

No. 2006-179

AN ACT

SB 1054

Amending Titles 18 (Crimes and Offenses), 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, protecting children from abuse; further providing for endangering the welfare of children; further providing, in child protective services, for definitions, for reporting, for immunity, for penalties and for information on prospective child-care personnel; providing, in child protective services, for information on family day-care home residents and for information on persons having child contact; further providing, in child protective services, for investigation of reports; and further providing for limitation of actions, for sentencing, for assessments and for sex offender information made available on the Internet.

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

Section 1. Section 4304(a) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 4304. Endangering welfare of children.

(a) Offense defined.—

(1) A parent, guardian[,] or other person supervising the welfare of a child under 18 years of age, *or a person that employs or supervises such a person*, commits an offense if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

(2) *A person commits an offense if the person, in an official capacity, prevents or interferes with the making of a report of suspected child abuse under 23 Pa.C.S. Ch. 63 (relating to child protective services).*

(3) *As used in this subsection, the term “person supervising the welfare of a child” means a person other than a parent or guardian that provides care, education, training or control of a child.*

Section 2. The definition of “sexual abuse or exploitation” in section 6303(a) of Title 23 is amended to read:

§ 6303. Definitions.

(a) General rule.—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:

["Sexual abuse or exploitation." The employment, use, persuasion, inducement, enticement or coercion of any child to engage in or assist any other person to engage in any sexually explicit conduct or any simulation of any sexually explicit conduct for the purpose of producing any visual depiction, including photographing, videotaping, computer

depicting or filming, of any sexually explicit conduct or the rape, sexual assault, involuntary deviate sexual intercourse, aggravated indecent assault, molestation, incest, indecent exposure, prostitution, statutory sexual assault or other form of sexual exploitation of children.]

“Sexual abuse or exploitation.” Any of the following:

(1) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct.

(2) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in simulation of sexually explicit conduct for the purpose of producing visual depiction, including photographing, videotaping, computer depicting and filming.

(3) Any of the following offenses committed against a child:

(i) Rape.

(ii) Sexual assault.

(iii) Involuntary deviate sexual intercourse.

(iv) Aggravated indecent assault.

(v) Molestation.

(vi) Incest.

(vii) Indecent exposure.

(viii) Prostitution.

(ix) Sexual abuse.

(x) Sexual exploitation.

Section 3. Sections 6311(a), 6318(a) and 6319 of Title 23 are amended to read:

§ 6311. Persons required to report suspected child abuse.

(a) General rule.—[Persons] *A person* who, in the course of [their] employment, occupation or practice of [their] a profession, [come] *comes* into contact with children shall report or cause a report to be made in accordance with section 6313 (relating to reporting procedure) when [they have] *the person has* reasonable cause to suspect, on the basis of [their] medical, professional or other training and experience, that a child [coming before them in their professional or official capacity is an abused child.] *under the care, supervision, guidance or training of that person or of an agency, institution, organization or other entity with which that person is affiliated is a victim of child abuse, including child abuse by an individual who is not a perpetrator.*¹ Except with respect to confidential communications made to [an ordained] a member of the clergy which are protected under 42 Pa.C.S. § 5943 (relating to confidential communications to clergymen), *and except with respect to confidential communications*

¹“perpetrator, shall report or cause a report to be made in accordance with section 6313.” in enrolled bill.

made to an attorney which are protected by 42 Pa.C.S. § 5916 (relating to confidential communications to attorney) or 5928 (relating to confidential communications to attorney), the privileged communication between any professional person required to report and the patient or client of that person shall not apply to situations involving child abuse and shall not constitute grounds for failure to report as required by this chapter.

* * *

§ 6318. Immunity from liability.

(a) General rule.—A person, hospital, institution, school, facility, agency or agency employee that participates in good faith in the making of a report, *whether required or not*, cooperating with an investigation, testifying in a proceeding arising out of an instance of suspected child abuse, the taking of photographs or the removal or keeping of a child pursuant to section 6315 (relating to taking child into protective custody), and any official or employee of a county agency who refers a report of suspected abuse to law enforcement authorities or provides services under this chapter, shall have immunity from civil and criminal liability that might otherwise result by reason of those actions.

* * *

§ 6319. Penalties for failure to report *or to refer*.

A person or official required by this chapter to report a case of suspected child abuse *or to make a referral to the appropriate authorities* who willfully fails to do so commits a [summary offense] *misdemeanor of the third degree* for the first violation and a misdemeanor of the [third] *second degree* for a second or subsequent violation.

Section 4. Section 6344(a) and (c)(1) of Title 23 are amended and the section is amended by adding subsections to read:

§ 6344. Information relating to prospective child-care personnel.

(a) Applicability.—This section applies to all prospective employees of child-care services, prospective foster parents, prospective adoptive parents, prospective self-employed family day-care providers and other persons seeking to provide child-care services under contract with a child-care facility or program. *This section also applies to individuals 14 years of age or older who reside in the home of a prospective foster parent for at least 30 days in a calendar year or who reside in the home of a prospective adoptive parent for at least 30 days in a calendar year.* This section does not apply to administrative or other support personnel unless their duties will involve direct contact with children.

* * *

(c) Grounds for denying employment.—

(1) In no case shall an administrator hire an applicant where the department has verified that the applicant is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section[,] *or is named in the central register as the perpetrator of a*

founded report for a school employee committed within the five-year period immediately preceding verification pursuant to this section.

* * *

(o) Use of information.—A foster family care agency may not approve a prospective foster parent if the prospective foster parent or an individual 14 years of age or older who resides for at least 30 days in a calendar year with the prospective foster parent meets either of the following:

(1) Is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section or is named in the central register as the perpetrator of a founded report for a school employee committed within the five-year period immediately preceding verification pursuant to this section.

(2) Has been found guilty of an offense listed in subsection (c)(2).

(p) Use of information.—A prospective adoptive parent may not be approved if the prospective adoptive parent or an individual 14 years of age or older who resides for at least 30 days in a calendar year with the prospective adoptive parent meets either of the following:

(1) Is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section or is named in the central register as the perpetrator of a founded report for a school employee committed within the five-year period immediately preceding verification pursuant to this section.

(2) Has been found guilty of an offense listed in subsection (c)(2).

Section 5. Title 23 is amended by adding sections to read:

§ 6344.1. *Information relating to family day-care home residents.*

(a) General rule.—In addition to the requirements of section 6344 (relating to information relating to prospective child-care personnel), an individual who applies to the department for a registration certificate to operate a family day-care home shall include criminal history record and child abuse record information required under section 6344(b) for every individual 18 years of age or older who resides in the home for at least 30 days in a calendar year.

(b) Required information.—Child abuse record information required under subsection (a) shall include certification by the department as to whether the applicant is named in the central register as the perpetrator of a founded report, indicated report, founded report for school employee or indicated report for school employee.

(c) Effect on registration.—The department shall refuse to issue or renew a registration certificate or shall revoke a registration certificate if the family day-care home provider or individual 18 years of age or older who has resided in the home for at least 30 days in a calendar year:

(1) is named in the central register on child abuse established under Chapter 63 (relating to child protective services) as the perpetrator of a

founded report committed within the immediately preceding five-year period; or

(2) has been convicted of an offense enumerated in section 6344(c).

(d) Regulations.—The department shall promulgate regulations to administer this section.

§ 6344.2. Information relating to other persons having contact with children.

(a) Applicability.—This section applies to prospective employees applying to engage in occupations with a significant likelihood of regular contact with children, in the form of care, guidance, supervision or training. Such persons include social service workers, hospital personnel, mental health professionals, members of the clergy, counselors, librarians and doctors.

(b) Investigation.—Employers, administrators or supervisors shall require an applicant to submit to all requirements set forth in section 6344(b) (relating to information relating to prospective child-care personnel). An employer, administrator, supervisor or other person responsible for employment decisions regarding an applicable prospective employee under this section that intentionally fails to require the submissions before hiring that individual commits a misdemeanor of the third degree.

(c) Grounds for denial.—Each applicant shall be subject to the requirements of section 6344(c).

(d) Departmental treatment of information.—Information provided and compiled under this section by the department shall be confidential and shall not be subject to the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law. This information shall not be released except as permitted by the department through regulation. The department may charge a fee to conduct a certification as required by section 6344(b)(2) in accordance with the provisions of section 6344(h). The department shall promulgate regulations necessary to carry out this subsection.

Section 6. Section 6368(d) of Title 23 is amended to read:

§ 6368. Investigation of reports.

(d) Referral for investigation.—If the complaint of suspected abuse is determined to be one which cannot be investigated under this chapter because the person accused of the abuse is not a perpetrator within the meaning of section 6303 (relating to definitions)[,] but does suggest the need for investigation, the county agency shall immediately transmit the information to the appropriate authorities[.], including the district attorney, the district attorney's designee or other law enforcement official, in accordance with the county protocols for investigative teams required by section 6365(c) (relating to services for prevention, investigation and treatment of child abuse).

Section 7. Section 5552(c)(3) of Title 42 is amended to read:

§ 5552. Other offenses.

* * *

(c) Exceptions.—If the period prescribed in subsection (a), (b) or (b.1) has expired, a prosecution may nevertheless be commenced for:

* * *

(3) Any sexual offense committed against a minor who is less than 18 years of age any time up to *the later of* the period of limitation provided by law after the minor has reached 18 years of age *or the date the minor reaches 50 years of age*. As used in this paragraph, the term “sexual offense” means a crime under the following provisions of Title 18 (relating to crimes and offenses):

Section 3121 (relating to rape).

Section 3122.1 (relating to statutory sexual assault).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124.1 (relating to sexual assault).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).

Section 4304 (relating to endangering welfare of children).

Section 6301 (relating to corruption of minors).

Section 6312(b) (relating to sexual abuse of children).

Section 6320 (relating to sexual exploitation of children).

* * *

Section 8. Section 9795.4 of Title 42 is amended by adding a subsection to read:

§ 9795.4. Assessments.

* * *

(d.1) Summary of offense.—The board shall prepare a description of the offense or offenses which trigger the application of this subchapter to include, but not be limited to:

(1) A concise narrative of the offender’s conduct.

(2) Whether the victim was a minor.

(3) The manner of weapon or physical force used or threatened.

(4) If the offense involved unauthorized entry into a room or vehicle occupied by the victim.

(5) If the offense was part of a course or pattern of conduct involving multiple incidents or victims.

(6) Previous instances in which the offender was determined guilty of an offense subject to this subchapter or of a crime of violence as defined in section 9714(g) (relating to sentences for second and subsequent offenses).

* * *

Section 9. Section 9798.1(b) and (c) of Title 42, amended or added November 24, 2004 (P.L.1243, No.152) and November 9, 2006 (P.L.1352,

No.143), are amended and subsection (d) is carried without amendment to read:

§ 9798.1. Information made available on the Internet.

* * *

(b) Internet posting of sexually violent predators, lifetime registrants and other offenders.—The Commissioner of the Pennsylvania State Police shall, in the manner and form directed by the Governor:

(1) Develop and maintain a system for making the information described in subsection (c) publicly available by electronic means so that the public may, without limitation, obtain access to the information via an Internet website to view an individual record or the records of all sexually violent predators, lifetime registrants and other offenders who are registered with the Pennsylvania State Police.

(2) Ensure that the Internet website contains warnings that any person who uses the information contained therein to threaten, intimidate or harass another or who otherwise misuses that information may be criminally prosecuted.

(3) Ensure that the Internet website contains an explanation of its limitations, including statements advising that a positive identification of a sexually violent predator, lifetime registrant or other offender whose record has been made available may be confirmed only by fingerprints; that some information contained on the Internet website may be outdated or inaccurate; and that the Internet website is not a comprehensive listing of every person who has ever committed a sex offense in Pennsylvania.

(4) Strive to ensure *that*:

(i) the information contained on the Internet website is accurate **[and that];**

(ii) the data therein is revised and updated as appropriate in a timely and efficient manner; *and*

(iii) *instructions are included on how to seek correction of information which a person contends is erroneous.*

(5) Provide on the Internet website general information designed to inform and educate the public about sex offenders and sexually violent predators and the operation of this subchapter as well as pertinent and appropriate information concerning crime prevention and personal safety, with appropriate links to other relevant Internet websites operated by the Commonwealth of Pennsylvania.

(6) *Identify when the victim is a minor with a special designation. The identity of a victim of a sex offense shall not be published or posted on the Internet website.*

(c) Information permitted to be disclosed regarding individuals.—Notwithstanding 18 Pa.C.S. Ch. 91 (relating to criminal history record information), the Internet website shall contain the following information on each individual:

(1) For sexually violent predators **[only]**, the following information shall be posted on the Internet website:

- (i) name and **[any] all known** aliases;
- (ii) year of birth;
- (iii) the street address, **[city] municipality**, county and zip code of all residences, **including, where applicable, the name of the prison or other place of confinement**;
- (iv) the street address, **[city] municipality**, county **[and]**, zip code **and name** of any institution or location at which the person is enrolled as a student;
- (v) the **[city] municipality**, county and zip code of any employment location;
- (vi) a photograph of the offender, which shall be updated not less than annually;
- (vii) **a physical description of the offender, including sex, height, weight, eye color, hair color and race**;
- (viii) **any identifying marks, including scars, birthmarks and tattoos**;
- (ix) **the license plate number and description of any vehicle owned or registered to the offender**;
- (x) **whether the offender is currently compliant with registration requirements**;
- (xi) **whether the victim is a minor**;
- [(vii)] (xii)** a description of the offense or offenses which triggered the application of this subchapter; **and**
- [viii] (xiii)** the date of the offense and conviction, if available.

(2) For all other lifetime registrants and offenders subject to registration **[only]**, the **[same]** information **[as specified under] set forth in** paragraph (1) shall be posted on the Internet website.

(d) Duration of Internet posting.—

(1) The information listed in subsection (c) about a sexually violent predator shall be made available on the Internet for the lifetime of the sexually violent predator.

(2) The information listed in subsection (c) about an offender who is subject to lifetime registration shall be made available on the Internet for the lifetime of the offender unless the offender is granted relief under section 9795.5 (relating to exemption from certain notifications).

(3) The information listed in subsection (c) about any other offender subject to registration shall be made available on the Internet for the entire period during which the offender is required to register, including any extension of this period pursuant to 9795.2(a)(3) (relating to registration procedures and applicability).

Section 10. The amendment of 42 Pa.C.S. § 9798.1(c)(xi) shall apply to persons convicted after November 30, 2006, of an offense requiring registration under 42 Pa.C.S. § 9795.1.

Section 11. This act shall take effect as follows:

- (1) The following provisions shall take effect in 180 days:
 - (i) The amendment of the definition of “sexual abuse or exploitation” in 23 Pa.C.S. § 6303(a).
 - (ii) The amendment of 23 Pa.C.S. § 6311(a).
 - (iii) The amendment of 23 Pa.C.S. § 6319.
 - (iv) The amendment or addition of 23 Pa.C.S. § 6344(a), (c)(1), (o) and (p).
 - (v) The addition of 23 Pa.C.S. § 6344.1.
 - (vi) The amendment of 23 Pa.C.S. § 6368(d).
 - (vii) The amendment of 42 Pa.C.S. § 9795.4(d.1).
 - (viii) The amendment of 42 Pa.C.S. § 9798.1(b), (c) and (d).
- (2) This section shall take effect immediately.
- (3) The remainder of this act shall take effect in 60 days.

APPROVED—The 29th day of November, A.D. 2006.

EDWARD G. RENDELL