

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 264

Session of
1983

INTRODUCED BY FLICK, FARGO, BUNT, CIMINI, POTT, ANGSTADT, VROON,
GRIECO, PERZEL, BELARDI, BLAUM, F. E. TAYLOR, BOWSER, DALEY,
RYBAK, PRATT, KOSINSKI, REINARD, GRUPPO, COHEN, MERRY,
MICOZZIE, ARTY, LEHR, JOHNSON, RYAN, HAYES, SCHULER, HERSHEY,
WASS, SPITZ, DURHAM, CIVERA, CLYMER, FREIND, E. Z. TAYLOR,
PITTS AND R. C. WRIGHT, FEBRUARY 16, 1983

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 16, 1983

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for minimum
3 terms for aggravated assault, rape and involuntary deviate
4 sexual intercourse committed against persons suffering from a
5 severe physical handicap.

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

8 Section 1. Title 42 of the Pennsylvania Consolidated
9 Statutes is amended by adding a section to read:

10 § 9719. Sentences for offenses against handicapped persons.

11 (a) Mandatory sentence.--A person convicted of the following
12 offenses shall be sentenced to a mandatory minimum sentence of
13 total confinement as follows if said person knew or had reason
14 to believe that the victim was suffering from a severe physical
15 handicap at the time the offense was committed:

16 18 Pa.C.S. § 2702(a)(1) and (4) (relating to aggravated
17 assault) - not less than two years.

1 18 Pa.C.S. § 3121 (relating to rape) - not less than five
2 years.

3 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual
4 intercourse) - not less than five years.

5 (b) Eligibility for parole.--Parole shall not be granted
6 until the minimum term of imprisonment has been served.

7 (c) Definition.--As used in this section the term "severe
8 physical handicap" means one or more of the following
9 conditions: blindness, confinement to a wheelchair, amputation
10 of one or more limbs, a paraplegic condition or a quadriplegic
11 condition.

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

23 (e) Authority of court in sentencing.--There shall be no
24 authority in any court to impose on an offender to which this
25 section is applicable any lesser sentence than provided for in
26 subsection (a) or to place such offender on probation or to
27 suspend sentence. Nothing in this section shall prevent the
28 sentencing court from imposing a sentence greater than that
29 provided in this section. Sentencing guidelines promulgated by
30 the Pennsylvania Commission on Sentencing shall not supersede

1 the mandatory sentences provided in this section.

2 (f) Appeal by Commonwealth.--If a sentencing court refuses
3 to apply this section where applicable, the Commonwealth shall
4 have the right to appellate review of the action of the
5 sentencing court. The appellate court shall vacate the sentence
6 and remand the case to the sentencing court for imposition of a
7 sentence in accordance with this section if it finds that the
8 sentence was imposed in violation of this section.

9 Section 2. This act shall take effect in 60 days.