

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 888 Session of
1993

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TOMLINSON, M. COHEN, KIRKLAND AND TANGRETTI, MARCH 24, 1993

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, MAY 25, 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

1 within one year of the termination of the relationship.

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

11 (c) Indecent assault by a psychotherapist.--A
12 psychotherapist commits indecent assault, a misdemeanor of the
13 second degree, when the psychotherapist has indecent contact, as
14 defined in section 3101, with the psychotherapist's patient or
15 client, regardless of whether 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 one year of the termination of the
19 relationship.

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

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

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

1 (g) Definitions.--As used in this section, the following
2 words and phrases shall have the meanings given to them in this
3 subsection:

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

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

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

22 § 3130. Practitioner of the healing arts sexual offenses.

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

1 treatment or examination procedures which could be expected to
2 prevent resistance by the patient.

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

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

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

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

1 ~~physicians, including~~ MEDICAL DOCTORS, osteopathic physicians, <—
2 dentists, emergency medical technicians, X-ray technicians, lab
3 technicians, optometrists, physical therapists, occupational
4 therapists, podiatrists, nurses, nurse practitioners,
5 chiropractors and, midwives, PHYSICIAN ASSISTANTS AND <—
6 ACUPUNCTURISTS.

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

9 SUBCHAPTER C

10 REVOCATION OR SUSPENSION OF LICENSE

11 Sec.

12 3131. Revocation or suspension of license; order for
13 treatment.

14 3132. Report of district attorney required.

15 § 3131. Revocation or suspension of license; order for
16 treatment.

17 (a) Conviction of felony.--

18 (1) Upon conviction of a practitioner of the healing
19 arts or a psychotherapist of a sexual offense under Chapter
20 31 (relating to sexual offenses), the license or
21 certification of the practitioner of the healing arts or
22 psychotherapist shall be automatically revoked by the
23 appropriate licensing board within the Bureau of Professional
24 and Occupational Affairs or by the appropriate certifying
25 authority upon receipt of the report required under section
26 3132 (relating to report of district attorney required).

27 (2) Any other person convicted of the crimes enumerated
28 in paragraph (1) OR SUBSECTION (F)(1) shall be prohibited <—
29 from applying for licensure or certification as a
30 practitioner of the healing arts or psychotherapist for a

1 period of five years from the date of conviction. Licensure
2 or certification after the expiration of such period shall be
3 subject to the provisions of subsection (g)(1).

4 (b) Conviction of misdemeanor.--

5 (1) Upon conviction of a practitioner of the healing
6 arts or a psychotherapist of a sexual offense under Chapter
7 31, the license or certification of the practitioner of the
8 healing arts or psychotherapist shall be automatically
9 suspended by the appropriate licensing board within the
10 bureau or by the appropriate certifying authority upon
11 receipt of the report required under section 3132.

12 (2) Any other person convicted of the crimes enumerated
13 in paragraph (1) OR SUBSECTION (F)(2) shall be prohibited <—
14 from applying for licensure or certification as a
15 practitioner of the healing arts or psychotherapist unless
16 reinstated under the provisions of subsection (g)(2).

17 (c) ~~Treatment in impaired professional program~~ OF IMPAIRED <—
18 PRACTITIONER.--When imposing a sentence for an offense
19 enumerated in subsection (a) or (b), the court may order
20 treatment of the practitioner of the healing arts or
21 psychotherapist ~~under an appropriate impaired professional~~ <—
22 ~~program~~ MONITORED BY AN APPROPRIATE PROBATION OR LAW ENFORCEMENT <—
23 AUTHORITY.

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

30 (e) Stay of revocation or suspension pending appeal of

1 conviction.--

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

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

8 (f) Conviction in other jurisdictions.--

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

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

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

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

1 patients or clients or the public and if all other licensing
2 or certification requirements, including any examination
3 requirement, are met.

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

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

25 (i) Injunction against nonlicensed or noncertified
26 practitioners of the healing arts and psychotherapists.--In the
27 event that a practitioner of the healing arts or psychotherapist
28 convicted of an offense enumerated under subsection (a) or (b)
29 is not subject to revocation or suspension of a license or
30 certification, the court, upon conviction, shall enjoin the

1 practitioner of the healing arts or psychotherapist from the
2 practice of all or any of the duties of his profession or
3 occupation until such time as the practitioner of the healing
4 arts or psychotherapist demonstrates to the court that
5 resumption of the practice of his duties will not create a
6 substantial risk of harm to the health and safety of his
7 patients or clients or the public.

8 (j) Definition.--As used in this section, the term
9 "conviction" includes a judgment, verdict of guilt, admission of
10 guilt or plea of nolo contendere and also includes entry into
11 Accelerated Rehabilitative Disposition for a felony offense.

12 § 3132. Report of district attorney required.

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

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

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

30 (3) The present employer of the practitioner of the

1 healing arts or psychotherapist and the employer of the
2 practitioner of the healing arts or psychotherapist at the
3 time of the alleged sexual offense, if the employer is not
4 the present employer.

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

7 § 5552. Other offenses.

8 * * *

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

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

14 Section 911 (relating to corrupt organizations).

15 Section 2706 (relating to terroristic threats).

16 Section 2901 (relating to kidnapping).

17 Section 3121 (relating to rape).

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

20 Section 3129 (relating to psychotherapist sexual
21 offenses).

22 Section 3130 (relating to practitioner of the healing
23 arts sexual offenses).

24 Section 3301 (relating to arson and related
25 offenses).

26 Section 3502 (relating to burglary).

27 Section 3701 (relating to robbery).

28 Section 3921 (relating to theft by unlawful taking or
29 disposition) through section 3931 (relating to theft of
30 unpublished dramas and musical compositions).

1 Section 4101 (relating to forgery).

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

4 Section 4109 (relating to rigging publicly exhibited
5 contest).

6 Section 4302 (relating to incest).

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

10 Section 4902 (relating to perjury) through section
11 4912 (relating to impersonating a public servant).

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

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

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

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

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

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

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

29 (4) Under the act of June 13, 1967 (P.L.31, No.21),
30 known as the ["Public Welfare Code.["]

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

4 (1) Any offense a material element of which is either
5 fraud or a breach of fiduciary obligation within one year
6 after discovery of the offense by an aggrieved party or by a
7 person who has a legal duty to represent an aggrieved party
8 and who is himself not a party to the offense, but in no case
9 shall this paragraph extend the period of limitation
10 otherwise applicable by more than three years.

11 (2) Any offense committed by a public officer or
12 employee in the course of or in connection with his office or
13 employment at any time when the defendant is in public office
14 or employment or within five years thereafter, but in no case
15 shall this paragraph extend the period of limitation
16 otherwise applicable by more than eight years.

17 (3) Any sexual offense committed against a minor who is
18 less than 18 years of age any time up to the period of
19 limitation provided by law after the minor has reached 18
20 years of age. As used in this paragraph, the term "sexual
21 offense" means a crime under the following provisions of
22 Title 18 (relating to crimes and offenses):

23 Section 3121 (relating to rape).

24 Section 3122 (relating to statutory rape).

25 Section 3123 (relating to involuntary deviate sexual
26 intercourse).

27 Section 3124 (relating to voluntary deviate sexual
28 intercourse).

29 Section 3125 (relating to aggravated indecent
30 assault).

1 Section 3126 (relating to indecent assault).
2 Section 3127 (relating to indecent exposure).
3 Section 3129 (relating to psychotherapist sexual
4 offenses).
5 Section 3130 (relating to practitioner of the healing
6 arts sexual offenses).
7 Section 4302 (relating to incest).
8 Section 4304 (relating to endangering welfare of
9 children).
10 Section 6301 (relating to corruption of minors).
11 Section 6312(b) (relating to sexual abuse of
12 children).
13 * * *
14 Section 4. The provisions of this act are severable. If any
15 provision of this act or its application to any person or
16 circumstance is held invalid, the invalidity shall not affect
17 other provisions or applications of this act which can be given
18 effect without the invalid provision or application.
19 Section 5. The act of December 20, 1985 (P.L.457, No.112),
20 known as the Medical Practice Act of 1985, is repealed insofar
21 as it is inconsistent with this act.
22 Section 6. This act shall apply to offenses committed on or
23 after the effective date of this act.
24 Section 7. This act shall take effect in 60 days.