

## **SUMMARY OF SENATE BILL 850, PRINTER'S NO. 1691**

**Synopsis:** This bill amends the Crimes Code, Title 18, and the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, establishing the criminal offense of cyberbullying; further providing for the expungement of juvenile records; and making a number of changes to the Juvenile Act to protect children who are involved in cases before magisterial district judges or involved in juvenile court proceedings.

### **Summary:** **Cyberbullying**

The bill adds section 6321 to the Crimes Code making it a misdemeanor of the third degree if a minor knowingly transmits or disseminates any electronic communication, including a visual depiction of himself or any other person in a state of nudity, to another minor with the intent that the communication will coerce, intimidate, torment, harass or otherwise cause emotional distress to the other minor.

It is also a third degree misdemeanor if the minor photographs, videotapes, depicts on a computer or films the other minor in a state of nudity without the person's knowledge; or transmits, distributes, publishes or disseminates a visual depiction of the other minor in a state of nudity without consent.

An electronic communication device used in violation of section 6321 may be seized by and forfeited to the Commonwealth.

A minor is defined as an individual less than 18 years of age. There also are definitions of "disseminate," "electronic communication," "nudity," "transmit" and "visual depiction."

### **Expungement**

The bill amends section 9123 of the Crimes Code to add several situations in which juvenile records may be expunged. The court on its own motion or upon the motion of a child or the parents or guardian of the child may expunge records of juvenile delinquency cases when a written allegation is filed but not approved for prosecution; the individual successfully completed an informal adjustment and no proceeding seeking adjudication or conviction is pending; and six months have elapsed since the final discharge of the person from supervision under a consent decree or diversion program, including an adjudication alternative program under 42 Pa.C.S. §1520, and no proceeding seeking adjudication or conviction is pending.

Expungement may occur if the court finds that the person is 18 years of age or older and was convicted of underage drinking while the person was under 18 years of age and the person has satisfied all of the terms and conditions of the sentence imposed including any suspension of operating privileges. Expungement shall include all criminal history record information and all administrative records of the Department of Transportation relating to the conviction. If the person was over 18 years of age at the time of the underage drinking offense, the criminal history record information may be expunged under section 9122(a).

In the case of other summary offenses, the court must find that the person is 18 years of age or older and the individual satisfied all of the terms and conditions of the sentence imposed following a conviction for a summary offense committed while the person was under 18 years of age and the person has not been convicted of a felony, misdemeanor or adjudicated delinquent and no proceeding is pending seeking such conviction or adjudication.

Under section 9123(a)(4) the bill also allows for expungement of juvenile delinquency cases regardless of the age of the individual when the Commonwealth attorney consents to the expungement and the court orders the expungement after giving consideration to enumerated factors.

### **Juvenile Act**

The bill makes a number of changes to the Juvenile Act. Section 6301(b) is amended to add two “purposes” to the act. Courts shall use the least restrictive sanctions consistent with the protection of the community and the rehabilitation needs of the child. Confinement should only be used as a last resort and should be imposed for the minimum amount of time consistent with the protection of the public and the rehabilitation needs of the child. In every stage of the juvenile justice process evidence-based practices should be employed whenever possible.

Section 6337 is amended, relating to right to counsel, so that in delinquency cases, all children are presumed indigent. The presumption may be rebutted if the court ascertains that the child has the financial resources to retain counsel. The court shall not consider the financial resources of the child’s parent, guardian or custodian. The provisions in section 6337 relating to waiver of counsel are repealed.

Sections 6303, relating to the scope of the chapter, section 6307, relating to inspection of court files and records, and section 6336, relating to conduct of hearings, are amended to apply the same protections children receive in juvenile court to proceedings involving children who appear before magisterial district judges charged with summary offenses.

### **Effective date**

The amendment to section 6337 takes effect immediately; the amendments to sections 6303, 6307 and 6336 take effect in 90 days; otherwise this act takes effect in 60 days.

**Background:** Chapter 63 of the Judicial Code is the Juvenile Act and the provisions apply to both dependent and delinquent children unless otherwise specified.

### **Cyberbullying**

Section 6321 only applies if the minor knowingly transmits an electronic message to another minor with the intent to coerce, intimidate, torment, harass or otherwise cause emotional distress to the other minor. Consensual activity is not a crime under this provision.

### **Expungement**

As juveniles make decisions to go to college, join the military or seek employment, it is important that they are able to move forward without minor criminal offenses on their record. The legislation amends 18 Pa.C.S. §9123 to streamline the expungement of juvenile adjudications and summary offenses committed by juveniles. These provisions are similar to the provisions relating to juveniles in House Bill 264 of last session.

The reference to 42 Pa.C.S. §1520 is added because section 18 Pa.C.S. §9123 will also apply to the expungement of summary offenses committed by a minor and it is necessary to specifically reference diversion programs overseen by magisterial district judges who handle summary offenses involving minors.

### **Juvenile Act**

The purpose clause is amended to emphasize the use of the least restrictive sanctions and evidence-based practices in juvenile justice.

The juvenile courts do not have jurisdiction over summary offenses. As a result, a juvenile who is charged with a misdemeanor or even a felony and adjudicated delinquent in juvenile court may be treated less harshly than a juvenile found guilty of a summary offense by a magisterial district judge. In addition, the records of a juvenile who is adjudicated delinquent are protected while the records of a juvenile found guilty of a summary offense are public.

While giving the juvenile courts jurisdiction over summary offenses would overwhelm those courts, making them less effective, some changes are necessary to make the treatment of juveniles more equitable regardless of whether the juvenile is before a magisterial district judge or a juvenile court judge. Under this legislation summary cases involving a juvenile would continue to be heard by a magisterial district judge but the juveniles will be provided many of the same protections that are available to juveniles adjudicated delinquent. These provisions are similar to the provisions in Senate Bill 1121 of last session relating to cases heard by magisterial district judges.

The provisions relating to summary offenses before a magisterial district judge will take effect in 90 days at the request of the Administrative Office of Pennsylvania Courts.

### **Interbranch Commission on Juvenile Justice**

In its report investigating Luzerne County's juvenile justice system, the Interbranch Commission reported that "there is an inherent risk that the legal protections afforded juveniles could be eroded by the limited financial resources of their parents, particularly those parents whose income is just above the guidelines, or by the unwillingness of parents to expend their resources. There is also the risk that the attorneys hired by parents might rely upon the parents for decision making in a case rather than rely upon the juvenile as the law requires."

The Interbranch Commission recommended "That all juveniles should be deemed indigent for the purposes of appointment of counsel."

The language in section 6337 is consistent with Rule of Juvenile Court Procedure 151 when the rule and its comment are read together.

The provisions in section 6337 relating to waiver are repealed because they were suspended by court rule.

The changes to section 6337 take effect immediately because they are consistent with court rules already in effect.