

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1333 Session of
2001

INTRODUCED BY BUXTON, BIRMELIN, BLAUM, GANNON, BEBKO-JONES,
CALTAGIRONE, CAPPABIANCA, CAPPELLI, CLARK, CLYMER, CORRIGAN,
COY, EGOLF, FICHTER, FRANKEL, GEORGE, HARHAI, HENNESSEY,
HERSHEY, KENNEY, LAUGHLIN, MARSICO, McNAUGHTON, MELIO,
METCALFE, MUNDY, READSHAW, ROONEY, SATHER, SCHRODER, SHANER,
STERN, TIGUE, TULLI, WANSACZ, WILT, DeLUCA, CREIGHTON, SURRA,
VANCE, GRUCELA, PALLONE, KELLER, LEDERER, COLEMAN, THOMAS,
STEELMAN, McGILL, WOJNAROSKI, J. WILLIAMS AND PISTELLA,
MAY 29, 2001

SENATOR THOMPSON, APPROPRIATIONS, IN SENATE, RE-REPORTED AS
AMENDED, JANUARY 28, 2002

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, ~~providing for Internet child~~ <—
3 ~~pornography.~~ REQUIRING INTERNET SERVICE PROVIDERS TO REMOVE <—
4 OR DISABLE ACCESS TO CHILD PORNOGRAPHY SITES ON THE INTERNET.

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

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

9 § 7330. Internet child pornography.

10 ~~(a) General rule. An Internet service provider shall remove~~ <—
11 ~~or disable access to child pornography items residing on its~~
12 ~~service in a manner accessible to persons located within this~~
13 ~~Commonwealth. The child pornography items shall be disabled or~~
14 ~~removed within 15 business days of when the Internet service~~

1 ~~provider is notified by the Attorney General or a county~~
2 ~~district attorney in accordance with pursuant to subsection (e)~~
3 ~~that child pornography items reside on its service.~~

4 ~~(b) Protection of privacy. Nothing in this section may be~~
5 ~~construed as imposing a duty on an Internet service provider to~~
6 ~~actively monitor its network or affirmatively seek evidence of~~
7 ~~illegal activity on its network.~~

8 ~~(c) Penalty. Any Internet service provider who violates~~
9 ~~subsection (a) commits a felony of the third degree.~~

10 ~~(d) Concurrent jurisdiction to prosecute. The Attorney~~
11 ~~General shall have concurrent prosecutorial jurisdiction with~~
12 ~~the district attorney for violations under this section and any~~
13 ~~crime arising out of the activity prohibited by this section. No~~
14 ~~person charged with a violation of this section by the Attorney~~
15 ~~General shall have standing to challenge the authority of the~~
16 ~~Attorney General to prosecute the case, and if any such~~
17 ~~challenge is made, the challenge shall be dismissed and no~~
18 ~~relief shall be available in the courts of this Commonwealth to~~
19 ~~the person making the challenge.~~

20 ~~(e) Notification procedure. For purposes of this section,~~
21 ~~an Internet service provider shall be notified by the Attorney~~
22 ~~General or county district attorney only if it receives a~~
23 ~~written notice that:~~

24 ~~(1) identifies the child pornography items;~~

25 ~~(2) provides information sufficient to permit the~~
26 ~~Internet service provider to locate the items on its network;~~
27 ~~and~~

28 ~~(3) contains contact information for the notifying~~
29 ~~agency, including the name, address, telephone number of the~~
30 ~~agency and officer submitting the notification. misdemeanor~~

~~of the third degree for a first offense punishable by a fine of \$5,000; a misdemeanor of the first degree for a second offense punishable by a fine of \$20,000; and a felony of the third degree for a third or subsequent offense punishable by a fine of \$30,000.~~

~~(d) Jurisdiction for notification and prosecution.~~

~~(1) The Attorney General shall have exclusive jurisdiction for notification pursuant to subsection (c). The Attorney General shall have concurrent prosecutorial jurisdiction with the county district attorney for violations of this section. For purposes of this section, the Attorney General shall be required to initiate notification pursuant to subsection (c) if requested by a county district attorney.~~

~~(2) 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) Application for order to disable or remove materials.~~

~~An application for an order of authorization to disable or remove materials from an Internet service provider shall be made to the court of common pleas having jurisdiction in writing upon the personal oath or affirmation of the Attorney General or a district attorney of the county wherein the material has been discovered and shall contain all of the following information if available:~~

~~(1) A statement of the authority of the applicant to make such application.~~

~~(2) A statement of the identity of the investigative or~~

1 ~~law enforcement officer that has, in the official scope that~~
2 ~~officer's duties, discovered the child pornography items.~~

3 ~~(3) A statement by the investigative or law enforcement~~
4 ~~officer who has knowledge of relevant information justifying~~
5 ~~the application.~~

6 ~~(4) The uniform resource locator providing access to~~
7 ~~such materials.~~

8 ~~(5) The identity of the Internet service provider used~~
9 ~~by the law enforcement officer.~~

10 ~~(6) A showing that there is probable cause to believe~~
11 ~~that such materials constitute a violation of section 6312~~
12 ~~(relating to sexual abuse of children).~~

13 ~~(7) A proposed order of authorization for consideration~~
14 ~~by the judge.~~

15 ~~(8) Such additional testimony or documentary evidence in~~
16 ~~support of the application as the judge may require.~~

17 ~~(f) Notification procedure.—~~

18 ~~(1) The Attorney General shall have exclusive~~
19 ~~jurisdiction to notify Internet service providers under this~~
20 ~~section. The Attorney General shall initiate notification~~
21 ~~pursuant to this section if requested in writing by a~~
22 ~~district attorney who has provided the Attorney General with~~
23 ~~an application filed pursuant to subsection (e).~~

24 ~~(2) For purposes of this subsection, an Internet service~~
25 ~~provider, or the person designated by the Internet service~~
26 ~~provider, shall be notified in writing by the Attorney~~
27 ~~General within three days of the Attorney General's receipt~~
28 ~~of an application by a district attorney.~~

29 ~~(3) The notice shall include the following information:~~

30 ~~(i) A copy of the application made pursuant to~~

1 ~~subsection (e).~~

2 ~~(ii) The uniform resource locator providing access~~
3 ~~to the child pornography materials if included in the~~
4 ~~application.~~

5 ~~(iii) Notification that the Internet service~~
6 ~~provider must disable or remove the materials from its~~
7 ~~service within 15 days of the date the application was~~
8 ~~filed with the court pursuant to subsection (e).~~

9 ~~(iv) Contact information for the office of the~~
10 ~~Attorney General including the name, address and~~
11 ~~telephone number of any deputy or agent, authorized by~~
12 ~~the Attorney General to the notification.~~

13 ~~(g) Order to remove or disable certain material from~~
14 ~~Internet service provider.~~

15 ~~(1) Upon consideration of an application, the court may~~
16 ~~enter an order, including an ex parte order, as requested,~~
17 ~~advising the Attorney General that such materials constitute~~
18 ~~probable cause evidence of a violation of section 6312. Upon~~
19 ~~receipt by the Attorney General, such order shall be~~
20 ~~forwarded to the Internet service provider, or the person~~
21 ~~designated by the Internet service provider, within three~~
22 ~~days of its receipt.~~

23 ~~(2) Each order authorizing the removal or disabling of~~
24 ~~any child pornography items from an Internet service provider~~
25 ~~shall include the following:~~

26 ~~(i) The uniform resource locator providing access to~~
27 ~~such materials if included in the application pursuant to~~
28 ~~subsection (f).~~

29 ~~(ii) The identity of the Internet service provider~~
30 ~~used by the law enforcement officer in the official scope~~

1 ~~of that officer's duties to gain access to such~~
2 ~~materials.~~

3 ~~(iii) A statement that there is probable cause to~~
4 ~~believe that such materials constitute a prima facie~~
5 ~~violation of section 6312.~~

6 ~~(iv) Such other information as the court deems~~
7 ~~relevant and necessary.~~

8 ~~(h) Designated agent. An Internet service provider may~~
9 ~~designate an agent to receive notification pursuant to~~
10 ~~subsection (e).~~

11 ~~(i) Report to the General Assembly. The Attorney General~~
12 ~~shall make an annual report to the chairman and minority~~
13 ~~chairman of the Judiciary Committee of the Senate and the~~
14 ~~chairman and minority chairman of the Judiciary Committee of the~~
15 ~~House of Representatives providing information on the number of~~
16 ~~notices issued and the prosecutions made under this section and~~
17 ~~making any recommendations for amendatory legislation.~~

18 ~~(f) (j) Definitions. As used in this section, the following~~
19 ~~words and phrases shall have the meanings given to them in this~~
20 ~~subsection:~~

21 ~~"Child pornography." As described in section 6312 (relating~~
22 ~~to sexual abuse of children).~~

23 ~~"Internet." The myriad of computer and telecommunications~~
24 ~~facilities, including equipment and operating software, which~~
25 ~~comprise the interconnected worldwide network of networks that~~
26 ~~employ the transmission control protocol/Internet protocol, or~~
27 ~~any predecessor or successor protocols to such protocol, to~~
28 ~~communicate information of all kinds by wire or radio.~~

29 ~~"Internet service provider." A person who provides a service~~
30 ~~that enables users to access content, information, electronic~~

1 ~~mail or other services offered over the Internet.~~

2 (A) GENERAL RULE.--AN INTERNET SERVICE PROVIDER SHALL REMOVE <—
3 OR DISABLE ACCESS TO CHILD PORNOGRAPHY ITEMS RESIDING ON OR
4 ACCESSIBLE THROUGH ITS SERVICE IN A MANNER ACCESSIBLE TO PERSONS
5 LOCATED WITHIN THIS COMMONWEALTH WITHIN FIVE BUSINESS DAYS OF
6 WHEN THE INTERNET SERVICE PROVIDER IS NOTIFIED BY THE ATTORNEY
7 GENERAL PURSUANT TO SUBSECTION (G) THAT CHILD PORNOGRAPHY ITEMS
8 RESIDE ON OR ARE ACCESSIBLE THROUGH ITS SERVICE.

9 (B) PROTECTION OF PRIVACY.--NOTHING IN THIS SECTION MAY BE
10 CONSTRUED AS IMPOSING A DUTY ON AN INTERNET SERVICE PROVIDER TO
11 ACTIVELY MONITOR ITS SERVICE OR AFFIRMATIVELY SEEK EVIDENCE OF
12 ILLEGAL ACTIVITY ON ITS SERVICE.

13 (C) PENALTY.--NOTWITHSTANDING ANY OTHER PROVISION OF LAW TO
14 THE CONTRARY, ANY INTERNET SERVICE PROVIDER WHO VIOLATES
15 SUBSECTION (A) COMMITS:

16 (1) A MISDEMEANOR OF THE THIRD DEGREE FOR A FIRST
17 OFFENSE PUNISHABLE BY A FINE OF \$5,000.

18 (2) A MISDEMEANOR OF THE SECOND DEGREE FOR A SECOND
19 OFFENSE PUNISHABLE BY A FINE OF \$20,000.

20 (3) A FELONY OF THE THIRD DEGREE FOR A THIRD OR
21 SUBSEQUENT OFFENSE PUNISHABLE BY A FINE OF \$30,000 AND
22 IMPRISONMENT FOR A MAXIMUM OF SEVEN YEARS.

23 (D) JURISDICTION FOR PROSECUTION.--THE ATTORNEY GENERAL
24 SHALL HAVE CONCURRENT PROSECUTORIAL JURISDICTION WITH THE COUNTY
25 DISTRICT ATTORNEY FOR VIOLATIONS OF THIS SECTION. NO PERSON
26 CHARGED WITH A VIOLATION OF THIS SECTION BY THE ATTORNEY GENERAL
27 SHALL HAVE STANDING TO CHALLENGE THE AUTHORITY OF THE ATTORNEY
28 GENERAL TO PROSECUTE THE CASE, AND IF ANY SUCH CHALLENGE IS
29 MADE, THE CHALLENGE SHALL BE DISMISSED AND NO RELIEF SHALL BE
30 AVAILABLE IN THE COURTS OF THIS COMMONWEALTH TO THE PERSON

1 MAKING THE CHALLENGE.

2 (E) APPLICATION FOR ORDER TO REMOVE OR DISABLE ITEMS.--AN
3 APPLICATION FOR AN ORDER OF AUTHORIZATION TO REMOVE OR DISABLE
4 ITEMS RESIDING ON OR ACCESSIBLE THROUGH AN INTERNET SERVICE
5 PROVIDER'S SERVICE SHALL BE MADE TO THE COURT OF COMMON PLEAS
6 HAVING JURISDICTION IN WRITING UPON THE PERSONAL OATH OR
7 AFFIRMATION OF THE ATTORNEY GENERAL OR A DISTRICT ATTORNEY OF
8 THE COUNTY WHEREIN THE ITEMS HAVE BEEN DISCOVERED AND IF
9 AVAILABLE SHALL CONTAIN ALL OF THE FOLLOWING INFORMATION:

10 (1) A STATEMENT OF THE AUTHORITY OF THE APPLICANT TO
11 MAKE SUCH AN APPLICATION.

12 (2) A STATEMENT OF THE IDENTITY OF THE INVESTIGATIVE OR
13 LAW ENFORCEMENT OFFICER THAT HAS, IN THE OFFICIAL SCOPE OF
14 THAT OFFICER'S DUTIES, DISCOVERED THE CHILD PORNOGRAPHY
15 ITEMS.

16 (3) A STATEMENT BY THE INVESTIGATIVE OR LAW ENFORCEMENT
17 OFFICER WHO HAS KNOWLEDGE OF RELEVANT INFORMATION JUSTIFYING
18 THE APPLICATION.

19 (4) THE UNIFORM RESOURCE LOCATOR PROVIDING ACCESS TO
20 SUCH ITEMS.

21 (5) THE IDENTITY OF THE INTERNET SERVICE PROVIDER USED
22 BY THE LAW ENFORCEMENT OFFICER.

23 (6) A SHOWING THAT THERE IS PROBABLE CAUSE TO BELIEVE
24 THAT SUCH ITEMS CONSTITUTE A VIOLATION OF SECTION 6312
25 (RELATING TO SEXUAL ABUSE OF CHILDREN).

26 (7) A PROPOSED ORDER OF AUTHORIZATION FOR CONSIDERATION
27 BY THE JUDGE.

28 (8) CONTACT INFORMATION FOR THE OFFICE OF ATTORNEY
29 GENERAL INCLUDING THE NAME, ADDRESS AND TELEPHONE NUMBER OF
30 ANY DEPUTY OR AGENT AUTHORIZED BY THE ATTORNEY GENERAL TO

1 SUBMIT NOTIFICATION PURSUANT TO SUBSECTION (G).

2 (9) SUCH ADDITIONAL TESTIMONY OR DOCUMENTARY EVIDENCE IN
3 SUPPORT OF THE APPLICATION AS THE JUDGE MAY REQUIRE.

4 (F) ORDER TO REMOVE OR DISABLE CERTAIN ITEMS FROM INTERNET
5 SERVICE PROVIDER'S SERVICE.--UPON CONSIDERATION OF AN
6 APPLICATION, THE COURT MAY ENTER AN ORDER, INCLUDING AN EX PARTE
7 ORDER, AS REQUESTED, ADVISING THE ATTORNEY GENERAL OR A DISTRICT
8 ATTORNEY THAT SUCH ITEMS CONSTITUTE PROBABLE CAUSE EVIDENCE OF A
9 VIOLATION OF SECTION 6312 AND THAT SUCH ITEMS SHALL BE REMOVED
10 OR DISABLED FROM THE INTERNET SERVICE PROVIDER'S SERVICE AND THE
11 COURT MAY INCLUDE SUCH OTHER INFORMATION AS THE COURT DEEMS
12 RELEVANT AND NECESSARY.

13 (G) NOTIFICATION PROCEDURE.--

14 (1) THE ATTORNEY GENERAL SHALL HAVE EXCLUSIVE
15 JURISDICTION TO NOTIFY INTERNET SERVICE PROVIDERS UNDER THIS
16 SECTION. THE ATTORNEY GENERAL SHALL INITIATE NOTIFICATION
17 PURSUANT TO THIS SECTION IF REQUESTED IN WRITING BY A
18 DISTRICT ATTORNEY WHO HAS PROVIDED THE ATTORNEY GENERAL WITH
19 A COPY OF THE APPLICATION MADE PURSUANT TO SUBSECTION (E) AND
20 A COPY OF THE ORDER ISSUED PURSUANT TO SUBSECTION (F) OR UPON
21 THE ISSUANCE OF AN ORDER BASED UPON AN APPLICATION FILED BY
22 THE ATTORNEY GENERAL.

23 (2) FOR PURPOSES OF THIS SUBSECTION, AN INTERNET SERVICE
24 PROVIDER, OR THE PERSON DESIGNATED BY THE INTERNET SERVICE
25 PROVIDER AS PROVIDED FOR IN SUBSECTION (H), SHALL BE NOTIFIED
26 IN WRITING BY THE ATTORNEY GENERAL WITHIN THREE BUSINESS DAYS
27 OF THE ATTORNEY GENERAL'S RECEIPT OF AN ORDER.

28 (3) THE NOTICE SHALL INCLUDE THE FOLLOWING INFORMATION:

29 (I) A COPY OF THE APPLICATION MADE PURSUANT TO
30 SUBSECTION (E).

1 (II) A COPY OF THE COURT ORDER ISSUED PURSUANT TO
2 SUBSECTION (F).

3 (III) NOTIFICATION THAT THE INTERNET SERVICE
4 PROVIDER MUST REMOVE OR DISABLE THE ITEMS RESIDING ON OR
5 ACCESSIBLE THROUGH ITS SERVICE WITHIN FIVE BUSINESS DAYS
6 OF THE DATE OF RECEIPT OF THE NOTIFICATION.

7 (IV) CONTACT INFORMATION FOR THE OFFICE OF ATTORNEY
8 GENERAL INCLUDING THE NAME, ADDRESS AND TELEPHONE NUMBER
9 OF ANY DEPUTY OR AGENT AUTHORIZED BY THE ATTORNEY GENERAL
10 TO SUBMIT NOTIFICATION PURSUANT TO THIS SUBSECTION.

11 (H) DESIGNATED AGENT.--AN INTERNET SERVICE PROVIDER MAY
12 DESIGNATE AN AGENT TO RECEIVE NOTIFICATION PURSUANT TO
13 SUBSECTION (G).

14 (I) REPORT TO GENERAL ASSEMBLY.--THE ATTORNEY GENERAL SHALL
15 MAKE AN ANNUAL REPORT TO THE CHAIRMAN AND MINORITY CHAIRMAN OF
16 THE JUDICIARY COMMITTEE OF THE SENATE AND TO THE CHAIRMAN AND
17 MINORITY CHAIRMAN OF THE JUDICIARY COMMITTEE OF THE HOUSE OF
18 REPRESENTATIVES PROVIDING INFORMATION ON THE NUMBER OF
19 NOTIFICATIONS ISSUED AND THE PROSECUTIONS MADE UNDER THIS
20 SECTION AND MAKING ANY RECOMMENDATIONS FOR AMENDATORY LANGUAGE.

21 (J) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
22 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
23 SUBSECTION:

24 "CHILD PORNOGRAPHY." AS DESCRIBED IN SECTION 6312 (RELATING
25 TO SEXUAL ABUSE OF CHILDREN).

26 "INTERNET." THE MYRIAD OF COMPUTER AND TELECOMMUNICATIONS
27 FACILITIES, INCLUDING EQUIPMENT AND OPERATING SOFTWARE, WHICH
28 COMPRISE THE INTERCONNECTED WORLD-WIDE NETWORK OF NETWORKS THAT
29 EMPLOY THE TRANSMISSION CONTROL PROTOCOL/INTERNET PROTOCOL, OR
30 ANY PREDECESSOR OR SUCCESSOR PROTOCOLS TO SUCH PROTOCOL, TO

1 COMMUNICATE INFORMATION OF ALL KINDS BY WIRE OR RADIO.

2 "INTERNET SERVICE PROVIDER." A PERSON WHO PROVIDES A SERVICE

3 THAT ENABLES USERS TO ACCESS CONTENT, INFORMATION, ELECTRONIC

4 MAIL OR OTHER SERVICES OFFERED OVER THE INTERNET.

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