

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1077 Session of  
2001

INTRODUCED BY GREENLEAF, SCHWARTZ, ERICKSON, LAVALLE, WAGNER,  
WAUGH AND TARTAGLIONE, OCTOBER 1, 2001

REFERRED TO JUDICIARY, OCTOBER 1, 2001

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and  
2 Judicial Procedure) of the Pennsylvania Consolidated  
3 Statutes, providing for sexual offenses by psychotherapists  
4 and practitioners of the healing arts.

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

7 Section 1. Title 18 of the Pennsylvania Consolidated  
8 Statutes is amended by adding sections to read:

9 § 3130. Psychotherapist sexual offenses.

10 (a) Sexual assault by a psychotherapist.--A psychotherapist  
11 commits a misdemeanor of the first degree when the  
12 psychotherapist engages in sexual intercourse or deviate sexual  
13 intercourse, as defined in section 3101 (relating to  
14 definitions), with the psychotherapist's patient or client,  
15 regardless of whether or not it occurred during any treatment,  
16 consultation, assessment, interview or examination where the act  
17 occurred during the ongoing therapist-patient or therapist-  
18 client relationship or within two years of the termination of

1 the relationship.

2 (b) Indecent assault by a psychotherapist.--A  
3 psychotherapist commits a misdemeanor of the second degree when  
4 the psychotherapist has indecent contact, as defined in section  
5 3101, with the psychotherapist's patient or client, regardless  
6 of whether it occurred during any treatment, consultation,  
7 assessment, interview or examination where the act occurred  
8 during the ongoing therapist-patient or therapist-client  
9 relationship or within two years of the termination of the  
10 relationship.

11 (c) Prohibited defense.--It shall not be a defense to a  
12 prosecution brought under this section that the patient or  
13 client consented to the act.

14 (d) Prosecutions under subsection (a) or (b).--In  
15 prosecutions under subsection (a) or (b), physical or mental  
16 injury to the patient need not be established.

17 (e) Restitution.--Upon sentencing a defendant for a  
18 conviction under this section, the court shall order, pursuant  
19 to 42 Pa.C.S. § 9721(c) (relating to sentencing generally), that  
20 the defendant pay the cost of rehabilitative psychotherapy for  
21 the victim.

22 (f) Definitions.--As used in this section, the following  
23 words and phrases shall have the meanings given to them in this  
24 subsection:

25 "Patient" or "client." A person who receives psychotherapy  
26 from a psychotherapist, regardless of whether or not the  
27 psychotherapist receives remuneration for the services from the  
28 person.

29 "Psychotherapist." A psychiatrist, psychologist,  
30 psychoanalyst, registered nurse certified to practice

psychotherapy, mental health counselor, chemical dependency counselor, hypnotist, social worker, health care practitioner or any person who represents himself as such, whether or not licensed or certified by the Commonwealth, and any person licensed or certified by the State Board of Psychology or the State Board of Social Work Examiners, who provides psychotherapy counseling to patients or clients.

"Psychotherapy counseling." The professional treatment of a mental or emotional distress, illness or disability through the creation of an ongoing therapeutic relationship between the therapist and the patient or client in which principles of clinical psychiatric or psychological treatment methodology are employed, regardless of whether or not the psychotherapist receives remuneration for the services from the patient or client.

§ 3131. Practitioner of the healing arts sexual offenses.

(a) Sexual assault by a practitioner of the healing arts.--A practitioner commits a misdemeanor of the first degree when the practitioner engages in sexual intercourse or deviate sexual intercourse, as defined in section 3101 (relating to definitions), with the practitioner's patient during the course of an office or hospital visit or at the site of a professional encounter, whether or not in a clinical setting, where the practitioner impaired the patient's power to appraise or control his conduct by administering drugs or employing treatment or examination procedures which could be expected to prevent resistance by the patient.

(b) Indecent assault by a practitioner of the healing arts.--A practitioner commits a misdemeanor of the second degree when the practitioner has indecent contact, as defined in

1 section 3101, with the practitioner's patient or causes a  
2 patient of the practitioner to have indecent contact with the  
3 practitioner during the course of an office or hospital visit or  
4 at the site of a professional encounter, whether or not in a  
5 clinical setting, where the practitioner impaired the patient's  
6 power to appraise or control his conduct by administering drugs  
7 or employing treatment or examination procedures which could be  
8 expected to prevent resistance by the patient.

9 (c) Prohibited defense.--It shall not be a defense to a  
10 prosecution under this section that the patient consented to the  
11 act.

12 (d) Restitution.--Upon sentencing a defendant for conviction  
13 of a violation of this section, the court shall order, pursuant  
14 to 42 Pa.C.S. § 9721(c) (relating to sentencing generally), that  
15 the defendant pay the cost of rehabilitative psychotherapy for  
16 the victim.

17 (e) Definition.--As used in this section, the term  
18 "practitioner of the healing arts" or "practitioner" includes  
19 any person licensed or certified by the State Board of Medicine,  
20 State Board of Osteopathic Medicine, State Board of Dentistry,  
21 State Board of Podiatry, State Board of Nursing, State Board of  
22 Physical Therapy, State Board of Occupational Therapy, State  
23 Board of Optometry, State Board of Examiners of Nursing Home  
24 Administrators, State Board of Chiropractic or State Board of  
25 Examiners in Speech, Language and Hearing in the Bureau of  
26 Professional and Occupational Affairs of the Department of State  
27 and any emergency medical technician or EMT-paramedic certified  
28 by the Department of Health.

29 Section 2. Chapter 31 of Title 18 is amended by adding a  
30 subchapter to read:

SUBCHAPTER C

REVOCATION OR SUSPENSION OF LICENSE

Sec.

3141. Revocation or suspension of license; order for treatment.

3142. Report of district attorney required.

§ 3141. Revocation or suspension of license; order for treatment.

(a) Conviction of misdemeanor of the first degree.--

(1) Upon conviction of a practitioner of the healing arts or a psychotherapist of a misdemeanor of the first degree sexual offense under this chapter, the license or certification of the practitioner of the healing arts or psychotherapist shall be automatically revoked by the appropriate licensing board within the Bureau of Professional and Occupational Affairs or by the appropriate certifying authority upon receipt of the report required under section 3142 (relating to report of district attorney required) or the filing with the appropriate licensing board of a certified copy of the conviction.

(2) Any other person convicted of the crimes enumerated in paragraph (1) shall be prohibited from applying for licensure or certification as a practitioner of the healing arts or psychotherapist for a period of five years from the date of conviction. Licensure or certification after the expiration of such period shall be subject to the provisions of subsection (f)(1).

(b) Conviction of misdemeanor of the second degree.--

(1) Upon conviction of a practitioner of the healing arts or a psychotherapist of a misdemeanor of the second

1 degree sexual offense under this chapter, the license or  
2 certification of the practitioner of the healing arts or  
3 psychotherapist shall be automatically suspended by the  
4 appropriate licensing board within the Bureau of Professional  
5 and Occupational Affairs or by the appropriate certifying  
6 authority upon receipt of the report required under section  
7 3142 or the filing with the appropriate licensing board of a  
8 certified copy of the conviction.

9 (2) Any other person convicted of the crimes enumerated  
10 in paragraph (1) shall be prohibited from applying for  
11 licensure or certification as a practitioner of the healing  
12 arts or psychotherapist unless reinstated under the  
13 provisions of subsection (f)(2).

14 (c) Eligibility for impaired professional program.--Any  
15 person who is convicted of a crime under this chapter shall not  
16 be eligible for an impaired professional program in lieu of the  
17 suspension or revocation of the person's license or  
18 certification.

19 (d) Stay of revocation or suspension pending appeal of  
20 conviction.--

21 (1) An order of revocation under this section shall not  
22 be stayed pending any appeal of a conviction of an offense  
23 enumerated in subsection (a).

24 (2) An order of suspension under this section shall not  
25 be stayed pending any appeal of a conviction of an offense  
26 enumerated in subsection (b).

27 (e) Conviction in other jurisdictions.--

28 (1) Conviction of an offense under the laws of another  
29 jurisdiction, which, if committed in this Commonwealth, would  
30 be a misdemeanor of the first degree enumerated in subsection

1 (a) shall result in automatic revocation of the license or  
2 certification of the practitioner of the healing arts or  
3 psychotherapist so convicted.

4 (2) Conviction of an offense under the laws of another  
5 jurisdiction, which, if committed in this Commonwealth, would  
6 be a misdemeanor of the second degree enumerated in  
7 subsection (b) shall result in automatic suspension of the  
8 license or certification of the practitioner of the healing  
9 arts or psychotherapist.

10 (f) Reinstatement of license or certification.--

11 (1) A practitioner of the healing arts or  
12 psychotherapist whose license is revoked under subsection (a)  
13 or (e)(1) may apply for reinstatement after a period of five  
14 years from the date of conviction. The license or  
15 certification shall not be reinstated unless the licensing or  
16 certifying authority is satisfied that the practitioner of  
17 the healing arts or psychotherapist has made significant  
18 progress in personal rehabilitation since conviction, such  
19 that reinstatement should not be expected to create a  
20 substantial risk of harm to the health and safety of his  
21 patients or clients and the public and if all other licensing  
22 or certification requirements, including any examination  
23 requirement, are met.

24 (2) A practitioner of the healing arts or  
25 psychotherapist who is convicted under subsection (b) or  
26 (e)(2) shall be suspended for a period to be determined by  
27 the appropriate licensing or certifying authority, provided  
28 that the period of suspension or other disciplinary or  
29 corrective action shall not be less than one year and shall  
30 not expire until the licensing or certifying authority is

1 satisfied that the practitioner of the healing arts or  
2 psychotherapist has made significant progress in personal  
3 rehabilitation since conviction, such that reinstatement  
4 should not be expected to create a substantial risk of harm  
5 to the health and safety of his patients or clients and the  
6 public.

7 (g) Authority of licensing or certifying authority.--Nothing  
8 in this section shall prohibit a licensing board within the  
9 bureau or an appropriate certifying authority from denying,  
10 refusing to renew, revoking or suspending the license or  
11 certification of a practitioner of the healing arts or  
12 psychotherapist or from imposing other disciplinary or  
13 corrective action against a practitioner of the healing arts or  
14 psychotherapist relating to offenses enumerated in this section  
15 or other conduct prohibited by the statutes governing the  
16 appropriate licensing or certifying authority.

17 (h) Injunction against nonlicensed or noncertified  
18 practitioners of the healing arts and psychotherapists.--In the  
19 event that a practitioner of the healing arts or psychotherapist  
20 convicted of an offense enumerated under subsection (a) or (b)  
21 is not subject to revocation or suspension of a license or  
22 certification, the court, upon conviction, shall enjoin the  
23 practitioner of the healing arts or psychotherapist from the  
24 practice of all or any of the duties of his profession or  
25 occupation until such time as the practitioner of the healing  
26 arts or psychotherapist demonstrates to the court that  
27 resumption of the practice of his duties will not create a  
28 substantial risk of harm to the health and safety of his  
29 patients or clients or the public.

30 (i) Statute of limitations not a bar.--Any disciplinary



proceedings arising from conduct that is covered by this chapter and the corresponding provisions of any act governing the profession or occupation shall not be barred by any criminal or civil statute of limitations or by the defense of laches. The licensing board or hearing examiner may determine the weight and sufficiency of any evidence presented to support a complaint arising from conduct prohibited by this chapter.

(j) Definition.--As used in this section, the term "conviction" includes a judgment, verdict of guilt, admission of guilt or plea of nolo contendere and also includes entry into Accelerated Rehabilitative Disposition in the disposition of a felony or misdemeanor charge.

§ 3142. Report of district attorney required.

The district attorney prosecuting an offense under this chapter shall, upon conviction of the practitioner of the healing arts or psychotherapist, report the conviction, in writing, within 30 days after the conviction, to the following:

(1) The licensure board within the Bureau of Professional and Occupational Affairs or registration or certification organization, if any, which issued the practitioner's or psychotherapist's license, certification or registration.

(2) The professional organization with which the practitioner of the healing arts or psychotherapist is affiliated.

(3) The present employer of the practitioner of the healing arts or psychotherapist and the employer of the practitioner of the healing arts or psychotherapist at the time of the alleged sexual offense, if the employer is not the present employer.

1       Section 3.   Section 5552(b) and (c) of Title 42 are amended  
2 to read:

3   § 5552.   Other offenses.

4       \* \* \*

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

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

10               Section 911 (relating to corrupt organizations).

11               Section 2702 (relating to aggravated assault).

12               Section 2706 (relating to terroristic threats).

13               Section 2901 (relating to kidnapping).

14               Section 3121 (relating to rape).

15               Section 3122.1 (relating to statutory sexual  
16 assault).

17               Section 3123 (relating to involuntary deviate sexual  
18 intercourse).

19               Section 3124.1 (relating to sexual assault).

20               Section 3125 (relating to aggravated indecent  
21 assault).

22               Section 3130 (relating to psychotherapist sexual  
23 offenses).

24               Section 3131 (relating to practitioner of the healing  
25 arts sexual offenses).

26               Section 3301 (relating to arson and related  
27 offenses).

28               Section 3502 (relating to burglary).

29               Section 3701 (relating to robbery).

30               Section 3921 (relating to theft by unlawful taking or

disposition) through section 3933 (relating to unlawful use of computer).

Section 4101 (relating to forgery).

Section 4108 (relating to commercial bribery and breach of duty to act disinterestedly).

Section 4109 (relating to rigging publicly exhibited contest).

Section 4117 (relating to insurance fraud).

Section 4302 (relating to incest).

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

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

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

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

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

Section 5111 (relating to dealing in proceeds of unlawful activities).

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

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

Section 6312 (relating to sexual abuse of children).

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

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

5           (4) Under the act of June 13, 1967 (P.L.31, No.21),  
6       known as the Public Welfare Code.

7           (5) Under the act of November 24, 1998 (P.L.874,  
8       No.110), known as the Motor Vehicle Chop Shop and Illegally  
9       Obtained and Altered Property Act.

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

13           (1) Any offense a material element of which is either  
14       fraud or a breach of fiduciary obligation within one year  
15       after discovery of the offense by an aggrieved party or by a  
16       person who has a legal duty to represent an aggrieved party  
17       and who is himself not a party to the offense, but in no case  
18       shall this paragraph extend the period of limitation  
19       otherwise applicable by more than three years.

20           (2) Any offense committed by a public officer or  
21       employee in the course of or in connection with his office or  
22       employment at any time when the defendant is in public office  
23       or employment or within five years thereafter, but in no case  
24       shall this paragraph extend the period of limitation  
25       otherwise applicable by more than eight years.

26           (3) Any sexual offense committed against a minor who is  
27       less than 18 years of age any time up to the period of  
28       limitation provided by law after the minor has reached 18  
29       years of age. As used in this paragraph, the term "sexual  
30       offense" means a crime under the following provisions of

1 Title 18 (relating to crimes and offenses):

2 Section 3121 (relating to rape).

3 Section 3122 (relating to statutory rape).

4 Section 3123 (relating to involuntary deviate sexual  
5 intercourse).

6 Section 3124 (relating to voluntary deviate sexual  
7 intercourse).

8 Section 3125 (relating to aggravated indecent  
9 assault).

10 Section 3126 (relating to indecent assault).

11 Section 3127 (relating to indecent exposure).

12 Section 3130 (relating to psychotherapist sexual  
13 offenses).

14 Section 3131 (relating to practitioner of the healing  
15 arts sexual offenses).

16 Section 4302 (relating to incest).

17 Section 4304 (relating to endangering welfare of  
18 children).

19 Section 6301 (relating to corruption of minors).

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

22 \* \* \*

23 Section 4. All acts and parts of acts are repealed insofar  
24 as they are inconsistent with this act.

25 Section 5. This act shall apply to offenses committed on or  
26 after the effective date of this act.

27 Section 6. This act shall take effect in 60 days.