

**ACLU-PA Position: Oppose**

### Bill summary

[HB 231](#) PN 195 adds 18 existing offenses to [§6318 of Title 18](#), which creates the crime of unlawful contact with a minor. Grading for a violation is: (1) an offense of the same grade and degree as the most serious underlying offense in subsection (a) for which the defendant contacted the minor; or (2) a felony of the third degree, whichever is greater.

### Context

The offenses listed under [Section 6318](#) are not unique; every crime listed within § 6318 is already an *existing criminal offense*. Section 6318 simply creates an additional offense if the person commits the underlying offense AND initiates contact with a minor or the minor being contacted. Section 6318 creates separate, stand-alone offenses that are not considered “lesser included offenses” for charging and conviction purposes.<sup>1</sup> Establishing a separate offense allows prosecutors to charge two separate offenses listed under §6318 for the exact same conduct: once under the existing statute and then again, separately, under §6318.

Lesser or greater included offenses are offenses based on the same facts, where all the elements of the crime are the same and the offenses merge for sentencing purposes. In other words, a situation where it’s impossible to commit a greater offense without committing a lesser one, e.g. manslaughter is a lesser included offense of murder, simple assault is a lesser included offense of aggravated assault. But due to Pennsylvania’s strict doctrine regarding lesser included offenses, very few offenses are merged for sentencing purposes. This gives prosecutors even greater plea bargaining leverage by permitting them to charge two separate offenses for the same act, further impeding the already vanishing right to trial. HB 231 doubles down on this practice by handing 18 new offenses to prosecutors, all of which can be sentenced as separate offenses. And the grading scheme all but ensures that each act can be charged with two separate felonies.

### What HB 231 proposes

If enacted, [HB 231](#) (P.N. 195) will:

- Add **18 new offenses** to §6318, allowing each act to generate multiple offenses. For example:
  - Indecent exposure could be charged under §3127 as an M1 (5 years max incarceration) AND as an F3 under §6318 (7 years max incarceration) for a new total of **12 years maximum incarceration**.
  - Offenses graded as an F2 (10 years max incarceration) would also be charged as an F2 under §6318 for a new total of **20 years maximum incarceration**.
  - Offenses graded as an F1 (20 years max incarceration) would also be charged as an F1 under §6318 for a new total of **40 years maximum incarceration**.
- Make “**an attempt, solicitation or conspiracy to commit**” any of the existing offenses an additional crime under §6318, graded as an F3 or higher.

<sup>1</sup> The Pennsylvania Superior Court has held repeatedly that the enumerated crimes in 6318 do not merge with 6318 for sentencing purposes and are there NOT lesser included offenses. See *Comm. v. Evans* 901 A.2d 528 (Pa.Super. 2006) (finding that indecent assault and unlawful contact with a minor, while both “crimes were carried out contemporaneously, such a circumstance does NOT require merger for sentencing purposes.” Id. at 538. 6319 and the crimes contained with it are not lesser included offenses. “Since each offense requires proof of an element that the other does not, the offenses do not merge.” Id.

Many of these newly included offenses *already increase the grading* if committed against a minor (noted by an asterisk\*). Current grading of the existing offense is in bold:

(1.2) Any of the offenses enumerated in [Chapter 31](#) (relating to sexual offenses).

1. 3121. Rape.\* [(c) Rape of a child, F1; (d) Rape of a child with serious bodily injury, F1]
2. 3122.1. Statutory sexual assault.[F2 or F1, depending on age difference]
3. 3123. Involuntary deviate sexual intercourse.\* [(b) IDSI with a child, F1; (c) IDSI with a child with serious bodily injury, F1]
4. 3124.1. Sexual assault. [F2]
5. 3124.2. Institutional sexual assault.\* [(a.1) Institutional sexual assault of a minor, F3]
6. 3124.3. Sexual assault by sports official, volunteer or employee of nonprofit association. [F3]
7. 3125. Aggravated indecent assault.\* [(b) Aggravated indecent assault of a child, F1]
8. 3126. Indecent assault.\* [M2 if under 16 years old; M1 or F3 if under 13 years old]
9. 3127. Indecent exposure.\* [M1 if under 16]
10. 3129. Sexual intercourse with animal. [M2]
11. 3130. Conduct relating to sex offenders. [F3]
12. 3131. Unlawful dissemination of intimate image.\* [M1 if a minor]
13. 3132. Female mutilation. [F1]
14. 3133. Sexual extortion.\* [F3 if under 18]

(1.3) Incest as defined in section [4302\(b\)](#) (relating to incest). [F2]

(1.4) Endangering welfare of children as defined in section [4304\(a\)\(1\)](#) (relating to endangering welfare of children), if the activity involved sexual contact with the minor.\* [M1, F3, F2, one grade enhancement if child is under 6 years old]

(4.1) Corruption of minors as defined in section [6301\(a\)\(1\)\(i\)](#) (relating to corruption of minors), if the activity involved sexual contact with the minor. [M1]

(4.2) Corruption of minors as defined in section [6301\(a\)\(1\)\(ii\)](#). [F3]

(7) An attempt, solicitation or conspiracy to commit any of the offenses in this subsection.

## Current law

Section 6318 already includes the following offenses (current grading of the existing offense is in bold):

- (1) Any of the offenses enumerated in [Chapter 30](#) (relating to human trafficking), if the activity involved sexual servitude and the victim was a minor.
  - 3011. Trafficking in individuals.\* [F2, F1 or 40 years max if (b) Trafficking in minors]
  - 3012. Involuntary servitude. [F1]
  - 3013. Patronizing a victim of sexual servitude. [F3, F1]
  - 3014. Unlawful conduct regarding documents. [F3]
  - 3015. Nonpayment of wages. [M3, F3]
  - 3016. Obstruction of justice. [same grading as for offense obstructed]
- (2) Open lewdness as defined in section [5901](#) (relating to open lewdness). [M3]
- (3) Prostitution as defined in section [5902](#) (relating to prostitution and related offenses). [M3, M2, M1, F3]
- (4) Obscene and other sexual materials and performances as defined in section [5903](#) (relating to obscene and other sexual materials and performances). [M1, F3]
- (5) Sexual abuse of children as defined in section [6312](#) (relating to sexual abuse of children). [F3, F2]
- (6) Sexual exploitation of children as defined in section [6320](#) (relating to sexual exploitation of children). [F2]