

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 888 Session of
1993

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PESCI, BELARDI, ROBINSON, LaGROTTA, ROONEY, KASUNIC,
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TOMLINSON, M. COHEN, KIRKLAND AND TANGRETTI, MARCH 24, 1993

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 24, 1993

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 § 3129. Psychotherapist sexual offenses.

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

1 (b) Deviate sexual intercourse by a psychotherapist.--A
2 psychotherapist commits deviate sexual intercourse, a felony of
3 the second degree, when the psychotherapist engages in deviate
4 sexual intercourse, as defined in section 3101, with the
5 psychotherapist's patient or client, regardless of whether it
6 occurred during any treatment, consultation, assessment,
7 interview or examination where the act occurred during the
8 ongoing therapist-patient or therapist-client relationship or
9 within one year of the termination of the relationship.

10 (c) Indecent assault by a psychotherapist.--A
11 psychotherapist commits indecent assault, a misdemeanor of the
12 second degree, when the psychotherapist has indecent contact, as
13 defined in section 3101, with the psychotherapist's patient or
14 client, regardless of whether it occurred during any treatment,
15 consultation, assessment, interview or examination where the act
16 occurred during the ongoing therapist-patient or therapist-
17 client relationship or within one year of the termination of the
18 relationship.

19 (d) Prohibited defense.--It shall not be a defense to a
20 prosecution brought under this section that the patient or
21 client consented to the act.

22 (e) Prosecutions under subsection (a), (b) or (c).--In
23 prosecutions under subsection (a), (b) or (c), physical or
24 mental injury to the patient need not be established.

25 (f) Restitution.--Upon sentencing a defendant for a
26 conviction under this section, the court may order, pursuant to
27 42 Pa.C.S. § 9721(c) (relating to sentencing generally), that
28 the defendant pay the cost of rehabilitative psychotherapy for
29 the victim.

30 (g) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection:

3 "Patient" or "client." A person who receives psychotherapy
4 from a psychotherapist, regardless of whether or not the
5 psychotherapist receives remuneration for the services from the
6 person.

7 "Psychotherapist." A psychiatrist, psychologist,
8 psychoanalyst, member of the clergy, registered nurse certified
9 to practice psychotherapy, mental health counselor, chemical
10 dependency counselor, hypnotist, clinical social worker or any
11 person who represents himself or herself as such, whether or not
12 licensed by the Commonwealth, who provides psychotherapy to
13 patients or clients.

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

21 § 3130. Practitioner of the healing arts sexual offenses.

22 (a) Sexual assault by a practitioner of the healing arts.--A
23 practitioner commits sexual assault, a felony of the first
24 degree, when the practitioner engages in sexual intercourse, as
25 defined in section 3101 (relating to definitions), with the
26 practitioner's patient during the course of an office or
27 hospital visit or at the site of a professional encounter where
28 the practitioner impaired the patient's power to appraise or
29 control his conduct by administering drugs or employing
30 treatment or examination procedures which could be expected to

1 prevent resistance by the patient.

2 (b) Deviate sexual intercourse by a practitioner of the
3 healing arts.--A practitioner commits deviate sexual
4 intercourse, a felony of the first degree, when the practitioner
5 engages in deviate sexual intercourse, as defined in section
6 3101, with the practitioner's patient during the course of an
7 office or hospital visit or at the site of a professional
8 encounter where the practitioner impaired the patient's power to
9 appraise or control his conduct by administering drugs or
10 employing treatment or examination procedures which could be
11 expected to prevent resistance by the patient.

12 (c) Indecent assault by a practitioner of the healing
13 arts.--A practitioner commits indecent assault, a misdemeanor of
14 the second degree, when the practitioner has indecent contact,
15 as defined in section 3101, with the practitioner's patient or
16 causes a patient of the practitioner to have indecent contact
17 with the practitioner during the course of an office or hospital
18 visit or at the site of a professional encounter where the
19 practitioner impaired the patient's power to appraise or control
20 his conduct by administering drugs or employing treatment or
21 examination procedures which could be expected to prevent
22 resistance by the patient.

23 (d) Restitution.--Upon sentencing a defendant for conviction
24 of a violation of this section, the court may order, pursuant to
25 42 Pa.C.S. § 9721(c) (relating to sentencing generally), that
26 the defendant pay the cost of rehabilitative psychotherapy for
27 the victim.

28 (e) Definition.--As used in this section, the term
29 "practitioner of the healing arts" or "practitioner" includes
30 physicians, including osteopathic physicians, dentists,

1 emergency medical technicians, X-ray technicians, lab
2 technicians, optometrists, physical therapists, occupational
3 therapists, podiatrists, nurses, nurse practitioners,
4 chiropractors and midwives.

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

7 SUBCHAPTER C

8 REVOCATION OR SUSPENSION OF LICENSE

9 Sec.

10 3131. Revocation or suspension of license; order for
11 treatment.

12 3132. Report of district attorney required.

13 § 3131. Revocation or suspension of license; order for
14 treatment.

15 (a) Conviction of felony.--

16 (1) Upon conviction of a practitioner of the healing
17 arts or a psychotherapist of a sexual offense under Chapter
18 31 (relating to sexual offenses), the license or
19 certification of the practitioner of the healing arts or
20 psychotherapist shall be automatically revoked by the
21 appropriate licensing board within the Bureau of Professional
22 and Occupational Affairs or by the appropriate certifying
23 authority upon receipt of the report required under section
24 3132 (relating to report of district attorney required).

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

of subsection (g)(1).

(b) Conviction of misdemeanor.--

(1) Upon conviction of a practitioner of the healing arts or a psychotherapist of a sexual offense under Chapter 31, the license or certification of the practitioner of the healing arts or psychotherapist shall be automatically suspended by the appropriate licensing board within the bureau or by the appropriate certifying authority upon receipt of the report required under section 3132.

(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 unless reinstated under the provisions of subsection (g)(2).

(c) Treatment in impaired professional program.--When imposing a sentence for an offense enumerated in subsection (a) or (b), the court may order treatment of the practitioner of the healing arts or psychotherapist under an appropriate impaired professional program.

(d) Copy of sentencing order.--The district attorney who obtains a conviction for an offense enumerated in subsection (a) or (b) shall, within 30 days of sentencing of the practitioner of the healing arts or psychotherapist, send a certified copy of the sentencing order to the appropriate licensure board within the bureau or certifying authority.

(e) Stay of revocation or suspension pending appeal of conviction.--

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

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

4 (f) Conviction in other jurisdictions.--

5 (1) Conviction of an offense under the laws of another
6 jurisdiction, which, if committed in this Commonwealth, would
7 be a felony enumerated in subsection (a) shall result in
8 automatic revocation of the license or certification of the
9 practitioner of the healing arts or psychotherapist so
10 convicted.

11 (2) Conviction of an offense under the laws of another
12 jurisdiction, which, if committed in this Commonwealth, would
13 be a misdemeanor enumerated in subsection (b) shall result in
14 automatic suspension of the license or certification of the
15 practitioner of the healing arts or psychotherapist.

16 (g) Reinstatement of license or certification.--

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

30 (2) A practitioner of the healing arts or

1 psychotherapist who is convicted under subsection (b) or
2 (f)(2) shall be suspended for a period to be determined by
3 the appropriate licensing or certifying authority, provided
4 that the period of suspension or other disciplinary or
5 corrective action shall not be less than one year and shall
6 not expire until the licensing or certifying authority is
7 satisfied that the practitioner of the healing arts or
8 psychotherapist has made significant progress in personal
9 rehabilitation since conviction, such that reinstatement
10 should not be expected to create a substantial risk of harm
11 to the health and safety of his patients or clients or the
12 public.

13 (h) Authority of licensing or certifying authority.--Nothing
14 in this section shall prohibit a licensing board within the
15 bureau or an appropriate certifying authority from denying,
16 revoking or suspending the license or certification of a
17 practitioner of the healing arts or psychotherapist or from
18 imposing other disciplinary or corrective action against a
19 practitioner of the healing arts or psychotherapist relating to
20 offenses enumerated in this section.

21 (i) Injunction against nonlicensed or noncertified
22 practitioners of the healing arts and psychotherapists.--In the
23 event that a practitioner of the healing arts or psychotherapist
24 convicted of an offense enumerated under subsection (a) or (b)
25 is not subject to revocation or suspension of a license or
26 certification, the court, upon conviction, shall enjoin the
27 practitioner of the healing arts or psychotherapist from the
28 practice of all or any of the duties of his profession or
29 occupation until such time as the practitioner of the healing
30 arts or psychotherapist demonstrates to the court that

1 resumption of the practice of his duties will not create a
2 substantial risk of harm to the health and safety of his
3 patients or clients or the public.

4 (j) Definition.--As used in this section, the term
5 "conviction" includes a judgment, verdict of guilt, admission of
6 guilt or plea of nolo contendere and also includes entry into
7 Accelerated Rehabilitative Disposition for a felony offense.
8 § 3132. Report of district attorney required.

9 The district attorney prosecuting an offense under section
10 3121 (relating to rape), 3123 (relating to involuntary deviate
11 sexual intercourse), 3126 (relating to indecent assault), 3127
12 (relating to indecent exposure), 3129 (relating to
13 psychotherapist sexual offenses) or 3130 (relating to
14 practitioner of the healing arts sexual offenses) shall, upon
15 conviction of the practitioner of the healing arts or
16 psychotherapist, report the conviction, in writing, within 30
17 days after the conviction, to the following:

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

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

26 (3) The present employer of the practitioner of the
27 healing arts or psychotherapist and the employer of the
28 practitioner of the healing arts or psychotherapist at the
29 time of the alleged sexual offense, if the employer is not
30 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 2706 (relating to terroristic threats).

12 Section 2901 (relating to kidnapping).

13 Section 3121 (relating to rape).

14 Section 3123 (relating to involuntary deviate sexual
15 intercourse).

16 Section 3129 (relating to psychotherapist sexual
17 offenses).

18 Section 3130 (relating to practitioner of the healing
19 arts sexual offenses).

20 Section 3301 (relating to arson and related
21 offenses).

22 Section 3502 (relating to burglary).

23 Section 3701 (relating to robbery).

24 Section 3921 (relating to theft by unlawful taking or
25 disposition) through section 3931 (relating to theft of
26 unpublished dramas and musical compositions).

27 Section 4101 (relating to forgery).

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

30 Section 4109 (relating to rigging publicly exhibited

1 contest).

2 Section 4302 (relating to incest).

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

6 Section 4902 (relating to perjury) through section
7 4912 (relating to impersonating a public servant).

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

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

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

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

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

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 3129 (relating to psychotherapist sexual
30 offenses).

1 Section 3130 (relating to practitioner of the healing
2 arts sexual offenses).

3 Section 4302 (relating to incest).

4 Section 4304 (relating to endangering welfare of
5 children).

6 Section 6301 (relating to corruption of minors).

7 Section 6312(b) (relating to sexual abuse of
8 children).

9 * * *

10 Section 4. The provisions of this act are severable. If any
11 provision of this act or its application to any person or
12 circumstance is held invalid, the invalidity shall not affect
13 other provisions or applications of this act which can be given
14 effect without the invalid provision or application.

15 Section 5. The act of December 20, 1985 (P.L.457, No.112),
16 known as the Medical Practice Act of 1985, is repealed insofar
17 as it is inconsistent with this act.

18 Section 6. This act shall apply to offenses committed on or
19 after the effective date of this act.

20 Section 7. This act shall take effect in 60 days.