

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1402 Session of 2019

INTRODUCED BY NESBIT, McCLINTON, KAUFFMAN, HOWARD, SCHLOSSBERG, DONATUCCI, CALTAGIRONE, READSHAW, BERNSTINE, BOBACK, WILLIAMS, ISAACSON, KINSEY, FRANKEL, HILL-EVANS, IRVIN, TOPPER, MILLARD, WARREN, MARSHALL, DeLUCA, TOOHIL, MULLINS, MURT, STEPHENS, DELOZIER, GILLEN, DAWKINS, KLUNK, KORTZ AND MALAGARI, MAY 6, 2019

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 4, 2019

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in sexual offenses, providing for the
3 offense of sexual extortion.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

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

8 § 3132. Sexual extortion.

9 (a) Offense defined.--A person commits the offense of sexual
10 extortion if the person knowingly or intentionally coerces or
11 causes a complainant, through any means set forth in subsection

12 (b), to:

13 (1) engage in sexual conduct, the simulation of sexual
14 conduct or a state of nudity; or

15 (2) make, produce, disseminate, transmit or distribute
16 any image, video, recording or other material depicting the

1 complainant in a state of nudity or engaging in sexual
2 conduct or in the simulation of sexual conduct.

3 (b) Means of subjecting complainant to sexual extortion.--A
4 person subjects a complainant to sexual extortion through any of
5 the following means:

6 (1) Harming or threatening to harm the complainant or
7 the property of the complainant, the reputation of the
8 complainant or any other thing of value of the complainant.

9 (2) Making, producing, disseminating, transmitting or
10 distributing or threatening to make, produce, disseminate,
11 transmit or distribute any image, video, recording or other
12 material depicting the complainant in a state of nudity or
13 engaged in sexual conduct or in the simulation of sexual
14 conduct.

15 (3) Exposing or threatening to expose any fact or piece
16 of information that, if revealed, would tend to subject the
17 complainant to criminal proceedings, a civil action, hatred,
18 contempt, embarrassment or ridicule.

19 (4) Holding out, withholding or threatening to withhold
20 a service, employment, position or other thing of value.

21 (5) Threatening to cause or causing a loss, disadvantage
22 or injury, including a loss, disadvantage or injury to a
23 family or household member, as defined in section 2709.1
24 (relating to stalking).

25 (c) Demanding property.--A person commits the offense of
26 sexual extortion if the person knowingly or intentionally:

27 (1) solicits or demands the payment of money, property
28 or services or any other thing of value from the complainant
29 in exchange for removing from public view or preventing the
30 disclosure of any image, video, recording or other material

1 obtained through a violation of subsection(a)(2); or
2 (2) disseminates, transmits or distributes, or threatens
3 to disseminate, transmit or distribute, an image, video,
4 recording or other material depicting the complainant in a
5 state of nudity or engaging in sexual conduct or the
6 simulation of sexual conduct to another person or entity,
7 including a commercial social networking site, and solicits
8 or demands the payment of money, property or services or any
9 other thing of value from the complainant in exchange for
10 removing from public view or preventing disclosure of the
11 image, video, recording or other material.

12 (d) Grading.--

13 (1) Except as otherwise provided in ~~paragraph (2)~~ <--
14 PARAGRAPHS (2) AND (3), a violation of this section shall <--
15 constitute a misdemeanor of the first degree.

16 (2) A violation of this section shall constitute a
17 felony of the third degree if THE ACTOR IS AT LEAST 18 YEARS <--
18 OF AGE AND:

- 19 (i) the complainant is under 18 years of age;
20 (ii) the complainant has an intellectual disability;

21 OR <--

22 (iii) the actor holds a position of trust or
23 supervisory or disciplinary power over the complainant by
24 virtue of the actor's legal, professional or occupational
25 status. <--

26 (3) A violation of this section shall constitute a
27 felony of the third degree if:

28 ~~(iv)~~ (I) the violation is part of a course of <--
29 conduct of sexual extortion by the actor; or

30 ~~(v)~~ (II) the actor was previously convicted OR <--

1 ADJUDICATED DELINQUENT of a violation of this section or
2 of a similar offense in another jurisdiction.

3 (e) Sentencing.--The Pennsylvania Commission on Sentencing,
4 in accordance with 42 Pa.C.S. § 2154 (relating to adoption of
5 guidelines for sentencing), shall provide for a sentence
6 enhancement within its guidelines for an offense under this
7 section when at the time of the offense the complainant is under
8 18 years of age or has an intellectual disability or the actor
9 holds a position of trust or supervisory or disciplinary power
10 over the complainant by virtue of the actor's legal,
11 professional or occupational status.

12 (f) Venue.--

13 (1) An offense committed under this section may be
14 deemed to have been committed at either the place at which
15 the communication was made or at the place where the
16 communication was received.

17 (2) Acts indicating a course of conduct which occur in
18 more than one jurisdiction may be used by any other
19 jurisdiction in which an act occurred as evidence of a
20 continuing pattern of conduct or a course of conduct.

21 (g) Territorial applicability.--A person may be convicted
22 under the provisions of this section if the complainant or the
23 offender is located within this Commonwealth.

24 (h) Concurrent jurisdiction to prosecute.--In addition to
25 the authority conferred upon the Attorney General by the act of
26 October 15, 1980 (P.L.950, No.164), known as the Commonwealth
27 Attorneys Act, the Attorney General shall have the authority to
28 investigate and to institute criminal proceedings for any
29 violation of this section or any series of violations involving
30 more than one county of this Commonwealth or another state. No

1 person charged with a violation of this section by the Attorney
2 General shall have standing to challenge the authority of the
3 Attorney General to investigate or prosecute the case, and, if a
4 challenge is made, the challenge shall be dismissed, and no
5 relief shall be made available in the courts of this
6 Commonwealth to the person making the challenge.

7 (i) Applicability.--Nothing in this section shall be
8 construed to apply to:

9 (1) A person who acts within the legitimate and lawful
10 course of the person's employment.

11 (2) Works of public interest, including commentary,
12 satire or parody.

13 (j) Definitions.--As used in this section, the following
14 words and phrases shall have the meanings given to them in this
15 subsection unless the context clearly indicates otherwise:

16 "Commercial social networking site." A business,
17 organization or other similar entity that operates an Internet
18 website and permits persons to become registered users for the
19 purposes of establishing personal relationships with other users
20 through direct or real-time communication with other users or
21 the creation of web pages or profiles available to the public or
22 to other users. The term does not include an electronic mail
23 program or a message board program.

24 "Course of conduct." A pattern of actions composed of more
25 than one act over a period of time, however short, evidencing a
26 continuity of conduct.

27 "Disseminate." To cause or make an electronic or actual
28 communication from one place or electronic communication device
29 to two or more other persons, places or electronic communication
30 devices.

1 "Distribute." To sell, lend, rent, lease, give, advertise,
2 publish or exhibit in a physical or electronic medium.

3 "Intellectual disability." Regardless of the age of the
4 individual, significantly subaverage general intellectual
5 functioning that is accompanied by significant limitations in
6 adaptive functioning in at least two of the following skill
7 areas: communication; self-care; home living; social and
8 interpersonal skills; use of community resources' self-
9 direction; functional academic skills; work; health; and safety.

10 "Nudity." As defined in section 5903(e) (relating to obscene
11 and other sexual materials and performances).

12 "Sexual conduct." Any of the following:

13 (1) Intentional touching by the complainant or actor,
14 either directly or through clothing, of the complainant's or
15 actor's intimate parts. Sexual contact of the actor with
16 himself must be in view of the complainant whom the actor
17 knows to be present.

18 (2) Sexual intercourse as defined in section 3101
19 (relating to definitions), masturbation, sadism, masochism,
20 bestiality, fellatio, cunnilingus or lewd exhibition of the
21 genitals.

22 "Simulation." Conduct engaged in that is depicted in a
23 manner that would cause a reasonable viewer to believe was
24 sexual conduct, even if sexual conduct did not occur.

25 "Transmit." To cause or make an electronic or actual
26 communication from one place or electronic communication device
27 to another person, place or electronic communication device.

28 Section 2. This act shall take effect in 60 days.