

COMMITTEE BILL ANALYSIS

Bill: House Bill 321

Printer's No.: 746

Sponsor: Rep. Toepel

Prepared by: Gregg Warner

Synopsis: This bill amends section 6312 of the Crimes Code, Title 18, relating to sexual abuse of children, by adding a subsection governing multiple offenses, and adds a section to the Judicial Code, Title 42 of the Pennsylvania Consolidated Statutes, providing for a sentencing enhancement for offenses committed under section 6312.

Summary:

Crimes Code

Section 6312 of the Crimes Code prohibits the production, dissemination or viewing of child pornography. The production of child pornography is a felony of the second degree. The dissemination or viewing of child pornography is a third degree felony for a first offense and a second degree felony for a second or subsequent offense. This bill adds a provision governing multiple offenses. A person who at the time of sentencing has been convicted of another offense under this section shall be sentenced to the penalties associated with second or subsequent violations of this section. A person shall be deemed to have been convicted of another offense under this section whether or not judgment of sentence has been imposed for that violation.

Judicial Code

Section 9720.5 is added to the Judicial Code directing the Pennsylvania Commission on Sentencing to provide for a sentencing enhancement within its guidelines for an offense under section 6312 of the Crimes Code. The sentencing enhancement would specify variations from the range of sentence applicable based on such aggravating circumstances as the age of the child, the number of images possessed by the defendant, and the nature and character of the abuse depicted in the image.

Effective date

This act takes effect in 60 days.

Background: The House of Representatives passed House Bill 321 on March 12, 2013 by a vote of 195 to 0.

According to the sponsor, the “Task Force on Child Protection, which was established last session pursuant to House Resolution 522, recommended that there be a sentencing enhancement for the offense of child pornography, 18 Pa.C.S. §6312. The task force stated in its November 2012 report that those who committed the offense of child pornography received a wide variety of sentences, including probation, despite the egregious nature of the offense.

The Task Force on Child Protection characterized such abuse as ‘horrific.’ A child forced to commit sexual acts on film suffers the additional trauma of physical evidence of the assault being frozen in time and in perpetuity via images that are passed from pedophile to pedophile.

The Task Force recommended that the Pennsylvania Commission on Sentencing provide for a sentencing enhancement for this crime, based upon the age of the child victimized, the number of images possessed, and the nature and character of the abuse.”

House Judiciary Committee amendment

The House Judiciary Committee amended House Bill 321 to address Commonwealth v. Jarowecki, 604 Pa. 242 (2009), in which the Pennsylvania Supreme Court held that the General Assembly did not intend that a person convicted of child pornography be sentenced to an enhanced grading for a second or subsequent offense unless the offender had first been convicted of, and sentenced for, the first offense. The House Judiciary Committee added the language to the bill relating to multiple offenses in order to make clear that sentencing for the first offense is not necessary in order for the grading for a second or subsequent offense to apply.