

COMMITTEE AMENDMENT ANALYSIS

Bill: House Bill 815

Printer's No.: 1711

Amendment No.: A13375

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Summary: This amendment removes the provisions of the bill and replaces them with the criminal offense of transmitting sexually explicit images by a minor. A minor commits a summary offense when the minor knowingly transmits, distributes, publishes or disseminates an electronic communication containing a sexually explicit image of himself or herself. A minor also commits a summary offense when the minor knowingly possesses or knowingly views a sexually explicit image of a minor who is 12 years of age or older.

In the case of these summary offenses, the magisterial district judge may refer the minor to a diversionary program that would include an educational component explaining the consequences of sharing sexually explicit images. If the minor successfully completes the diversionary program, the minor's records shall be expunged (similar to ARD). The provisions of House Bill 815, as revised by this amendment, should be considered in tandem with the provisions of Senate Bill 850 which give the same protections to juveniles charged with summary offenses and appearing before a magisterial district judge as they would have in juvenile court.

A minor commits a misdemeanor of the third degree when the minor knowingly transmits, distributes, publishes or disseminates an electronic communication containing a sexually explicit image of another minor who is 12 years of age or older. A minor commits a misdemeanor of the second degree when, with the intent to coerce, intimidate, torment, harass or otherwise cause emotional distress to another minor, the minor (1) makes a visual depiction of any minor in the state of nudity without the knowledge and consent of the depicted minor; or (2) transmits, distributes, publishes or disseminates a visual depiction of any minor in a state of nudity without the knowledge and consent of the depicted minor. Both of these misdemeanors would mean that the minor would appear in juvenile court. The second degree misdemeanor offense is more serious because it encompasses cyberbullying.

Definitions are included for key terms such as "knowingly possesses" and "knowingly views" to make sure that it does not include accidental or inadvertent possession or viewing of sexually explicit material.

Any electronic communication device used in violation of this offense shall be subject to forfeiture to the Commonwealth and no property right shall exist in it.

This amendment reflects the Senate Judiciary Committee's discussion at its meeting on September 25, 2012.