

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 728 Session of
1997

INTRODUCED BY L. I. COHEN, BELFANTI, FICHTER, SAYLOR,
HUTCHINSON, DeLUCA, STABACK, STERN, GEIST, ROONEY, RUBLEY,
KENNEY, STURLA, BATTISTO, COLAFELLA, CURRY, YOUNGBLOOD,
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TRAVAGLIO, BENNINGHOFF, RAYMOND, CIVERA, HORSEY AND PISTELLA,
MARCH 11, 1997

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 11, 1997

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, further providing for unlawful restraint, for false
4 imprisonment and for obscenity; and further providing for
5 sentences for offenses against minors and for sentences of
6 total confinement.

7 It is the intent of the General Assembly to protect our most
8 vulnerable and precious citizens, the Commonwealth's children,
9 from the ravages of sexual abuse. Because sexual crimes
10 committed against children are among the most heinous
11 imaginable, the General Assembly declares it to be in the public
12 interest to enact this act.

13 The General Assembly of the Commonwealth of Pennsylvania
14 hereby enacts as follows:

15 Section 1. Sections 2902, 2903 and 5903(h)(2) of Title 18 of
16 the Pennsylvania Consolidated Statutes are amended to read:

17 § 2902. Unlawful restraint.

1 (a) Offense defined.--A person commits [a misdemeanor of the
2 first degree] an offense if he knowingly:

3 (1) restrains another unlawfully in circumstances
4 exposing him to risk of serious bodily injury; or

5 (2) holds another in a condition of involuntary
6 servitude.

7 (b) Grading.--

8 (1) Except as provided in paragraph (2), an offense
9 under subsection (a) is a misdemeanor of the first degree.

10 (2) If the victim of the offense is an individual under
11 18 years of age, an offense under subsection (a) is a felony
12 of the second degree.

13 § 2903. False imprisonment.

14 (a) Offense defined.--A person commits [a misdemeanor of the
15 second degree] an offense if he knowingly restrains another
16 unlawfully so as to interfere substantially with his liberty.

17 (b) Grading.--

18 (1) Except as provided in paragraph (2), an offense
19 under subsection (a) is a misdemeanor of the second degree.

20 (2) If the victim of the offense is an individual under
21 18 years of age, an offense under subsection (a) is a felony
22 of the second degree.

23 § 5903. Obscene and other sexual materials and performances.

24 * * *

25 (h) Criminal prosecution.--

26 * * *

27 (2) Any person who violates subsection (c) or (d) is
28 guilty of a [misdemeanor] felony of the [first] third degree.
29 Violation of subsection (c) or (d) is a felony of the [third]
30 second degree if the offender has previously been convicted

1 of a violation of subsection (c) or (d).

2 * * *

3 Section 2. Section 9718 of Title 42 is amended to read:

4 § 9718. Sentences for offenses against infant persons.

5 (a) Mandatory sentence.--

6 (1) [A] Except as provided in paragraph (2), a person
7 convicted of any of the following offenses when the victim is
8 under [16] 18 years of age shall be sentenced to [a] all of
9 the following:

10 (i) A mandatory term of imprisonment as follows:

11 18 Pa.C.S. § 2702(a)(1) and (4) (relating to
12 aggravated assault) - not less than two years.

13 18 Pa.C.S. § 2901 (relating to kidnapping) - not
14 less than 20 years.

15 18 Pa.C.S. § 2902 (relating to unlawful
16 restraint) - not less than seven years nor more than
17 ten years.

18 18 Pa.C.S. § 2903 (relating to false
19 imprisonment) - not less than seven years nor more
20 than ten years.

21 18 Pa.C.S. § 3121(1), (2), (3), (4), (5) and (6)
22 (relating to rape) - not less than five years.

23 18 Pa.C.S. § 3123 (relating to involuntary
24 deviate sexual intercourse) - not less than five
25 years.

26 18 Pa.C.S. § 5903 (relating to obscene and other
27 sexual materials and performances) - not less than
28 five years nor more than seven years for the first
29 offense and not less than seven years nor more than
30 ten years for a subsequent offense.

1 (ii) Parole for the remainder of the person's life.

2 This subparagraph applies even if the person completes
3 the maximum term of imprisonment.

4 (2) A person convicted of the following offenses when
5 the victim is less than 13 years of age shall be sentenced to
6 [a] all of the following:

7 (i) A mandatory term of imprisonment as follows:

8 18 Pa.C.S. § 2702(a)(1) (relating to aggravated
9 assault) - not less than five years.

10 18 Pa.C.S. § 3125(1) through (6) (relating to
11 aggravated indecent assault) - not less than two and
12 one-half years.

13 (ii) Parole for the remainder of the person's life.

14 This subparagraph applies even if the person completes
15 the maximum term of imprisonment.

16 (3) Provisions of this subsection shall not be an
17 element of the crime and notice thereof to the defendant
18 shall not be required prior to conviction, but reasonable
19 notice of the Commonwealth's intention to proceed under this
20 subsection shall be provided after conviction and before
21 sentencing. The applicability of this subsection shall be
22 determined at sentencing. The sentencing court shall consider
23 evidence presented at trial and shall afford the Commonwealth
24 and the defendant an opportunity to present necessary
25 additional evidence and shall determine by a preponderance of
26 the evidence if this subsection is applicable.

27 (4) There shall be no authority in any court to impose
28 on an offender to which this subsection is applicable any
29 lesser sentence than provided for in this subsection or to
30 place such offender on probation or to suspend sentence.

1 Nothing in this subsection shall prevent the sentencing court
2 from imposing a sentence greater than that provided in this
3 subsection. Sentencing guidelines promulgated by the
4 Pennsylvania Commission on Sentencing shall not supersede the
5 mandatory sentences provided in this subsection.

6 (5) If a sentencing court refuses to apply this
7 subsection where applicable, the Commonwealth shall have the
8 right to appellate review of the action of the sentencing
9 court. The appellate court shall vacate the sentence and
10 remand the case to the sentencing court for imposition of a
11 sentence in accordance with this subsection if it finds that
12 the sentence was imposed in violation of this subsection.

13 (a.1) Treatment in prison.--A person sentenced under
14 subsection (a) shall attend and participate in a Department of
15 Corrections program of counseling or therapy designed for
16 incarcerated sex offenders.

17 (b) Eligibility for parole.--Parole shall not be granted
18 [until] unless the offender has done all of the following:

19 (1) Served the minimum term of imprisonment [has been
20 served].

21 (2) Participated in the program under subsection (a.1).

22 (3) Made arrangements to continue, as a condition of
23 parole, therapy or counseling for sex offenders.

24 Section 3. Section 9756(b) of Title 42 is amended to read:

25 § 9756. Sentence of total confinement.

26 * * *

27 (b) Minimum sentence.--[The] Except as provided in section
28 9718(a) (relating to sentences against infant persons), the
29 court shall impose a minimum sentence of confinement which shall
30 not exceed one-half of the maximum sentence imposed.

1 * * *

2 Section 4. The amendment of 18 Pa.C.S. §§ 2902, 2903 and
3 5903(h)(2) and 42 Pa.C.S. §§ 9718 and 9756(b) shall apply to
4 offenses committed on or after the effective date of this act.

5 Section 5. This act shall take effect in 60 days.