

No. 2019-100

AN ACT

HB 1402

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

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

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

**§ 3133. Sexual extortion.**

*(a) Offense defined.—A person commits the offense of sexual extortion if the person knowingly or intentionally coerces or causes a complainant, through any means set forth in subsection (b), to:*

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

*(2) make, produce, disseminate, transmit or distribute any image, video, recording or other material depicting the complainant in a state of nudity or engaging in sexual conduct or in the simulation of sexual conduct.*

*(b) Means of subjecting complainant to sexual extortion.—A person subjects a complainant to sexual extortion through any of the following means:*

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

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

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

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

*(5) Threatening to cause or causing a loss, disadvantage or injury, including a loss, disadvantage or injury to a family or household member.*

*(c) Demanding property.—A person commits the offense of sexual extortion if the person knowingly or intentionally:*

*(1) solicits or demands the payment of money, property or services or any other thing of value from the complainant or a family or household member of the complainant in exchange for removing from*

*public view or preventing the disclosure of any image, video, recording or other material obtained through a violation of subsection (a)(2); or*

*(2) disseminates, transmits or distributes, or threatens to disseminate, transmit or distribute, an image, video, recording or other material depicting the complainant in a state of nudity or engaging in sexual conduct or the simulation of sexual conduct to another person or entity, including a commercial social networking site, and solicits or demands the payment of money, property or services or any other thing of value from the complainant or a family or household member of the complainant in exchange for removing from public view or preventing disclosure of the image, video, recording or other material.*

*(d) Grading.—*

*(1) Except as otherwise provided in paragraphs (2) and (3), a violation of this section shall constitute a misdemeanor of the first degree.*

*(2) A violation of this section shall constitute a felony of the third degree if the actor is at least 18 years of age and:*

*(i) the complainant is under 18 years of age;*

*(ii) the complainant has an intellectual disability; or*

*(iii) the actor holds a position of trust or supervisory or disciplinary power over the complainant by virtue of the actor's legal, professional or occupational status.*

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

*(i) the violation is part of a course of conduct of sexual extortion by the actor; or*

*(ii) the actor was previously convicted or adjudicated delinquent of a violation of this section or of a similar offense in another jurisdiction.*

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

*(f) Venue.—*

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

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

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

*(h) Concurrent jurisdiction to prosecute.—In addition to the authority conferred upon the Attorney General by the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General shall have the authority to investigate and to institute criminal proceedings for any violation of this section or any series of violations involving more than one county of this Commonwealth or another state. 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 investigate or prosecute the case, and, if a challenge is made, the challenge shall be dismissed, and no relief shall be made available in the courts of this Commonwealth to the person making the challenge.*

*(i) Applicability.—Nothing in this section shall be construed to apply to:*

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

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

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

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

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

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

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

*"Family or household member." As defined in section 2709.1(f) (relating to stalking).*

*"Intellectual disability." Regardless of the age of the individual, significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communication; self-care; home living; social and interpersonal skills; use of community resources<sup>1</sup>; self-direction; functional academic skills; work; health; and safety.<sup>1</sup>*

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

*"Sexual conduct." Any of the following:*

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<sup>1</sup>"use of community resources' self-direction; functional academic skills; work; health; and safety." in enrolled bill.

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

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

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

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

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

APPROVED—The 27th day of November, A.D. 2019

TOM WOLF