

No. 2013-105

AN ACT

HB 321

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in sexual offenses, further providing for definitions; in minors, further providing for the offense of sexual abuse of children; and, in sentencing, providing for sentencing for offenses involving sexual abuse of children.

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

Section 1. The definition of "indecent contact" in section 3101 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 3101. Definitions.

Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

* * *

"Indecent contact." Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in **[either] any person.**

* * *

Section 2. Section 6312(b), (c) and (d) of Title 18 are amended and the section is amended by adding a subsection to read:

§ 6312. Sexual abuse of children.

(b) Photographing, videotaping, depicting on computer or filming sexual acts.—

(1) Any person who causes or knowingly permits a child under the age of 18 years to engage in a prohibited sexual act or in the simulation of such act **[is guilty of a felony of the second degree] commits an offense** if such person knows, has reason to know or intends that such act may be photographed, videotaped, depicted on computer or filmed.

(2) Any person who knowingly photographs, videotapes, depicts on computer or films a child under the age of 18 years engaging in a prohibited sexual act or in the simulation of such an act **[is guilty of a felony of the second degree] commits an offense.**

(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 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) Child pornography.—

[(1)] Any person who intentionally views or 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 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.1) Grading.—The offenses shall be graded as follows:

(1) Except as provided in paragraph (3), an offense under subsection (b) is a felony of the second degree.

(2) (i) Except as provided in paragraph (3), a first offense under subsection (c) or (d) is a felony of the third degree.

(ii) A second or subsequent offense under subsection (c) or (d) is a felony of the second degree.

(3) When a person commits an offense graded under paragraph (1) or (2)(i) and indecent contact with the child as defined in section 3101 (relating to definitions) is depicted, the grading of the offense shall be one grade higher than the grade specified in paragraph (1) or (2)(i).

* * *

Section 3. Title 42 is amended by adding a section to read:

§ 9720.5. Sentencing for offenses involving sexual abuse of children.

The Pennsylvania Commission on Sentencing, in accordance with section 2154 (relating to adoption of guidelines for sentencing), shall provide for a sentence enhancement within its guidelines for an offense under 18 Pa.C.S. § 6312 (relating to sexual abuse of children), specifying variations from the range of sentences applicable based on such aggravating circumstances as the age of the child or a determination of prepubescence, the number of images possessed by the defendant and the nature and character of the abuse depicted in the images.

Section 4. This act shall take effect January 1, 2014, or immediately, whichever occurs later.

APPROVED—The 18th day of December, A.D. 2013

TOM CORBETT