
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2302 Session of
1992

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JANUARY 21, 1992

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 21, 1992

AN ACT

1 Amending Titles 18 (Crimes and Offenses), 23 (Domestic
2 Relations) and 42 (Judiciary and Judicial Procedure) of the
3 Pennsylvania Consolidated Statutes, further providing for
4 sexual offenses and the consequences of committing sexual
5 offenses; providing for the testimony of children; and
6 imposing penalties.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Sections 3101, 3102, 3103, 3104(a), 3105, 3106
10 and 3107 of Title 18 of the Pennsylvania Consolidated Statutes
11 are amended to read:

12 § 3101. Definitions.

13 Subject to additional definitions contained in subsequent
14 provisions of this chapter which are applicable to specific
15 provisions of this chapter, the following words and phrases when
16 used in this chapter shall have, unless the context clearly
17 indicates otherwise, the meanings given to them in this section:

18 "Consent." Intelligent, knowing and voluntary consent, not

1 to be construed to include coerced submission.

2 "Defendant." A person accused of an offense under the
3 specific provisions of this chapter.

4 "Deviate sexual intercourse." [Sexual intercourse per os or
5 per anus between human beings who are not husband and wife,
6 except as provided in section 3128 (relating to spousal sexual
7 assault), and any form of sexual intercourse with an animal. The
8 term also includes penetration, however slight, of the genitals
9 or anus of another person with a foreign object for any purpose
10 other than good faith medical, hygienic or law enforcement
11 procedures.] Cunnilingus, fellatio or anal intercourse between
12 persons, with some penetration, however slight; emission is not
13 required. The term includes penetration, however slight, of the
14 genitals or anus of another person with a foreign object either
15 by the defendant or, upon the defendant's instruction, by
16 another person, including the victim, for any purpose other than
17 good faith medical, hygienic or law enforcement purposes. The
18 term also includes any form of sexual intercourse with an animal
19 by the defendant or by the victim upon the defendant's
20 instruction.

21 "Family member." Spouses or persons who have been spouses,
22 persons living as spouses or who have lived as spouses, parents,
23 siblings, children and other persons related by consanguinity,
24 affinity or adoption.

25 "Forcible compulsion." To compel by use of either physical
26 force or threat, expressed or implied, which places the victim
27 or another person in fear of immediate death, serious bodily
28 injury, loss of personal liberty or retaliation.

29 "Foreign object." Includes any physical object not a part of
30 the actor's body.

1 "Indecent contact." [Any touching of the sexual or other
2 intimate parts of the person for the purpose of arousing or
3 gratifying sexual desire, in either person.] Intentional
4 touching by the victim or defendant of the victim's or
5 defendant's intimate parts, either directly or indirectly, for
6 the purpose of degrading or humiliating the victim or, in
7 circumstances where the defendant knew or should have known that
8 his or her behavior would have such a result, for the purpose of
9 sexually arousing or sexually gratifying the defendant.

10 "Intimate parts." Sexual organs, the genital area, anal
11 area, inner thigh, groin, buttock or breast of a person.

12 "Mentally disabled." A condition in which a person suffers
13 from a mental state which renders the person temporarily or
14 permanently incapable of appraising the nature of one's conduct.

15 "Mentally incapacitated." A condition in which the victim is
16 rendered temporarily incapable of appraising or controlling
17 conduct due to the influence of a narcotic, anesthetic,
18 intoxicant or other substance administered without prior
19 knowledge or consent or due to any other act committed upon the
20 victim which rendered the victim incapable of appraising or
21 controlling his or her conduct.

22 "Penetration." Insertion of any part of a person's body in
23 another person's genitals or anus for any purpose other than
24 good faith medical, hygienic or law enforcement procedures. The
25 depth of penetration shall not be relevant as to the question of
26 commission of the offense.

27 "Physically helpless." A condition in which a person is
28 unconscious or is physically unable to flee or is physically
29 unable to communicate an unwillingness to act.

30 "Position of authority." A person serving in a legal,

1 professional or voluntary capacity, paid or unpaid, who is
2 charged with any duty or responsibility, however limited, for
3 the care, education, health, welfare or supervision of a victim.

4 "Retaliation." The term includes, but is not limited to,
5 threats of future physical or mental punishment, kidnapping,
6 false imprisonment, forcible confinement or extortion.

7 "Serious bodily injury." Bodily injury which creates a
8 substantial risk of death or which causes serious, permanent
9 disfigurement or protracted loss or impairment of the function
10 of any bodily member or organ.

11 "Sexual conduct." Any conduct or behavior relating to sexual
12 activities of the victim, including, but not limited to,
13 previous or subsequent experience of sexual penetration or
14 sexual activity, use of contraceptives, living arrangement,
15 marital status and sexual lifestyle. The term includes any
16 sexual offense committed, or alleged to have been committed,
17 against the victim.

18 "Sexual intercourse." [In addition to its ordinary meaning,
19 includes intercourse per os or per anus] Vaginal intercourse
20 between persons, with some penetration, however slight; emission
21 is not required.

22 "Victim." A person alleging to have been subjected to an
23 offense under the specific provisions of this chapter.

24 § 3102. Mistake as to age.

25 [Whenever in this chapter the criminality of conduct depends
26 on a child being below the age of 14 years, it is no defense
27 that the actor did not know the age of the child, or reasonably
28 believed the child to be the age of 14 years or older. When
29 criminality depends on the child's being below a critical age
30 other than 14 years, it is a defense for the actor to prove by a

preponderance of the evidence that he reasonably believed the child to be above the critical age.] Whenever in this chapter, the criminality of conduct depends on a child being below a certain age, ignorance of the age is no defense. Neither a misrepresentation of age by a child nor a bona fide belief a child is over the specified age shall be a defense.

[§ 3103. Spouse relationships.

Except as provided in section 3128 (relating to spousal sexual assault), whenever in this chapter the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship: Provided, however, That the exclusion shall be inoperative as respects spouses living in separate residences, or in the same residence but under terms of a written separation agreement or an order of a court of record. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse as accomplice in a sexual act which he or she causes another person, not within the exclusion, to perform.]

§ 3103. Capacity to commit sexual offense.

No defendant shall be presumed to be incapable of committing an offense under this chapter because of age or impotency or marriage to the victim.

§ 3104. Evidence of victim's sexual conduct.

(a) General rule.--Evidence of specific instances of the alleged victim's past sexual conduct, opinion evidence of the alleged victim's past sexual conduct[,] and reputation evidence of the alleged victim's past sexual conduct shall not be admissible, and references to it shall not be made in the presence of the jury, in prosecutions under this chapter [except

1 evidence of the alleged victim's past sexual conduct with the
2 defendant where consent of the alleged victim is at issue and
3 such evidence is otherwise admissible pursuant to the rules of
4 evidence.] except as provided for in this section. Evidence of
5 previous sexual conduct shall not be considered relevant unless
6 it is material to negating the element of force or coercion or
7 to proving that the source of semen, pregnancy or disease is a
8 person other than the defendant.

9 * * *

10 § 3105. Prompt complaint.

11 Prompt reporting to public authority is not required in a
12 prosecution under this chapter: Provided, however, That nothing
13 in this section shall be construed to prohibit a defendant from
14 introducing evidence of the alleged victim's failure to promptly
15 report the crime if such evidence would be admissible pursuant
16 to the rules of evidence. Where evidence of failure to promptly
17 report is admitted, the prosecution may introduce general expert
18 witness testimony, if applicable, to educate the jury regarding
19 psychological reasons for failure to make prompt complaints.

20 § 3106. Testimony of complainants.

21 The credibility of an alleged victim of an offense under this
22 chapter shall be determined by the same standard as is the
23 credibility of an alleged victim of any other crime. The
24 testimony of a victim need not be corroborated in prosecutions
25 under this chapter. [In any prosecution before a jury for an
26 offense under this chapter, no] No instructions shall be given
27 cautioning the jury to view the alleged victim's testimony in
28 any other way than that in which all victims' testimony is
29 viewed.

30 § 3107. Resistance not required.

1 [The alleged victim need not resist the actor in prosecutions
2 under this chapter: Provided, however, That nothing in this
3 section shall be construed to prohibit a defendant from
4 introducing evidence that the alleged victim consented to the
5 conduct in question.]

6 (a) General rule.--The victim need not resist the defendant
7 in prosecutions under this chapter. The prosecutor shall not be
8 required to offer proof that the victim resisted, or resisted to
9 the utmost, or reasonably resisted the sexual assault in any
10 offense under this chapter. Lack of verbal or physical
11 resistance or submission by the victim resulting from the use or
12 threat of forcible compulsion by the defendant shall not
13 constitute consent.

14 (b) Exception.--Nothing in this section shall be construed
15 to prohibit a defendant from introducing evidence that the
16 victim consented to the conduct in question.

17 Section 2. Title 18 is amended by adding sections to read:

18 § 3108. Evidence relating to manner in which victim was
19 dressed.

20 Evidence relating to the manner in which the victim was
21 dressed at the time of the offense to suggest that the victim
22 provoked the offense shall not be admissible in a prosecution
23 under this chapter.

24 § 3109. Conditions constituting incapacity to consent.

25 A victim is considered incapable of consenting to a sexual
26 act if the victim is:

27 (1) thirteen years of age or younger;

28 (2) mentally disabled;

29 (3) mentally incapacitated; or

30 (4) physically helpless.

1 § 3110. Lie detector tests.

2 No law enforcement officer, prosecuting attorney or other
3 official shall require a victim of an offense described in this
4 chapter to submit to a polygraph examination or any form of a
5 mechanical or electrical lie detector test as a condition for
6 proceeding with the investigation, charging or prosecuting of
7 the offense. A test shall be administered to a victim solely at
8 the victim's request. A victim's refusal to submit to a
9 polygraph or any form of a mechanical or electrical lie detector
10 test shall not mitigate against the investigation, charging or
11 prosecuting of the pending case as originally charged.

12 § 3111. Defense to prosecution.

13 Whenever the criminality of conduct depends upon the
14 defendant aiding or abetting another person in the commission of
15 an offense, it is a defense that the defendant was compelled by
16 either the use of physical force or threat, expressed or
17 implied, which placed the defendant in fear of immediate death,
18 serious bodily injury, loss of personal liberty or retaliation.

19 Section 3. Sections 3121, 3122, 3123, 3124, 3125, 3126, 3127
20 and 3128 of Title 18 are amended to read:

21 [§ 3121. Rape.

22 A person commits a felony of the first degree when he engages
23 in sexual intercourse with another person not his spouse:

- 24 (1) by forcible compulsion;
25 (2) by threat of forcible compulsion that would prevent
26 resistance by a person of reasonable resolution;
27 (3) who is unconscious; or
28 (4) who is so mentally deranged or deficient that such
29 person is incapable of consent.

30 Whenever the term "rape" is used in this title or any other

1 title, it is deemed to include spousal sexual assault as further
2 defined in section 3128 (relating to spousal sexual assault).]

3 § 3121. Aggravated sexual assault.

4 (a) Offense defined generally.--A defendant commits a felony
5 of the first degree when the defendant engages in sexual
6 intercourse with another person by forcible compulsion or threat
7 of forcible compulsion that would prevent consent by a person
8 with reasonable resolution and:

9 (1) the defendant is armed with a weapon, or any object
10 fashioned in such a manner as to lead the victim to
11 reasonably believe it to be a weapon, and threatens by word
12 or gesture to use the weapon or object;

13 (2) the defendant inflicts suffocation, strangulation or
14 serious bodily injury upon the victim or anyone else in the
15 course of committing the offense;

16 (3) the defendant threatens or places the victim or
17 another person in fear of imminent death, suffocation,
18 strangulation, serious bodily injury or kidnapping;

19 (4) the defendant is aided or abetted by one or more
20 persons;

21 (5) the act is committed during the commission or
22 attempted commission of any other felony by the defendant; or

23 (6) the defendant is a family member or serves in a
24 position of authority in respect to the victim.

25 (b) Victim incapable of consent.--A defendant commits a
26 felony of the first degree when the defendant engages in sexual
27 intercourse with another person incapable of consent by reason
28 of being physically helpless, mentally disabled, mentally
29 incapacitated or 13 years of age or younger and:

30 (1) the defendant is armed with a weapon, or any object

1 fashioned in such a manner as to lead the victim to
2 reasonably believe it to be a weapon, and threatens by word
3 or gesture to use the weapon or object;

4 (2) the defendant inflicts suffocation, strangulation or
5 serious bodily injury upon the victim or anyone else in the
6 course of committing the offense;

7 (3) the defendant threatens or places the victim or
8 another person in fear of imminent death, suffocation,
9 strangulation, serious bodily injury or kidnapping;

10 (4) the defendant is aided or abetted by one or more
11 persons;

12 (5) the act is committed during the commission or
13 attempted commission of any other felony by the defendant; or

14 (6) the defendant is a family member or serves in a
15 position of authority in respect to the victim.

16 [§ 3122. Statutory rape.

17 A person who is 18 years of age or older commits statutory
18 rape, a felony of the second degree, when he engages in sexual
19 intercourse with another person not his spouse who is less than
20 14 years of age.]

21 § 3122. Sexual assault.

22 (a) Offense defined generally.--A defendant commits a felony
23 of the second degree when the defendant engages in sexual
24 intercourse with another person by forcible compulsion or threat
25 of forcible compulsion that would prevent consent by a person
26 with reasonably resolution.

27 (b) Victim incapable of consent.--A defendant commits a
28 felony of the second degree when the defendant engages in sexual
29 intercourse with another person incapable of consent by reason
30 of being physically helpless, mentally disabled, mentally

1 incapacitated or 13 years of age or younger.

2 [§ 3123. Involuntary deviate sexual intercourse.

3 A person commits a felony of the first degree when he engages
4 in deviate sexual intercourse with another person:

5 (1) by forcible compulsion;

6 (2) by threat of forcible compulsion that would prevent
7 resistance by a person of reasonable resolution;

8 (3) who is unconscious;

9 (4) who is so mentally deranged or deficient that such
10 person is incapable of consent; or

11 (5) who is less than 16 years of age.]

12 § 3123. Aggravated deviate sexual intercourse.

13 (a) Offense defined generally.--A defendant commits a felony
14 of the first degree when the defendant engages in sexual
15 intercourse with another person by forcible compulsion or threat
16 of forcible compulsion that would prevent consent by a person
17 with reasonable resolution and:

18 (1) the defendant is armed with a weapon, or any object
19 fashioned in such a manner as to lead the victim to
20 reasonably believe it to be a weapon, and threatens by word
21 or gesture to use the weapon or object;

22 (2) the defendant inflicts suffocation, strangulation,
23 or serious bodily injury upon the victim or anyone else in
24 the course of committing the offense;

25 (3) the defendant threatens or places the victim or
26 another person in fear of imminent death, suffocation,
27 strangulation, serious bodily injury or kidnapping;

28 (4) the defendant is aided or abetted by one or more
29 persons;

30 (5) the act is committed during the commission or

1 attempted commission of any other felony by the defendant; or
2 (6) the defendant is a family member or serves in a
3 position of authority in respect to the victim.

4 (b) Victim incapable of consent.--A defendant commits a
5 felony of the first degree when the defendant engages in deviate
6 sexual intercourse with another person incapable of consent by
7 reason of being physically helpless, mentally disabled, mentally
8 incapacitated or 13 years of age or younger and:

9 (1) the defendant is armed with a weapon, or any object
10 fashioned in such a manner as to lead the victim to
11 reasonably believe it to be a weapon, and threatens by word
12 or gesture to use the weapon or object;

13 (2) the defendant inflicts suffocation, strangulation or
14 serious bodily injury upon the victim or anyone else in the
15 course of committing the offense;

16 (3) the defendant threatens or places the victim or
17 another person in fear of imminent death, suffocation,
18 strangulation, serious bodily injury or kidnapping;

19 (4) the defendant is aided or abetted by one or more
20 persons;

21 (5) the act is committed during the commission or
22 attempted commission of any other felony by the defendant; or

23 (6) the defendant is a family member or serves in a
24 position of authority in respect to the victim.

25 [§ 3124. Voluntary deviate sexual intercourse.

26 A person who engages in deviate sexual intercourse under
27 circumstances not covered by section 3123 of this title
28 (relating to involuntary deviate sexual intercourse) is guilty
29 of a misdemeanor of the second degree.]

30 § 3124. Deviate sexual intercourse.

1 (a) Offense defined generally.--A defendant commits a felony
2 of the second degree when the defendant engages in deviate
3 sexual intercourse with another person by forcible compulsion or
4 threat of forcible compulsion that would prevent consent by a
5 person with reasonably resolution.

6 (b) Victim incapable of consent.--A defendant commits a
7 felony of the second degree when the defendant engages in
8 deviate sexual intercourse with another person incapable of
9 consent by reason of being physically helpless, mentally
10 disabled, mentally incapacitated or 13 years of age or younger.

11 § 3125. Aggravated indecent assault.

12 [Except as provided in sections 3121 (relating to rape), 3122
13 (relating to statutory rape) and 3123 (relating to involuntary
14 deviate sexual intercourse), a person commits a felony of the
15 second degree when he engages in penetration, however slight, of
16 the genitals or anus of another with a part of the actor's body
17 for any purpose other than good faith medical, hygienic or law
18 enforcement procedures if:

19 (1) he does so without the consent of the other person;

20 (2) he knows that the other person suffers from a mental
21 disease or defect which renders him or her incapable of
22 appraising the nature of his or her conduct;

23 (3) he knows that the other person is unaware that the
24 indecent contact is being committed;

25 (4) he has substantially impaired the other person's
26 power to appraise or control his or her conduct by
27 administering or employing, without the knowledge of the
28 other, drugs, intoxicants or other means for the purpose of
29 preventing resistance;

30 (5) the other person is in custody of law or detained in

1 a hospital or other institution and the actor has supervisory
2 or disciplinary authority over him; or

3 (6) he is over 18 years of age and the other person is
4 under 14 years of age.]

5 (a) Offense defined generally.--Except as provided in
6 sections 3121 (relating to aggravated sexual assault), 3122
7 (relating to sexual assault), 3123 (relating to aggravated
8 deviate sexual intercourse) and 3124 (relating to deviate sexual
9 intercourse), a defendant commits a felony of the first degree
10 when the defendant engages in penetration, however slight, by
11 forcible compulsion or threat of forcible compulsion that would
12 prevent consent by a person with reasonable resolution and:

13 (1) the defendant is armed with a weapon, or any object
14 fashioned in such a manner as to lead the victim to
15 reasonably believe it to be a weapon, and threatens by word
16 or gesture to use the weapon or object;

17 (2) the defendant inflicts suffocation, strangulation,
18 or serious bodily injury upon the victim or anyone else in
19 the course of committing the offense;

20 (3) the defendant threatens or places the victim or
21 another person in fear of imminent death, suffocation,
22 strangulation, serious bodily injury or kidnapping;

23 (4) the defendant is aided or abetted by one or more
24 persons;

25 (5) the act is committed during the commission or
26 attempted commission of any other felony by the defendant; or

27 (6) the defendant is a family member or serves in a
28 position of authority in respect to the victim.

29 (b) Victim incapable of consent.--Except as provided in
30 sections 3121, 3122, 3123 and 3124, a defendant commits a felony

1 of the first degree when the defendant engages in sexual
2 intercourse with another person incapable of consent by reason
3 of being physically helpless, mentally disabled, mentally
4 incapacitated or 13 years of age or younger and:

5 (1) the defendant is armed with a weapon, or any object
6 fashioned in such a manner as to lead the victim to
7 reasonably believe it to be a weapon, and threatens by word
8 or gesture to use the weapon or object;

9 (2) the defendant inflicts suffocation, strangulation or
10 serious bodily injury upon the victim or anyone else in the
11 course of committing the offense;

12 (3) the defendant threatens or places the victim or
13 another person in fear of imminent death, suffocation,
14 strangulation, serious bodily injury or kidnapping;

15 (4) the defendant is aided or abetted by one or more
16 persons;

17 (5) the act is committed during the commission or
18 attempted commission of any other felony by the defendant; or

19 (6) the defendant is a family member or serves in a
20 position of authority in respect to the victim.

21 § 3126. Indecent assault.

22 [(a) Offense defined.--A person who has indecent contact
23 with another not his spouse, or causes such other to have
24 indecent contact with him, is guilty of indecent assault if:

25 (1) he does so without the consent of the other person;

26 (2) he knows that the other person suffers from a mental
27 disease or defect which renders him or her incapable of
28 appraising the nature of his or her conduct;

29 (3) he knows that the other person is unaware that a
30 indecent contact is being committed;

1 (4) he has substantially impaired the other person's
2 power to appraise or control his or her conduct by
3 administering or employing without the knowledge of the other
4 drugs, intoxicants or other means for the purpose of
5 preventing resistance;

6 (5) the other person is in custody of law or detained in
7 a hospital or other institution and the actor has supervisory
8 or disciplinary authority over him; or

9 (6) he is over 18 years of age and the other person is
10 under 14 years of age.

11 (b) Grading.--Indecent assault under subsection (a)(6) is a
12 misdemeanor of the first degree. Otherwise, indecent assault is
13 a misdemeanor of the second degree.]

14 (a) Offense defined generally.--Except as provided in
15 sections 3121 (relating to aggravated sexual assault), 3122
16 (relating to sexual assault), 3123 (relating to aggravated
17 deviate sexual intercourse) and 3124 (relating to deviate sexual
18 intercourse), a defendant commits a felony of the second degree
19 when the defendant engages in penetration, however slight, by
20 forcible compulsion or threat of forcible compulsion that would
21 prevent consent by a person with reasonable resolution.

22 (b) Victim incapable of consent.--Except as provided in
23 sections 3121, 3122, 3123 and 3124, a defendant commits a felony
24 of the second degree when the defendant engages in penetration,
25 however slight, with another person incapable of consent by
26 reason of being physically helpless, mentally disabled, mentally
27 incapacitated or 13 years of age or younger.

28 § 3127. Indecent exposure.

29 [A person commits a misdemeanor of the second degree if, for
30 the purpose of arousing or gratifying sexual desire of himself

1 or of any person other than his spouse, he exposes his genitals
2 under circumstances in which he knows his conduct is likely to
3 cause affront or alarm.] A defendant commits a misdemeanor of
4 the second degree if, for the purpose of degrading or
5 humiliating the victim, or in those circumstances where the
6 defendant knew or should have known that his or her behavior
7 would have such a result, the defendant exposes his or her
8 genitals in any public place or in any place where there are
9 present other persons under circumstances in which he or she
10 knows his or her conduct is likely to offend, annoy, affront or
11 alarm. If any of the persons present are 13 years of age or
12 younger, indecent exposure is a misdemeanor of the first degree.

13 [§ 3128. Spousal sexual assault.

14 (a) Sexual assault.--A person commits a felony of the second
15 degree when that person engages in sexual intercourse with that
16 person's spouse:

17 (1) by forcible compulsion;

18 (2) by threat of forcible compulsion that would prevent
19 resistance by a person of reasonable resolution; or

20 (3) who is unconscious.

21 (b) Involuntary spousal deviate sexual intercourse.--A
22 person commits a felony of the second degree when that person
23 engages in deviate sexual intercourse with that person's spouse:

24 (1) by forcible compulsion;

25 (2) by threat of forcible compulsion that would prevent
26 resistance by a person of reasonable resolution; or

27 (3) who is unconscious.

28 (c) Crime to be reported.--The crime of spousal sexual
29 assault shall be personally reported by the victim or her agent
30 to a law enforcement agency having the requisite jurisdiction

1 within 90 days of the commission of the offense.]

2 § 3128. Indecent contact.

3 (a) Offense defined generally.--A defendant commits a
4 misdemeanor of the second degree when the defendant engages in
5 indecent contact with another person, or causes such person to
6 engage in indecent contact with the defendant, if the defendant
7 does so by forcible compulsion or threat of forcible compulsion
8 that would prevent consent by a person with reasonable
9 resolution.

10 (b) Victim incapable of consent.--A defendant commits a
11 misdemeanor of the first degree when the defendant engages in
12 indecent contact with another person, or causes such person to
13 engage in indecent contact with the defendant, when the victim
14 is incapable of consent by reason of being physically helpless,
15 mentally disabled, mentally incapacitated or 13 years of age or
16 younger.

17 Section 4. Title 18 is amended by adding sections to read:

18 § 3129. Continuous sexual victimization of child.

19 (a) Offense defined.--A defendant who either resides in the
20 same home with a child or has recurring access to the child, who
21 over a period of time engages in three or more acts of sexual
22 activity with the child as defined in sections 3121 (relating to
23 aggravated sexual assault), 3122 (relating to sexual assault),
24 3123 (relating to aggravated deviate sexual intercourse), 3124
25 (relating to deviate sexual intercourse), 3125 (relating to
26 aggravated indecent assault) and 3126 (relating to indecent
27 assault) commits a felony of the first degree.

28 (b) Requirement for conviction.--In order for a person to be
29 found guilty of violating this section, a jury need unanimously
30 agree only that the requisite number of acts occurred.

1 (c) Other sex offenses.--No other felony sex offense
2 involving the same victim may be charged in the same proceeding
3 with a charge under this section unless the other charged
4 offense occurred outside the time period charged under this
5 section or the other offense is charged in the alternative. A
6 defendant may be charged with only one count under this section
7 unless more than one victim is involved in which case a separate
8 count may be charged for each victim.

9 (d) Guidelines.--The Pennsylvania Commission on Sentencing
10 is hereby directed to promulgate guidelines for the offense
11 defined in subsection (a) that will establish a higher penalty
12 for the offense than for a first degree felony offense.

13 (e) Sentence.--There shall be no authority in any court to
14 impose on a defendant convicted of violating subsection (a) a
15 lesser sentence than provided for in this section or to place
16 the defendant on probation, parole, work release or prerelease
17 or to suspend sentence. Nothing in this section shall prevent
18 the sentencing court from imposing a greater sentence than is
19 provided for in this section.

20 (f) Appellate review of sentence.--If a sentencing court
21 refuses to apply the provisions of this section, the
22 Commonwealth shall have the right to appellate review of the
23 action of the sentencing court. The appellate court shall vacate
24 the sentence and remand the case to the sentencing court for
25 imposition of a sentence in accordance with the provisions of
26 this section if it finds that the sentence imposed was in
27 violation of subsections (d) and (e).

28 (g) Definition.--As used in this section, the term "child"
29 means an individual 18 years of age or younger at the time of
30 commission of the offense.

1 § 3130. Sexual exploitation of child.

2 (a) Offense defined.--A defendant commits a felony of the
3 first degree when the defendant actively procures or arranges to
4 procure a child 18 years of age or younger for the purpose of
5 engaging in sexual activity with another person.

6 (b) Defense.--It is a defense to prosecution based on this
7 section that the defendant was compelled to commit the offense
8 by either the use of physical force or threat which placed the
9 defendant in fear of immediate death, serious bodily injury,
10 loss of personal liberty or retaliation.

11 (c) Definition.--As used in this section, the term "sexual
12 activity" includes vaginal intercourse, cunnilingus, fellatio,
13 anal intercourse, touching or fondling of intimate parts,
14 masturbation, bestiality, sadism and masochism.

15 Section 5. Sections 3205(a), 3215(c) and (j), 4302, 4303 and
16 6312 of Title 18 are amended to read:

17 § 3205. Informed consent.

18 (a) General rule.--No abortion shall be performed or induced
19 except with the voluntary and informed consent of the woman upon
20 whom the abortion is to be performed or induced. Except in the
21 case of a medical emergency, consent to an abortion is voluntary
22 and informed if and only if:

23 (1) At least 24 hours prior to the abortion, the
24 physician who is to perform the abortion or the referring
25 physician has orally informed the woman of:

26 (i) The nature of the proposed procedure or
27 treatment and of those risks and alternatives to the
28 procedure or treatment that a reasonable patient would
29 consider material to the decision of whether or not to
30 undergo the abortion.

1 (ii) The probable gestational age of the unborn
2 child at the time the abortion is to be performed.

3 (iii) The medical risks associated with carrying her
4 child to term.

5 (2) At least 24 hours prior to the abortion, the
6 physician who is to perform the abortion or the referring
7 physician, or a qualified physician assistant, health care
8 practitioner, technician or social worker to whom the
9 responsibility has been delegated by either physician, has
10 informed the pregnant woman that:

11 (i) The department publishes printed materials which
12 describe the unborn child and list agencies which offer
13 alternatives to abortion and that she has a right to
14 review the printed materials and that a copy will be
15 provided to her free of charge if she chooses to review
16 it.

17 (ii) Medical assistance benefits may be available
18 for prenatal care, childbirth and neonatal care, and that
19 more detailed information on the availability of such
20 assistance is contained in the printed materials
21 published by the department.

22 (iii) The father of the unborn child is liable to
23 assist in the support of her child, even in instances
24 where he has offered to pay for the abortion. In the case
25 of [rape] sexual assault, sexual exploitation or sexual
26 victimization, this information may be omitted.

27 (3) A copy of the printed materials has been provided to
28 the pregnant woman if she chooses to view these materials.

29 (4) The pregnant woman certifies in writing, prior to
30 the abortion, that the information required to be provided

1 under paragraphs (1), (2) and (3) has been provided.

2 * * *

3 § 3215. Publicly owned facilities; public officials and public
4 funds.

5 * * *

6 (c) Public funds.--No Commonwealth funds and no Federal
7 funds which are appropriated by the Commonwealth shall be
8 expended by any State or local government agency for the
9 performance of abortion, except:

10 (1) When abortion is necessary to avert the death of the
11 mother on certification by a physician. When such physician
12 will perform the abortion or has a pecuniary or proprietary
13 interest in the abortion there shall be a separate
14 certification from a physician who has no such interest.

15 (2) When abortion is performed in the case of pregnancy
16 caused by [rape] sexual assault which, prior to the
17 performance of the abortion, has been reported, together with
18 the identity of the offender, if known, to a law enforcement
19 agency having the requisite jurisdiction and has been
20 personally reported by the victim.

21 (3) When abortion is performed in the case of pregnancy
22 caused by [incest] sexual assault by a family member which,
23 prior to the performance of the abortion, has been personally
24 reported by the victim to a law enforcement agency having the
25 requisite jurisdiction, or, in the case of a minor, to the
26 county child protective service agency and the other party to
27 the [incestuous] act has been named in such report.

28 * * *

29 (j) Required statements.--No Commonwealth agency shall make
30 any payment from Federal or State funds appropriated by the

Commonwealth for the performance of any abortion pursuant to subsection (c)(2) or (3) unless the Commonwealth agency first:

(1) receives from the physician or facility seeking payment a statement signed by the physician performing the abortion stating that, prior to performing the abortion, he obtained a non-notarized, signed statement from the pregnant woman stating that she was a victim of [rape or incest] sexual assault, sexual exploitation or sexual victimization, as the case may be, and that she reported the crime, including the identity of the offender, if known, to a law enforcement agency having the requisite jurisdiction or, in the case of [incest] sexual assault, sexual exploitation or sexual victimization by a family member where a pregnant minor is the victim, to the county child protective service agency and stating the name of the law enforcement agency or child protective service agency to which the report was made and the date such report was made;

(2) receives from the physician or facility seeking payment, the signed statement of the pregnant woman which is described in paragraph (1). The statement shall bear the notice that any false statements made therein are punishable by law and shall state that the pregnant woman is aware that false reports to law enforcement authorities are punishable by law; and

(3) verifies with the law enforcement agency or child protective service agency named in the statement of the pregnant woman whether a report of [rape or incest] sexual assault, sexual exploitation or sexual victimization was filed with the agency in accordance with the statement.

The Commonwealth agency shall report any evidence of false

1 statements, of false reports to law enforcement authorities or
2 of fraud in the procurement or attempted procurement of any
3 payment from Federal or State funds appropriated by the
4 Commonwealth pursuant to this section to the district attorney
5 of appropriate jurisdiction and, where appropriate, to the
6 Attorney General.

7 § 4302. Incest.

8 A person is guilty of incest, a [felony of the second degree,
9 if he] misdemeanor of the first degree, if the person knowingly
10 and with consent marries or [cohabits or has sexual intercourse]
11 lives as a spouse with an ancestor or descendant, a brother or
12 sister of the whole or half blood or an uncle, aunt, nephew or
13 niece of the whole blood. The relationships referred to in this
14 section include blood relationships without regard to
15 legitimacy[, and relationship of parent and child by adoption].
16 § 4303. Concealing death of child [born out of wedlock].

17 (a) Offense defined.--A person is guilty of a misdemeanor of
18 the third degree if he or she endeavors privately, either alone
19 or by the procurement of others, to conceal the death of his or
20 her child [born out of wedlock], so that it may not come to
21 light, whether it was born dead or alive or whether it was
22 murdered or not.

23 (b) Procedure.--If the same indictment or information
24 charges any person with the murder of his or her child [born out
25 of wedlock], as well as with the offense of the concealment of
26 the death, the jury may acquit or convict him or her of both
27 offenses, or find him or her guilty of one and acquit him or her
28 of the other.

29 § 6312. Sexual abuse of children.

30 (a) Definition.--As used in this section, the term

1 "prohibited sexual act" means sexual intercourse, anal
2 intercourse, masturbation, bestiality, sadism, masochism,
3 fellatio, cunnilingus, lewd exhibition of the genitals or nudity
4 if such nudity is depicted for the purpose of sexual stimulation
5 or gratification of any person who might view such depiction.

6 (b) Photographing or filming sexual acts.--Any person who
7 causes or knowingly permits a child under the age of [17] 18
8 years to engage in a prohibited sexual act or in the simulation
9 of such act is guilty of a felony of the second degree if such
10 person knows, has reason to know or intends that such act may be
11 photographed or filmed. Any person who knowingly photographs or
12 films a child under the age of [17] 18 years engaging in a
13 prohibited sexual act or in the simulation of such an act is
14 guilty of a felony of the second degree.

15 (c) Dissemination of photographs and films.--Any person who
16 knowingly sells, distributes, delivers, disseminates, transfers,
17 displays or exhibits to others, or who possesses for the purpose
18 of sale, distribution, delivery, dissemination, transfer,
19 display or exhibition to others, any book, magazine, pamphlet,
20 slide, photograph, film, videotape or other material depicting a
21 child under the age of [17] 18 years engaging in a prohibited
22 sexual act or in the simulation of such act is guilty of a
23 felony of the third degree.

24 (d) Possession of child pornography.--Any person who
25 knowingly possesses or controls any book, magazine, pamphlet,
26 slide, photograph, film, videotape or other material depicting a
27 child under the age of [17] 18 years engaging in a prohibited
28 sexual act or in the simulation of such act is guilty of a
29 felony of the third degree.

30 (e) [Evidence of age.--In the event a person involved in a

1 prohibited sexual act is alleged to be a child under the age of
2 17 years, competent expert testimony shall be sufficient to
3 establish the age of said person.] Mistake as to age.--It is no
4 defense that the actor did not know the age of the child.
5 Neither a misrepresentation of age by the child nor a bona fide
6 belief that such person is over the specified age shall be a
7 defense.

8 (f) Exceptions.--This section does not apply to any material
9 that is possessed, controlled, brought or caused to be brought
10 into this Commonwealth, or presented for a bona fide
11 educational, scientific, artistic, governmental or judicial
12 purpose.

13 Section 6. Section 5303(b) of Title 23 is amended to read:
14 § 5303. Award of custody, partial custody or visitation.

15 * * *

16 (b) Consideration of criminal conviction.--If a parent has
17 been convicted of or has pleaded guilty or no contest to an
18 offense as set forth below, the court shall consider such
19 criminal conduct and shall determine that the parent does not
20 pose a threat of harm to the child before making an order of
21 custody, partial custody or visitation to that parent:

22 (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);

23 (2) 18 Pa.C.S. § 2901 (relating to kidnapping);

24 (3) 18 Pa.C.S. § 2902 (relating to unlawful restraint);

25 (4) 18 Pa.C.S. § 3121 (relating to [rape] aggravated
26 sexual assault);

27 (5) 18 Pa.C.S. § 3122 (relating to [statutory rape]
28 sexual assault);

29 (6) 18 Pa.C.S. § 3123 (relating to [involuntary deviate
30 sexual intercourse] aggravated deviate sexual intercourse);

1 (7) 18 Pa.C.S. § 3124 (relating to deviate sexual
2 intercourse);

3 (8) 18 Pa.C.S. § 3125 (relating to aggravated indecent
4 assault);

5 [(7)] (9) 18 Pa.C.S. § 3126 (relating to indecent
6 assault);

7 (10) 18 Pa.C.S. § 3128 (relating to indecent contact);

8 (11) 18 Pa.C.S. § 3129 (relating to continuous sexual
9 victimization of child);

10 (12) 18 Pa.C.S. § 3130 (relating to sexual exploitation
11 of child);

12 [(8)] (13) 18 Pa.C.S. § 4302 (relating to incest);

13 [(9)] (14) 18 Pa.C.S. § 4304 (relating to endangering
14 welfare of children);

15 [(10)] (15) 18 Pa.C.S. § 5902(b) (relating to
16 prostitution and related offenses); or

17 [(11)] (16) 18 Pa.C.S. § 6312 (relating to sexual abuse
18 of children).

19 * * *

20 Section 7. The definition of "abuse" in section 6102 of
21 Title 23 is amended to read:

22 § 6102. Definitions.

23 (a) General rule.--The following words and phrases when used
24 in this chapter shall have the meanings given to them in this
25 section unless the context clearly indicates otherwise:

26 "Abuse." The occurrence of one or more of the following acts
27 between family or household members, sexual or intimate partners
28 or persons who share biological parenthood:

29 (1) Attempting to cause or intentionally, knowingly or
30 recklessly causing bodily injury, serious bodily injury,

1 [rape, spousal sexual assault or involuntary deviate sexual
2 intercourse] aggravated sexual assault, sexual assault,
3 aggravated deviate sexual intercourse, deviate sexual
4 intercourse, aggravated indecent assault or indecent assault
5 with or without a deadly weapon.

6 (2) Placing by physical menace another in fear of
7 imminent serious bodily injury.

8 (3) The infliction of false imprisonment pursuant to 18
9 Pa.C.S. § 2903 (relating to false imprisonment).

10 (4) Physically or sexually abusing minor children,
11 including such terms as defined in Chapter 63 (relating to
12 child protective services).

13 * * *

14 Section 8. The definition of "sexual abuse" in section 6303
15 of Title 23 is amended to read:

16 § 6303. Definitions.

17 The following words and phrases when used in this chapter
18 shall have the meanings given to them in this section unless the
19 context clearly indicates otherwise:

20 * * *

21 "Sexual abuse." The obscene or pornographic photographing,
22 filming or depiction of children for commercial purposes or the
23 [rape] sexual assault, molestation, [incest] sexual
24 victimization, prostitution or other forms of sexual
25 exploitation of children under circumstances which indicate that
26 the child's health or welfare is harmed or threatened thereby,
27 as determined in accordance with regulations of the department.

28 * * *

29 Section 9. Section 6344(c) of Title 23 is amended to read:

30 § 6344. Information relating to prospective child-care

1 personnel.

2 * * *

3 (c) Grounds for denying employment.--In no case shall an
4 administrator hire an applicant where the department has
5 verified that the applicant is named in the central register as
6 the perpetrator of a founded report of child abuse committed
7 within the five-year period immediately preceding verification
8 pursuant to this section. In no case shall an administrator hire
9 an applicant if the applicant's criminal history record
10 information indicates the applicant has been convicted, within
11 five years immediately preceding the date of the report, of one
12 or more of the following offenses under Title 18 (relating to
13 crimes and offenses):

14 Chapter 25 (relating to criminal homicide).

15 Section 2702 (relating to aggravated assault).

16 Section 2901 (relating to kidnapping).

17 Section 2902 (relating to unlawful restraint).

18 [Section 3121 (relating to rape).

19 Section 3122 (relating to statutory rape).

20 Section 3123 (relating to involuntary deviate sexual
21 intercourse).

22 Section 3126 (relating to indecent assault).

23 Section 3127 (relating to indecent exposure).]

24 Section 3121 (relating to aggravated sexual assault).

25 Section 3122 (relating to sexual assault).

26 Section 3123 (relating to aggravated deviate sexual
27 intercourse).

28 Section 3124 (relating to deviate sexual intercourse).

29 Section 3125 (relating to aggravated indecent assault).

30 Section 3126 (relating to indecent assault).

1 Section 3127 (relating to indecent exposure).

2 Section 3128 (relating to indecent contact).

3 Section 3129 (relating to continuous sexual victimization
4 of child).

5 Section 3130 (relating to sexual exploitation of child).

6 Section 4303 (relating to concealing death of child [born
7 out of wedlock]).

8 Section 4304 (relating to endangering welfare of
9 children).

10 Section 4305 (relating to dealing in infant children).

11 A felony offense under section 5902(b) (relating to
12 prostitution and related offenses).

13 Section 5903(c) or (d) (relating to obscene and other
14 sexual materials).

15 Section 6301 (relating to corruption of minors).

16 Section 6312 (relating to sexual abuse of children).

17 * * *

18 Section 10. Sections 5552 and 5554 of Title 42 are amended
19 to read:

20 § 5552. Other offenses.

21 (a) General rule.--Except as otherwise provided in this
22 subchapter, a prosecution for an offense must be commenced
23 within two years after it is committed.

24 (b) Major offenses.--A prosecution for any of the following
25 offenses must be commenced within five years after it is
26 committed:

27 (1) Under the following provisions of Title 18 (relating
28 to crimes and offenses):

29 Section 911 (relating to corrupt organizations).

30 Section 2706 (relating to terroristic threats).

1 Section 2901 (relating to kidnapping).

2 [Section 3121 (relating to rape).

3 Section 3123 (relating to involuntary deviate sexual

4 intercourse).]

5 Section 3121 (relating to aggravated sexual assault).

6 Section 3122 (relating to sexual assault).

7 Section 3123 (relating to aggravated deviate sexual

8 intercourse).

9 Section 3124 (relating to deviate sexual

10 intercourse).

11 Section 3125 (relating to aggravated indecent

12 assault).

13 Section 3126 (relating to indecent assault).

14 Section 3128 (relating to indecent contact).

15 Section 3129 (relating to continuous sexual

16 victimization of child).

17 Section 3130 (relating to sexual exploitation of

18 child).

19 Section 3301 (relating to arson and related

20 offenses).

21 Section 3502 (relating to burglary).

22 Section 3701 (relating to robbery).

23 Section 3921 (relating to theft by unlawful taking or

24 disposition) through section 3931 (relating to theft of

25 unpublished dramas and musical compositions).

26 Section 4101 (relating to forgery).

27 Section 4108 (relating to commercial bribery and

28 breach of duty to act disinterestedly).

29 Section 4109 (relating to rigging publicly exhibited

30 contest).

1 [Section 4302 (relating to incest).]

2 Section 4701 (relating to bribery in official and
3 political matters) through section 4703 (relating to
4 retaliation for past official action).

5 Section 4902 (relating to perjury) through section
6 4912 (relating to impersonating a public servant).

7 Section 4952 (relating to intimidation of witnesses
8 or victims).

9 Section 4953 (relating to retaliation against witness
10 or victim).

11 Section 5101 (relating to obstructing administration
12 of law or other governmental function).

13 Section 5512 (relating to lotteries, etc.) through
14 section 5514 (relating to pool selling and bookmaking).

15 Section 5902(b) (relating to prostitution and related
16 offenses).

17 Section 6312 (relating to sexual abuse of children).

18 (2) Any offense punishable under section 13(f) of the
19 act of April 14, 1972 (P.L.233, No.64), known as ["The
20 Controlled Substance, Drug, Device and Cosmetic Act.["]

21 (3) Any conspiracy to commit any of the offenses set
22 forth in paragraphs (1) and (2) and any solicitation to
23 commit any of the offenses in paragraphs (1) and (2) if the
24 solicitation results in the completed offense.

25 (4) Under the act of June 13, 1967 (P.L.31, No.21),
26 known as the ["Public Welfare Code.["]

27 (c) Exceptions.--If the period prescribed in subsection (a)
28 or subsection (b) has expired, a prosecution may nevertheless be
29 commenced for:

30 (1) Any offense a material element of which is either

1 fraud or a breach of fiduciary obligation within one year
2 after discovery of the offense by an aggrieved party or by a
3 person who has a legal duty to represent an aggrieved party
4 and who is himself not a party to the offense, but in no case
5 shall this paragraph extend the period of limitation
6 otherwise applicable by more than three years.

7 (2) Any offense committed by a public officer or
8 employee in the course of or in connection with his office or
9 employment at any time when the defendant is in public office
10 or employment or within five years thereafter, but in no case
11 shall this paragraph extend the period of limitation
12 otherwise applicable by more than eight years.

13 (3) Any sexual offense committed against a minor who is
14 less than 18 years of age any time up to the period of
15 limitation provided by law after the minor has reached 18
16 years of age. As used in this paragraph, the term "sexual
17 offense" means a crime under the following provisions of
18 Title 18 (relating to crimes and offenses):

19 [Section 3121 (relating to rape).

20 Section 3122 (relating to statutory rape).

21 Section 3123 (relating to involuntary deviate sexual
22 intercourse).

23 Section 3124 (relating to voluntary deviate sexual
24 intercourse).

25 Section 3125 (relating to aggravated indecent
26 assault).

27 Section 3126 (relating to indecent assault).

28 Section 3127 (relating to indecent exposure).

29 Section 4302 (relating to incest).]

30 Section 3121 (relating to aggravated sexual assault).

1 Section 3122 (relating to sexual assault).

2 Section 3123 (relating to aggravated deviate sexual
3 intercourse).

4 Section 3124 (relating to deviate sexual
5 intercourse).

6 Section 3125 (relating to aggravated indecent
7 assault).

8 Section 3126 (relating to indecent assault).

9 Section 3127 (relating to indecent exposure).

10 Section 3128 (relating to indecent contact).

11 Section 3129 (relating to continuous sexual
12 victimization of child).

13 Section 3130 (relating to sexual exploitation of
14 child).

15 Section 4304 (relating to endangering welfare of
16 children).

17 Section 5902 (relating to prostitution and related
18 offenses).

19 Section 6301 (relating to corruption of minors).

20 Section 6312(b) (relating to sexual abuse of
21 children).

22 (d) Commission of offense.--An offense is committed either
23 when every element occurs, or, if a legislative purpose to
24 prohibit a continuing course of conduct plainly appears, at the
25 time when the course of conduct or the complicity of the
26 defendant therein is terminated. Time starts to run on the day
27 after the offense is committed.

28 (e) Commencement of prosecution.--Except as otherwise
29 provided by general rule adopted pursuant to section 5503
30 (relating to commencement of matters), a prosecution is

1 commenced either when an indictment is found or an information
2 under section 8931(b) (relating to indictment and information)
3 is issued, or when a warrant, summons or citation is issued, if
4 such warrant, summons or citation is executed without
5 unreasonable delay.

6 § 5554. Tolling of statute.

7 Except as provided by section 5553(e) (relating to
8 disposition of proceedings within two years), the period of
9 limitation does not run during any time when:

10 (1) the accused is continuously absent from this
11 Commonwealth or has no reasonably ascertainable place of
12 abode or work within this Commonwealth;

13 (2) a prosecution against the accused for the same
14 conduct is pending in this Commonwealth; or

15 (3) a child is under 18 years of age, where the crime
16 involves physical injuries to the person of the child or
17 sexual victimization of the child caused by the wrongful act,
18 or neglect, or unlawful violence, or negligence of the
19 child's parents or by a person responsible for the child's
20 welfare, or any adult who is related to the child by
21 consanguinity or any individual residing in the same home as
22 the child, or a paramour of the child's parent.

23 Section 11. Title 42 is amended by adding sections to read:
24 § 5989. Length of in-court testimony.

25 (a) General rule.--The court may, upon its own motion or
26 upon the motion of the child's advocate, the child's parent or
27 guardian or the attorney for the Commonwealth, order the court
28 testimony of a child victim or witness to be limited in duration
29 in accordance with the developmental maturity of the child.

30 (b) Expert testimony.--The court may consider or hear expert

1 testimony in order to determine the appropriate limitation on
2 the duration of a child's testimony.

3 (c) Opportunity for rest.--The court may, upon motion, limit
4 the duration of a child's uninterrupted testimony to a period of
5 one hour, at which time the court shall allow the child to rest
6 before continuing to testify.

7 § 5990. Speedy disposition of cases.

8 All criminal actions in which a child is the victim or a
9 material witness shall be heard and disposed of as expeditiously
10 as possible. In ruling on any motion or request for delay or
11 continuance of any proceeding, the court shall consider and give
12 weight to any adverse impact that the requested delay or
13 continuance may have on the well-being of the child.

14 § 5991. Expert witness testimony.

15 When a prosecution is brought for offenses committed against
16 children, the court shall have the discretion to permit the
17 introduction of expert witness testimony of a general nature for
18 the purpose of educating the jury regarding any area where the
19 testimony might be useful and beneficial in helping the jury
20 understand the typical behaviors of children who are victims of
21 sexual assault.

22 § 5992. Competency of child victim witness.

23 (a) General rule.--Every child who is an alleged victim of a
24 sexual offense, abuse or neglect shall be presumed competent to
25 testify in any judicial proceeding regarding the alleged
26 offense; however, the presumption may be rebutted by evidence to
27 the contrary.

28 (b) Disqualification.--A child shall be disqualified to be a
29 witness if the court finds that the proposed witness is
30 incapable of:

1 (1) expressing himself or herself concerning the matter
2 so as to be understood by the judge and jury either directly
3 or through interpretation by one who can understand him or
4 her; or

5 (2) understanding the duty of a witness to tell the
6 truth.

7 (c) Oath not required.--A child under ten years of age, in
8 the court's discretion, need not take an oath or make an
9 affirmation or declaration but may be required only to promise
10 to tell the truth.

11 Section 12. This act shall apply as follows:

12 (1) The amendment or addition of sections of 18 Pa.C.S.
13 shall apply to offenses committed on or after the effective
14 date of this act.

15 (2) The addition of 42 Pa.C.S. §§ 5989, 5990, 5991 and
16 5992 shall apply to proceedings conducted on or after the
17 effective date of this act.

18 Section 13. This act shall take effect in 60 days.