

No. 2002-134

## AN ACT

SB 834

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for sexual abuse of children and for unlawful contact or communication with minor; and making editorial changes.

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

Section 1. Sections 5708(1), 6312(c) and (d) and 6318 of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 5708. Order authorizing interception of wire, electronic or oral communications.

The Attorney General, or, during the absence or incapacity of the Attorney General, a deputy attorney general designated in writing by the Attorney General, or the district attorney or, during the absence or incapacity of the district attorney, an assistant district attorney designated in writing by the district attorney of the county wherein the interception is to be made, may make written application to any Superior Court judge for an order authorizing the interception of a wire, electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation involving suspected criminal activities when such interception may provide evidence of the commission of any of the following offenses, or may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the following offenses:

(1) Under this title:

- Section 911 (relating to corrupt organizations)
- Section 2501 (relating to criminal homicide)
- Section 2502 (relating to murder)
- Section 2503 (relating to voluntary manslaughter)
- Section 2702 (relating to aggravated assault)
- Section 2706 (relating to terroristic threats)
- Section 2709(b) (relating to harassment and stalking)
- Section 2716 (relating to weapons of mass destruction)
- Section 2901 (relating to kidnapping)
- Section 3121 (relating to rape)
- Section 3123 (relating to involuntary deviate sexual intercourse)
- Section 3124.1 (relating to sexual assault)
- Section 3125 (relating to aggravated indecent assault)
- Section 3301 (relating to arson and related offenses)
- Section 3302 (relating to causing or risking catastrophe)
- Section 3502 (relating to burglary)

- Section 3701 (relating to robbery)
  - Section 3921 (relating to theft by unlawful taking or disposition)
  - Section 3922 (relating to theft by deception)
  - Section 3923 (relating to theft by extortion)
  - Section 4701 (relating to bribery in official and political matters)
  - Section 4702 (relating to threats and other improper influence in official and political matters)
  - Section 5512 (relating to lotteries, etc.)
  - Section 5513 (relating to gambling devices, gambling, etc.)
  - Section 5514 (relating to pool selling and bookmaking)
  - Section 5516 (relating to facsimile weapons of mass destruction)
  - Section 6318 (relating to unlawful contact [or communication] with minor)
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§ 6312. Sexual abuse of children.

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(c) Dissemination of photographs, videotapes, computer depictions and films.—

(1) Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act [is guilty of a felony of the third degree] *commits an offense.*

(2) *A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.*

(d) Possession of child pornography.—

(1) Any person who knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape, computer depiction or other material depicting a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such act [is guilty of a felony of the third degree] *commits an offense.*

(2) *A first offense under this subsection is a felony of the third degree, and a second or subsequent offense under this subsection is a felony of the second degree.*

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§ 6318. Unlawful contact [or communication] with minor.

(a) Offense defined.—A person [whether within or without this Commonwealth] commits an offense if he *or she*[, knowing that he is contacting or communicating with a minor within this Commonwealth,] intentionally contacts [or communicates with that] a minor [for the purpose of engaging in], *and either the person initiating the contact or*

*the minor being contacted is within this Commonwealth, for the purpose of engaging in an activity prohibited under any of the following:*

(1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).

(2) Open lewdness as defined in section 5901 (relating to open lewdness).

(3) Prostitution as defined in section 5902 (relating to prostitution and related offenses).

(4) Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).

(5) Sexual abuse of children as defined in section 6312 (relating to sexual abuse of children).

(6) *Sexual exploitation of children as defined in section 6320 (relating to sexual exploitation of children).*

(b) Grading.—A violation of subsection (a) is:

(1) an offense of the same grade and degree as the most serious underlying offense in subsection (a) for which the defendant contacted or communicated with the minor; or

(2) a misdemeanor of the first degree;  
whichever is greater.

*(b.1) Concurrent jurisdiction to prosecute.—The Attorney General shall have concurrent prosecutorial jurisdiction with the district attorney for violations under this section and any crime arising out of the activity prohibited by this section when the person charged with a violation of this section contacts a minor through the use of a computer, computer system or computer network. No person charged with a violation of this section by the Attorney General shall have standing to challenge the authority of the Attorney General to prosecute the case, and, if any such challenge is made, the challenge shall be dismissed and no relief shall be available in the courts of this Commonwealth to the person making the challenge.*

(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

*“Computer.” An electronic, magnetic, optical, hydraulic, organic or other high-speed data processing device or system which performs logic, arithmetic or memory functions and includes all input, output, processing, storage, software or communication facilities which are connected or related to the device in a computer system or computer network.*

*“Computer network.” The interconnection of two or more computers through the usage of satellite, microwave, line or other communication medium.*

*“Computer system.” A set of related, connected or unconnected computer equipment, devices and software.*

**“Contacts [or communicates with].”** Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

**“Minor.”** An individual under 18 years of age.

Section 2. The definition of “felony sex offense” in section 4703 of Title 42 is amended to read:

§ 4703. Definitions.

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

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**“Felony sex offense.”** A felony offense or an attempt, conspiracy or solicitation to commit a felony offense under any of the following:

18 Pa.C.S. Ch. 31 (relating to sexual offenses).

18 Pa.C.S. § 4302 (relating to incest).

18 Pa.C.S. § 5902(c)(1)(i)(iii) and (iv) (relating to prostitution and related offenses).

18 Pa.C.S. § 5903(a) (relating to obscene and other sexual materials and performances) where the offense constitutes a felony.

18 Pa.C.S. § 6312 (relating to sexual abuse of children).

18 Pa.C.S. § 6318 (relating to unlawful contact [**or communication**] with minor) where the most serious underlying offense for which the defendant contacted [**or communicated with**] the minor is graded as a felony.

18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

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Section 3. Sections 9718.1(a) and 9795.1(a) of Title 42 are amended to read:

§ 9718.1. Sexual offender treatment.

(a) General rule.—A person, including an offender designated as a “sexually violent predator” as defined in section 9792 (relating to definitions), shall attend and participate in a Department of Corrections program of counseling or therapy designed for incarcerated sex offenders if the person is incarcerated in a State institution for any of the following provisions under 18 Pa.C.S. (relating to crimes and offenses):

(1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses) if the offense involved a minor under 18 years of age.

(2) Section 4304 (relating to endangering welfare of children) if the offense involved sexual contact with the victim.

(3) Section 6301 (relating to corruption of minors) if the offense involved sexual contact with the victim.

(4) Open lewdness, as defined in section 5901 (relating to open lewdness), if the offense involved a minor under 18 years of age.

(5) Prostitution, as defined in section 5902 (relating to prostitution and related offenses), if the offense involved a minor under 18 years of age.

(6) Obscene and other sexual materials and performances, as defined in section 5903 (relating to obscene and other sexual materials and performances), if the offense involved a minor under 18 years of age.

(7) Sexual abuse of children, as defined in section 6312 (relating to sexual abuse of children).

(8) Section 6318 (relating to unlawful contact [**or communication**] with minor).

(9) Section 6320 (relating to sexual exploitation of children).

(10) Section 4302 (relating to incest) if the offense involved a minor under 18 years of age.

(11) An attempt or solicitation to commit any of the offenses listed in this subsection.

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#### § 9795.1. Registration.

(a) Ten-year registration.—The following individuals shall be required to register with the Pennsylvania State Police for a period of ten years:

(1) Individuals convicted of any of the following offenses:

18 Pa.C.S. § 2901 (relating to kidnapping) where the victim is a minor.

18 Pa.C.S. § 3126 (relating to indecent assault) where the offense is a misdemeanor of the first degree.

18 Pa.C.S. § 4302 (relating to incest) where the victim is 12 years of age or older but under 18 years of age.

18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses) where the actor promotes the prostitution of a minor.

18 Pa.C.S. § 5903(a)(3), (4), (5) or (6) (relating to obscene and other sexual materials and performances) where the victim is a minor.

18 Pa.C.S. § 6312 (relating to sexual abuse of children).

18 Pa.C.S. § 6318 (relating to unlawful contact [**or communication**] with minor).

18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

(2) Individuals convicted of an attempt to commit any of the offenses under paragraph (1) or subsection (b)(2).

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

APPROVED—The 20th day of November, A.D. 2002.

MARK S. SCHWEIKER