

IN THE SUPERIOR COURT OF PENNSYLVANIA
SITTING AT PHILADELPHIA


COMMONWEALTH OF PENNSYLVANIA : EDA 2013

V. : NO. 96

MIKECHEL BROOKER :

PROOF OF SERVICE

BRADLEY S. BRIDGE, being duly sworn according to law does hereby state and aver that he is counsel for the defendant in the captioned matter and that he has personally served upon the District Attorney of Philadelphia a copy of the Brief For Appellant being filed on behalf of the defendant in the captioned matter.


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IN THE SUPERIOR COURT OF PENNSYLVANIA
EASTERN DISTRICT

96 EDA 2013

COMMONWEALTH OF PENNSYLVANIA

V.

MIKECHEL BROOKER, APPELLANT

BRIEF OF APPELLANT

On Appeal from the Judgment of Sentence in the Court of Common Pleas,
Philadelphia County, Docket No. 0006874 of 2009, Dated December 17, 2012.

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I. STATEMENT OF JURISDICTION

The Jurisdiction of this Court is invoked under and pursuant to the provisions of the Judicial Code, Act of July 9, 1976. P.L. No. 142, as amended, Art. B., Section 742, 42 Pa. C.S. § 742.

II. STATEMENT OF SCOPE AND STANDARD OF REVIEW

The scope of review in this matter is limited to examining whether the trial court's determination is supported by the evidence of record and whether it is free of legal error. *Commonwealth v Williams*, 437 A.2d 1144, 1145 (Pa. 1981). The standard of review on the sufficiency of the evidence of a first-degree murder conviction requires this Court to “ascertain whether the evidence introduced at trial and all reasonable inferences derived from that evidence, viewed in the light most favorable to the Commonwealth as verdict winner, is sufficient to establish beyond a reasonable doubt the elements of first-degree murder.” *Commonwealth v. Staton*, 38 A.3d 785, 789 (Pa. 2012). The standard of review on the challenge to the constitutionality of the sentencing statute is plenary. *See, e.g., In re A.C.*, 991 A.2d 884 (Pa. Super. 2010) (quoting *Commonwealth v. Leddington*, 908 A.2d 328, 331 (Pa. Super. 2006)).

III. STATEMENT OF THE QUESTIONS INVOLVED

1. Was the evidence sufficient to find Mikechel Brooker guilty of first degree murder where the Commonwealth failed to establish beyond a reasonable doubt that the defendant had the specific intent to kill?

2. Did the trial court err in denying the defense motion for mistrial where the improper question regarding prior bad acts by the prosecution had the unavoidable effect of prejudicing the jury against the Mikechel Brooker, and which could not be cured by court instruction or admonition to the jury?

3. Was the law under which Mikechel Brooker was sentenced unconstitutional because the original purpose of the bill for which he was sentenced dramatically changed during the legislative process in violation of Article III, Section 1 of the Pennsylvania Constitution?

4. Was the law under which Mikechel Brooker was sentenced unconstitutional because it contains more than one subject in violation of Article III, Section 3 of the Pennsylvania Constitution?

5. Was the law under which the Mikechel Brooker was sentenced unconstitutional because it violates the United States and Pennsylvania constitutional bans on cruel and unusual punishment?

6. Was the law under which the Mikechel Brooker was sentenced unconstitutional because it violates the ex post facto clauses of the United States and Pennsylvania Constitutions?

IV. STATEMENT OF THE CASE

This is an appeal from the judgment of sentence by Mikechel Brooker from the judgment of sentence in the Court of Common Pleas, Philadelphia County. He was convicted of first Degree Murder, Conspiracy, Violation of the Uniform Firearms Act and Possession of Instrument of Crime, CP-51-CR-0006874-2009.

Mikechel Brooker was found guilty of the above offenses at a jury trial before the Honorable Carolyn Engel Temin on July 16, 2012 and sentenced on December 17, 2012 to 35 years to life in prison. John P. Cotter, Esq. was appointed on December 24, 2012 and a timely appeal was filed on January 2, 2013. Timely 1925(b) Statements of Error were filed on January 22, 2013 and September 5, 2013 (attached hereto as Exhibit "A"). No trial court opinion was filed. See Letter to the Prothonotary of Natasha L. Lowe, Supervisor of the Post-Trial Unit dated May 8, 2013 (attached hereto as Exhibit "B").

At the time of the alleged incident Mikechel Brooker was a child of 15 years of age. The facts introduced at trial indicated that the victim, Barry Jacobs, was killed by gunshots in the head, the left breast and the shoulder on July 18, 2008 on the 8700 Block of Glenoch Place in Philadelphia Pennsylvania, and that five cartridge casings recovered from the scene of the incident came from one gun. Antoinette Gray gave a statement to police on July 20, 2008. At trial Ms. Gray

stated that she did not remember the shooting. Her July 20, 2008 statement was admitted into evidence in which she stated that Mikechel Brooker, Alonzo Alison, and Ferock Smith shot the victim (N.T. 7/10/12 at 110-158).

Another witness, Jeffrey Gould, identified Alonzo Alison as the shooter. Alison stood over the victim and shot him in the head (N.T. 7/11/12 at 138-180). Another witness at trial, Eleanore Sampson, also testified that she did not remember the events after the shooting, and her July 19, 2008 statement to police was admitted into evidence. In that statement she stated that she let Brooker, Alison and Smith into her apartment because they gave her drugs and she heard a conversation between the three individuals in which she heard Alonzo Smith say that he shot the victim, Barry Jacobs. She also saw that Brooker and Smith had handguns (N.T. 7/11/12 at 212-263). All three Commonwealth witnesses recanted their statements at trial. No physical evidence was ever introduced linking Mikechel Brooker to the homicide. The evidence was based on the inconsistent statements of three eyewitnesses whose contradictory testimony was recanted at trial. During direct testimony from Detective Thomas Gaul, the prosecutor elicited the following:

Q. Based on the information that you received-- and Mr. Phillips had asked about Barry Jacobs, Jr. and the information that he was actively dealing in the same area; correct?

A. Yes ma'am.

Q. Based on the information that you received from the witnesses-- were these three defendants also actively dealing in that area?

Defense counsel: Objection

Trial Court: Sustained. The jury will totally disregard that last question.

N.T. 7/12/12, 131-132.

The trial court gave an admonition to the jury to disregard the question of the prosecutor (N.T. 7/12/12, 132-133). Defense counsel requested a mistrial notwithstanding the admonition, which was denied by the trial court (N.T. 7/12/12, 131-35).

Mikechel Brooker, who was just three months past his 15th birthday at the time of the alleged occurrence, was sentenced under Act 204 of 2012, which required the trial court to sentence Mikechel Brooker to no less than 35 years to life. The trial court imposed the minimum sentence allowed under this new law. (N.T. 12/17/12, 61). Act 204 was passed by the Pennsylvania legislature and enacted into law after the date of the incident for which Mikechel Brooker was convicted. Prior to his sentencing, Mikechel Brooker filed a motion challenging the constitutionality of the Act; after oral argument, the trial court found the Act to

be constitutional (N.T. 12/17/12, 16). Various iterations of the statute are attached hereto as C1 to C6. The statute was enacted on October 25, 2012.

V. SUMMARY OF THE ARGUMENT

Mikechel Brooker's conviction and sentence are improper because the evidence was legally insufficient, there were errors committed by the trial court, and the statute under which Mikechel Brooker was sentenced was unconstitutional.

An examination of the trial evidence demonstrates that it was insufficient to establish murder of the first degree. The Commonwealth failed to establish beyond a reasonable doubt that Mikechel Brooker had the specific intent to kill the victim, which requires a finding that the killing was premeditated, willful and deliberate. The evidence showed that Mikechel Brooker did not share the specific intent to kill with his co-defendant, who stood over the victim and shot him in the head. The Commonwealth failed to establish the *mens rea* required to convict Mikechel Brooker of first degree murder, as the evidence presented required the fact finder to speculate as to Mikechel Brooker's specific intent.

Additionally, the trial court erred in denying the defense motion for a mistrial after excluding an improper question posed by the prosecutor. Although the court instructed the jury to disregard the prosecutor's impermissible question, that was insufficient to overcome the inference that the prosecutor created regarding Mikechel Brooker and the sale of illegal drugs. The prosecutor's

question was sufficiently prejudicial that the court should have granted the defense motion for a mistrial, as no instruction could cure the tainting of the jury it caused.

Lastly, the law under which Mikechel Brooker was sentenced was unconstitutional. Prior to June 25, 2012, Pennsylvania mandated that the trial court impose a life sentence without the possibility of parole irrespective of the age of the defendant. On June 25, 2012, the United States Supreme Court in *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455 (2012), struck down as unconstitutional the mandatory imposition of a life sentence upon those under the age of eighteen at the time the homicide crime was committed. While the Pennsylvania legislature attempted to “fix” the deficiency in Pennsylvania law following *Miller*, the effort that culminated in Act 204 of 2012 (the law under which Mikechel Brooker was sentenced) resulted in an unconstitutional statute, as an examination of that Act reveals. Act 204 is unconstitutional because the original purpose of the bill dramatically changed during the legislative process in violation of Article III, Section 1 of the Pennsylvania Constitution; because it violated the ‘single subject’ mandate of Article III, Section 3 of the Pennsylvania Constitution; because it violates the United States and Pennsylvania constitutional ban against cruel and unusual punishment, and because it violates the ex post facto clauses of the United States and Pennsylvania Constitutions.

VI. ARGUMENT

I. THE EVIDENCE IS INSUFFICIENT TO FIND MIKECHEL BROOKER GUILTY OF FIRST DEGREE MURDER BECAUSE THE COMMONWEALTH FAILED TO ESTABLISH BEYOND A REASONABLE DOUBT THAT HE HAD THE SPECIFIC INTENT TO KILL.

The evidence presented at trial showed that it was Mikechel Brooker's co-defendant who stood over the victim and shot him in the head. There was no evidence introduced at trial that showed that Mikechel Brooker shared the specific intent to kill evidenced by his co-defendant. Instead, the evidence introduced at trial required the fact finder to speculate as to Mikechel Brooker's specific intent. As the Commonwealth did not establish the requisite *mens rea* for the crime of first degree murder, the conviction must be vacated.

The standard of review with respect to the sufficiency of the evidence is

whether the evidence admitted at trial, and all reasonable inferences drawn from that evidence, when viewed in light most favorable to the Commonwealth as the verdict winner, was sufficient to enable the fact finder to conclude that the Commonwealth established all the elements of the offense beyond a reasonable doubt.

Commonwealth v. Ockenhouse, 756 A.2d 1130, 1135 (Pa. 2000). In other words, “[a]ny doubts regarding the defendant's guilt may be resolved by the fact-finder unless the evidence is so weak and inconclusive that as a matter of law no probability of fact may be drawn from the combined circumstances.”

Commonwealth v. Andrulowicz, 911 A.2d 162, 165 (Pa. 2006) (quoting *Commonwealth v. DiStefano*, 782 A.2d 574 (Pa. Super. 2001)). A guilty verdict “may not be based upon surmise or conjecture[;]” it cannot stand when the “evidence offered to support a verdict of guilt is so unreliable and/or contradictory” that it requires the fact finder to improperly render a verdict based on conjecture. *Commonwealth v. Karkaria*, 625 A.2d 1167, 1169 (Pa. 1993) (quoting *Commonwealth v. Smith*, 476 A.2d 1120, 1122 (Pa. 1983) (quoting *Commonwealth v. Farquharson*, 354 A.2d 545, 550 (Pa. 1976))).

Mikechel Brooker was found guilty of first degree murder, which is defined at 18 Pa.C.S.A. § 2502 as follows:

(a) Murder of the first degree.--A criminal homicide constitutes murder of the first degree when it is committed by an intentional killing.

...

(d) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

...

“Intentional killing.” Killing by means of poison, or by lying in wait, or by any other kind of willful, deliberate and premeditated killing.

The Commonwealth must prove that Mikechel Brooker took an action that is of such a nature that there can be no reasonable doubt that that it was his conscious

objective and purpose to cause death to the victim. *Commonwealth v. Stewart*, 336 A.2d 282, 285 (Pa. 1975). In the case at bar there was no physical evidence that connected Mikechel Brooker to the crime. There was no evidence that a gun that was used by Mikechel Brooker caused the fatal injuries or any injuries at all. The three Commonwealth witnesses all recanted their statements. The witnesses all stated that it was the co-defendant that fired the fatal shots at the victim, and not Mikechel Brooker. The Commonwealth established that Mikechel Brooker was merely present at the time of the homicide and mere presence and knowledge that a crime is committed is insufficient to convict that person of the crime. The evidence must show that Mikechel Brooker shared in the specific intent to kill the victim, and acted with the same premeditation, willfulness and deliberation as the co-defendant. Here, there is no evidence that Mikechel Brooker intentionally used a deadly weapon on a vital part of the victim's body, which is required to prove specific intent to kill; similarly, there is no evidence that he shared the intent to kill with his co-defendant Brooker. *Commonwealth v. O'Searo*, 352 A.2d 30, 37 (Pa. 1976); *Commonwealth v. Rega*, 929 A.2d 997, 1009 (Pa. 2007). The fact finder is left to speculate or surmise as to Mikechel Brooker's intent.

The Commonwealth in this case did not prove the requisite *mens rea*. The Commonwealth did not prove that Mikechel Brooker specifically intended to cause

death or that Mikechel Brooker acted willfully and with premeditation. The verdict of guilty of first degree murder, in this case, is based on conjecture and surmise. The fact finder, and this Court, are required to look at the totality of the circumstances in rendering a judgment. *Commonwealth v. Davis*, 479 A.2d 1077, 1079 (1984). Here, there is insufficient evidence to show that Mikechel Brooker had fully formed an intent to kill. Therefore, this Court should vacate the murder conviction.

II. THE TRIAL COURT ERRED IN DENYING THE DEFENSE MOTION FOR MISTRIAL DUE TO PROSECUTORIAL MISCONDUCT.

At Mikechel Brooker's trial, the prosecutor improperly asked a detective, serving as a government witness, a question from which the jury could—and likely did—infer that Mikechel Brooker was actively involved in the sale of illegal drugs in competition with the victim, in the area in which the murder occurred and that was the motive for this killing. Specifically, the prosecutor asked:

Q. Based on the information that you received and Mr. Phillips had asked about Barry Jacobs, Jr. and the information that he was actively dealing in the same area; correct?

A. Yes ma'am.

Q. Based on the information you received from the witnesses—were these three defendants also actively dealing in the same area?

Defense counsel: Objection

Trial Court: Sustained. The jury will totally disregard that last question....

N.T. 7/12/12, 131-132.

The prosecutor's question called for prejudicial hearsay and opinion evidence. This question had the unavoidable effect of prejudicing the jury against Mikechel Brooker; it created a fixed bias and hostility toward him, which prevented the jury from being able to weigh the evidence objectively and render a true verdict. The curative instruction of the trial court did not overcome this prejudice created by the prosecutor's misconduct. Once the prosecutor asked the impermissible question, the bias could not be removed from the jurors' minds. Therefore, the judge's charge or instruction was insufficient to correct the damage that had been done.

Accordingly, defense counsel motioned for a mistrial. Pa. R. CIM. P. 605(8) states:

(B) when an event prejudicial to the defendant occurs during trial only the defendant may move for mistrial; the motion shall be made when the event is disclosed. Otherwise the trial judge may declare a mistrial only for reasons of manifest necessity.

The trial court impermissibly denied defense counsel's mistrial motion. The prosecutor is allowed to make vigorous examination so long as the examination

does not violate the Rules of Evidence or deprive a defendant of his right to a fair trial. Here, however, as the judge specifically stated, the prosecutor's questioning "was totally out of line" (N.T. 7/12/12, 134). Prosecutorial misconduct occurs when the government's conduct is so outrageous and damaging that it deprives a defendant a fair trial. *Commonwealth v. Washington*, 700 A.2d 400, 407 (Pa. 1997) (explaining that "the inquiry is centered on whether the defendant was deprived of a fair trial, not deprived of a perfect one.") (internal citations omitted).

The prosecutor's question created an inference that Mikechel Brooker had a motive to kill the victim because the victim was a competitor in the illegal drug business. This was the only evidence of any motive to kill introduced by the Commonwealth at any point during the trial with respect to Mikechel Brooker and, considering the paucity of evidence establishing any specific intent to kill (see Argument I, *supra*), this request for unsupported speculation that appellant was involved in a criminal conspiracy in competition with the deceased might explain the instant erroneous jury verdict. It prevented the jury from being able to objectively weigh the evidence and impeded their ability to render a true verdict. *See, e.g., Commonwealth v. Chester*, 587 A.2d 1367, 1378 (Pa. 1991). This Court has noted that, "the nature of the reference and whether the remark was intentionally elicited by the Commonwealth are considerations relevant to the

determination of whether a mistrial is required.” *Commonwealth v. Gilliard*, 300 Pa. Super. 469, 475, 446 A.2d 951, 954 (1982). *See also Commonwealth v. Boone*, 862 A.2d 639, 646 (Pa. Super. Ct. 2004). Here it was clear to all that, after characterizing the deceased as a dealer “in the same area,” the prosecutor was eliciting confirmation from the detective that he had received information from “the witnesses” about “these three defendants also actively dealing in the same area.” The suggestion that this shooting was part of a turf war over drugs was the motive the Commonwealth was missing. The powerful leading question, therefore, was unavoidably prejudicial and deprived Mikechel Brooker of his constitutionally protected right to a fair trial. The trial court erred in not declaring a mistrial and this Court must reverse Mikechel Brooker’s conviction and order a new trial.

III. ACT 204 OF 2012 IS UNCONSTITUTIONAL BECAUSE THE ORIGINAL PURPOSE OF THE BILL DRAMATICALLY CHANGED DURING THE LEGISLATIVE PROCESS IN VIOLATION OF ARTICLE III, SECTION 1 OF THE PENNSYLVANIA CONSTITUTION.

Senate Bill 850, which became Act 204 of 2012, violated Article III, Section 1 of the Pennsylvania Constitution because the bill's original purpose changed dramatically during the legislative process. Initially introduced in 2011, the original purpose of S.B. 850 was to establish the new juvenile crimes of

cyberbullying and sexting, provide for expungement of juvenile records and adopt new provisions and procedures regarding the right to counsel for juveniles and the handling of summary offenses. S.B. 850, P.N. 868 (March 16, 2011) (attached hereto as Exhibit "C1"). However, its purpose radically shifted in September of 2012, when the legislature gutted the cyberbullying/sexting and right to counsel provisions and added completely new sentencing penalties for juveniles convicted of first or second degree murder in adult court, proposed amendments to the parole statute and added new provisions regarding the Office of the Victim Advocate.

Article III, Section 1 of the Pennsylvania Constitution provides that, during the legislative process, a bill shall not be altered or amended to change its original purpose:

No law shall be passed except by bill, and no bill shall be so altered or amended, on its passage through either House, as to change its original purpose.

PA. CONST., Art III, § 1.

To determine whether legislation violates Article III, Section 1, the Court must conduct a two-part inquiry. *Marcavage v. Rendell*, 936 A.2d 188, 192 (Commw. Ct. 2007), *aff'd per curiam*, 591 Pa. 371 (2008). Relying upon *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 583 Pa. 275, 877 A.2d 383 (2005) (hereinafter "*P.A.G.E.*"), *Marcavage* held that first

the court “must consider the legislation's original purpose and compare it to the final purpose to determine whether there has been an alteration or amendment that changed the original purpose.” *Marcavage*, 936 A.2d at 192. Second, the Court “must consider whether the title and contents of the legislation are deceptive in their final form.” *Id.* The legislation in question “must survive both inquiries to pass constitutional muster.” *Id.*

The first “comparison” prong of the inquiry requires that the challenged legislation must be viewed in reasonably broad terms. *P.A.G.E.*, 583 Pa. at 318. The Supreme Court imposed this limiting principle because of the expectation that legislation will transform during the enactment process, and because of the Court's own wariness in substituting its judgment for that of the legislature. *Id.* In determining a bill's reasonably broad original purpose, the reviewing court should “hypothesize, based on the text of the initial bill . . .” *Id.* at 409.

At issue in *Marcavage* was whether a bill that was initially aimed at criminalizing crop destruction could permissibly become a bill dealing with the crime of ethnic intimidation. In concluding that this was impermissible, the *Marcavage* Court held that it was not sufficient that in each instance the legislature was acting to amend the Crimes Code as a “unifying justification for amendments to bills under the Crimes Code that contain no nexus to the conduct to which the

original legislation was directed.” *Marcavage*, 936 A.2d at 193. To permit such reasoning would “stretch the Supreme Court's meaning of ‘reasonably broad terms.’” *Id.* In its defense of the bill, the Commonwealth argued that all amendments contained in the final version of H.B. 1493 “satisfy the reasonably broad original purpose of amending the Crimes Code.” *Id.* The *Marcavage* Court rejected the Commonwealth's position, finding that although the original and final versions of the bill both fell under the broad heading of crime, each version regulated “vastly different activities.” *Id.*

Here, S. B. 850 fails to satisfy the first requirement of the *P.A.G.E.* inquiry. Even when viewed in reasonably broad terms, the original purpose of S.B. 850 was to amend the Crimes Code to criminalize certain behavior by juveniles only as well as to better provide for the well being of juvenile offenders. *See* S.B. 850, P.N. 868 (attached hereto as Exhibit C1). Specifically, the original bill's primary purposes were to criminalize cyberbullying by minors and protect juvenile offenders from inappropriate placement and sentencing.

The final version of S.B. 850 abandoned the bill's initial purpose and spirit. With the cyberbullying, sexting and right to counsel provisions deleted entirely, *see* S.B. 850, P.N. 2475 (October 15, 2012) (attached hereto as Exhibit “C6”), the bill's final version instead aimed at amending the Crimes Code to create an entirely

new sentencing scheme for juveniles convicted as adults of first or second degree murder following *Miller v. Alabama*, amending the parole statute to extend the time between reviews for juveniles coming before the parole board, and amending provisions regarding the Office of the Victim Advocate. See House Fiscal Notes to S.B. 850, P.N. 2475 (attached hereto as Exhibit "C7"). The original bill dealt only with juveniles in juvenile court; the final bill deleted these provisions and focused on adult sentencing and parole procedures for juveniles convicted in adult court of first or second degree murder.

Additionally, S.B. 850 began as a cyberbullying initiative. See Senate Legislative Journal, October 19, 2011 at 1063-1065, where Senator Greenleaf explains the bill's attempt to balance the need to prosecute juveniles who use the Internet to victimize other juveniles with the need to defer to parents to intervene to stop children from using the Internet for immature activities, such as sexting.

While both versions of the bill had something to do with crime and juveniles, the link is too tenuous to meet the test in *Marcavage*. Like *Marcavage*, both versions of the bill sought to amend the Crimes Code, but there is no logical nexus between cyberbullying or sexting and the establishment of a new sentencing scheme for juveniles convicted in adult court of murder.

As noted above, S.B. 850 in its final form did not even contain a single provision concerning cyberbullying. The Senate had unanimously passed S.B. 850, P.N. 1691 (attached hereto as C4), 50-0 on October 19, 2011 – a version that contained no provisions dealing with sentencing for homicide crimes. These amendments were added nearly a year later by the House. *See* S.B. 850, P.N. 2418 (September 25, 2012) (attached hereto as “Exhibit C5”). After a second round of amendments, the House passed S.B. 850 on October 16, 2012 with all of cyberbullying and right to counsel provisions deleted. *See* S.B. 850, P.N. 2475 (attached hereto as Exhibit “C6”). The original version of S.B. 850 was gutted and redrafted to establish a new sentencing scheme for juveniles convicted of homicide that sought to comply with *Miller* – *a case that had not even been decided when the Senate passed its version of S.B. 850*. Act 204 violated Article III, section 1 of the Pennsylvania Constitution.

IV. ACT 204 OF 2012 IS UNCONSTITUTIONAL BECAUSE IT CONTAINS MORE THAN ONE SUBJECT IN VIOLATION OF ARTICLE III, SECTION 3 OF THE PENNSYLVANIA CONSTITUTION.

As discussed above, Act 204 of 2012 made extraordinary changes to Pennsylvania's sentencing statutes in a single omnibus bill that had no connection to the bill's original, narrow focused purpose. Rather than starting fresh with a new

bill, lawmakers intentionally crafted this sentencing statute as an amendment to an already existing bill, allowing them to skirt the legislative process and thereby ensure that it would bypass the Senate Judiciary Committee. Moreover, while Act 204 as finally enacted includes provisions related to practices in the juvenile justice system, it also includes entirely new sentencing provisions for certain homicide crimes committed by juveniles who are not prosecuted in the juvenile system but who are prosecuted and convicted in the adult criminal justice system. It therefore addresses two entirely distinct subjects.

Including such diverse and distinct topics in one piece of legislation violates both the text and spirit of Article III, Section 3 of the Pennsylvania Constitution which, as the Pennsylvania Supreme Court has recently explained, was adopted to effectuate “the electorate’s overall goal of curtailing legislative practices that it viewed with suspicion.” *Commonwealth of Pennsylvania v. Neiman*, No. 74 MAP 2011 (J-83-2012), Slip Opinion at 13 (Dec.16, 2013) (quoting *City of Philadelphia v. Commonwealth*, 838 A.2d 566, 586 (Pa., 2003)). Specifically,

there were two legislative practices the framers and the electorate sought to eliminate with their adoption of Article III Section 3. The first involved the insertion into a single bill of a number of distinct and independent subjects of legislation in order to hide the real purpose of the bill...(citation omitted)...The second was the practice of ‘logrolling’ which involves ‘embracing in one bill several distinct matters, none of which could singly obtain the assent of the legislature, and procuring the

passage by combining the minorities who favored the individual matters to form a majority that would adopt them all.”

Id. at p. 13 Slip Op. *See also Pa. State Ass 'n of Jury Comm'rs v. Commonwealth*, 53 A. 2d 109, 113 (Pa. Cmwlth. Ct. 2012) (Our Supreme Court has explained that the purpose of the single-subject requirement is to curb “[l]ast-minute consideration of important measures, logrolling, mixing substantive provisions in omnibus bills, low visibility and hasty enactment of important, and sometimes corrupt, legislation, and the attachment of unrelated provisions to bills in the amendment process.”) (quoting *City of Philadelphia v. Commonwealth*, 838 A.2d at 589)).

Simply put, Section 3 of Article III of the Pennsylvania Constitution prohibits the passage of a bill that pertains to more than one subject. *See, e.g.* *Pennsylvanians Against Gambling Expansion Fund, Inc. v. Commonwealth*, 871 A.2d 383, 394 (Pa. 2005) (“*P.A.G.E.*”). Section 3 is explicit: “No bill shall be passed containing more than one subject which shall be clearly expressed in its title, except a general appropriation bill or a bill codifying or compiling the law or a part thereof.” PA.CONST. Art. III, Section 3. Commonly referred to as the “single subject” requirement, this provision expressly limits the mechanisms through which the legislature can pass laws as a means to safeguard the transparency of the deliberative process. *See, e.g. City of Philadelphia*, 838 A.2d at

586. The provision aims to provide for “a more *open and deliberative state legislative process*, one that addresses the merits of legislative proposals in an orderly and rational manner.” *Id.* (emphasis in original).

Additionally – and of particular relevance here – “[t]he requirement that each piece of legislation pertain to only one subject creates a greater likelihood that it will receive a more considered and thorough review by legislators than if it is aggregated with other pieces of legislation pertaining to different topics into a single ‘omnibus bill,’ thereby creating a ‘jumbling together of incongruous subjects.’” *Neiman*, Slip. Op. at 13 (quoting *Commonwealth v. Barnett*, 48 A. 976, 977 (Pa. 1901)). As noted above, the original version of S.B. 850, P. N. 868 (March 16, 2011)(attached hereto as Exhibit “C1), was a bill to create the new juvenile offenses of cyberbullying and sexting as well as to amend Title 42 to, *inter alia*, address the prosecution of summary offenses, right to counsel and a presumption of indigency for juvenile defendants. Throughout 2011, relatively minor changes to these key substantive provisions were made (See Exhibits “C2” [P.N. 1043], “C3” [P.N. 1582] and “C4” [P.N. 1691]). For the first time on September 25, 2012, the bill was amended to include entirely new sentencing provisions for juveniles convicted of homicide as well as amendments to the parole statute (Exhibit “C5,” P. N. 2418); on October 15, 2012, all of the cyberbullying

provisions were deleted, the right to counsel provisions were deleted, and new provisions regarding victims were added to the new sentencing and parole revisions (Exhibit "C6," P. N. 2475). The bill was voted on this same day and enacted into law. Plainly, the enactment of Act 204's sentencing provisions with such haste runs afoul of the Supreme Court's further admonition that "the single subject requirement proscribe(s) the inclusion of provisions into legislation without allowing for 'fair notice to the public and to legislators of the existence of the same.'... (citation omitted)... It thus provides a vital assurance to residents of this Commonwealth that they will be able to make their views and wishes regarding a particular piece of legislation known to their duly elected representatives *before* its final passage, and it concomitantly ensures that those representatives will be adequately apprised of the full scope and impact of a legislative measure before being required to cast a vote on it." *Neiman*, Slip. Op. at 13, 14. (emphasis in original).

Further, while amendments to legislation are common and often permissible under Section 3, they also must be rationally related to the subject of the underlying bill, "assist in carrying out a bill's main objective or [be] otherwise 'germane' to the bill's subject." *City of Philadelphia v. Commonwealth*, 838 A.2d

at 586 (citing *L. J. W. Realty Corp. v. Philadelphia*, 134 A.2d 878, 883 n.8 (1957)).

As the *Neiman* court explained,

In determining ‘germaneness,’ our Court has acknowledged that some degree of deference to the General Assembly’s prerogative to amend legislation is required, due to the normal fluidity inherent in the legislative process, and, thus, we have deemed it is appropriate for a reviewing court to hypothesize a ‘reasonably broad topic’ which would unify the various provisions of a final bill as enacted...(citation omitted)...However, our Court has also stressed the ‘reasonable’ aspect of any proposed hypothetical unifying topic. In recognition of the fact that Article III, Section 3 would be rendered nugatory if such hypothetical topics were too expansive.... Consequently, in determining whether a proposed unifying subject is sufficiently narrow so as to pass muster under Article III, Section 3, our Court must examine the various subjects contained within a legislative enactment and determine whether they have a nexus to a common purpose. Stated another way, our task is to ascertain whether the various components of the enactment are part of ‘a unifying scheme to accomplish a single purpose.’”

Id. at 14.

Act 204 addressed a particular and related set of issues when it was first introduced – the establishment and grading of the crimes of cyberbullying and sexting for juveniles, provisions and procedures pertaining to the right to counsel for juveniles, expungement of juvenile records and minor revisions to the Juvenile Act’s purpose clauses. However, when ultimately passed over eighteen months later, the proposed legislation addressed a wholly different set of concerns and proposed amendments to the adult sentencing code, parole statute and provisions regarding the Office of the Victim Advocate, while simultaneously dropping all of

the cyberbullying/sexting and right to counsel amendments. While the bill sought to appropriately bring Pennsylvania into compliance with *Miller v. Alabama*, it did so in a manner and with such haste that it ran afoul of the core principles of Article III, Section 3 outlined above.

An examination of the “Short Title” of Act 204 underscores the diversity of subjects it addresses – and the folly of ascribing a single, unifying purpose to the Act:

An Act amending Titles 18 (Crimes and Offenses), 42 (Judiciary and Judicial Procedure) and 61 (Prisons and Parole) of the Pennsylvania Consolidated Statutes, in authorized disposition of offenders, further providing for sentence for murder, murder of unborn child and murder of law enforcement officer and providing for sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer; in criminal history record information, further providing for expungement and for juvenile records; and providing for crime victims; in juvenile matters, further providing for short title and purposes of chapter, for definitions, far scope, for inspection of court files and records and for conduct of hearings; in sentencing, providing for sentencing for certain murders of infant persons and for sentences for second and subsequent offenses in Pennsylvania Board of Probation and Parole, further providing for parole procedure.

This “short” description demonstrates that the legislation seeks to amend multiple and vastly different aspects of the criminal and juvenile justice systems. No ‘reasonable’ common purpose can be assigned; no proper amount of time was afforded for true notice and deliberation. These factors render Act 204 inconsistent

with the Pennsylvania Constitution and the case law that has interpreted it. *See, e.g., Neiman*, Slip Op. at 13-16; *Pennsylvania State Ass'n of Jury Comm'rs v. Commonwealth*, 53 A.3d 109, 114 (Pa. Cmwlth. 2012) (observing that the Supreme Court had invalidated a statute on the basis of its “voluminous and varying provisions,” which “implicate[d] many of the concerns underlying the adoption of [the] constitutional mandate” of Section 3).

Senator Mary Jo White aptly framed these concerns in her remarks on the floor:

I am here for probably what will be one of my last votes of my career in the Senate. I am here to voice my extreme displeasure with Senate Bill No. 850, not only with the content of the bill but the manner in which this was presented to this body. Basically what happened was in the House, a March 2011 cyber bullying bill was taken, completely gutted, and reconstituted. It now contains a great many things, including some good, some bad. Expungement of juvenile records is a good thing . . . [SB850 is] taking certain summary offenses out of juvenile court and putting them in the minor judiciary. Is that a good place? I do not know. And the reason I do not know is because this bill never came through the Committee on Judiciary. I am vice chair of the Committee on Judiciary and I saw this bill for the first time today. [W]hat is particularly egregious is that the House took advantage of this hodgepodge to take up a serious matter, and that is the U.S. Supreme Court's determination that minors cannot be sentenced to life in prison without parole. . . . But the way the bill has come over, they have in fact created mandatory minimum for minors convicted of very serious crimes based on the crime and the age of the minor One of the reasons I think this bill never came through the Senate Committee on Judiciary is that in recent Sessions that committee has expressed an extreme displeasure with mandatory minimum sentences Judges need their discretion to sentence . . . I am very offended by turning our policymaking over to

stakeholders . . . When we permit this kind of process to bypass our own standing committees in the Senate, we make this body irrelevant. And I think that is a very sad thing to happen.

Senate Legislative Journal, October 17, 2012, at 1001 (attached hereto as Exhibit “D”).

V. ACT 204 OF 2012 IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE EIGHTH AMENDMENT’S BAN ON CRUEL AND UNUSUAL PUNISHMENTS AS INTERPRETED AND APPLIED BY *MILLER v. ALABAMA* AND *GRAHAM v. FLORIDA*.

Recent United States Supreme Court precedent has established that children convicted of crimes – even serious and violent offenses – are categorically less culpable than adults and less deserving of society’s harshest punishments. In *Miller v. Alabama*, 567 U.S. ___, 132 S. Ct. 2455, 2469 (2012), the United States Supreme Court held “that the Eighth Amendment forbids a sentencing scheme that mandates life in prison without the possibility of parole for juvenile offenders.” Acknowledging the unique status of juveniles and reaffirming its recent holdings in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 560 U.S. ___, 130 S. Ct. 2011 (2010), and *J.D.B. v. North Carolina*, 564 U.S. ___, 131 S. Ct. 2394 (2011), the Court in *Miller* held that “children are constitutionally different from adults for purposes of sentencing,” *id.* at 2464, and therefore the “imposition of a

State's most severe penalties on juvenile offenders cannot proceed as though they were not children." *Id.* at 2466.

Justice Kagan, writing for the majority in *Miller*, was explicit in articulating the Court's rationale for its holding: the mandatory imposition of sentences of life without parole "prevents those meting out punishment from considering a juvenile's 'lessened culpability' and greater 'capacity for change,' *Graham v. Florida*, 130 S. Ct. 2011, 2026–27, 2029–30 (2010), and runs afoul of our cases' requirement of individualized sentencing for defendants facing the most serious penalties." *Miller* at 2460. The Court grounded its holding "not only on common sense . . . but on science and social science as well," *id.* at 2464, which demonstrate fundamental differences between juveniles and adults. The Court noted "that those [scientific] findings – of transient rashness, proclivity for risk, and inability to assess consequences – both lessened a child's 'moral culpability' and enhanced the prospect that, as the years go by and neurological development occurs, his 'deficiencies will be reformed.'" *Id.* at 2464–65 (quoting *Graham*, 130 S. Ct., at 2027, *Roper*, 543 U.S., at 570)). Importantly, the Court specifically found that none of what *Graham* "said about children – about their distinctive (and transitory) mental traits and environmental vulnerabilities – is crime-specific." *Id.* at 2465. Accordingly, the Court emphasized "that the distinctive attributes of youth

diminish the penological justifications for imposing the harshest sentences on juvenile offenders, even when they commit terrible crimes.” *Id.*

Relying on *Graham*, *Roper*, and other decisions on individualized sentencing, the Court found “that in imposing a State’s harshest penalties, a sentencer misses too much if he treats every child as an adult.” *Id.* at 2468. Mandatory life without parole sentences are unconstitutional as applied to juveniles because “[b]y making youth (and all that accompanies it) irrelevant to imposition of the harshest prison sentence, such a scheme poses too great a risk of disproportionate punishment.” *Id.* at 2469. Moreover, in the non-homicide context, *Graham* requires that states must provide children “some meaningful opportunity to obtain release based on demonstrated maturity and rehabilitation.” 130 S. Ct. at 2030.

Act 204, while eliminating *mandatory life without parole* sentences for children convicted of murder, still runs afoul of *Miller*’s requirement of individualized sentencing and *Graham*’s requirement that children have a meaningful opportunity for release. Under Act 204, children 15 and older who are convicted of first degree murder face a mandatory *minimum* sentence of 35 years to life. The United States Sentencing Commission defines a life sentence as 470 months (or just over 39 years), based on average life expectancy of those serving

prison sentences. *See, e.g., United States v. Nelson*, 491 F.3d 344, 349-50 (7th Cir., 2007); U.S. Sentencing Commission Preliminary Quarterly Data Report (Through June 30, 2012) at A-8, *available at* http://www.ussc.gov/Data_and_Statistics/Federal_Sentencing_Statistics/Quarterly_Sentencing_Updates/USSC_2012_3rd_Quarter_Report.pdf. Act 204's mandatory minimum sentence of 35 years is virtually equivalent to a life without parole sentence and therefore neither provides a meaningful alternative to life without parole nor complies with the requirements of *Miller* that sentences be tailored to a child's individual level of culpability. Indeed, thirty five years is the floor – it is the least number of years a juvenile must serve before parole eligibility; judges remain free under the statute to impose a higher minimum sentence. And by establishing a mandatory minimum, the statute unconstitutionally prevents the sentencer from fashioning an appropriate sentence based on a child's individual level of culpability and “disregards the possibility of rehabilitation even when the circumstances most suggest it.” *See Miller, id.* at 2468. Moreover, because Act 204 precludes juveniles sentenced under this new scheme from petitioning the parole board for release sooner than five years after they have been denied parole – each time – the sentence will easily become a life sentence for most juveniles. Further, because children age 15 and older face their *earliest* possible parole eligibility just four years before their average prison life

expectancy, Act 204 does not provide a “*meaningful* opportunity to obtain release based on demonstrated maturity and rehabilitation” as *Graham* requires. *Graham*, *Id.* at 2030 (emphasis added).

Finally, Act 204 disregards *Miller*’s finding that “appropriate occasions for sentencing juveniles to this harshest possible penalty [life without parole] will be uncommon.” *Miller*, 132 S. Ct. at 2469; *Miller* further notes that the “juvenile offender whose crime reflects irreparable corruption” will be “rare.” *Id.* *Miller* creates a presumption *against* imposing juvenile life without parole sentences. Act 204 ignores this presumption and provides no safeguards or guidelines to ensure that imposition of juvenile life without parole sentences will be “uncommon” or “rare.”

VI. ACT 204 OF 2012 IS UNCONSTITUTIONAL BECAUSE IT VIOLATES THE EX POST FACTO CLAUSES OF THE UNITED STATES AND PENNSYLVANIA CONSTITUTIONS.

Both the United States and Pennsylvania Constitutions prohibit *ex post facto* laws. *See* U.S. CONST. Art. I, Section 10; PA.CONST. Art. 9, Section 17. The Ex Post Facto Clauses prohibit subsequent laws from inflicting greater punishments than the punishment available for the crime at the time it was committed. *See*

Commonwealth v. Story, 497 Pa. 273, 300 (1981). At the time of Mikechel Brooker's offenses and subsequent convictions on July 17, 2012, no constitutional statutory sentence existed for him. *See Miller*, 132 S. Ct. 2455 (issued on June 25, 2012 and striking mandatory life without parole sentences for juveniles); *see also Commonwealth v. Batts*, 19 M.A.P. 2009 Supplemental Brief for Pennsylvania District Attorneys Association as Amicus Curiae for Appellee at 6,(conceding that resentencing for juveniles convicted of first degree murder was required pursuant to *Miller*). Because no other constitutional sentencing statute had been enacted, the only constitutional sentence available to Appellants at the time of their crimes and convictions was the sentence for the most serious lesser included offense, which in this case was the sentence for third degree murder. *See Commonwealth v. Batts*, 79 M.A.P. 2009 Supplemental Brief for Appellant at 7-12; *Commonwealth v. Batts*, 79 M.A.P. 2009 Supplemental Reply Brief for Appellant at 2-10; *Commonwealth v. Cunningham*, 38 E.A.P. 2012 Brief for Appellant at 25-36. Since Appellants here faced a maximum constitutional sentence of 40 years imprisonment for third degree murder at the time of their conviction, Act 204's imposition of a minimum 35 years to life or life without parole constitutes an unconstitutional *ex post facto* law.

The Pennsylvania Supreme Court faced an analogous situation in *Commonwealth v. Story*, 497 Pa. 273, 440 A.2d 488 (1981). Story had been sentenced to death “pursuant to a death penalty statute that was declared unconstitutional while his appeal was pending.” *Id.* at 274. By the time he faced retrial, the state legislature had passed a new death penalty statute to replace the unconstitutional sentencing scheme. *Id.* The Court, however, held that Story could not be sentenced under the new sentencing statute; instead he had to be sentenced pursuant to the statute available at the time of his conviction and therefore he received a life sentence - the most serious sentence available when the death penalty provision had been declared unconstitutional. *Id.* at 280-81. Similarly here, Mikechel Brooker must be sentenced pursuant to the only lawful sentencing scheme in place at the time of his offense and conviction—third degree murder. His sentence must be vacated and the matter remanded for a new sentencing hearing.¹

¹ Had Mikechel Brooker been sentenced before Act 204 had passed, the only sentence available would have been a maximum 40-year sentence for third degree murder. He should not be penalized because his sentencing occurred after Act 204 had been signed into law.

VII. CONCLUSION

For the reasons stated above, Mikechel Brooker requests that this Honorable Court vacate the judgment of sentence and remand for a new trial. Alternatively, this Court should remand for a new sentencing hearing at which he will be sentenced for third degree murder.

Respectfully submitted,

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EXHIBIT "A"

FILED

JAN 22 2013

Criminal Appeals Unit
First Judicial District of PA

JOHN P. COTTER, ESQ
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(215)336-0343

ATTORNEY FOR DEFENDANT

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CRIMINAL TRIAL DIVISION
CP-51-CR-0006875-2009

VS

MIKECHEL BROOKER

DEFENDANT'S 1925(b) STATEMENT

1. The evidence was insufficient to find that the defendant was the perpetrator of the crimes of first degree murder, Uniform Firearms Act Violation (VUFA) and Possession of Instrument of Crime (PIC).
2. The evidence was insufficient to show that the defendant had the requisite *mens rea* or the crime of first degree murder. The Commonwealth did not show beyond a reasonable doubt that the defendant had the specific intent to kill.
3. The evidence was insufficient to show that the defendant had the requisite *mens rea* for the crimes of VUFA and PIC.
4. The trial court erred in denying the defendant's motion for extraordinary relief.
5. The sentence imposed was unreasonable. The trial court did not take into consideration the defendant's age, family history, and rehabilitative needs. The trial court in imposing the sentence did not take into consideration all the factors required by 42 Pa.CSA sec.9721(b).
6. The defendant reserves the right to modify, supplement, and or amend this statement when defense counsel receives and reviews all the notes of testimony.
7. The defendant reserves the right to modify, amend, or supplement this statement.

Respectfully Submitted,



John P. Cotter, Esq.

Attorney for Defendant/Appellant

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FILED
SEP 05 2013
Criminal Appeals Unit
First Judicial District of PA

COMMONWEALTH OF PENNSYLVANIA : COURT OF COMMON PLEAS
PHILADELPHIA COUNTY
CRIMINAL TRIAL DIVISION
CP-51-CR-0006875-2009

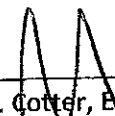
VS

MIKECHEL BROOKER

DEFENDANT'S SUPPLEMENTAL 1925(b) STATEMENT

1. Defendant incorporates all allegations made in defendant's 1925(b) Statement filed on 1-22-13 as though expressly set forth herein.
2. The trial court erred in not dismissing the charges with prejudice because the defendant was denied a speedy trial pursuant to Rule 600.
3. The trial court erred in not granting a mistrial when the prosecutor engaged in misconduct, wherein she injected the opinion to the jury that the defendant was actively dealing in drugs when there was no evidence to establish this.
4. The trial court erred in not sustaining the objection of counsel to the argument of the prosecutor that the defendant and co-defendants had guns in their homes when the record did not establish this.
5. The trial court erred in allowing evidence of other crimes or bad acts including drug dealing and firearms violations.
6. The trial court instruction on first degree murder was deficient and erroneous because it did not define the term premeditation which is required for specific intent for first degree murder.
7. The sentence imposed of 35 years to life on the defendant who was a juvenile violates the 8th amendment prohibition on cruel and unusual punishment.
8. The defendant reserves the right to modify, amend, and/or supplement this statement.

Respectfully Submitted,



John P. Cotter, Esq.

Attorney for Defendant/Appellant

EXHIBIT "B"



COURT OF COMMON PLEAS
TRIAL DIVISION/APPEAL UNIT RM 206
JUANITA KIDD STOUT CENTER FOR CRIMINAL JUSTICE
1301 FILBERT STREET
PHILADELPHIA, PA 19107
683-7522, 7523

PAMELA PRYOR DEMBE
President Judge

JOHN W. HERRON
Administrative Judge
Trial Division

SHEILA WOODS-SKIPPER
Supervising Judge
Criminal Division

NATASHA L. LOWE, ESQUIRE
Supervisor
Post Trial Unit

May 8, 2013

Karen Reid Bramblett, Prothonotary
Superior Court of Pennsylvania
530 Walnut Street, Suite 315
Philadelphia, PA 19106

CP-51-CR-0006874-2009 Comm. v. Booker, Mikechel
*No Opinion Letter: Judge no longer sitting in Phila. County



Re: Mikechel Booker

CP-51-CR-0006874-2009

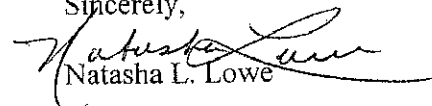
Superior Court No. 96 EDA 2013

Dear Ms. Bramblett,

On January 2, 2013, John P. Cotter, Esq., filed a Notice of Appeal on the above captioned matter. This is an appeal from the Judgment of Sentence by the Hon. Carolyn E. Temin on December 17, 2012. Since Judge Temin is no longer sitting as a Judge in Philadelphia County this file is being forwarded to the Superior Court without an opinion.

Should you require further information, please do not hesitate to contact me.

Sincerely,


Natasha L. Lowe

cc: Hugh J. Burns, Jr., Chief, Appeals Unit, Philadelphia District Attorney's Office
John P. Cotter, Esq., 2541 S. Broad Street, Philadelphia, PA 19148

EXHIBIT "C-1"

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 850 Session of
2011

INTRODUCED BY GREENLEAF, BAKER, TARTAGLIONE, FONTANA, COSTA,
YUDICHAK, BOSCOLA, ALLOWAY AND HUGHES, MARCH 16, 2011

REFERRED TO JUDICIARY, MARCH 16, 2011

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in minors, providing for the offense of
4 cyberbullying and sexting by minors; in criminal history
5 record information, further providing for expungement and for
6 juvenile records; and, in relation to summary offenses,
7 further providing for short title and purpose of chapter, for
8 the scope of the Juvenile Act, for inspection of court files
9 and records, for conduct of hearings and for right to
10 counsel.

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

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

15 § 6321. Cyberbullying and sexting by minors.

16 (a) Offense defined.--A minor commits a misdemeanor of the
17 second degree if:

18 (1) the minor knowingly transmits or disseminates any
19 electronic message, including a visual depiction of himself
20 or any other person in a state of nudity, to another minor
21 with the knowledge or intent that the message would coerce,
22 intimidate, torment, harass or otherwise cause emotional

1 distress to the other minor; or

2 (2) the minor does any of the following involving
3 another minor:

4 (i) photographs, videotapes, depicts on a computer
5 or films the other minor in a state of nudity without the
6 person's knowledge or consent; or

7 (ii) transmits, distributes, publishes or
8 disseminates a visual depiction of the other minor in a
9 state of nudity where the minor depicted has not given
10 consent or has withdrawn consent for the dissemination.

11 (b) Seizure and forfeiture of electronic device.--An
12 electronic device used in violation of this section may be
13 seized by and forfeited to the Commonwealth.

14 (c) Definitions.--As used in this section, the following
15 words and phrases shall have the meanings given to them in this
16 subsection:

17 "Disseminate." To cause or make an electronic communication
18 from one person, place or electronic communication device to two
19 or more persons, places or electronic communication devices. The
20 term does not include the posting on or transfer to an Internet
21 page or website to which the public has or might gain access.

22 "Minor." An individual under 18 years of age.

23 "Nudity." The showing of the human male or female genitals,
24 pubic area or buttocks with less than a fully opaque covering,
25 the showing of the female breast with less than a fully opaque
26 covering of any portion thereof below the top of the nipple or
27 the depiction of covered male genitals in a discernibly turgid
28 state.

29 "Transmit." To cause or make an electronic communication
30 from one person, place or electronic communication device to

1 only one other person, place or electronic communication device.
2 The term shall not include the posting on or transfer to an
3 Internet page or website to which the public has or might gain
4 access.

5 "Visual depiction." A photograph, videotape, film or
6 depiction on a computer. The term shall not include a
7 photograph, videotape, film or depiction on a computer, taken,
8 taped, filmed, made, produced, used or intended to be used, for
9 or in furtherance of a commercial purpose or to the transmission
10 or dissemination of such a visual depiction.

11 Section 2. Sections 9122(a)(3) and (d) and 9123(a) of Title
12 18 are amended to read:

13 § 9122. Expungement.

14 (a) Specific proceedings.--Criminal history record
15 information shall be expunged in a specific criminal proceeding
16 when:

17 * * *

18 (3) a person 21 years of age or older who has been
19 convicted of a violation of section 6308 (relating to
20 purchase, consumption, possession or transportation of liquor
21 or malt or brewed beverages), which occurred on or after the
22 day the person attained 18 years of age, petitions the court
23 of common pleas in the county where the conviction occurred
24 seeking expungement and the person has satisfied all terms
25 and conditions of the sentence imposed for the violation,
26 including any suspension of operating privileges imposed
27 pursuant to section 6310.4 (relating to restriction of
28 operating privileges). Upon review of the petition, the court
29 shall order the expungement of all criminal history record
30 information and all administrative records of the Department

1 of Transportation relating to said conviction.

2 * * *

3 (d) Notice of expungement.--Notice of expungement shall
4 promptly be submitted to the central [respository] repository
5 which shall notify all criminal justice agencies which have
6 received the criminal history record information to be expunged.

7 * * *

8 § 9123. Juvenile records.

9 (a) Expungement of juvenile records.--Notwithstanding the
10 provisions of section 9105 (relating to other criminal justice
11 information) and except upon cause shown, expungement of records
12 of juvenile delinquency cases and cases involving summary
13 offenses committed while the individual was under 18 years of
14 age, wherever kept or retained shall occur after 30 days' notice
15 to the district attorney, whenever the court upon its own motion
16 or upon the motion of a child or the parents or guardian finds:

17 (1) a complaint is filed which is not substantiated or
18 the petition which is filed as a result of a complaint is
19 dismissed by the court;

20 (1.1) a written allegation is filed which was not
21 approved for prosecution;

22 (1.2) the individual successfully completed an informal
23 adjustment and no proceeding seeking adjudication or
24 conviction is pending;

25 (2) six months have elapsed since the final discharge of
26 the person from supervision under a consent decree or
27 diversion program and no proceeding seeking adjudication or
28 conviction is pending;

29 (2.1) the individual is 18 years of age or older and the
30 individual has satisfied all terms and conditions of the

1 sentence imposed following a conviction for a summary
2 offense, with the exception of a violation of section 6308
3 (relating to purchase, consumption, possession or
4 transportation of liquor or malt or brewed beverages),
5 committed while the individual was under 18 years of age and
6 the individual has not been convicted of a felony,
7 misdemeanor or adjudicated delinquent and no proceeding is
8 pending to seek such conviction and adjudication;

9 (2.2) the individual is 18 years of age or older and has
10 been convicted of a violation of section 6308 which occurred
11 while the individual was under 18 years of age and the
12 individual has satisfied all terms and conditions of the
13 sentence imposed for the violation, including any suspension
14 of operating privileges imposed under section 6310.4
15 (relating to restriction of operating privileges).

16 Expungement shall include all criminal history record
17 information and all administrative records of the Department
18 of Transportation relating to the conviction;

19 (3) five years have elapsed since the final discharge of
20 the person from commitment, placement, probation or any other
21 disposition and referral and since such final discharge, the
22 person has not been convicted of a felony, misdemeanor or
23 adjudicated delinquent and no proceeding is pending seeking
24 such conviction or adjudication; or

25 (4) the individual [is 18 years of age or older]
26 petitions the court for an expungement, the attorney for the
27 Commonwealth consents to the expungement and a court orders
28 the expungement after giving consideration to the following
29 factors:

30 (i) the type of offense;

1 (ii) the individual's age, history of employment,
2 criminal activity and drug or alcohol problems;

3 (iii) adverse consequences that the individual may
4 suffer if the records are not expunged; and

5 (iv) whether retention of the record is required for
6 purposes of protection of the public safety.

7 * * *

8 Section 3. Section 6301(b) of Title 42 is amended to read:

9 § 6301. Short title and purposes of chapter.

10 * * *

11 (b) Purposes.--This chapter shall be interpreted and
12 construed as to effectuate the following purposes:

13 (1) To preserve the unity of the family whenever
14 possible or to provide another alternative permanent family
15 when the unity of the family cannot be maintained.

16 (1.1) To provide for the care, protection, safety and
17 wholesome mental and physical development of children coming
18 within the provisions of this chapter.

19 (2) Consistent with the protection of the public
20 interest, to provide for children committing delinquent acts
21 programs of supervision, care and rehabilitation which
22 provide balanced attention to the protection of the
23 community, the imposition of accountability for offenses
24 committed and the development of competencies to enable
25 children to become responsible and productive members of the
26 community.

27 (3) To achieve the foregoing purposes in a family
28 environment whenever possible, separating the child from
29 parents only when necessary for his welfare, safety or health
30 or in the interests of public safety.

1 (4) To provide means through which the provisions of
2 this chapter are executed and enforced and in which the
3 parties are assured a fair hearing and their constitutional
4 and other legal rights recognized and enforced.

5 (5) To use the least restrictive punitive sanctions
6 consistent with the protection of the community and the
7 rehabilitative needs of the child; and to use confinement as
8 a last resort and to impose it for the minimum amount of time
9 that is consistent with the protection of the public and the
10 rehabilitative needs of the child.

11 (6) To employ evidence-based practices, with fidelity,
12 at every stage of the juvenile justice process.

13 Section 4. Sections 6303, 6307 and 6336 of Title 42 are
14 amended by adding subsections to read:

15 § 6303. Scope of chapter.

16 * * *

17 (c) Summary offenses generally.--In addition to the
18 provisions of subsection (a)(5) and notwithstanding the
19 exclusion of summary offenses generally from the definition of
20 "delinquent act" under section 6302, the provisions of sections
21 6307 (relating to inspection of court files and records) and
22 6336(d) (relating to conduct of hearings), insofar as section
23 6336(d) relates to the exclusion of the general public from the
24 proceedings, shall apply to proceedings involving a child
25 charged with a summary offense when the proceedings are before a
26 judge of the minor judiciary.

27 § 6307. Inspection of court files and records.

28 * * *

29 (c) Summary offenses.--The provisions of this section shall
30 apply to proceedings involving a child charged with a summary

1 offense when the proceedings are before a judge of the minor
2 judiciary.

3 § 6336. Conduct of hearings.

4 * * *

5 (g) Summary offenses.--The provisions of subsection (d),
6 insofar as it relates to the exclusion of the general public
7 from the proceedings, shall apply to proceedings involving a
8 child charged with a summary offense when the proceedings are
9 before a judge of the minor judiciary.

10 (h) Adjudication alternative.--The magisterial district
11 judge may refer a child charged with a summary offense to an
12 adjudication alternative program under section 1520 (relating to
13 adjudication alternative program) and the Pennsylvania Rules of
14 Criminal Procedure.

15 Section 5. Section 6337 of Title 42 is amended to read:

16 § 6337. Right to counsel.

17 (a) Presumption of indigency.--

18 (1) Except as provided in section 6311 (relating to
19 guardian ad litem for child in court proceedings), a party is
20 entitled to representation by legal counsel at all stages of
21 any proceedings under this chapter and if he is without
22 financial resources or otherwise unable to employ counsel, to
23 have the court provide counsel for him.

24 (2) All children are presumed indigent for the purposes
25 of any proceedings under this chapter. The presumption may be
26 rebutted if the court ascertains that the child has the
27 financial resources to retain counsel of his choice at his
28 own expense.

29 (3) If a party appears without counsel the court shall
30 ascertain whether he knows of his right thereto and to be

1 provided with counsel by the court if applicable. The court
2 may continue the proceeding to enable a party to obtain
3 counsel.

4 (b) Waiver.--Counsel must be provided for a child unless his
5 parent, guardian, or custodian is present in court and
6 affirmatively [waive] waives it. However, the parent, guardian,
7 or custodian may not waive counsel for a child when their
8 interest may be in conflict with the interest or interests of
9 the child. If the interests of two or more parties may conflict,
10 separate counsel shall be provided for each of them.

11 Section 6. This act shall take effect in 60 days.

EXHIBIT "C-2"

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 850 Session of
2011

INTRODUCED BY GREENLEAF, BAKER, TARTAGLIONE, FONTANA, COSTA,
YUDICHAK, BOSCOLA, ALLOWAY, HUGHES AND FARNESE,
MARCH 16, 2011

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, APRIL 12, 2011

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in minors, providing for the offense of
4 cyberbullying and sexting by minors; in criminal history
5 record information, further providing for expungement and for
6 juvenile records; and, in relation to summary offenses,
7 further providing for short title and purpose of chapter, for
8 the scope of the Juvenile Act, for inspection of court files
9 and records, for conduct of hearings and for right to
10 counsel.

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

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

15 § 6321. Cyberbullying and sexting by minors.

16 (a) Offense defined.--A minor commits a misdemeanor of the
17 second THIRD degree if:

18 (1) the minor knowingly transmits or disseminates any
19 electronic message, including a visual depiction of himself
20 or any other person in a state of nudity, to another minor
21 with the knowledge or intent that the message would coerce,

1 intimidate, torment, harass or otherwise cause emotional
2 distress to the other minor; or

3 (2) the minor does any of the following involving
4 another minor:

5 (i) photographs, videotapes, depicts on a computer
6 or films the other minor in a state of nudity without the
7 person's knowledge or consent; or

8 (ii) transmits, distributes, publishes or
9 disseminates a visual depiction of the other minor in a
10 state of nudity where the minor depicted has not given
11 consent or has withdrawn consent for the dissemination.

12 (b) Seizure and forfeiture of electronic device.--An
13 electronic device used in violation of this section may be
14 seized by and forfeited to the Commonwealth.

15 (c) Definitions.--As used in this section, the following
16 words and phrases shall have the meanings given to them in this
17 subsection:

18 "Disseminate." To cause or make an electronic communication
19 from one person, place or electronic communication device to two
20 or more persons, places or electronic communication devices. The
21 term does not include the posting on or transfer to an Internet
22 page or website to which the public has or might gain access.

23 "Minor." An individual under 18 years of age.

24 "Nudity." The showing of the human male or female genitals,
25 pubic area or buttocks with less than a fully opaque covering,
26 the showing of the female breast with less than a fully opaque
27 covering of any portion thereof below the top of the nipple or
28 the depiction of covered male genitals in a discernibly turgid
29 state.

30 "Transmit." To cause or make an electronic communication

1 from one person, place or electronic communication device to
2 only one other person, place or electronic communication device.
3 The term shall not include the posting on or transfer to an
4 Internet page or website to which the public has or might gain
5 access.

6 "Visual depiction." A photograph, videotape, film or
7 depiction on a computer. The term shall not include a
8 photograph, videotape, film or depiction on a computer, taken,
9 taped, filmed, made, produced, used or intended to be used, for
10 or in furtherance of a commercial purpose or to the transmission
11 or dissemination of such a visual depiction.

12 Section 2. Sections 9122(a)(3) and (d) and 9123(a) of Title
13 18 are amended to read:

14 § 9122. Expungement.

15 (a) Specific proceedings.--Criminal history record
16 information shall be expunged in a specific criminal proceeding
17 when:

18 * * *

19 (3) a person 21 years of age or older who has been
20 convicted of a violation of section 6308 (relating to
21 purchase, consumption, possession or transportation of liquor
22 or malt or brewed beverages), which occurred on or after the
23 day the person attained 18 years of age, petitions the court
24 of common pleas in the county where the conviction occurred
25 seeking expungement and the person has satisfied all terms
26 and conditions of the sentence imposed for the violation,
27 including any suspension of operating privileges imposed
28 pursuant to section 6310.4 (relating to restriction of
29 operating privileges). Upon review of the petition, the court
30 shall order the expungement of all criminal history record

1 information and all administrative records of the Department
2 of Transportation relating to said conviction.

3 * * *

4 (d) Notice of expungement.--Notice of expungement shall
5 promptly be submitted to the central [respository] repository
6 which shall notify all criminal justice agencies which have
7 received the criminal history record information to be expunged.

8 * * *

9 § 9123. Juvenile records.

10 (a) Expungement of juvenile records.--Notwithstanding the
11 provisions of section 9105 (relating to other criminal justice
12 information) and except upon cause shown, expungement of records
13 of juvenile delinquency cases and cases involving summary
14 offenses committed while the individual was under 18 years of
15 age, wherever kept or retained shall occur after 30 days' notice
16 to the district attorney, whenever the court upon its own motion
17 or upon the motion of a child or the parents or guardian finds:

18 (1) a complaint is filed which is not substantiated or
19 the petition which is filed as a result of a complaint is
20 dismissed by the court;

21 (1.1) a written allegation is filed which was not
22 approved for prosecution;

23 (1.2) the individual successfully completed an informal
24 adjustment and no proceeding seeking adjudication or
25 conviction is pending;

26 (2) six months have elapsed since the final discharge of
27 the person from supervision under a consent decree or
28 diversion program, INCLUDING A PROGRAM UNDER 42 PA.C.S. § ←
29 1520 (RELATING TO ADJUDICATION ALTERNATIVE PROGRAM) and no
30 proceeding seeking adjudication or conviction is pending;

1 (2.1) the individual is 18 years of age or older and the
2 individual has satisfied all terms and conditions of the
3 sentence imposed following a conviction for a summary
4 offense, with the exception of a violation of section 6308
5 (relating to purchase, consumption, possession or
6 transportation of liquor or malt or brewed beverages),
7 committed while the individual was under 18 years of age and
8 the individual has not been convicted of a felony,
9 misdemeanor or adjudicated delinquent and no proceeding is
10 pending to seek such conviction and adjudication;

11 (2.2) the individual is 18 years of age or older and has
12 been convicted of a violation of section 6308 which occurred
13 while the individual was under 18 years of age and the
14 individual has satisfied all terms and conditions of the
15 sentence imposed for the violation, including any suspension
16 of operating privileges imposed under section 6310.4
17 (relating to restriction of operating privileges).
18 Expungement shall include all criminal history record
19 information and all administrative records of the Department
20 of Transportation relating to the conviction;

21 (3) five years have elapsed since the final discharge of
22 the person from commitment, placement, probation or any other
23 disposition and referral and since such final discharge, the
24 person has not been convicted of a felony, misdemeanor or
25 adjudicated delinquent and no proceeding is pending seeking
26 such conviction or adjudication; or

27 (4) [~~the individual is 18 years of age or older~~ ←
28 ~~petitions the court for an expungement,~~] the attorney for ←
29 the Commonwealth consents to the expungement and a court
30 orders the expungement after giving consideration to the

1 following factors:

2 (i) the type of offense;

3 (ii) the individual's age, history of employment,
4 criminal activity and drug or alcohol problems;

5 (iii) adverse consequences that the individual may
6 suffer if the records are not expunged; and

7 (iv) whether retention of the record is required for
8 purposes of protection of the public safety.

9 * * *

10 Section 3. Section 6301(b) of Title 42 is amended to read:

11 § 6301. Short title and purposes of chapter.

12 * * *

13 (b) Purposes.--This chapter shall be interpreted and
14 construed as to effectuate the following purposes:

15 (1) To preserve the unity of the family whenever
16 possible or to provide another alternative permanent family
17 when the unity of the family cannot be maintained.

18 (1.1) To provide for the care, protection, safety and
19 wholesome mental and physical development of children coming
20 within the provisions of this chapter.

21 (2) Consistent with the protection of the public
22 interest, to provide for children committing delinquent acts
23 programs of supervision, care and rehabilitation which
24 provide balanced attention to the protection of the
25 community, the imposition of accountability for offenses
26 committed and the development of competencies to enable
27 children to become responsible and productive members of the
28 community.

29 (3) To achieve the foregoing purposes in a family
30 environment whenever possible, separating the child from

1 parents only when necessary for his welfare, safety or health
2 or in the interests of public safety.

3 (4) To provide means through which the provisions of
4 this chapter are executed and enforced and in which the
5 parties are assured a fair hearing and their constitutional
6 and other legal rights recognized and enforced.

7 (5) To use the least restrictive ~~punitive~~ sanctions ←
8 consistent with the protection of the community and the
9 ~~rehabilitative~~ REHABILITATION needs of ~~the~~ A DELINQUENT ←
10 child; and to use confinement as a last resort and to impose
11 it for the minimum amount of time that is consistent with the
12 protection of the public and the ~~rehabilitative~~ ←
13 REHABILITATION needs of ~~the~~ A DELINQUENT child. ←

14 (6) To employ WHENEVER POSSIBLE evidence-based ←
15 practices, with fidelity, at every stage of the juvenile
16 justice process.

17 Section 4. Sections 6303, 6307 and 6336 of Title 42 are
18 amended by adding subsections to read:

19 § 6303. Scope of chapter.

20 * * *

21 (c) Summary offenses generally.--In addition to the
22 provisions of subsection (a)(5) and notwithstanding the
23 exclusion of summary offenses generally from the definition of
24 "delinquent act" under section 6302, the provisions of sections
25 6307 (relating to inspection of court files and records) and
26 6336(d) (relating to conduct of hearings), insofar as section
27 6336(d) relates to the exclusion of the general public from the
28 proceedings, shall apply to proceedings involving a child
29 charged with a summary offense when the proceedings are before a
30 judge of the minor judiciary.

1 § 6307. Inspection of court files and records.

2 * * *

3 (c) Summary offenses.--The provisions of this section shall
4 apply to proceedings involving a child charged with a summary
5 offense when the proceedings are before a judge of the minor
6 judiciary.

7 § 6336. Conduct of hearings.

8 * * *

9 (g) Summary offenses.--The provisions of subsection (d),
10 insofar as it relates to the exclusion of the general public
11 from the proceedings, shall apply to proceedings involving a
12 child charged with a summary offense when the proceedings are
13 before a judge of the minor judiciary.

14 (h) Adjudication alternative.--The magisterial district
15 judge may refer a child charged with a summary offense to an
16 adjudication alternative program under section 1520 (relating to
17 adjudication alternative program) and the Pennsylvania Rules of
18 Criminal Procedure.

19 Section 5. Section 6337 of Title 42 is amended to read:

20 § 6337. Right to counsel.

21 (a) Presumption of indigency.--

22 (1) Except as provided in section 6311 (relating to
23 guardian ad litem for child in court proceedings), a party is
24 entitled to representation by legal counsel at all stages of
25 any proceedings under this chapter and if he is without
26 financial resources or otherwise unable to employ counsel, to
27 have the court provide counsel for him.

28 (2) All children are presumed indigent for the purposes
29 of any proceedings under this chapter. The presumption may be
30 rebutted if the court ascertains that the child has the

1 financial resources to retain counsel of his choice at his
2 own expense. THE COURT SHALL NOT CONSIDER THE FINANCIAL ←
3 RESOURCES OF THE CHILD'S PARENT, GUARDIAN OR CUSTODIAN WHEN
4 ASCERTAINING WHETHER THE CHILD HAS THE FINANCIAL RESOURCES TO
5 RETAIN COUNSEL OF HIS CHOICE AT HIS OWN EXPENSE.

6 (3) If a party appears without counsel the court shall
7 ascertain whether he knows of his right thereto and to be
8 provided with counsel by the court if applicable. The court
9 may continue the proceeding to enable a party to obtain
10 counsel.

11 (b) Waiver.--Counsel must be provided for a child unless his
12 parent, guardian, or custodian is present in court and
13 affirmatively [waive] waives it. However, the parent, guardian,
14 or custodian may not waive counsel for a child when their
15 interest may be in conflict with the interest or interests of
16 the child. If the interests of two or more parties may conflict,
17 separate counsel shall be provided for each of them.

18 Section 6. This act shall take effect in 60 days.

EXHIBIT "C-3"

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 850 Session of
2011

INTRODUCED BY GREENLEAF, BAKER, TARTAGLIONE, FONTANA, COSTA,
YUDICHAK, BOSCOLA, ALLOWAY, HUGHES AND FARNESE,
MARCH 16, 2011

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED,
SEPTEMBER 26, 2011

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in minors, providing for the offense of
4 cyberbullying ~~and sexting~~ by minors; in criminal history ←
5 record information, further providing for expungement and for
6 juvenile records; and, in relation to summary offenses,
7 further providing for short title and purpose of chapter, for
8 the scope of the Juvenile Act, for inspection of court files
9 and records, for conduct of hearings and for right to
10 counsel.

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

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

15 § 6321. Cyberbullying ~~and sexting~~ by minors. ←

16 (a) Offense defined.--A minor commits a misdemeanor of the
17 third degree if:

18 (1) the minor knowingly transmits or disseminates any
19 electronic message, including a visual depiction of himself
20 or any other person in a state of nudity, to another minor
21 with the knowledge or intent that the message would coerce,

1 intimidate, torment, harass or otherwise cause emotional
2 distress to the other minor; or

3 (2) the minor does any of the following involving
4 another minor:

5 (i) photographs, videotapes, depicts on a computer
6 or films the other minor in a state of nudity without the
7 person's knowledge or consent; or

8 (ii) transmits, distributes, publishes or
9 disseminates a visual depiction of the other minor in a
10 state of nudity where the minor depicted has not given
11 consent or has withdrawn consent for the dissemination.

12 (b) Seizure and forfeiture of electronic device.--An
13 electronic device used in violation of this section may be
14 seized by and forfeited to the Commonwealth.

15 (c) Definitions.--As used in this section, the following
16 words and phrases shall have the meanings given to them in this
17 subsection:

18 "Disseminate." To cause or make an electronic communication
19 from one person, place or electronic communication device to two
20 or more persons, places or electronic communication devices. The ←
21 term does not include the posting on or transfer to an Internet-
22 page or website to which the public has or might gain access.

23 "Minor." An individual under 18 years of age.

24 "Nudity." The showing of the human male or female genitals,
25 pubic area or buttocks with less than a fully opaque covering,
26 the showing of the female breast with less than a fully opaque
27 covering of any portion thereof below the top of the nipple or
28 the depiction of covered male genitals in a discernibly turgid
29 state.

30 "Transmit." To cause or make an electronic communication

1 from one person, place or electronic communication device to
2 only one other person, place or electronic communication device.
3 The term shall not include the posting on or transfer to an ←
4 Internet page or website to which the public has or might gain
5 access.

6 "Visual depiction." A photograph, videotape, film or
7 depiction on a computer. The term shall not include a
8 photograph, videotape, film or depiction on a computer, taken,
9 taped, filmed, made, produced, used or intended to be used, for
10 or in furtherance of a commercial purpose or to the transmission
11 or dissemination of such a visual depiction.

12 Section 2. Sections 9122(a)(3) and (d) and 9123(a) of Title
13 18 are amended to read:

14 § 9122. Expungement.

15 (a) Specific proceedings.--Criminal history record
16 information shall be expunged in a specific criminal proceeding
17 when:

18 * * *

19 (3) a person 21 years of age or older who has been
20 convicted of a violation of section 6308 (relating to
21 purchase, consumption, possession or transportation of liquor
22 or malt or brewed beverages), which occurred on or after the
23 day the person attained 18 years of age, petitions the court
24 of common pleas in the county where the conviction occurred
25 seeking expungement and the person has satisfied all terms
26 and conditions of the sentence imposed for the violation,
27 including any suspension of operating privileges imposed
28 pursuant to section 6310.4 (relating to restriction of
29 operating privileges). Upon review of the petition, the court
30 shall order the expungement of all criminal history record

1 information and all administrative records of the Department
2 of Transportation relating to said conviction.

3 * * *

4 (d) Notice of expungement.--Notice of expungement shall
5 promptly be submitted to the central [respository] repository
6 which shall notify all criminal justice agencies which have
7 received the criminal history record information to be expunged.

8 * * *

9 § 9123. Juvenile records.

10 (a) Expungement of juvenile records.--Notwithstanding the
11 provisions of section 9105 (relating to other criminal justice
12 information) and except upon cause shown, expungement of records
13 of juvenile delinquency cases and cases involving summary
14 offenses committed while the individual was under 18 years of
15 age, wherever kept or retained shall occur after 30 days' notice
16 to the district attorney, whenever the court upon its own motion
17 or upon the motion of a child or the parents or guardian finds:

18 (1) a complaint is filed which is not substantiated or
19 the petition which is filed as a result of a complaint is
20 dismissed by the court;

21 (1.1) a written allegation is filed which was not
22 approved for prosecution;

23 (1.2) the individual successfully completed an informal
24 adjustment and no proceeding seeking adjudication or
25 conviction is pending;

26 (2) six months have elapsed since the final discharge of
27 the person from supervision under a consent decree or
28 diversion program, including a program under 42 Pa.C.S. §
29 1520 (relating to adjudication alternative program) and no
30 proceeding seeking adjudication or conviction is pending;

1 (2.1) the individual is 18 years of age or older and the
2 individual has satisfied all terms and conditions of the
3 sentence imposed following a conviction for a summary
4 offense, with the exception of a violation of section 6308
5 (relating to purchase, consumption, possession or
6 transportation of liquor or malt or brewed beverages),
7 committed while the individual was under 18 years of age and
8 the individual has not been convicted of a felony,
9 misdemeanor or adjudicated delinquent and no proceeding is
10 pending to seek such conviction and adjudication;

11 (2.2) the individual is 18 years of age or older and has
12 been convicted of a violation of section 6308 which occurred
13 while the individual was under 18 years of age and the
14 individual has satisfied all terms and conditions of the
15 sentence imposed for the violation, including any suspension
16 of operating privileges imposed under section 6310.4
17 (relating to restriction of operating privileges).
18 Expungement shall include all criminal history record
19 information and all administrative records of the Department
20 of Transportation relating to the conviction;

21 (3) five years have elapsed since the final discharge of
22 the person from commitment, placement, probation or any other
23 disposition and referral and since such final discharge, the
24 person has not been convicted of a felony, misdemeanor or
25 adjudicated delinquent and no proceeding is pending seeking
26 such conviction or adjudication; or

27 (4) [the individual is 18 years of age or older,] the
28 attorney for the Commonwealth consents to the expungement and
29 a court orders the expungement after giving consideration to
30 the following factors:

- 1 (i) the type of offense;
- 2 (ii) the individual's age, history of employment,
3 criminal activity and drug or alcohol problems;
- 4 (iii) adverse consequences that the individual may
5 suffer if the records are not expunged; and
- 6 (iv) whether retention of the record is required for
7 purposes of protection of the public safety.

8 * * *

9 Section 3. Section 6301(b) of Title 42 is amended to read:
10 § 6301. Short title and purposes of chapter.

11 * * *

12 (b) Purposes.--This chapter shall be interpreted and
13 construed as to effectuate the following purposes:

14 (1) To preserve the unity of the family whenever
15 possible or to provide another alternative permanent family
16 when the unity of the family cannot be maintained.

17 (1.1) To provide for the care, protection, safety and
18 wholesome mental and physical development of children coming
19 within the provisions of this chapter.

20 (2) Consistent with the protection of the public
21 interest, to provide for children committing delinquent acts
22 programs of supervision, care and rehabilitation which
23 provide balanced attention to the protection of the
24 community, the imposition of accountability for offenses
25 committed and the development of competencies to enable
26 children to become responsible and productive members of the
27 community.

28 (3) To achieve the foregoing purposes in a family
29 environment whenever possible, separating the child from
30 parents only when necessary for his welfare, safety or health

1 or in the interests of public safety.

2 (4) To provide means through which the provisions of
3 this chapter are executed and enforced and in which the
4 parties are assured a fair hearing and their constitutional
5 and other legal rights recognized and enforced.

6 (5) To use the least restrictive sanctions consistent
7 with the protection of the community and the rehabilitation
8 needs of a delinquent child; and to use confinement as a last
9 resort and to impose it for the minimum amount of time that
10 is consistent with the protection of the public and the
11 rehabilitation needs of a delinquent child.

12 (6) To employ whenever possible evidence-based
13 practices, with fidelity, at every stage of the juvenile
14 justice process.

15 Section 4. Sections 6303, 6307 and 6336 of Title 42 are
16 amended by adding subsections to read:

17 § 6303. Scope of chapter.

18 * * *

19 (c) Summary offenses generally.--In addition to the
20 provisions of subsection (a)(5) and notwithstanding the
21 exclusion of summary offenses generally from the definition of
22 "delinquent act" under section 6302, the provisions of sections
23 6307 (relating to inspection of court files and records) and
24 6336(d) (relating to conduct of hearings), insofar as section
25 6336(d) relates to the exclusion of the general public from the
26 proceedings, shall apply to proceedings involving a child
27 charged with a summary offense when the proceedings are before a
28 judge of the minor judiciary.

29 § 6307. Inspection of court files and records.

30 * * *

1 (c) Summary offenses.--The provisions of this section shall
2 apply to proceedings involving a child charged with a summary
3 offense when the proceedings are before a judge of the minor
4 judiciary.

5 § 6336. Conduct of hearings.

6 * * *

7 (g) Summary offenses.--The provisions of subsection (d),
8 insofar as it relates to the exclusion of the general public
9 from the proceedings, shall apply to proceedings involving a
10 child charged with a summary offense when the proceedings are
11 before a judge of the minor judiciary.

12 (h) Adjudication alternative.--The magisterial district
13 judge may refer a child charged with a summary offense to an
14 adjudication alternative program under section 1520 (relating to
15 adjudication alternative program) and the Pennsylvania Rules of
16 Criminal Procedure.

17 Section 5. Section 6337 of Title 42 is amended to read:

18 § 6337. Right to counsel.

19 (a) ~~Presumption of indigency~~ COURT TO PROVIDE COUNSEL.-- ←

20 (1) Except as provided in section 6311 (relating to
21 guardian ad litem for child in court proceedings), a party is
22 entitled to representation by legal counsel at all stages of
23 any proceedings under this chapter and if he is without
24 financial resources or otherwise unable to employ counsel, to
25 have the court provide counsel for him.

26 (2) ~~All children are presumed indigent for the purposes~~ ←
27 ~~of any proceedings under this chapter. The presumption may be~~
28 ~~rebutted if the court ascertains that the child has the~~
29 ~~financial resources to retain counsel of his choice at his~~
30 ~~own expense. The court shall not consider the financial~~

1 ~~resources of the child's parent, guardian or custodian when~~
2 ~~ascertaining whether the child has the financial resources to~~
3 ~~retain counsel of his choice at his own expense.~~

4 ~~(3)~~ (2) If a party appears without counsel the court ←
5 shall ascertain whether he knows of his right thereto and to
6 be provided with counsel by the court if applicable. The
7 court may continue the proceeding to enable a party to obtain
8 counsel.

9 ~~(b) Waiver. Counsel~~ [COUNSEL must be provided for a child ←
10 unless his parent, guardian, or custodian is present in court
11 and affirmatively ~~waive~~ waives it. However, the parent, ←
12 guardian, or custodian may not waive counsel for a child when
13 their interest may be in conflict with the interest or interests
14 of the ~~child. If CHILD.]~~ ←

15 (3) IF the interests of two or more parties may
16 conflict, separate counsel shall be provided for each of
17 them.

18 (B) DELINQUENCY CASES.-- ←

19 (1) IN DELINQUENCY CASES, ALL CHILDREN ARE PRESUMED
20 INDIGENT. THE PRESUMPTION MAY BE REBUTTED IF THE COURT
21 ASCERTAINS THAT THE CHILD HAS THE FINANCIAL RESOURCES TO
22 RETAIN COUNSEL OF HIS CHOICE AT HIS OWN EXPENSE.

23 (2) THE COURT SHALL NOT CONSIDER THE FINANCIAL RESOURCES
24 OF THE CHILD'S PARENT, GUARDIAN OR CUSTODIAN WHEN
25 ASCERTAINING WHETHER THE CHILD HAS THE FINANCIAL RESOURCES TO
26 RETAIN COUNSEL OF HIS CHOICE AT HIS OWN EXPENSE.

27 Section 6. This act shall take effect ~~in 60 days.~~ AS ←

28 FOLLOWS:

29 (1) THE ADDITION OF 42 PA.C.S. §§ 6303(C), 6307(C) AND
30 6336(G) AND (H) SHALL TAKE EFFECT IN 90 DAYS.

1 (2) THE AMENDMENT OF 42 PA.C.S. § 6337 SHALL TAKE EFFECT
2 IMMEDIATELY.

3 (3) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

4 (4) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
5 DAYS.

EXHIBIT "C-4"

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 850 Session of
2011

INTRODUCED BY GREENLEAF, BAKER, TARTAGLIONE, FONTANA, COSTA,
YUDICHAK, BOSCOLA, ALLOWAY, HUGHES AND FARNESE,
MARCH 16, 2011

AS AMENDED ON THIRD CONSIDERATION, OCTOBER 18, 2011

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in minors, providing for the offense of
4 cyberbullying by minors; in criminal history record
5 information, further providing for expungement and for
6 juvenile records; and, in relation to summary offenses,
7 further providing for short title and purpose of chapter, for
8 the scope of the Juvenile Act, for inspection of court files
9 and records, for conduct of hearings and for right to
10 counsel.

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

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

15 § 6321. Cyberbullying by minors.

16 (a) Offense defined.--A minor commits a misdemeanor of the
17 third degree if:

18 (1) the minor knowingly transmits or disseminates any
19 electronic message COMMUNICATION, including a visual ←
20 depiction of himself or any other person in a state of
21 nudity, to another minor with the knowledge or intent that

1 the message COMMUNICATION would coerce, intimidate, torment; ←
2 harass or otherwise cause emotional distress to the other
3 minor; or

4 (2) the minor does any of the following involving
5 another minor:

6 (i) photographs, videotapes, depicts on a computer
7 or films the other minor in a state of nudity without the
8 person's knowledge or consent; or

9 (ii) transmits, distributes, publishes or
10 disseminates a visual depiction of the other minor in a
11 state of nudity where the minor depicted has not given
12 consent or has withdrawn consent for the dissemination.

13 (b) Seizure and forfeiture of electronic COMMUNICATION ←
14 device.--An electronic COMMUNICATION device used in violation of ←
15 this section may be seized by and forfeited to the Commonwealth.

16 (c) Definitions.--As used in this section, the following
17 words and phrases shall have the meanings given to them in this
18 subsection:

19 "Disseminate." To cause or make an electronic communication
20 from one person, place or electronic communication device to two
21 or more persons, places or electronic communication devices.

22 "ELECTRONIC COMMUNICATION." AS DEFINED IN SECTION 5702 ←
23 (RELATING TO DEFINITIONS).

24 "Minor." An individual under 18 years of age.

25 "Nudity." The showing of the human male or female genitals,
26 pubic area or buttocks with less than a fully opaque covering,
27 the showing of the female breast with less than a fully opaque
28 covering of any portion thereof below the top of the nipple or
29 the depiction of covered male genitals in a discernibly turgid
30 state.

1 "Transmit." To cause or make an electronic communication
2 from one person, place or electronic communication device to
3 only one other person, place or electronic communication device.

4 "Visual depiction." A photograph, videotape, film or
5 depiction on a computer. The term shall not include a
6 photograph, videotape, film or depiction on a computer, taken,
7 taped, filmed, made, produced, used or intended to be used, for
8 or in furtherance of a commercial purpose or to the transmission
9 or dissemination of such a visual depiction.

10 Section 2. Sections 9122(a)(3) and (d) and 9123(a) of Title
11 18 are amended to read:

12 § 9122. Expungement.

13 (a) Specific proceedings.--Criminal history record
14 information shall be expunged in a specific criminal proceeding
15 when:

16 * * *

17 (3) a person 21 years of age or older who has been
18 convicted of a violation of section 6308 (relating to
19 purchase, consumption, possession or transportation of liquor
20 or malt or brewed beverages), which occurred on or after the
21 day the person attained 18 years of age, petitions the court
22 of common pleas in the county where the conviction occurred
23 seeking expungement and the person has satisfied all terms
24 and conditions of the sentence imposed for the violation,
25 including any suspension of operating privileges imposed
26 pursuant to section 6310.4 (relating to restriction of
27 operating privileges). Upon review of the petition, the court
28 shall order the expungement of all criminal history record
29 information and all administrative records of the Department
30 of Transportation relating to said conviction.

1 * * *

2 (d) Notice of expungement.--Notice of expungement shall
3 promptly be submitted to the central [respository] repository
4 which shall notify all criminal justice agencies which have
5 received the criminal history record information to be expunged.

6 * * *

7 § 9123. Juvenile records.

8 (a) Expungement of juvenile records.--Notwithstanding the
9 provisions of section 9105 (relating to other criminal justice
10 information) and except upon cause shown, expungement of records
11 of juvenile delinquency cases and cases involving summary
12 offenses committed while the individual was under 18 years of
13 age, wherever kept or retained shall occur after 30 days' notice
14 to the district attorney, whenever the court upon its own motion
15 or upon the motion of a child or the parents or guardian finds:

16 (1) a complaint is filed which is not substantiated or
17 the petition which is filed as a result of a complaint is
18 dismissed by the court;

19 (1.1) a written allegation is filed which was not
20 approved for prosecution;

21 (1.2) the individual successfully completed an informal
22 adjustment and no proceeding seeking adjudication or
23 conviction is pending;

24 (2) six months have elapsed since the final discharge of
25 the person from supervision under a consent decree or
26 diversion program, including a program under 42 Pa.C.S. §
27 1520 (relating to adjudication alternative program) and no
28 proceeding seeking adjudication or conviction is pending;

29 (2.1) the individual is 18 years of age or older and the
30 individual has satisfied all terms and conditions of the

1 sentence imposed following a conviction for a summary
2 offense, with the exception of a violation of section 6308
3 (relating to purchase, consumption, possession or
4 transportation of liquor or malt or brewed beverages),
5 committed while the individual was under 18 years of age and
6 the individual has not been convicted of a felony,
7 misdemeanor or adjudicated delinquent and no proceeding is
8 pending to seek such conviction and adjudication;

9 (2.2) the individual is 18 years of age or older and has
10 been convicted of a violation of section 6308 which occurred
11 while the individual was under 18 years of age and the
12 individual has satisfied all terms and conditions of the
13 sentence imposed for the violation, including any suspension
14 of operating privileges imposed under section 6310.4
15 (relating to restriction of operating privileges).
16 Expungement shall include all criminal history record
17 information and all administrative records of the Department
18 of Transportation relating to the conviction;

19 (3) five years have elapsed since the final discharge of
20 the person from commitment, placement, probation or any other
21 disposition and referral and since such final discharge, the
22 person has not been convicted of a felony, misdemeanor or
23 adjudicated delinquent and no proceeding is pending seeking
24 such conviction or adjudication; or

25 (4) [the individual is 18 years of age or older,] the
26 attorney for the Commonwealth consents to the expungement and
27 a court orders the expungement after giving consideration to
28 the following factors:

29 (i) the type of offense;

30 (ii) the individual's age, history of employment,

1 criminal activity and drug or alcohol problems;

2 (iii) adverse consequences that the individual may
3 suffer if the records are not expunged; and

4 (iv) whether retention of the record is required for
5 purposes of protection of the public safety.

6 * * *

7 Section 3. Section 6301(b) of Title 42 is amended to read:

8 § 6301. Short title and purposes of chapter.

9 * * *

10 (b) Purposes.--This chapter shall be interpreted and
11 construed as to effectuate the following purposes:

12 (1) To preserve the unity of the family whenever
13 possible or to provide another alternative permanent family
14 when the unity of the family cannot be maintained.

15 (1.1) To provide for the care, protection, safety and
16 wholesome mental and physical development of children coming
17 within the provisions of this chapter.

18 (2) Consistent with the protection of the public
19 interest, to provide for children committing delinquent acts
20 programs of supervision, care and rehabilitation which
21 provide balanced attention to the protection of the
22 community, the imposition of accountability for offenses
23 committed and the development of competencies to enable
24 children to become responsible and productive members of the
25 community.

26 (3) To achieve the foregoing purposes in a family
27 environment whenever possible, separating the child from
28 parents only when necessary for his welfare, safety or health
29 or in the interests of public safety.

30 (4) To provide means through which the provisions of

1 this chapter are executed and enforced and in which the
2 parties are assured a fair hearing and their constitutional
3 and other legal rights recognized and enforced.

4 (5) To use the least restrictive sanctions consistent
5 with the protection of the community and the rehabilitation
6 needs of a delinquent child; and to use confinement as a last
7 resort and to impose it for the minimum amount of time that
8 is consistent with the protection of the public and the
9 rehabilitation needs of a delinquent child.

10 (6) To employ whenever possible evidence-based
11 practices, with fidelity, at every stage of the juvenile
12 justice process.

13 Section 4. Sections 6303, 6307 and 6336 of Title 42 are
14 amended by adding subsections to read:

15 § 6303. Scope of chapter.

16 * * *

17 (c) Summary offenses generally.--In addition to the
18 provisions of subsection (a)(5) and notwithstanding the
19 exclusion of summary offenses generally from the definition of
20 "delinquent act" under section 6302, the provisions of sections
21 6307 (relating to inspection of court files and records) and
22 6336(d) (relating to conduct of hearings), insofar as section
23 6336(d) relates to the exclusion of the general public from the
24 proceedings, shall apply to proceedings involving a child
25 charged with a summary offense when the proceedings are before a
26 judge of the minor judiciary.

27 § 6307. Inspection of court files and records.

28 * * *

29 (c) Summary offenses.--The provisions of this section shall
30 apply to proceedings involving a child charged with a summary

1 offense when the proceedings are before a judge of the minor
2 judiciary.

3 § 6336. Conduct of hearings.

4 * * *

5 (g) Summary offenses.--The provisions of subsection (d),
6 insofar as it relates to the exclusion of the general public
7 from the proceedings, shall apply to proceedings involving a
8 child charged with a summary offense when the proceedings are
9 before a judge of the minor judiciary.

10 (h) Adjudication alternative.--The magisterial district
11 judge may refer a child charged with a summary offense to an
12 adjudication alternative program under section 1520 (relating to
13 adjudication alternative program) and the Pennsylvania Rules of
14 Criminal Procedure.

15 Section 5. Section 6337 of Title 42 is amended to read:

16 § 6337. Right to counsel.

17 (a) Court to provide counsel.--

18 (1) Except as provided in section 6311 (relating to
19 guardian ad litem for child in court proceedings), a party is
20 entitled to representation by legal counsel at all stages of
21 any proceedings under this chapter and if he is without
22 financial resources or otherwise unable to employ counsel, to
23 have the court provide counsel for him.

24 (2) If a party appears without counsel the court shall
25 ascertain whether he knows of his right thereto and to be
26 provided with counsel by the court if applicable. The court
27 may continue the proceeding to enable a party to obtain
28 counsel. [Counsel must be provided for a child unless his
29 parent, guardian, or custodian is present in court and
30 affirmatively waive it. However, the parent, guardian, or

1 custodian may not waive counsel for a child when their
2 interest may be in conflict with the interest or interests of
3 the child.]

4 (3) If the interests of two or more parties may
5 conflict, separate counsel shall be provided for each of
6 them.

7 (b) Delinquency cases.--

8 (1) In delinquency cases, all children are presumed
9 indigent. The presumption may be rebutted if the court
10 ascertains that the child has the financial resources to
11 retain counsel of his choice at his own expense.

12 (2) The court shall not consider the financial resources
13 of the child's parent, guardian or custodian when
14 ascertaining whether the child has the financial resources to
15 retain counsel of his choice at his own expense.

16 Section 6. This act shall take effect as follows:

17 (1) The addition of 42 Pa.C.S. §§ 6303(c), 6307(c) and
18 6336(g) and (h) shall take effect in 90 days.

19 (2) The amendment of 42 Pa.C.S. § 6337 shall take effect
20 immediately.

21 (3) This section shall take effect immediately.

22 (4) The remainder of this act shall take effect in 60
23 days.

EXHIBIT "C-5"

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 850 Session of
2011

INTRODUCED BY GREENLEAF, BAKER, TARTAGLIONE, FONTANA, COSTA,
YUDICHAK, BOSCOLA, ALLOWAY, HUGHES AND FARNESE,
MARCH 16, 2011

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, SEPTEMBER 25, 2012

AN ACT

1 ~~Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and~~ ←
2 ~~Judicial Procedure) of the Pennsylvania Consolidated~~
3 ~~Statutes, in minors, providing for the offense of~~
4 ~~cyberbullying by minors; in criminal history record~~
5 ~~information, further providing for expungement and for~~
6 ~~juvenile records; and, in relation to summary offenses,~~
7 ~~further providing for short title and purpose of chapter, for~~
8 ~~the scope of the Juvenile Act, for inspection of court files~~
9 ~~and records, for conduct of hearings and for right to~~
10 ~~counsel.~~

11 AMENDING TITLES 18 (CRIMES AND OFFENSES), 42 (JUDICIARY AND ←
12 JUDICIAL PROCEDURE) AND 61 (PRISONS AND PAROLE), OF THE
13 PENNSYLVANIA CONSOLIDATED STATUTES, IN AUTHORIZED DISPOSITION
14 OF OFFENDERS, FURTHER PROVIDING FOR SENTENCE FOR MURDER,
15 MURDER OF UNBORN CHILD AND MURDER OF LAW ENFORCEMENT OFFICER;
16 AND PROVIDING FOR SENTENCE OF PERSONS UNDER THE AGE OF 18 FOR
17 MURDER, MURDER OF AN UNBORN CHILD AND MURDER OF A LAW
18 ENFORCEMENT OFFICER; IN MINORS, PROVIDING FOR THE OFFENSE OF
19 CYBERBULLYING BY MINORS; IN CRIMINAL HISTORY RECORD
20 INFORMATION, FURTHER PROVIDING FOR EXPUNGEMENT AND FOR
21 JUVENILE RECORDS; IN RELATION TO SUMMARY OFFENSES, FURTHER
22 PROVIDING FOR SHORT TITLE AND PURPOSE OF CHAPTER, FOR
23 DEFINITIONS, FOR THE SCOPE OF THE JUVENILE ACT, FOR
24 INSPECTION OF COURT FILES AND RECORDS, FOR CONDUCT OF
25 HEARINGS AND FOR RIGHT TO COUNSEL; AND, IN PENNSYLVANIA BOARD
26 OF PROBATION AND PAROLE, FURTHER PROVIDING FOR PAROLE
27 PROCEDURE.

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

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

3 SECTION 1. SECTION 1102(A) (1) AND (B) OF TITLE 18 OF THE
4 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

5 § 1102. SENTENCE FOR MURDER, MURDER OF UNBORN CHILD AND MURDER
6 OF LAW ENFORCEMENT OFFICER.

7 (A) FIRST DEGREE.--

8 (1) [A] EXCEPT AS PROVIDED UNDER SECTION 1102.1
9 (RELATING TO SENTENCE OF PERSONS UNDER THE AGE OF 18 FOR
10 MURDER, MURDER OF AN UNBORN CHILD AND MURDER OF A LAW
11 ENFORCEMENT OFFICER), A PERSON WHO HAS BEEN CONVICTED OF A
12 MURDER OF THE FIRST DEGREE OR OF MURDER OF A LAW ENFORCEMENT
13 OFFICER OF THE FIRST DEGREE SHALL BE SENTENCED TO DEATH OR TO
14 A TERM OF LIFE IMPRISONMENT IN ACCORDANCE WITH 42 PA.C.S. §
15 9711 (RELATING TO SENTENCING PROCEDURE FOR MURDER OF THE
16 FIRST DEGREE).

17 * * *

18 (B) SECOND DEGREE.--[A] EXCEPT AS PROVIDED UNDER SECTION
19 1102.1, A PERSON WHO HAS BEEN CONVICTED OF MURDER OF THE SECOND
20 DEGREE, OF SECOND DEGREE MURDER OF AN UNBORN CHILD OR OF SECOND
21 DEGREE MURDER OF A LAW ENFORCEMENT OFFICER SHALL BE SENTENCED TO
22 A TERM OF LIFE IMPRISONMENT.

23 * * *

24 SECTION 2. TITLE 18 IS AMENDED BY ADDING SECTIONS TO READ:
25 § 1102.1. SENTENCE OF PERSONS UNDER THE AGE OF 18 FOR MURDER,
26 MURDER OF AN UNBORN CHILD AND MURDER OF A LAW
27 ENFORCEMENT OFFICER.

28 (A) FIRST DEGREE MURDER.--A PERSON WHO HAS BEEN CONVICTED,
29 AFTER JUNE 24, 2012, OF A MURDER OF THE FIRST DEGREE, FIRST
30 DEGREE MURDER OF AN UNBORN CHILD OR OF MURDER OF A LAW

1 ENFORCEMENT OFFICER OF THE FIRST DEGREE AND WHO WAS UNDER THE
2 AGE OF 18 AT THE TIME OF THE COMMISSION OF THE OFFENSE SHALL BE
3 SENTENCED AS FOLLOWS:

4 (1) A PERSON WHO AT THE TIME OF THE COMMISSION OF THE
5 OFFENSE WAS 15 YEARS OF AGE OR OLDER SHALL BE SENTENCED TO A
6 TERM OF LIFE IMPRISONMENT WITHOUT PAROLE, OR A TERM OF
7 IMPRISONMENT, THE MINIMUM OF WHICH SHALL BE AT LEAST 35 YEARS
8 TO LIFE.

9 (2) A PERSON WHO AT THE TIME OF THE COMMISSION OF THE
10 OFFENSE WAS UNDER 15 YEARS OF AGE SHALL BE SENTENCED TO A
11 TERM OF LIFE IMPRISONMENT WITHOUT PAROLE, OR A TERM OF
12 IMPRISONMENT, THE MINIMUM OF WHICH SHALL BE AT LEAST 25 YEARS
13 TO LIFE.

14 (B) NOTICE.--REASONABLE NOTICE TO THE DEFENDANT OF THE
15 COMMONWEALTH'S INTENTION TO SEEK A SENTENCE OF LIFE IMPRISONMENT
16 WITHOUT PAROLE UNDER SUBSECTION (A) SHALL BE PROVIDED AFTER
17 CONVICTION AND BEFORE SENTENCING.

18 (C) SECOND DEGREE MURDER.--A PERSON WHO HAS BEEN CONVICTED,
19 AFTER JUNE 24, 2012, OF A MURDER OF THE SECOND DEGREE, SECOND
20 DEGREE MURDER OF AN UNBORN CHILD OR OF MURDER OF A LAW
21 ENFORCEMENT OFFICER OF THE SECOND DEGREE AND WHO WAS UNDER THE
22 AGE OF 18 AT THE TIME OF THE COMMISSION OF THE OFFENSE SHALL BE
23 SENTENCED AS FOLLOWS:

24 (1) A PERSON WHO AT THE TIME OF THE COMMISSION OF THE
25 OFFENSE WAS 15 YEARS OF AGE OR OLDER SHALL BE SENTENCED TO A
26 TERM OF IMPRISONMENT THE MINIMUM OF WHICH SHALL BE AT LEAST
27 30 YEARS TO LIFE.

28 (2) A PERSON WHO AT THE TIME OF THE COMMISSION OF THE
29 OFFENSE WAS UNDER 15 YEARS OF AGE SHALL BE SENTENCED TO A
30 TERM OF IMPRISONMENT THE MINIMUM OF WHICH SHALL BE AT LEAST

1 20 YEARS TO LIFE.

2 (D) FINDINGS.--IN DETERMINING WHETHER TO IMPOSE A SENTENCE
3 OF LIFE WITHOUT PAROLE UNDER SUBSECTION (A), THE COURT SHALL
4 CONSIDER AND MAKE FINDINGS ON THE RECORD REGARDING THE
5 FOLLOWING:

6 (1) THE IMPACT OF THE OFFENSE ON EACH VICTIM, INCLUDING
7 ORAL AND WRITTEN VICTIM IMPACT STATEMENTS MADE OR SUBMITTED
8 BY FAMILY MEMBERS OF THE VICTIM DETAILING THE PHYSICAL,
9 PSYCHOLOGICAL AND ECONOMIC EFFECTS OF THE CRIME ON THE VICTIM
10 AND THE VICTIM'S FAMILY. A VICTIM IMPACT STATEMENT MAY
11 INCLUDE COMMENT ON THE SENTENCE OF THE DEFENDANT.

12 (2) THE IMPACT OF THE OFFENSE ON THE COMMUNITY.

13 (3) THE THREAT TO THE SAFETY OF THE PUBLIC OR ANY
14 INDIVIDUAL POSED BY THE DEFENDANT.

15 (4) THE NATURE AND CIRCUMSTANCES OF THE OFFENSE
16 COMMITTED BY THE DEFENDANT.

17 (5) THE DEGREE OF THE DEFENDANT'S CULPABILITY.

18 (6) GUIDELINES FOR SENTENCING AND RESENTENCING ADOPTED
19 BY THE PENNSYLVANIA COMMISSION ON SENTENCING.

20 (7) AGE-RELATED CHARACTERISTICS OF THE DEFENDANT,
21 INCLUDING:

22 (I) AGE.

23 (II) MENTAL CAPACITY.

24 (III) MATURITY.

25 (IV) THE DEGREE OF CRIMINAL SOPHISTICATION EXHIBITED
26 BY THE DEFENDANT.

27 (V) THE NATURE AND EXTENT OF ANY PRIOR DELINQUENT OR
28 CRIMINAL HISTORY, INCLUDING THE SUCCESS OR FAILURE OF ANY
29 PREVIOUS ATTEMPTS BY THE COURT TO REHABILITATE THE
30 DEFENDANT.

1 (VI) PROBATION OR INSTITUTIONAL REPORTS.

2 (VII) OTHER RELEVANT FACTORS.

3 (E) MINIMUM SENTENCE.--NOTHING UNDER THIS SECTION SHALL
4 PREVENT THE SENTENCING COURT FROM IMPOSING A MINIMUM SENTENCE
5 GREATER THAN THAT PROVIDED IN THIS SECTION. SENTENCING
6 GUIDELINES PROMULGATED BY THE PENNSYLVANIA COMMISSION ON
7 SENTENCING MAY NOT SUPERSEDE THE MANDATORY MINIMUM SENTENCES
8 PROVIDED UNDER THIS SECTION.

9 (F) APPEAL BY COMMONWEALTH.--IF A SENTENCING COURT REFUSES
10 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL
11 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE
12 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE
13 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A
14 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE
15 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.

16 § 6321. Cyberbullying by minors.

17 (a) Offense defined.--A minor commits a misdemeanor of the
18 third degree if:

19 (1) the minor knowingly transmits or disseminates any
20 electronic communication, including a visual depiction of
21 himself or any other person in a state of nudity, to another
22 minor with the knowledge or intent that the communication
23 would coerce, intimidate, torment, harass or otherwise cause
24 emotional distress to the other minor; or

25 (2) the minor does any of the following involving
26 another minor:

27 (i) photographs, videotapes, depicts on a computer
28 or films the other minor in a state of nudity without the
29 person's knowledge or consent; or

30 (ii) transmits, distributes, publishes or

1 disseminates a visual depiction of the other minor in a
2 state of nudity where the minor depicted has not given
3 consent or has withdrawn consent for the dissemination.

4 (b) Seizure and forfeiture of electronic communication
5 device.--An electronic communication device used in violation of
6 this section may be seized by and forfeited to the Commonwealth.

7 (c) Definitions.--As used in this section, the following
8 words and phrases shall have the meanings given to them in this
9 subsection:

10 "Disseminate." To cause or make an electronic communication
11 from one person, place or electronic communication device to two
12 or more persons, places or electronic communication devices.

13 "Electronic communication." As defined in section 5702
14 (relating to definitions).

15 "Minor." An individual under 18 years of age.

16 "Nudity." The showing of the human male or female genitals,
17 pubic area or buttocks with less than a fully opaque covering,
18 the showing of the female breast with less than a fully opaque
19 covering of any portion thereof below the top of the nipple or
20 the depiction of covered male genitals in a discernibly turgid
21 state.

22 "Transmit." To cause or make an electronic communication
23 from one person, place or electronic communication device to
24 only one other person, place or electronic communication device.

25 "Visual depiction." A photograph, videotape, film or
26 depiction on a computer. The term shall not include a
27 photograph, videotape, film or depiction on a computer, taken,
28 taped, filmed, made, produced, used or intended to be used, for
29 or in furtherance of a commercial purpose or to the transmission
30 or dissemination of such a visual depiction.

1 ~~Section 2. Sections 9122(a)(3) and (d) and 9123(a) of Title~~ ←
2 ~~18 are amended to read:~~

3 SECTION 3. SECTION 9122(A)(3) AND (D) OF TITLE 18 ARE ←
4 AMENDED TO READ:

5 § 9122. Expungement.

6 (a) Specific proceedings.--Criminal history record
7 information shall be expunged in a specific criminal proceeding
8 when:

9 * * *

10 (3) a person 21 years of age or older who has been
11 convicted of a violation of section 6308 (relating to
12 purchase, consumption, possession or transportation of liquor
13 or malt or brewed beverages), which occurred on or after the
14 day the person attained 18 years of age, petitions the court
15 of common pleas in the county where the conviction occurred
16 seeking expungement and the person has satisfied all terms
17 and conditions of the sentence imposed for the violation,
18 including any suspension of operating privileges imposed
19 pursuant to section 6310.4 (relating to restriction of
20 operating privileges). Upon review of the petition, the court
21 shall order the expungement of all criminal history record
22 information and all administrative records of the Department
23 of Transportation relating to said conviction.

24 * * *

25 (d) Notice of expungement.--Notice of expungement shall
26 promptly be submitted to the central [respository] repository
27 which shall notify all criminal justice agencies which have
28 received the criminal history record information to be expunged.

29 * * *

30 SECTION 4. SECTION 9123(A) OF TITLE 18, AMENDED JULY 5, 2012 ←

1 (P.L.880, NO.91), IS AMENDED TO READ:

2 § 9123. Juvenile records.

3 (a) Expungement of juvenile records.--Notwithstanding the
4 provisions of section 9105 (relating to other criminal justice
5 information) and except ~~upon cause shown~~ AS PROVIDED UNDER ←
6 SUBSECTION (A.1), expungement of records of juvenile delinquency
7 cases and cases involving summary offenses committed while the
8 individual was under 18 years of age, wherever kept or retained
9 shall occur after 30 days' notice to the district attorney,
10 whenever the court upon its own motion or upon the motion of a
11 child or the parents or guardian finds:

12 (1) a complaint is filed which is not substantiated or
13 the petition which is filed as a result of a complaint is
14 dismissed by the court;

15 (1.1) a written allegation is filed which was not
16 approved for prosecution;

17 (1.2) the individual successfully completed an informal
18 adjustment and no proceeding seeking adjudication or
19 conviction is pending;

20 (2) six months have elapsed since the final discharge of
21 the person from supervision under a consent decree or
22 diversion program, including a program under 42 Pa.C.S. §
23 1520 (relating to adjudication alternative program) and no
24 proceeding seeking adjudication or conviction is pending;

25 (2.1) the individual is 18 years of age or older and the
26 individual has satisfied all terms and conditions of the
27 sentence imposed following a conviction for a summary
28 offense, with the exception of a violation of section 6308
29 (relating to purchase, consumption, possession or
30 transportation of liquor or malt or brewed beverages),

1 committed while the individual was under 18 years of age and
2 the individual has not been convicted of a felony,
3 misdemeanor or adjudicated delinquent and no proceeding is
4 pending to seek such conviction and adjudication;

5 (2.2) the individual is 18 years of age or older and has
6 been convicted of a violation of section 6308 which occurred
7 while the individual was under 18 years of age and the
8 individual has satisfied all terms and conditions of the
9 sentence imposed for the violation, including any suspension
10 of operating privileges imposed under section 6310.4
11 (relating to restriction of operating privileges).

12 Expungement shall include all criminal history record
13 information and all administrative records of the Department
14 of Transportation relating to the conviction;

15 (3) five years have elapsed since the final discharge of
16 the person from commitment, placement, probation or any other
17 disposition and referral and since such final discharge, the
18 person has not been convicted of a felony, misdemeanor or
19 adjudicated delinquent and no proceeding is pending seeking
20 such conviction or adjudication; or

21 (4) [the individual is 18 years of age or older,] the
22 attorney for the Commonwealth consents to the expungement and
23 a court orders the expungement after giving consideration to
24 the following factors:

25 (i) the type of offense;

26 (ii) the individual's age, history of employment,
27 criminal activity and drug or alcohol problems;

28 (iii) adverse consequences that the individual may
29 suffer if the records are not expunged; and

30 (iv) whether retention of the record is required for

1 purposes of protection of the public safety.

2 * * *

3 Section 5. Section 6301(b) of Title 42 is amended to read: ←

4 § 6301. Short title and purposes of chapter.

5 * * *

6 (b) Purposes.--This chapter shall be interpreted and
7 construed as to effectuate the following purposes:

8 (1) To preserve the unity of the family whenever
9 possible or to provide another alternative permanent family
10 when the unity of the family cannot be maintained.

11 (1.1) To provide for the care, protection, safety and
12 wholesome mental and physical development of children coming
13 within the provisions of this chapter.

14 (2) Consistent with the protection of the public
15 interest, to provide for children committing delinquent acts
16 programs of supervision, care and rehabilitation which
17 provide balanced attention to the protection of the
18 community, the imposition of accountability for offenses
19 committed and the development of competencies to enable
20 children to become responsible and productive members of the
21 community.

22 (3) To achieve the foregoing purposes in a family
23 environment whenever possible, separating the child from
24 parents only when necessary for his welfare, safety or health
25 or in the interests of public safety.

26 (4) To provide means through which the provisions of
27 this chapter are executed and enforced and in which the
28 parties are assured a fair hearing and their constitutional
29 and other legal rights recognized and enforced.

30 (5) To use the least restrictive sanctions consistent

1 with the protection of the community and the rehabilitation
2 needs of a delinquent child; and to use confinement as a last
3 resort and to impose it for the minimum amount of time that
4 is consistent with the protection of the public and the
5 rehabilitation needs of a delinquent child.

6 (6) To employ whenever possible evidence-based
7 practices, with fidelity, at every stage of the juvenile
8 justice process.

9 SECTION 6. PARAGRAPH (7) OF THE DEFINITION OF "DEPENDENT
10 CHILD" IN SECTION 6302 OF TITLE 42 IS AMENDED TO READ:

11 § 6302. DEFINITIONS.

12 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
13 SHALL HAVE, UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE, THE
14 MEANINGS GIVEN TO THEM IN THIS SECTION:

15 * * *

16 "DEPENDENT CHILD." A CHILD WHO:

17 * * *

18 (7) [IS UNDER THE AGE OF TEN YEARS AND] HAS COMMITTED A
19 DELINQUENT ACT OR CRIME, OTHER THAN A SUMMARY OFFENSE, WHILE
20 UNDER THE AGE OF TEN YEARS;

21 * * *

22 Section 4 7. Sections 6303, 6307 and 6336 of Title 42 are
23 amended by adding subsections to read:

24 § 6303. Scope of chapter.

25 * * *

26 (c) Summary offenses generally.--In addition to the
27 provisions of subsection (a)(5) and notwithstanding the
28 exclusion of summary offenses generally from the definition of
29 "delinquent act" under section 6302, the provisions of sections
30 6307 (relating to inspection of court files and records) and

1 6336(d) (relating to conduct of hearings), insofar as section
2 6336(d) relates to the exclusion of the general public from the
3 proceedings, shall apply to proceedings involving a child
4 charged with a summary offense when the proceedings are before a
5 judge of the minor judiciary.

6 § 6307. Inspection of court files and records.

7 * * *

8 (c) Summary offenses.--The provisions of this section shall
9 apply to proceedings involving a child charged with a summary
10 offense when the proceedings are before a judge of the minor
11 judiciary.

12 § 6336. Conduct of hearings.

13 * * *

14 (g) Summary offenses.--The provisions of subsection (d),
15 insofar as it relates to the exclusion of the general public
16 from the proceedings, shall apply to proceedings involving a
17 child charged with a summary offense when the proceedings are
18 before a judge of the minor judiciary.

19 (h) Adjudication alternative.--The magisterial district
20 judge may refer a child charged with a summary offense to an
21 adjudication alternative program under section 1520 (relating to
22 adjudication alternative program) and the Pennsylvania Rules of
23 Criminal Procedure.

24 Section 5 8. Section 6337 of Title 42, AMENDED APRIL 9, 2012 ←
25 (P.L.223, NO.23), is amended to read:

26 § 6337. Right to counsel.

27 (a) Court to provide counsel.--

28 ~~(1) Except as provided in section 6311 (relating to~~ ←
29 ~~guardian ad litem for child in court proceedings), a party is~~
30 ~~entitled to representation by legal counsel at all stages of~~

1 ~~any proceedings under this chapter and if he is without~~
2 ~~financial resources or otherwise unable to employ counsel, to~~
3 ~~have the court provide counsel for him.~~

4 ~~(2) If a party appears without counsel the court shall~~
5 ~~ascertain whether he knows of his right thereto and to be~~
6 ~~provided with counsel by the court if applicable. The court~~
7 ~~may continue the proceeding to enable a party to obtain~~
8 ~~counsel. [Counsel must be provided for a child unless his~~
9 ~~parent, guardian, or custodian is present in court and~~
10 ~~affirmatively waive it. However, the parent, guardian, or~~
11 ~~custodian may not waive counsel for a child when their~~
12 ~~interest may be in conflict with the interest or interests of~~
13 ~~the child.]~~

14 ~~(3) If the interests of two or more parties may~~
15 ~~conflict, separate counsel shall be provided for each of~~
16 ~~them.~~

17 (1) EXCEPT AS PROVIDED UNDER THIS SECTION AND IN SECTION ←
18 6311 (RELATING TO GUARDIAN AD LITEM FOR CHILD IN COURT
19 PROCEEDINGS), A PARTY IS ENTITLED TO REPRESENTATION BY LEGAL
20 COUNSEL AT ALL STAGES OF ANY PROCEEDINGS UNDER THIS CHAPTER
21 AND IF HE IS WITHOUT FINANCIAL RESOURCES OR OTHERWISE UNABLE
22 TO EMPLOY COUNSEL, TO HAVE THE COURT PROVIDE COUNSEL FOR HIM.

23 (2) IF A PARTY OTHER THAN A CHILD APPEARS AT A HEARING
24 WITHOUT COUNSEL THE COURT SHALL ASCERTAIN WHETHER HE KNOWS OF
25 HIS RIGHT THERETO AND TO BE PROVIDED WITH COUNSEL BY THE
26 COURT IF APPLICABLE. THE COURT MAY CONTINUE THE PROCEEDING TO
27 ENABLE A PARTY TO OBTAIN COUNSEL. [EXCEPT AS PROVIDED UNDER
28 SECTION 6337.1 (RELATING TO RIGHT TO COUNSEL FOR CHILDREN IN
29 DEPENDENCY AND DELINQUENCY PROCEEDINGS), COUNSEL MUST BE
30 PROVIDED FOR A CHILD.]

1 (3) IF THE INTERESTS OF TWO OR MORE PARTIES MAY
2 CONFLICT, SEPARATE COUNSEL SHALL BE PROVIDED FOR EACH OF
3 THEM.

4 (b) Delinquency cases.--

5 (1) In delinquency cases, all children are presumed
6 indigent. The presumption may be rebutted if the court
7 ascertains that the child has the financial resources to
8 retain counsel of his choice at his own expense.

9 (2) The court shall not consider the financial resources
10 of the child's parent, guardian or custodian when
11 ascertaining whether the child has the financial resources to
12 retain counsel of his choice at his own expense.

13 SECTION 9. SECTION 6139(A) OF TITLE 61 IS AMENDED BY ADDING ←
14 A PARAGRAPH TO READ:

15 § 6139. PAROLE PROCEDURE.

16 (A) SPECIFIC REQUIREMENTS.--

17 * * *

18 (3.1) NOTWITHSTANDING PARAGRAPHS (2) AND (3), THE BOARD
19 SHALL NOT BE REQUIRED TO CONSIDER NOR DISPOSE OF AN
20 APPLICATION BY AN INMATE OR AN INMATE'S ATTORNEY IN THE CASE
21 OF AN INMATE SENTENCED UNDER 18 PA.C.S. § 1102.1 (RELATING TO
22 SENTENCE OF PERSONS UNDER THE AGE OF 18 FOR MURDER, MURDER OF
23 AN UNBORN CHILD AND MURDER OF A LAW ENFORCEMENT OFFICER) IF A
24 PAROLE DECISION HAS BEEN ISSUED BY THE BOARD WITHIN FIVE
25 YEARS OF THE DATE OF THE CURRENT APPLICATION.

26 * * *

27 Section 6 10. This act shall take effect as follows: ←

28 (1) The addition of 42 Pa.C.S. §§ 6303(c), 6307(c) and
29 6336(g) and (h) shall take effect in 90 days.

30 ~~(2) The amendment of 42 Pa.C.S. § 6337 shall take effect~~ ←

1 ~~immediately.~~

2 ~~(3) This section shall take effect immediately.~~

3 (2) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT ←
4 IMMEDIATELY:

5 (I) THE AMENDMENT OF 18 PA.C.S. § 1102(A)(1) AND
6 (B).

7 (II) THE ADDITION OF 18 PA.C.S. § 1102.1.

8 (III) THE AMENDMENT OF PARAGRAPH (7) OF THE
9 DEFINITION OF "DEPENDENT CHILD" IN 42 PA.C.S. § 6302.

10 (IV) THE AMENDMENT OF 42 PA.C.S. § 6337.

11 (V) THE ADDITION OF 61 PA.C.S. § 6139(A)(3.1).

12 (VI) THIS SECTION.

13 ~~(4)~~ (3) The remainder of this act shall take effect in ←
14 60 days.

EXHIBIT "C-6"

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 850 Session of
2011

INTRODUCED BY GREENLEAF, BAKER, TARTAGLIONE, FONTANA, COSTA,
YUDICHAK, BOSCOLA, ALLOWAY, HUGHES AND FARNESE,
MARCH 16, 2011

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,
OCTOBER 15, 2012

AN ACT

1 ~~Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and~~ ←
2 ~~Judicial Procedure) of the Pennsylvania Consolidated~~
3 ~~Statutes, in minors, providing for the offense of~~
4 ~~cyberbullying by minors; in criminal history record~~
5 ~~information, further providing for expungement and for~~
6 ~~juvenile records; and, in relation to summary offenses,~~
7 ~~further providing for short title and purpose of chapter, for~~
8 ~~the scope of the Juvenile Act, for inspection of court files~~
9 ~~and records, for conduct of hearings and for right to~~
10 ~~counsel.~~

11 AMENDING TITLES 18 (CRIMES AND OFFENSES), 42 (JUDICIARY AND ←
12 JUDICIAL PROCEDURE) AND 61 (PRISONS AND PAROLE), OF THE ←
13 PENNSYLVANIA CONSOLIDATED STATUTES, IN AUTHORIZED DISPOSITION ←
14 OF OFFENDERS, FURTHER PROVIDING FOR SENTENCE FOR MURDER, ←
15 MURDER OF UNBORN CHILD AND MURDER OF LAW ENFORCEMENT OFFICER; ←
16 AND PROVIDING FOR SENTENCE OF PERSONS UNDER THE AGE OF 18 FOR ←
17 MURDER, MURDER OF AN UNBORN CHILD AND MURDER OF A LAW ←
18 ENFORCEMENT OFFICER; IN MINORS, PROVIDING FOR THE OFFENSE OF ←
19 CYBERBULLYING BY MINORS; IN CRIMINAL HISTORY RECORD ←
20 INFORMATION, FURTHER PROVIDING FOR EXPUNGEMENT AND FOR ←
21 JUVENILE RECORDS; IN RELATION TO SUMMARY OFFENSES, FURTHER ←
22 PROVIDING FOR SHORT TITLE AND PURPOSE OF CHAPTER, FOR ←
23 DEFINITIONS, FOR THE SCOPE OF THE JUVENILE ACT, FOR ←
24 INSPECTION OF COURT FILES AND RECORDS, FOR CONDUCT OF ←
25 HEARINGS AND FOR RIGHT TO COUNSEL; AND, IN PENNSYLVANIA BOARD ←
26 OF PROBATION AND PAROLE, FURTHER PROVIDING FOR PAROLE ←
27 PROCEDURE IN AUTHORIZED DISPOSITION OF OFFENDERS, FURTHER ←
28 PROVIDING FOR SENTENCE FOR MURDER, MURDER OF UNBORN CHILD AND ←
29 MURDER OF LAW ENFORCEMENT OFFICER AND PROVIDING FOR SENTENCE ←
30 OF PERSONS UNDER THE AGE OF 18 FOR MURDER, MURDER OF AN ←
31 UNBORN CHILD AND MURDER OF A LAW ENFORCEMENT OFFICER; IN

1 CRIMINAL HISTORY RECORD INFORMATION, FURTHER PROVIDING FOR
2 EXPUNGEMENT AND FOR JUVENILE RECORDS; AND PROVIDING FOR CRIME
3 VICTIMS; IN JUVENILE MATTERS, FURTHER PROVIDING FOR SHORT
4 TITLE AND PURPOSES OF CHAPTER, FOR DEFINITIONS, FOR SCOPE,
5 FOR INSPECTION OF COURT FILES AND RECORDS AND FOR CONDUCT OF
6 HEARINGS; IN SENTENCING, PROVIDING FOR SENTENCING FOR CERTAIN
7 MURDERS OF INFANT PERSONS AND FOR SENTENCES FOR SECOND AND
8 SUBSEQUENT OFFENSES; IN PENNSYLVANIA BOARD OF PROBATION AND
9 PAROLE, FURTHER PROVIDING FOR PAROLE PROCEDURE.

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

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

14 SECTION 1. SECTION 1102(A) (1) AND (B) OF TITLE 18 OF THE ←
15 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED TO READ:

16 § 1102. SENTENCE FOR MURDER, MURDER OF UNBORN CHILD AND MURDER
17 OF LAW ENFORCEMENT OFFICER.

18 (A) FIRST DEGREE.--

19 (1) [A] EXCEPT AS PROVIDED UNDER SECTION 1102.1
20 (RELATING TO SENTENCE OF PERSONS UNDER THE AGE OF 18 FOR
21 MURDER, MURDER OF AN UNBORN CHILD AND MURDER OF A LAW
22 ENFORCEMENT OFFICER), A PERSON WHO HAS BEEN CONVICTED OF A
23 MURDER OF THE FIRST DEGREE OR OF MURDER OF A LAW ENFORCEMENT
24 OFFICER OF THE FIRST DEGREE SHALL BE SENTENCED TO DEATH OR TO
25 A TERM OF LIFE IMPRISONMENT IN ACCORDANCE WITH 42 PA.C.S. §
26 9711 (RELATING TO SENTENCING PROCEDURE FOR MURDER OF THE
27 FIRST DEGREE).

28 * * *

29 (B) SECOND DEGREE.-- [A] EXCEPT AS PROVIDED UNDER SECTION
30 1102.1, A PERSON WHO HAS BEEN CONVICTED OF MURDER OF THE SECOND
31 DEGREE, OF SECOND DEGREE MURDER OF AN UNBORN CHILD OR OF SECOND
32 DEGREE MURDER OF A LAW ENFORCEMENT OFFICER SHALL BE SENTENCED TO
33 A TERM OF LIFE IMPRISONMENT.

34 * * *

1 SECTION 2. TITLE 18 IS AMENDED BY ADDING ~~SECTIONS~~ A SECTION
2 TO READ:

3 § 1102.1. SENTENCE OF PERSONS UNDER THE AGE OF 18 FOR MURDER,
4 MURDER OF AN UNBORN CHILD AND MURDER OF A LAW
5 ENFORCEMENT OFFICER.

6 (A) FIRST DEGREE MURDER.--A PERSON WHO HAS BEEN CONVICTED,
7 AFTER JUNE 24, 2012, OF A MURDER OF THE FIRST DEGREE, FIRST
8 DEGREE MURDER OF AN UNBORN CHILD OR OF MURDER OF A LAW
9 ENFORCEMENT OFFICER OF THE FIRST DEGREE AND WHO WAS UNDER THE
10 AGE OF 18 AT THE TIME OF THE COMMISSION OF THE OFFENSE SHALL BE
11 SENTENCED AS FOLLOWS:

12 (1) A PERSON WHO AT THE TIME OF THE COMMISSION OF THE
13 OFFENSE WAS 15 YEARS OF AGE OR OLDER SHALL BE SENTENCED TO A
14 TERM OF LIFE IMPRISONMENT WITHOUT PAROLE, OR A TERM OF
15 IMPRISONMENT, THE MINIMUM OF WHICH SHALL BE AT LEAST 35 YEARS
16 TO LIFE.

17 (2) A PERSON WHO AT THE TIME OF THE COMMISSION OF THE
18 OFFENSE WAS UNDER 15 YEARS OF AGE SHALL BE SENTENCED TO A
19 TERM OF LIFE IMPRISONMENT WITHOUT PAROLE, OR A TERM OF
20 IMPRISONMENT, THE MINIMUM OF WHICH SHALL BE AT LEAST 25 YEARS
21 TO LIFE.

22 (B) NOTICE.--REASONABLE NOTICE TO THE DEFENDANT OF THE
23 COMMONWEALTH'S INTENTION TO SEEK A SENTENCE OF LIFE IMPRISONMENT
24 WITHOUT PAROLE UNDER SUBSECTION (A) SHALL BE PROVIDED AFTER
25 CONVICTION AND BEFORE SENTENCING.

26 (C) SECOND DEGREE MURDER.--A PERSON WHO HAS BEEN CONVICTED,
27 AFTER JUNE 24, 2012, OF A MURDER OF THE SECOND DEGREE, SECOND
28 DEGREE MURDER OF AN UNBORN CHILD OR OF MURDER OF A LAW
29 ENFORCEMENT OFFICER OF THE SECOND DEGREE AND WHO WAS UNDER THE
30 AGE OF 18 AT THE TIME OF THE COMMISSION OF THE OFFENSE SHALL BE

1 SENTENCED AS FOLLOWS:

2 (1) A PERSON WHO AT THE TIME OF THE COMMISSION OF THE
3 OFFENSE WAS 15 YEARS OF AGE OR OLDER SHALL BE SENTENCED TO A
4 TERM OF IMPRISONMENT THE MINIMUM OF WHICH SHALL BE AT LEAST
5 30 YEARS TO LIFE.

6 (2) A PERSON WHO AT THE TIME OF THE COMMISSION OF THE
7 OFFENSE WAS UNDER 15 YEARS OF AGE SHALL BE SENTENCED TO A
8 TERM OF IMPRISONMENT THE MINIMUM OF WHICH SHALL BE AT LEAST
9 20 YEARS TO LIFE.

10 (D) FINDINGS.--IN DETERMINING WHETHER TO IMPOSE A SENTENCE
11 OF LIFE WITHOUT PAROLE UNDER SUBSECTION (A), THE COURT SHALL
12 CONSIDER AND MAKE FINDINGS ON THE RECORD REGARDING THE
13 FOLLOWING:

14 (1) THE IMPACT OF THE OFFENSE ON EACH VICTIM, INCLUDING
15 ORAL AND WRITTEN VICTIM IMPACT STATEMENTS MADE OR SUBMITTED
16 BY FAMILY MEMBERS OF THE VICTIM DETAILING THE PHYSICAL,
17 PSYCHOLOGICAL AND ECONOMIC EFFECTS OF THE CRIME ON THE VICTIM
18 AND THE VICTIM'S FAMILY. A VICTIM IMPACT STATEMENT MAY
19 INCLUDE COMMENT ON THE SENTENCE OF THE DEFENDANT.

20 (2) THE IMPACT OF THE OFFENSE ON THE COMMUNITY.

21 (3) THE THREAT TO THE SAFETY OF THE PUBLIC OR ANY
22 INDIVIDUAL POSED BY THE DEFENDANT.

23 (4) THE NATURE AND CIRCUMSTANCES OF THE OFFENSE
24 COMMITTED BY THE DEFENDANT.

25 (5) THE DEGREE OF THE DEFENDANT'S CULPABILITY.

26 (6) GUIDELINES FOR SENTENCING AND RESENTENCING ADOPTED
27 BY THE PENNSYLVANIA COMMISSION ON SENTENCING.

28 (7) AGE-RELATED CHARACTERISTICS OF THE DEFENDANT,
29 INCLUDING:

30 (I) AGE.

1 (II) MENTAL CAPACITY.

2 (III) MATURITY.

3 (IV) THE DEGREE OF CRIMINAL SOPHISTICATED EXHIBITED
4 BY THE DEFENDANT.

5 (V) THE NATURE AND EXTENT OF ANY PRIOR DELINQUENT OR
6 CRIMINAL HISTORY, INCLUDING THE SUCCESS OR FAILURE OF ANY
7 PREVIOUS ATTEMPTS BY THE COURT TO REHABILITATE THE
8 DEFENDANT.

9 (VI) PROBATION OR INSTITUTIONAL REPORTS.

10 (VII) OTHER RELEVANT FACTORS.

11 (E) MINIMUM SENTENCE.--NOTHING UNDER THIS SECTION SHALL
12 PREVENT THE SENTENCING COURT FROM IMPOSING A MINIMUM SENTENCE
13 GREATER THAN THAT PROVIDED IN THIS SECTION. SENTENCING
14 GUIDELINES PROMULGATED BY THE PENNSYLVANIA COMMISSION ON
15 SENTENCING MAY NOT SUPERSEDE THE MANDATORY MINIMUM SENTENCES
16 PROVIDED UNDER THIS SECTION.

17 (F) APPEAL BY COMMONWEALTH.--IF A SENTENCING COURT REFUSES
18 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL
19 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE
20 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE
21 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A
22 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE
23 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.

24 ~~§ 6321. Cyberbullying by minors.~~ ←

25 ~~(a) Offense defined. A minor commits a misdemeanor of the~~
26 ~~third degree if:~~

27 ~~(1) the minor knowingly transmits or disseminates any~~
28 ~~electronic communication, including a visual depiction of~~
29 ~~himself or any other person in a state of nudity, to another~~
30 ~~minor with the knowledge or intent that the communication~~

1 ~~would coerce, intimidate, torment, harass or otherwise cause~~
2 ~~emotional distress to the other minor; or~~

3 ~~(2) the minor does any of the following involving~~
4 ~~another minor:~~

5 ~~(i) photographs, videotapes, depicts on a computer~~
6 ~~or films the other minor in a state of nudity without the~~
7 ~~person's knowledge or consent; or~~

8 ~~(ii) transmits, distributes, publishes or~~
9 ~~disseminates a visual depiction of the other minor in a~~
10 ~~state of nudity where the minor depicted has not given~~
11 ~~consent or has withdrawn consent for the dissemination.~~

12 ~~(b) Seizure and forfeiture of electronic communication~~
13 ~~device. An electronic communication device used in violation of~~
14 ~~this section may be seized by and forfeited to the Commonwealth.~~

15 ~~(c) Definitions. As used in this section, the following~~
16 ~~words and phrases shall have the meanings given to them in this~~
17 ~~subsection:~~

18 ~~"Disseminate." To cause or make an electronic communication~~
19 ~~from one person, place or electronic communication device to two~~
20 ~~or more persons, places or electronic communication devices.~~

21 ~~"Electronic communication." As defined in section 5702-~~
22 ~~(relating to definitions).~~

23 ~~"Minor." An individual under 18 years of age.~~

24 ~~"Nudity." The showing of the human male or female genitals,~~
25 ~~pubic area or buttocks with less than a fully opaque covering,~~
26 ~~the showing of the female breast with less than a fully opaque~~
27 ~~covering of any portion thereof below the top of the nipple or~~
28 ~~the depiction of covered male genitals in a discernibly turgid~~
29 ~~state.~~

30 ~~"Transmit." To cause or make an electronic communication~~

1 ~~from one person, place or electronic communication device to~~
2 ~~only one other person, place or electronic communication device.~~

3 ~~"Visual depiction." A photograph, videotape, film or~~
4 ~~depiction on a computer. The term shall not include a~~
5 ~~photograph, videotape, film or depiction on a computer, taken,~~
6 ~~taped, filmed, made, produced, used or intended to be used, for~~
7 ~~or in furtherance of a commercial purpose or to the transmission~~
8 ~~or dissemination of such a visual depiction.~~

9 Section 2. Sections 9122(a)(3) and (d) and 9123(a) of Title
10 18 are amended to read: ←

11 SECTION 3. SECTION 9122(A)(3) AND (D) OF TITLE 18 ARE ←
12 AMENDED TO READ:

13 § 9122. Expungement.

14 (a) Specific proceedings.--Criminal history record
15 information shall be expunged in a specific criminal proceeding
16 when:

17 * * *

18 (3) a person 21 years of age or older who has been
19 convicted of a violation of section 6308 (relating to
20 purchase, consumption, possession or transportation of liquor
21 or malt or brewed beverages), which occurred on or after the
22 day the person attained 18 years of age, petitions the court
23 of common pleas in the county where the conviction occurred
24 seeking expungement and the person has satisfied all terms
25 and conditions of the sentence imposed for the violation,
26 including any suspension of operating privileges imposed
27 pursuant to section 6310.4 (relating to restriction of
28 operating privileges). Upon review of the petition, the court
29 shall order the expungement of all criminal history record
30 information and all administrative records of the Department

1 of Transportation relating to said conviction.

2 * * *

3 (d) Notice of expungement.--Notice of expungement shall
4 promptly be submitted to the central [respository] repository
5 which shall notify all criminal justice agencies which have
6 received the criminal history record information to be expunged.

7 * * *

8 SECTION 4. SECTION 9123(A) OF TITLE 18, AMENDED JULY 5, 2012 ←
9 (P.L.880, NO.91), IS AMENDED TO READ:

10 § 9123. Juvenile records.

11 (a) Expungement of juvenile records.--Notwithstanding the
12 provisions of section 9105 (relating to other criminal justice
13 information) and except ~~upon cause shown~~ AS PROVIDED UNDER ←
14 SUBSECTION (A.1), expungement of records of juvenile delinquency
15 cases and cases involving summary offenses committed while the
16 individual was under 18 years of age, wherever kept or retained
17 shall occur after 30 days' notice to the district attorney,
18 whenever the court upon its own motion or upon the motion of a
19 child or the parents or guardian finds:

20 (1) a complaint is filed which is not substantiated or
21 the petition which is filed as a result of a complaint is
22 dismissed by the court;

23 (1.1) a written allegation is filed which was not
24 approved for prosecution;

25 (1.2) SIX MONTHS HAVE ELAPSED SINCE the individual ←
26 successfully completed an informal adjustment and no
27 proceeding seeking adjudication or conviction is pending;

28 (2) six months have elapsed since the final discharge of
29 the person from supervision under a consent decree or
30 diversion program, including a program under 42 Pa.C.S. §

1 1520 (relating to adjudication alternative program) and no
2 proceeding seeking adjudication or conviction is pending;

3 (2.1) the individual is 18 years of age or older and SIX ←
4 MONTHS HAVE ELAPSED SINCE the individual has satisfied all
5 terms and conditions of the sentence imposed following a
6 conviction for a summary offense, with the exception of a
7 violation of section 6308 (relating to purchase, consumption,
8 possession or transportation of liquor or malt or brewed
9 beverages), committed while the individual was under 18 years
10 of age and the individual has not been convicted of a felony,
11 misdemeanor or adjudicated delinquent and no proceeding is
12 pending to seek such conviction and adjudication;

13 (2.2) the individual is 18 years of age or older and has
14 been convicted of a violation of section 6308 which occurred
15 while the individual was under 18 years of age and SIX MONTHS ←
16 HAVE ELAPSED SINCE the individual has satisfied all terms and
17 conditions of the sentence imposed for the violation,
18 including any suspension of operating privileges imposed
19 under section 6310.4 (relating to restriction of operating
20 privileges). Expungement shall include all criminal history
21 record information and all administrative records of the
22 Department of Transportation relating to the conviction;

23 (3) five years have elapsed since the final discharge of
24 the person from commitment, placement, probation or any other
25 disposition and referral and since such final discharge, the
26 person has not been convicted of a felony, misdemeanor or
27 adjudicated delinquent and no proceeding is pending seeking
28 such conviction or adjudication; or.

29 (4) [the individual is 18 years of age or older,] the
30 attorney for the Commonwealth consents to the expungement and

1 a court orders the expungement after giving consideration to
2 the following factors:

- 3 (i) the type of offense;
- 4 (ii) the individual's age, history of employment,
5 criminal activity and drug or alcohol problems;
- 6 (iii) adverse consequences that the individual may
7 suffer if the records are not expunged; and
- 8 (iv) whether retention of the record is required for
9 purposes of protection of the public safety.

10 * * *

11 SECTION 4.1. TITLE 18 IS AMENDED BY ADDING A CHAPTER TO
12 READ: ←

13 CHAPTER 94
14 CRIME VICTIMS
15 SEC.

16 9401. DEFINITIONS.
17 9402. OFFICE OF THE VICTIM ADVOCATE.
18 § 9401. DEFINITIONS.

19 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
20 SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
21 CONTEXT CLEARLY INDICATES OTHERWISE:

22 "CRIME VICTIMS ACT." THE ACT OF NOVEMBER 24, 1998 (P.L.882,
23 NO.111), KNOWN AS THE CRIME VICTIMS ACT.

24 "OFFICE OF VICTIM ADVOCATE." THE OFFICE OF VICTIM ADVOCATE
25 ESTABLISHED UNDER SECTION 302 OF THE CRIMES VICTIMS ACT.

26 § 9402. OFFICE OF VICTIM ADVOCATE.

27 THE OFFICE OF VICTIM ADVOCATE HAS THE POWER AND DUTY TO
28 REPRESENT AND ADVOCATE FOR THE INTERESTS OF INDIVIDUAL CRIME
29 VICTIMS IN ACCORDANCE WITH SECTION 302 OF THE CRIME VICTIMS ACT,
30 AND ADVOCATE FOR THE INTERESTS OF CRIME VICTIMS GENERALLY,

1 INCLUDING THE VICTIMS OF CRIMES COMMITTED BY JUVENILES.

2 Section 3 5. Section 6301(b) of Title 42 is amended to read: ←

3 § 6301. Short title and purposes of chapter.

4 * * *

5 (b) Purposes.--This chapter shall be interpreted and
6 construed as to effectuate the following purposes:

7 (1) To preserve the unity of the family whenever
8 possible or to provide another alternative permanent family
9 when the unity of the family cannot be maintained.

10 (1.1) To provide for the care, protection, safety and
11 wholesome mental and physical development of children coming
12 within the provisions of this chapter.

13 (2) Consistent with the protection of the public
14 interest, to provide for children committing delinquent acts
15 programs of supervision, care and rehabilitation which
16 provide balanced attention to the protection of the
17 community, the imposition of accountability for offenses
18 committed and the development of competencies to enable
19 children to become responsible and productive members of the
20 community.

21 (3) To achieve the foregoing purposes in a family
22 environment whenever possible, separating the child from
23 parents only when necessary for his welfare, safety or health
24 or in the interests of public safety[.], BY DOING ALL OF THE ←
25 FOLLOWING:

26 (I) EMPLOYING EVIDENCE-BASED PRACTICES WHENEVER
27 POSSIBLE AND, IN THE CASE OF A DELINQUENT CHILD, BY USING
28 THE LEAST RESTRICTIVE INTERVENTION THAT IS CONSISTENT
29 WITH THE PROTECTION OF THE COMMUNITY, THE IMPOSITION OF
30 ACCOUNTABILITY FOR OFFENSES COMMITTED AND THE

1 REHABILITATION, SUPERVISION AND TREATMENT NEEDS OF THE
2 CHILD; AND

3 (II) IMPOSING CONFINEMENT ONLY IF NECESSARY AND FOR
4 THE MINIMUM AMOUNT OF TIME THAT IS CONSISTENT WITH THE
5 PURPOSES UNDER PARAGRAPHS (1), (1.1) AND (2).

6 (4) To provide means through which the provisions of
7 this chapter are executed and enforced and in which the
8 parties are assured a fair hearing and their constitutional
9 and other legal rights recognized and enforced.

10 ~~(5) To use the least restrictive sanctions consistent~~ ←
11 ~~with the protection of the community and the rehabilitation~~
12 ~~needs of a delinquent child; and to use confinement as a last~~
13 ~~resort and to impose it for the minimum amount of time that~~
14 ~~is consistent with the protection of the public and the~~
15 ~~rehabilitation needs of a delinquent child.~~

16 ~~(6) To employ whenever possible evidence based~~
17 ~~practices, with fidelity, at every stage of the juvenile~~
18 ~~justice process.~~

19 SECTION 6. PARAGRAPH (7) OF THE DEFINITION OF "DEPENDENT" ←
20 CHILD" IN SECTION 6302 OF TITLE 42 IS AMENDED TO READ:
21 § 6302. DEFINITIONS.

22 THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS CHAPTER
23 SHALL HAVE, UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE, THE
24 MEANINGS GIVEN TO THEM IN THIS SECTION:

25 * * *

26 "DEPENDENT CHILD." A CHILD WHO:

27 * * *

28 (7) [IS UNDER THE AGE OF TEN YEARS AND] HAS COMMITTED A
29 DELINQUENT ACT OR CRIME, OTHER THAN A SUMMARY OFFENSE, WHILE
30 UNDER THE AGE OF TEN YEARS;

1 * * *

2 Section 4 7. Sections 6303, 6307 and 6336 of Title 42 are
3 amended by adding subsections to read:

4 § 6303. Scope of chapter.

5 * * *

6 (c) Summary offenses generally.--In addition to the
7 provisions of subsection (a)(5) and notwithstanding the
8 exclusion of summary offenses generally from the definition of
9 "delinquent act" under section 6302, the provisions of sections
10 6307 (relating to inspection of court files and records) and
11 6336(d) (relating to conduct of hearings), insofar as section
12 6336(d) relates to the exclusion of the general public from the
13 proceedings, shall apply to proceedings involving a child
14 charged with a summary offense when the proceedings are before a
15 judge of the minor judiciary.

16 § 6307. Inspection of court files and records.

17 * * *

18 (c) Summary offenses.--The provisions of this section shall
19 apply to proceedings involving a child charged with a summary
20 offense when the proceedings are before a judge of the minor
21 judiciary.

22 § 6336. Conduct of hearings.

23 * * *

24 (g) Summary offenses.--The provisions of subsection (d),
25 insofar as it relates to the exclusion of the general public
26 from the proceedings, shall apply to proceedings involving a
27 child charged with a summary offense when the proceedings are
28 before a judge of the minor judiciary.

29 (h) Adjudication alternative.--The magisterial district
30 judge may refer a child charged with a summary offense to an

1 adjudication alternative program under section 1520 (relating to
2 adjudication alternative program) and the Pennsylvania Rules of
3 Criminal Procedure.

4 Section 5 8. ~~Section 6337 of Title 42, AMENDED APRIL 9, 2012~~ ←
5 ~~(P.L.223, NO.23), is amended to read:~~

6 ~~§ 6337. Right to counsel.~~

7 ~~(a) Court to provide counsel.--~~

8 ~~(1) Except as provided in section 6311 (relating to~~ ←
9 ~~guardian ad litem for child in court proceedings), a party is~~
10 ~~entitled to representation by legal counsel at all stages of~~
11 ~~any proceedings under this chapter and if he is without~~
12 ~~financial resources or otherwise unable to employ counsel, to~~
13 ~~have the court provide counsel for him.~~

14 ~~(2) If a party appears without counsel the court shall~~
15 ~~ascertain whether he knows of his right thereto and to be~~
16 ~~provided with counsel by the court if applicable. The court~~
17 ~~may continue the proceeding to enable a party to obtain~~
18 ~~counsel. [Counsel must be provided for a child unless his~~
19 ~~parent, guardian, or custodian is present in court and~~
20 ~~affirmatively waive it. However, the parent, guardian, or~~
21 ~~custodian may not waive counsel for a child when their~~
22 ~~interest may be in conflict with the interest or interests of~~
23 ~~the child.]~~

24 ~~(3) If the interests of two or more parties may~~
25 ~~conflict, separate counsel shall be provided for each of~~
26 ~~them.~~

27 ~~(1) EXCEPT AS PROVIDED UNDER THIS SECTION AND IN SECTION~~ ←
28 ~~6311 (RELATING TO GUARDIAN AD LITEM FOR CHILD IN COURT~~
29 ~~PROCEEDINGS), A PARTY IS ENTITLED TO REPRESENTATION BY LEGAL~~
30 ~~COUNSEL AT ALL STAGES OF ANY PROCEEDINGS UNDER THIS CHAPTER~~

1 ~~AND IF HE IS WITHOUT FINANCIAL RESOURCES OR OTHERWISE UNABLE~~
2 ~~TO EMPLOY COUNSEL, TO HAVE THE COURT PROVIDE COUNSEL FOR HIM.~~

3 ~~(2) IF A PARTY OTHER THAN A CHILD APPEARS AT A HEARING~~
4 ~~WITHOUT COUNSEL THE COURT SHALL ASCERTAIN WHETHER HE KNOWS OF~~
5 ~~HIS RIGHT THERETO AND TO BE PROVIDED WITH COUNSEL BY THE~~
6 ~~COURT IF APPLICABLE. THE COURT MAY CONTINUE THE PROCEEDING TO~~
7 ~~ENABLE A PARTY TO OBTAIN COUNSEL. [EXCEPT AS PROVIDED UNDER~~
8 ~~SECTION 6337.1 (RELATING TO RIGHT TO COUNSEL FOR CHILDREN IN~~
9 ~~DEPENDENCY AND DELINQUENCY PROCEEDINGS), COUNSEL MUST BE~~
10 ~~PROVIDED FOR A CHILD.]~~

11 ~~(3) IF THE INTERESTS OF TWO OR MORE PARTIES MAY~~
12 ~~CONFLICT, SEPARATE COUNSEL SHALL BE PROVIDED FOR EACH OF~~
13 ~~THEM.~~

14 ~~(b) Delinquency cases.~~

15 ~~(1) In delinquency cases, all children are presumed~~
16 ~~indigent. The presumption may be rebutted if the court~~
17 ~~ascertains that the child has the financial resources to~~
18 ~~retain counsel of his choice at his own expense.~~

19 ~~(2) The court shall not consider the financial resources~~
20 ~~of the child's parent, guardian or custodian when~~
21 ~~ascertaining whether the child has the financial resources to~~
22 ~~retain counsel of his choice at his own expense.~~

23 SECTION 8. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ: ←

24 § 9711.1. SENTENCING FOR CERTAIN MURDERS OF INFANT PERSONS.

25 (A) SENTENCE ENHANCEMENT.--THE PENNSYLVANIA COMMISSION ON
26 SENTENCING, PURSUANT TO SECTION 2154 (RELATING TO ADOPTION OF
27 GUIDELINES FOR SENTENCING), SHALL PROVIDE FOR A SENTENCING
28 ENHANCEMENT FOR AN OFFENSE UNDER 18 PA.C.S. § 2502(C) (RELATING
29 TO MURDER) WHEN THE VICTIM WAS LESS THAN 13 YEARS OF AGE AT THE
30 TIME OF THE COMMISSION OF THE OFFENSE.

1 (B) APPLICABILITY.--THE APPLICABILITY OF THIS SECTION SHALL
2 BE DETERMINED AT SENTENCING. THE COURT SHALL CONSIDER ANY
3 EVIDENCE PRESENTED AT TRIAL AND SHALL DETERMINE, BY
4 PREPONDERANCE OF THE EVIDENCE, IF THIS SECTION IS APPLICABLE.

5 (C) CONSECUTIVE SENTENCE.--A SENTENCE IMPOSED UPON A PERSON
6 TO WHOM THIS SECTION APPLIES SHALL BE SERVED CONSECUTIVELY TO
7 ANY OTHER SENTENCE THE PERSON IS SERVING AND TO ANY OTHER
8 SENTENCE BEING THEN IMPOSED BY THE COURT.

9 SECTION 9. SECTION 9714(G) OF TITLE 42, AMENDED JULY 5, 2012
10 (P.L.1050, NO.122), IS AMENDED TO READ:

11 § 9714. SENTENCES FOR SECOND AND SUBSEQUENT OFFENSES.

12 * * *

13 (G) DEFINITION.--AS USED IN THIS SECTION, THE TERM "CRIME OF
14 VIOLENCE" MEANS MURDER OF THE THIRD DEGREE, VOLUNTARY
15 MANSLAUGHTER, MANSLAUGHTER OF A LAW ENFORCEMENT OFFICER AS
16 DEFINED IN 18 PA.C.S. § 2507(C) OR (D) (RELATING TO CRIMINAL
17 HOMICIDE OF LAW ENFORCEMENT OFFICER), MURDER OF THE THIRD DEGREE
18 INVOLVING AN UNBORN CHILD AS DEFINED IN 18 PA.C.S. § 2604(C)
19 (RELATING TO MURDER OF UNBORN CHILD), AGGRAVATED ASSAULT OF AN
20 UNBORN CHILD AS DEFINED IN 18 PA.C.S. § 2606 (RELATING TO
21 AGGRAVATED ASSAULT OF UNBORN CHILD), AGGRAVATED ASSAULT AS
22 DEFINED IN 18 PA.C.S. § 2702(A)(1) OR (2) (RELATING TO
23 AGGRAVATED ASSAULT), ASSAULT OF LAW ENFORCEMENT OFFICER AS
24 DEFINED IN 18 PA.C.S. § 2702.1 (RELATING TO ASSAULT OF LAW
25 ENFORCEMENT OFFICER), USE OF WEAPONS OF MASS DESTRUCTION AS
26 DEFINED IN 18 PA.C.S. § 2716(B) (RELATING TO WEAPONS OF MASS
27 DESTRUCTION), TERRORISM AS DEFINED IN 18 PA.C.S. § 2717(B)(2)
28 (RELATING TO TERRORISM), TRAFFICKING OF PERSONS WHEN THE OFFENSE
29 IS GRADED AS A FELONY OF THE FIRST DEGREE AS PROVIDED IN 18
30 PA.C.S. § 3002 (RELATING TO TRAFFICKING OF PERSONS), RAPE,

1 INVOLUNTARY DEVIATE SEXUAL INTERCOURSE, AGGRAVATED INDECENT
2 ASSAULT, INCEST, SEXUAL ASSAULT, ARSON AS DEFINED IN 18 PA.C.S.
3 § 3301(A) (RELATING TO ARSON AND RELATED OFFENSES), ECOTERRORISM
4 AS [DEFINED] CLASSIFIED IN 18 PA.C.S. § [3311(B)(2)] 3311(B)(3)
5 (RELATING TO ECOTERRORISM), KIDNAPPING, BURGLARY AS DEFINED IN
6 18 PA.C.S. § 3502(A)(1) (RELATING TO BURGLARY), ROBBERY AS
7 DEFINED IN 18 PA.C.S. § 3701(A)(1)(I), (II) OR (III) (RELATING
8 TO ROBBERY), OR ROBBERY OF A MOTOR VEHICLE, DRUG DELIVERY
9 RESULTING IN DEATH AS DEFINED IN 18 PA.C.S. § 2506(A) (RELATING
10 TO DRUG DELIVERY RESULTING IN DEATH), OR CRIMINAL ATTEMPT,
11 CRIMINAL CONSPIRACY OR CRIMINAL SOLICITATION TO COMMIT MURDER OR
12 ANY OF THE OFFENSES LISTED ABOVE, OR AN EQUIVALENT CRIME UNDER
13 THE LAWS OF THIS COMMONWEALTH IN EFFECT AT THE TIME OF THE
14 COMMISSION OF THAT OFFENSE OR AN EQUIVALENT CRIME IN ANOTHER
15 JURISDICTION.

16 SECTION 9 10. SECTION 6139(A) OF TITLE 61 IS AMENDED BY ←
17 ADDING ~~A PARAGRAPH~~ PARAGRAPHS TO READ: ←

18 § 6139. PAROLE PROCEDURE.

19 (A) SPECIFIC REQUIREMENTS.--

20 * * *

21 (3.1) NOTWITHSTANDING PARAGRAPHS (2) AND (3), THE BOARD
22 SHALL NOT BE REQUIRED TO CONSIDER NOR DISPOSE OF AN
23 APPLICATION BY AN INMATE OR AN INMATE'S ATTORNEY IN THE CASE
24 OF AN INMATE SENTENCED UNDER 18 PA.C.S. § 1102.1 (RELATING TO
25 SENTENCE OF PERSONS UNDER THE AGE OF 18 FOR MURDER, MURDER OF
26 AN UNBORN CHILD AND MURDER OF A LAW ENFORCEMENT OFFICER) IF A
27 PAROLE DECISION HAS BEEN ISSUED BY THE BOARD WITHIN FIVE
28 YEARS OF THE DATE OF THE CURRENT APPLICATION.

29 (3.2) NOTHING UNDER THIS SECTION SHALL BE INTERPRETED AS ←
30 GRANTING A RIGHT TO BE PAROLED TO ANY PERSON, AND A DECISION

1 BY THE BOARD AND ITS DESIGNEES RELATING TO A PERSON SENTENCED
2 UNDER 18 PA.C.S. § 1102.1 MAY NOT BE CONSIDERED AN
3 ADJUDICATION UNDER 2 PA.C.S. CHS. 5 SUBCH. A (RELATING TO
4 PRACTICE AND PROCEDURE OF COMMONWEALTH AGENCIES AND 7 SUBCH.
5 A (RELATING TO JUDICIAL REVIEW OF COMMONWEALTH AGENCY
6 ACTION).

7 * * *

8 Section ~~6~~ 11. This act shall take effect as follows: ←

9 (1) The addition of 42 Pa.C.S. §§ 6303(c), 6307(c) and
10 6336(g) and (h) shall take effect in 90 days.

11 ~~(2) The amendment of 42 Pa.C.S. § 6337 shall take effect~~ ←
12 ~~immediately.~~

13 ~~(3) This section shall take effect immediately.~~

14 (2) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT ←
15 IMMEDIATELY:

16 (I) THE AMENDMENT OF 18 PA.C.S. § 1102(A)(1) AND
17 (B).

18 (II) THE ADDITION OF 18 PA.C.S. § 1102.1.

19 (III) THE AMENDMENT OF PARAGRAPH (7) OF THE
20 DEFINITION OF "DEPENDENT CHILD" IN 42 PA.C.S. § 6302.

21 ~~(IV) THE AMENDMENT OF 42 PA.C.S. § 6337.~~ ←

22 ~~(V)~~ (IV) THE ADDITION OF 61 PA.C.S. § 6139(A)(3.1). ←

23 ~~(VI)~~ (V) THIS SECTION. ←

24 ~~(4)~~ (3) The remainder of this act shall take effect in ←
25 60 days.

EXHIBIT "C-7"



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 850

PRINTERS NO. 2475

PRIME SPONSOR: Greenleaf

COST / (SAVINGS)

FUND	FY 2012/13	FY 2013/14
General Fund	See "Analysis & Fiscal Impact" Below	

SUMMARY: Senate Bill 850 amends the Crimes Code, Judicial Code, and Prisons and Parole Code. Effective dates vary by provision.

ANALYSIS & FISCAL IMPACT:

This legislation makes several changes to the various codes mentioned above, changes which are detailed by code and section below.

In the **Crimes Code** it adds a new **Section 1102.1** concerning the sentencing of persons under the age of 18 for murder, murder of an unborn child, and murder of a law enforcement officer. Under current law, persons who commit these crimes in the first degree, regardless of age, face a minimum life term and the possibility of the death penalty. This new section removes the possibility of the death penalty for those under 18 and sets the minimum sentence at 25 years to life for those who were under 15 years of age when they committed the crime, and 35 years to life for those who were at least 15 but younger than 18. Under current law, when these crimes are committed in the second degree, a minimum life sentence is required, regardless of age. This section changes that minimum to 20 years to life for those who were under 15 years of age when they committed the crime, and 30 years to life for those who were at least 15 but younger than 18. The section also lists findings the court must consider when determining whether to impose a sentence of life without parole on a minor. These changes will have no adverse impact on Commonwealth funds.

Crimes Code Sections 9122 and 9123 are amended to provide for the expungement of juvenile records. It establishes a 6-month waiting period for juvenile record expungements relating to successful completion of an informal adjustment, completion of all requirements in connection with a summary conviction, or conviction for possession of alcohol by a minor.

The anticipated additional number of expungement requests submitted to the Pennsylvania State Police cannot be determined at this time. If the volume of expungement requests increases significantly, this could result in the need for one additional Clerk Typist within the expungement unit along with some additional equipment, supplies, training and work space with an estimated annual cost of \$100,000, according to the Pennsylvania State Police.

A new **Chapter 94** is added to the **Crimes Code**, establishing the Office of Victim Advocate. The Office of Victim Advocate has the power and duty to represent and advocate for the interests of individual crime victims in accordance with section 302 of the Crime Victims Act, and advocate for the interests of crime victims generally, including the victims of crimes committed by juveniles. This addition will have no adverse impact on Commonwealth funds. The Office of Victim Advocate has already been established by the Crime Victims Act, and exists within the Pennsylvania Board of Probation and Parole.

Judicial Code Sections 6301, 6302, 6303, 6307, and 6336 are amended in order to protect children involved in cases before a Magisterial District Judge or involved in juvenile court proceedings. This change will have no adverse impact on Commonwealth funds.

A new **Section 9711.1** is added to the **Judicial Code** concerning sentencing for certain murders of infant persons. It directs the Pennsylvania Commission on Sentencing to provide a sentencing enhancement for the murder of an individual less than 13 years of age. The applicability of this enhancement would be determined at sentencing. Enactment of this provision may have a fiscal impact to the extent that sentences are enhanced. However, the exact nature of the sentencing enhancement is left to the discretion of the Pennsylvania Commission on Sentencing. Therefore, it is not possible to estimate what that impact may be at this time with available data.

In **Section 9714** of the **Judicial Code**, a technical change is made in the definition of the term "crime of violence." This will have no adverse impact on Commonwealth funds.

Title 61, Prisons and Parole, Section 6139, concerning parole procedure is amended with changes related to the addition of Section 1102.1 to the Crimes Code. This includes a clarification that juveniles convicted of first or second degree murder, and who would be eligible for parole after completion of the minimum mandatory term, have no right to parole or the ability to appeal a denial of parole to the courts.

PREPARED BY: Jeff Miller
House Appropriations Committee (R)

DATE: October 15, 2012

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.

EXHIBIT "D"

On the question,
Will the Senate agree to the motion?

The PRESIDENT. The Chair recognizes the gentleman from Lancaster, Senator Brubaker.

Senator BRUBAKER. Mr. President, this bill took years to develop. It ultimately included other bills that passed earlier when it went over to the House. The House divided it up and sent it back. I am delighted that Senate Bill No. 390 and the other agriculture bills are moving today. This brings agriculture into the 21st century and allows, as Senator Schwank said earlier, agriculture today to operate the way that it operates today in a legal manner. I would like to thank Senator Rafferty, Senator Schwank, Senator Vogel, Senator Waugh, and many other Members who worked very hard and very cooperatively in a bipartisan way to make sure that these series of bills came across the finish line.

Thank you, Mr. President.

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were required by Senator PILEGGI and were as follows, viz:

YEA-49

Alloway	Erickson	Piccola	Vulakovich
Argall	Farnese	Pileggi	Ward
Baker	Ferlo	Rafferty	Washington
Blake	Folmer	Robbins	Waugh
Boscola	Fontana	Scarnati	White, Donald
Brewster	Gordner	Schwank	White, Mary Jo
Browne	Greenleaf	Smucker	Williams
Brubaker	Hughes	Solobay	Wozniak
Corman	Kasunic	Stack	Yaw
Costa	Kitchen	Tartaglione	Yudichak
Dinniman	Leach	Tomlinson	
Earl	McIlhinney	Vance	
Eichelberger	Mensch	Vogel	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SENATE CONCURS IN HOUSE AMENDMENTS

SB 850 (Pr. No. 2475) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 18 (Crimes and Offenses), 42 (Judiciary and Judicial Procedure) and 61 (Prisons and Parole), of the Pennsylvania Consolidated Statutes, in authorized disposition of offenders, further providing for sentence for murder, murder of unborn child and murder of law enforcement officer and providing for sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer; in criminal history record information, further providing for expungement and for juvenile records; and providing for crime victims; in juvenile matters, further providing for short title and purposes of chapter, for definitions, for scope, for inspection of court files and records and for conduct of hearings; in sentencing, providing

for sentencing for certain murders of infant persons and for sentences for second and subsequent offenses; in Pennsylvania Board of Probation and Parole, further providing for parole procedure.

On the question,
Will the Senate concur in the amendments made by the House to Senate Bill No. 850?

The PRESIDENT. The Chair recognizes the gentleman from Delaware, Senator Pileggi.

Senator PILEGGI. Mr. President, I move that the Senate do concur in the amendments made by the House to Senate Bill No. 850.

On the question,
Will the Senate agree to the motion?

The PRESIDENT. The Chair recognizes the gentlewoman from Venango, Senator Mary Jo White.

Senator M.J. WHITE. Mr. President, I am here for probably what will be one of the last votes of my career in the Senate. I am here to voice my extreme displeasure with Senate Bill No. 850, not only with the content of the bill but the manner in which this was presented to this body. Basically what happened was in the House, a March 2011 cyber bullying bill was taken, completely gutted, and reconstituted. It now contains a great many things, including some good, some bad. Expungement of juvenile court records is a good thing, but the process under this bill can take anywhere from 6 months to 5 years. They are taking certain summary offenses out of juvenile court and putting them in the minor judiciary. Is that a good place? I do not know. And the reason I do not know is because this bill never came through the Committee on Judiciary. I am vice chair of the Committee on Judiciary and I saw this bill for the first time today.

I think what is particularly egregious is that the House took advantage of this hodgepodge to take up a very serious matter, and that is the U.S. Supreme Court's determination that minors cannot be sentenced to life in prison without parole. I happen to agree with that process. But the way the bill has come over, they have in fact created mandatory minimums for minors convicted of very serious crimes based on the crime and the age of the minor at the time the offense was committed. Mandatory minimums, Mr. President.

One of the reasons I think this bill never came through the Senate Committee on Judiciary is that in recent Sessions that committee has expressed an extreme displeasure with mandatory minimum sentences. I have frequently told judges, if you do not legislate, I will not sentence. Judges need their discretion to sentence within the appropriate guidelines set by our Sentencing Commission. They can deviate from those guidelines if they put on the record their reasons for going upward or downward. We have now tied their hands, the mandatory minimums are the mandatory minimums.

I am very offended by a process that turns our policymaking over to stakeholders. Who elected stakeholders to make public policy for Pennsylvania? When we permit this kind of process to bypass our own standing committees in the Senate, we make this body irrelevant. And I think that is a very sad thing to happen. I guess what is even more unfortunate is that this same bill, and these people who did this were crafty, they put in many of the

very good recommendations of the Interbranch Commission on Juvenile Justice. So now it comes over here with all this stuff in there and we are told, take it or leave it. I am telling you we should leave it until next Session. Thank you.

And the question recurring,
Will the Senate agree to the motion?

The yeas and nays were required by Senator PILEGGI and were as follows, viz:

YEA-37

Alloway	Dinniman	Mensch	Tomlinson
Argall	Eichelberger	Piccola	Vogel
Baker	Erickson	Pileggi	Vulakovich
Blake	Farnese	Rafferty	Waugh
Boscola	Fontana	Robbins	Wozniak
Brewster	Gordner	Scarnati	Yaw
Browne	Greenleaf	Schwank	Yudichak
Brubaker	Kasunic	Smucker	
Corman	Leach	Solobay	
Costa	McIlhinney	Stack	

NAY-12

Earll	Hughes	Vance	White, Donald
Ferlo	Kitchen	Ward	White, Mary Jo
Folmer	Tartaglione	Washington	Williams

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate inform the House of Representatives accordingly.

SPECIAL ORDER OF BUSINESS
SUPPLEMENTAL CALENDAR No. 2

BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE

HB 2591 (Pr. No. 3980) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Titles 51 (Military Affairs) and 71 (State Government) of the Pennsylvania Consolidated Statutes, further providing for the calculation of military members' State Employees' Retirement System benefits.

Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Alloway	Erickson	Piccola	Vulakovich
Argall	Farnese	Pileggi	Ward
Baker	Ferlo	Rafferty	Washington
Blake	Folmer	Robbins	Waugh
Boscola	Fontana	Scarnati	White, Donald
Brewster	Gordner	Schwank	White, Mary Jo
Browne	Greenleaf	Smucker	Williams
Brubaker	Hughes	Solobay	Wozniak

Corman	Kasunic	Stack	Yaw
Costa	Kitchen	Tartaglione	Yudichak
Dinniman	Leach	Tomlinson	
Earll	McIlhinney	Vance	
Eichelberger	Mensch	Vogel	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same without amendments.

CONSIDERATION OF CALENDAR RESUMED

THIRD CONSIDERATION CALENDAR RESUMED

HB 1719 CALLED UP

HB 1719 (Pr. No. 3805) -- Without objection, the bill, which previously went over in its order temporarily, was called up, from page 2 of the Third Consideration Calendar, by Senator PILEGGI.

BILL ON THIRD CONSIDERATION
AND FINAL PASSAGE

HB 1719 (Pr. No. 3805) -- The Senate proceeded to consideration of the bill, entitled:

An Act amending Title 53 (Municipalities Generally) of the Pennsylvania Consolidated Statutes, in municipal authorities, further providing for purposes and powers.

Considered the third time and agreed to,

On the question,
Shall the bill pass finally?

The yeas and nays were taken agreeably to the provisions of the Constitution and were as follows, viz:

YEA-49

Alloway	Erickson	Piccola	Vulakovich
Argall	Farnese	Pileggi	Ward
Baker	Ferlo	Rafferty	Washington
Blake	Folmer	Robbins	Waugh
Boscola	Fontana	Scarnati	White, Donald
Brewster	Gordner	Schwank	White, Mary Jo
Browne	Greenleaf	Smucker	Williams
Brubaker	Hughes	Solobay	Wozniak
Corman	Kasunic	Stack	Yaw
Costa	Kitchen	Tartaglione	Yudichak
Dinniman	Leach	Tomlinson	
Earll	McIlhinney	Vance	
Eichelberger	Mensch	Vogel	

NAY-0

A constitutional majority of all the Senators having voted "aye," the question was determined in the affirmative.

Ordered, That the Secretary of the Senate return said bill to the House of Representatives with information that the Senate has passed the same without amendments.