to the child or
7 siblings of the child.

8 (5) The name [and relationship], relationship, home
9 address and work address of the person or persons responsible
10 for causing the suspected abuse, if known, and any evidence
11 of prior abuse by that person or persons.

12 (6) Family composition.

13 (7) The source of the report.

14 (8) The person making the report and where that person
15 can be reached.

16 (9) The actions taken by the reporting source, including
17 the taking of photographs and X-rays, removal or keeping of
18 the child or notifying the medical examiner or coroner.

19 (9.1) Any specific comments or observations that are
20 directly related to the alleged incident and the individuals
21 involved.

22 (10) Any other information which the department may
23 require by regulation.

24 * * *

25 Section 4 3. Subchapter C.1 of Chapter 63 of Title 23 is <--
26 repealed:

27 [SUBCHAPTER C.1

28 STUDENTS IN PUBLIC AND PRIVATE SCHOOLS

29 Sec.

30 6351. Definitions.

- 1 6352. School employees.
- 2 6353. Administration.
- 3 6353.1. Investigation.
- 4 6353.2. Responsibilities of county agency.
- 5 6353.3. Information in Statewide central register.
- 6 6353.4. Other provisions.
- 7 § 6351. Definitions.

8 The following words and phrases when used in this subchapter
9 shall have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 "Administrator." The person responsible for the
12 administration of a public or private school, intermediate unit
13 or area vocational-technical school. The term includes an
14 independent contractor.

15 § 6352. School employees.

16 (a) Requirement.--

17 (1) Except as provided in paragraph (2), a school
18 employee who has reasonable cause to suspect, on the basis of
19 professional or other training and experience, that a student
20 coming before the school employee in the employee's
21 professional or official capacity is a victim of serious
22 bodily injury or sexual abuse or sexual exploitation by a
23 school employee shall immediately contact the administrator.

24 (2) If the school employee accused of seriously injuring
25 or sexually abusing or exploiting a student is the
26 administrator, the school employee who has reasonable cause
27 to suspect, on the basis of professional or other training
28 and experience, that a student coming before the school
29 employee in the employee's professional or official capacity
30 is a victim of serious bodily injury or sexual abuse or

1 sexual exploitation shall immediately report to law
2 enforcement officials and the district attorney under section
3 6353(a) (relating to administration). If an administrator is
4 the school employee who suspects injury or abuse, the
5 administrator shall make a report under section 6353(a).

6 (3) The school employee may not reveal the existence or
7 content of the report to any other person.

8 (b) Immunity.--A school employee who refers a report under
9 subsection (a) shall be immune from civil and criminal liability
10 arising out of the report.

11 (c) Criminal penalty.--

12 (1) A school employee who willfully violates subsection
13 (a) commits a summary offense.

14 (2) A school employee who, after being sentenced under
15 paragraph (1), violates subsection (a) commits a misdemeanor
16 of the third degree.

17 § 6353. Administration.

18 (a) Requirement.--An administrator and a school employee
19 governed by section 6352(a)(2) (relating to school employees)
20 shall report immediately to law enforcement officials and the
21 appropriate district attorney any report of serious bodily
22 injury or sexual abuse or sexual exploitation alleged to have
23 been committed by a school employee against a student.

24 (b) Report.--A report under subsection (a) shall include the
25 following information:

26 (1) Name, age, address and school of the student.

27 (2) Name and address of the student's parent or
28 guardian.

29 (3) Name and address of the administrator.

30 (4) Name, work and home address of the school employee.

1 (5) Nature of the alleged offense.

2 (6) Any specific comments or observations that are
3 directly related to the alleged incident and the individuals
4 involved.

5 (c) Immunity.--An administrator who makes a report under
6 subsection (a) shall be immune from civil or criminal liability
7 arising out of the report.

8 (d) Criminal penalty.--An administrator who willfully
9 violates subsection (a) commits a misdemeanor of the third
10 degree.

11 § 6353.1. Investigation.

12 (a) General rule.--Upon receipt of a report under section
13 6353 (relating to administration), an investigation shall be
14 conducted by law enforcement officials, in cooperation with the
15 district attorney, and a determination made as to what criminal
16 charges, if any, will be filed against the school employee.

17 (b) Referral to county agency.--

18 (1) If local law enforcement officials have reasonable
19 cause to suspect on the basis of initial review that there is
20 evidence of serious bodily injury, sexual abuse or sexual
21 exploitation committed by a school employee against a
22 student, local law enforcement officials shall notify the
23 county agency in the county where the alleged abuse or injury
24 occurred for the purpose of the agency conducting an
25 investigation of the alleged abuse or injury.

26 (2) To the fullest extent possible, law enforcement
27 officials and the county agency shall coordinate their
28 respective investigations. In respect to interviews with the
29 student, law enforcement officials and the county agency
30 shall conduct joint interviews. In respect to interviews with

1 the school employee, law enforcement officials shall be given
2 an opportunity to interview the school employee prior to the
3 employee having any contact with the county agency.

4 (3) The county agency and law enforcement officials have
5 the authority to arrange for photographs, medical tests or X-
6 rays of a student alleged to have been abused or injured by a
7 school employee. The county agency and law enforcement
8 officials shall coordinate their efforts in this regard and,
9 to the fullest extent possible, avoid the duplication of any
10 photographs, medical tests or X-rays.

11 (4) Law enforcement officials and the county agency
12 shall advise each other of the status and findings of their
13 respective investigations on an ongoing basis.

14 § 6353.2. Responsibilities of county agency.

15 (a) Information for the pending complaint file.--Immediately
16 after receiving a report under section 6353.1 (relating to
17 investigation), the county agency shall notify the department of
18 the receipt of the report, which is to be filed in the pending
19 complaint file as provided in section 6331(1) (relating to
20 establishment of pending complaint file, Statewide central
21 register and file of unfounded reports). The oral report shall
22 include the following information:

23 (1) The name and address of the student and the
24 student's parent or guardian.

25 (2) Where the suspected abuse or injury occurred.

26 (3) The age and sex of the student.

27 (4) The nature and extent of the suspected abuse or
28 injury.

29 (5) The name and home address of the school employee
30 alleged to have committed the abuse or injury.

1 (6) The relationship of the student to the school
2 employee alleged to have committed the abuse or injury.

3 (7) The source of the report to the county agency.

4 (8) The actions taken by the county agency, law
5 enforcement officials, parents, guardians, school officials
6 or other persons, including the taking of photographs,
7 medical tests and X-rays.

8 (b) Investigation of reports.--Upon receipt of a report
9 under section 6353.1, the county agency shall commence, within
10 the time frames established in department regulations, an
11 investigation of the nature, extent and cause of any alleged
12 abuse or injury enumerated in the report. The county agency
13 shall coordinate its investigation to the fullest extent
14 possible with law enforcement officials as provided in section
15 6353.1(b).

16 (c) Completion of investigation.--The investigation by the
17 county agency to determine whether the report is an indicated
18 report for school employee or an unfounded report shall be
19 completed within 60 days.

20 (d) Notice to subject of a report.--Prior to interviewing a
21 subject of the report, the county agency shall orally notify the
22 subject of the report of the existence of the report and the
23 subject's rights under this chapter in regard to amendment or
24 expungement. Within 72 hours following oral notification to the
25 subject, the county agency shall give written notice to the
26 subject. The notice may be reasonably delayed if notification is
27 likely to threaten the safety of the student or the county
28 agency worker, to cause the school employee to abscond or to
29 significantly interfere with the conduct of a criminal
30 investigation.

1 (e) Reliance on factual investigation.--The county agency
2 may rely on a factual investigation of substantially the same
3 allegations by a law enforcement officials to support the
4 agency's finding. This reliance shall not relieve the county
5 agency of its responsibilities relating to the investigation of
6 reports under this subchapter.

7 (f) Notice to the department of the county agency's
8 determination.--As soon as the county agency has completed its
9 investigation, the county agency shall advise the department and
10 law enforcement officials of its determination of the report as
11 an indicated report for school employee or an unfounded report.
12 Supplemental reports shall be made at regular intervals
13 thereafter in a manner and form the department prescribes by
14 regulation to the end that the department is kept fully informed
15 and up-to-date concerning the status of the report.

16 § 6353.3. Information in Statewide central register.

17 The Statewide central register established under section 6331
18 (relating to establishment of pending complaint file, Statewide
19 central register and file of unfounded reports) shall retain
20 only the following information relating to reports of abuse or
21 injury of a student by a school employee which have been
22 determined to be a founded report for school employee or an
23 indicated report for school employee:

24 (1) The names, Social Security numbers, age and sex of
25 the subjects of the report.

26 (2) The home address of the subjects of the report.

27 (3) The date and the nature and extent of the alleged
28 abuse or injury.

29 (4) The county and state where the abuse or injury
30 occurred.

- 1 (5) Factors contributing to the abuse or injury.
- 2 (6) The source of the report.
- 3 (7) Whether the report is a founded or indicated report.
- 4 (8) Information obtained by the department in relation
- 5 to the school employee's request to release, amend or expunge
- 6 information retained by the department or the county agency.
- 7 (9) The progress of any legal proceedings brought on the
- 8 basis of the report.
- 9 (10) Whether a criminal investigation has been
- 10 undertaken and the result of the investigation and of any
- 11 criminal prosecution.

12 § 6353.4. Other provisions.

13 The following provisions shall apply to the release and
14 retention of information by the department and the county agency
15 concerning reports of abuse or injury committed by a school
16 employee as provided by this subchapter:

17 Section 6336(b) and (c) (relating to information in Statewide
18 central register).

19 Section 6337 (relating to disposition of unfounded reports).

20 Section 6338(a) and (b) (relating to disposition of founded
21 and indicated reports).

22 Section 6339 (relating to confidentiality of reports).

23 Section 6340 (relating to release of information in
24 confidential reports).

25 Section 6341(a) through (f) (relating to amendment or
26 expunction of information).

27 Section 6342 (relating to studies of data in records).]

28 Section 5 4. This act shall take effect in 60 days.

<--