

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1608 Session of
2005

INTRODUCED BY DENLINGER, BAKER, BALDWIN, BARRAR, BASTIAN, BEBKO-
JONES, BOYD, CALTAGIRONE, CAPPELLI, CAUSER, CIVERA, DALLY,
FORCIER, GEIST, GEORGE, GILLESPIE, GINGRICH, GOOD, GOODMAN,
GRUCELA, HARRIS, HASAY, HERSHEY, HICKERNELL, KOTIK, LEDERER,
LEH, McILHATTAN, MILLARD, R. MILLER, S. MILLER, MUSTIO,
PHILLIPS, PYLE, RAPP, READSHAW, REICHLEY, SCAVELLO, SCHRODER,
STERN, E. Z. TAYLOR, WILT, YOUNGBLOOD, RAYMOND, ROHRER AND
KAUFFMAN, JUNE 3, 2005

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 3, 2005

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, adding provisions
3 relating to child molester control; and providing for
4 sentencing for certain sexual offense convictions, for
5 restrictions on parole or release and for certain treatment.

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

8 Section 1. Chapter 97 of Title 42 of the Pennsylvania
9 Consolidated Statutes is amended by adding a subchapter to read:

10 SUBCHAPTER I

11 CHILD MOLESTER CONTROL

12 Sec.

13 9799.21. Short title of subchapter.

14 9799.22. Definitions.

15 9799.23. Sentencing for certain sexual offense convictions.

16 9799.24. Restrictions on parole or release.

1 9799.25. Treatment.

2 9799.26. Regulation.

3 § 9799.21. Short title of subchapter.

4 This subchapter shall be known and may be cited as the Child
5 Molester Control Act.

6 § 9799.22. Definitions.

7 The following words and phrases when used in this subchapter
8 shall have the meanings given to them in this section unless the
9 context clearly indicates otherwise:

10 "Department." The Department of Corrections of the
11 Commonwealth.

12 "Serial child molester." A person who has been sentenced
13 pursuant to section 9799.23 (relating to sentencing for certain
14 sexual offense convictions).

15 "Sexual offense." A violation of any of the following:

16 18 Pa.C.S. § 3121 (relating to rape).

17 18 Pa.C.S. § 3122.1 (relating to statutory sexual
18 assault).

19 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual
20 intercourse).

21 18 Pa.C.S. § 3124.1 (relating to sexual assault).

22 18 Pa.C.S. § 3124.2 (relating to institutional sexual
23 assault).

24 18 Pa.C.S. § 3125 (relating to aggravated indecent
25 assault).

26 18 Pa.C.S. § 3126 (relating to indecent assault).

27 18 Pa.C.S. § 4302 (relating to incest).

28 "Testosterone-lowering treatment." The use of leuprolide
29 acetate to reduce the capacity of a serial child molester to
30 commit a sexual offense in which the victim is a child under 13

1 years of age or the use of any other drug for this purpose that
2 the department, in consultation with the Department of Health,
3 determines is equivalent to or more effective than leuprolide
4 acetate.

5 "Treatment." This term includes:

6 (1) Testosterone-lowering treatment.

7 (2) Weekly psychotherapy or at such other intervals as
8 may be designated by regulation of the department.

9 (3) A polygraph examination relating to the purposes of
10 this subchapter at least once every four months.

11 "Trier of fact." The jury or, if the defendant waives his
12 right to a jury determination, the court.

13 § 9799.23. Sentencing for certain sexual offense convictions.

14 (a) Life sentence.--Notwithstanding any other provision of
15 this title or other statute to the contrary, a person who is
16 convicted in a court of this Commonwealth of a sexual offense in
17 which the victim was a child under 13 years of age shall be
18 sentenced to life imprisonment at total confinement if, at the
19 time of the commission of the current sexual offense, the person
20 had been previously convicted of a sexual offense in which the
21 victim was a child under 13 years of age.

22 (b) Mandatory minimum term of confinement.--Notwithstanding
23 any other provision of this title or other statute to the
24 contrary:

25 (1) Upon conviction of an offender in a court of this
26 Commonwealth of a sexual offense in which the victim was
27 under 13 years of age the court shall issue an order
28 directing that the offender serve a mandatory minimum prison
29 term of:

30 (i) Not less than 15 years at total confinement if,

1 at the time of the commission of the current sexual
2 offense, the offender had been previously convicted of a
3 sexual offense in which the victim was a child under 13
4 years of age.

5 (ii) Not less than 30 years of total confinement if,
6 at the time of the commission of the sexual offense, the
7 offender had been previously convicted of two or more
8 sexual offenses in which the victims were children under
9 13 years of age.

10 (2) Upon conviction of an offender in a court of this
11 Commonwealth of a sexual offense in which the victim was
12 under 13 years of age, the court may issue an order directing
13 that the offender serve a mandatory minimum prison term of
14 life imprisonment without parole and without release from
15 total confinement, if at the time of the commission of the
16 sexual offense, the offender had been previously convicted of
17 three or more sexual offenses in which the victims were
18 children under 13 years of age and the court determines that
19 25 years of confinement is insufficient to protect the safety
20 of children.

21 (c) Mistake of age no defense.--It shall not be a defense in
22 any sentencing proceeding subject to this section that the
23 offender who committed the sexual offense believed that the
24 victim was 13 years of age or older.

25 (d) Equivalent convictions in other jurisdictions.--A
26 conviction for a criminal offense committed in another state or
27 criminal jurisdiction that is substantially equivalent to a
28 sexual offense shall be considered a conviction for a sexual
29 offense for purposes of determining whether the offender is
30 subject to sentencing pursuant to this section if the trier of

1 fact, in the sentencing proceeding prescribed in this section,
2 determines that the victim was under 13 years of age at the time
3 of such offense in the other state or jurisdiction.

4 (e) Proof at sentencing.--The provisions of this section
5 shall not be an element of the crime. Notice of the
6 Commonwealth's intention to proceed under this section shall be
7 provided to the offender prior to the trial. If the Commonwealth
8 provides notice to the offender and the court of its intent to
9 proceed under this section prior to the trial and the trier of
10 fact returns a guilty verdict against the offender on the
11 underlying sexual offense, or the offender pleads guilty or nolo
12 contendere to such offense, the court shall conduct an immediate
13 hearing on the applicability of this section. The offender shall
14 be sentenced in accordance with subsections (a) and (b) if the
15 trier of fact finds, by proof beyond a reasonable doubt, that
16 each of the following elements exist:

17 (1) The offender was found guilty of the underlying
18 sexual offense or pleaded guilty or nolo contendere to the
19 underlying sexual offense.

20 (2) The victim of the underlying sexual offense was a
21 child under 13 years of age.

22 (3) The offender, at the time of the commission of the
23 current sexual offense, has a previous conviction or
24 convictions for a sexual offense in which the victim was a
25 child under 13 years of age, regardless of whether any such
26 previous conviction occurred on, before or after the
27 effective date of this section.

28 Should a previous conviction be vacated and an acquittal or
29 final discharge entered subsequent to imposition of sentence
30 under this section, the offender shall have the right to

petition the sentencing court for reconsideration of sentence if this section would not have been applicable except for the conviction which was vacated.

(f) Authority of court in sentencing.--There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in this section or to place the offender on probation or to suspend sentence. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentence provided in this section.

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

§ 9799.24. Restrictions on parole or release.

(a) General rule.--No serial child molester shall be eligible for parole or other release from total confinement before the expiration of the life imprisonment term prescribed by section 9799.23(a) (relating to sentencing for certain sexual offense convictions) unless:

(1) the serial child molester qualifies for release under this section and undergoes treatment under section 9799.25 (relating to treatment); or

(2) the department determines, on the basis of clear and convincing evidence, that the serial child molester no longer presents a danger to children.

(b) Notice to district attorney.--The department shall

1 notify the district attorney of the county in which the serial
2 child molester was sentenced pursuant to section 9799.23(a), who
3 shall have standing to be a party in the determination
4 proceeding and to appeal any adverse decision.

5 (c) Minimum period of incarceration.--A serial child
6 molester sentenced under section 9799.23(b)(1) shall be
7 ineligible for release or parole until the serial child molester
8 has been incarcerated for the minimum period of imprisonment at
9 total confinement prescribed in section 9799.23(b)(1).

10 (d) Restriction on parole.--No parole or other release shall
11 be authorized by this subchapter if, at the time of the request
12 for such parole or release, there are other reasonable grounds
13 for denying parole or release.

14 § 9799.25. Treatment.

15 (a) Authority to administer.--The department shall
16 administer treatment to a serial child molester as provided in
17 this section if:

18 (1) The department determines, after receipt of a
19 recommendation from a licensed psychiatrist who is designated
20 by the department, that the serial child molester is an
21 appropriate candidate for treatment.

22 (2) The department receives a written agreement signed
23 by the serial child molester to undergo treatment in
24 accordance with this section.

25 (b) Duration of treatment.--

26 (1) A serial child molester to whom treatment is
27 administered under this section may not be released from
28 total confinement or paroled unless testosterone-lowering
29 treatment has been administered for at least two months prior
30 to the serial child molester's release or parole.

1 (2) A serial child molester who is released from total
2 confinement or paroled shall continue treatment until the
3 department determines, by clear and convincing evidence, that
4 treatment is no longer necessary or appropriate for the
5 serial child molester.

6 (3) In any case where parole or release of a serial
7 child molester is based on the receipt of treatment,
8 continuing compliance with the requirements of this
9 subchapter shall be a condition for continued release or
10 parole.

11 (c) Failure or refusal to continue treatment.--

12 (1) If after release from confinement a serial child
13 molester subject to this section willfully fails or refuses
14 to appear for treatment as required by the department or
15 willfully fails or refuses to allow the administration of
16 treatment, the serial child molester shall be arrested and
17 returned to incarceration where the serial child molester
18 shall remain in confinement unless the serial child molester
19 subsequently becomes eligible for release pursuant to this
20 subchapter.

21 (2) In no case shall the serial child molester be
22 eligible for release for a period of at least two years
23 following incarceration pursuant to this subsection.

24 (d) Random testing of testosterone levels.--A serial child
25 molester subject to treatment under this section shall undergo
26 random testing at least three times during each 12-month period
27 at the direction of the department in order to determine the
28 serial child molester's testosterone level.

29 (e) Voluntary surgical castration.--A serial child molester
30 may voluntarily choose to undergo surgical castration as an

1 alternative to testosterone-lowering treatment, provided that
2 the serial child molester satisfies the psychotherapy and
3 polygraph examination requirements of treatment.

4 (f) Information on treatment.--Prior to the commencement of
5 any testosterone lowering treatment or surgical castration under
6 subsection (e), the department shall inform the serial child
7 molester about the effect of treatment and any side effects that
8 may result therefrom. The serial child molester subject to
9 treatment shall acknowledge receipt of this information in
10 writing.

11 (g) Payment of treatment costs.--A serial child molester who
12 is subject to treatment under this section shall pay a
13 reasonable fee to cover the costs of providing treatment. The
14 department, at the expense of the Commonwealth, may provide for
15 the reduction, deferral or waiver of payment if the serial child
16 molester is financially unable to pay the fee.

17 (h) Conscience clause.--No State employee who is a physician
18 or other professional medical person may be compelled against
19 the employee's conscience to administer treatment under this
20 section.

21 (i) Immunity.--A physician or qualified mental health
22 professional who acts in good faith in compliance with the
23 provisions of this section shall be immune from civil or
24 criminal liability for his actions in connection with such good
25 faith compliance.

26 § 9799.26. Regulation.

27 The department may adopt any rules, regulations and
28 guidelines necessary and proper for the administration of this
29 subchapter.

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