



125 South Ninth Street, Suite 701  
P.O. Box 1161  
Philadelphia, PA 19105-1161  
215-592-1513, ext. 18  
215-592-1343 (FAX)

James D. Crawford  
PRESIDENT

Deborah Leavy  
EXECUTIVE DIRECTOR

TESTIMONY OF THE AMERICAN CIVIL LIBERTIES UNION

ON HOUSE BILL 2302

BEFORE THE HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE

April 15, 1992

Good morning Chairman Caltegirone and members of the House Judiciary Committee. My name is Karl Baker, and I serve as president of the Philadelphia Branch of the American Civil Liberties Committee. Speaking on behalf of the ACLU of Pennsylvania, I would like to praise the efforts of this committee to simplify and rationalize the existing sexual offense legislation in Pennsylvania. It is obvious that a great deal of thought has gone into the preparation of these amendments, and we appreciate the efforts that have been made to accommodate the concerns of a number of groups raised at an earlier stage. Nevertheless, the ACLU feels constrained to offer additional criticisms of several provisions in the current amendments that will violate rights protected by the United States and Pennsylvania Constitutions and/or violate sound social policy.

The principle concerns of the ACLU are as follows:

- 1) The use of marriage as an aggravating factor to enhance the felony grade of a sexual assault.
- 2) The use of membership in a family as an

aggravating factor to enhance the felony grade of a sexual assault.

3) The classification of disabled persons who are "physically unable to flee" as persons who are "incapable of consenting to a sexual act."

4) The similar criminalization of "sexual" or "indecent" contact with those who are mentally disabled or unable to communicate, regardless of the prior existence of a consensual or spousal relationship.

5) The criminalization of all sexual activity and "indecent contact" (i.e., the touching of another's "intimate parts") between teenagers, where one teenager is below the age of fourteen.

6) The imposition of strict liability for offenses involving children, regardless of whether the defendant had a reasonable or bona fide belief that the child was over the prohibited age, and even when that reasonable belief was based upon a misrepresentation.

7) The criminalization under section 6312, "sexual abuse of children," of the production, distribution and possession of all pictures depicting minors in a state of nudity, without any restriction with regard to the purpose the pictures serve or the actor's knowledge that they depict minors, both in violation of recent decisions of the United States

Supreme Court and other federal courts interpreting the First Amendment.

I will address each of these concerns in the order mentioned above.

Marriage As An Aggravating Factor.

The statutes have been redrafted to consolidate several types of sexual assaults under the categories "Aggravated Sexual Assault" (§ 3121) and "Sexual Assault" (§ 3122). The former is a felony in the first degree with a maximum sentence of twenty years, while the later is a felony in the second degree with a maximum sentence of ten years. The offense of sexual assault is made "aggravated" either by the presence of an "aggravated circumstance", or by the fact that the victim is a person who is deemed "incapable of consent." Aggravated circumstances are set forth and defined in § 3101 (Definitions).

House Bill 2302, § 3101(F), proposes to make the status of being married an aggravating factor that would raise the grade of a Sexual Assault ("a sexual act with another person by forcible compulsion, or threat of forcible compulsion") from a felony in the second degree to a felony in the first degree. That subsection identifies "a family member" as an aggravating factor, and subsequently defines "family member" in part as "a spouse or person who has been a spouse; a person living as a spouse or who has lived as a spouse . . . ."

The ACLU believes that the use of legal or common law marriage (a fundamental right) as an aggravating factor to

enhance punishment is a denial of due process and of equal protection. Rather, it is our belief that a husband or wife should be treated no differently under the law than any other person when the allegation is made and proven that the defendant has "engage[d] in a sexual act with another person by forcible compulsion, or threat of forcible compulsion." Thus, the grade of sexual assault should be raised to a felony in the first degree for a spouse only when it can be proven that another legitimate aggravating circumstance was present.

When the Crimes Code of 1972 was enacted the Legislature excluded a "spouse" from those who could be convicted of the crime of rape. In 1984 this Legislature enacted a special provision, Spousal Sexual Assault (§ 3128), that recognized that the crime of rape could be committed against a spouse, but which made it a lesser offense with the added requirement that the offense be reported within ninety days. House Bill 2302 would swing the law to the opposite extreme by making spousal sexual assault a greater offense than sexual assault. We urge this committee delete the provision that would make the spousal relationship an aggravating factor. We believe that when a legal or common law spouse commits a crime, he or she should be treated just like any other defendant.

#### Family Membership As An Aggravating Circumstance.

The same provision that makes a spousal relationship an aggravating circumstance, also makes other family relationships aggravating circumstances in the context of the sexual assault

statutes. Where a parent abuses a minor child, that abuse of parental authority may justify an aggravation of the punishment. Where, however, a sexual assault occurs between siblings who are related "whether by whole blood, half-blood or a[s] sibling[s]," that justification may be absent.

Clearly the evil that this provision is directed at is the abuse of authority that one family member may exercise over another. As it is currently as drafted, however, the provision is overbroad. In order to correct this overbreadth, one possible alternative might be to redraft the aggravating circumstance in § 3101(F) as follows:

(F) The defendant serves in a position of authority in respect to the victim, or is a family member who serves in a position of authority over a victim under 18 years of age within the household.

The terms "position of authority" and "family member" are both separately defined under § 3101. "Spouse" should be removed from the definition of "family member."

The Classification Of Disabled Persons As Being Incapable Of Consenting To A Sexual Act.

As noted above, the offense of sexual assault may be "aggravated" either by the presence of an "aggravated circumstance," or by the fact that the victim is a person who is deemed "incapable of consent." Section 3109 classifies certain groups of persons as being incapable of consent. Sections 3121(B) (Aggravated Sexual Assault) and 3124(b) (Indecent Contact) then criminalizes all sexual contact with such persons. In so doing House Bill 3202 creates several classes of persons

for whom all sexual contact with others will be forbidden by law. Given that all persons (over some undefined age) are entitled to a fundamental right to privacy in personal matters, including their sexuality, any step in the direction of creating a class of persons for whom all sexual contact is forbidden by law should be taken with the greatest of caution.

While society may have a significant interest in protecting from sexual exploitation a person who is unconscious, who has been mentally incapacitated against his/her will, or who is "temporarily or permanently incapable of appraising the nature of [his/her] conduct," there is no excuse for society to prohibit a disabled person who "is physically unable to flee" from having any sexual contact with another. The proposed statute, however, does just that by making any sexual act or intimate contact with such a person punishable by law.

For example, the spouse or sexual partner of a person deemed "physically helpless" because he or she is "physically unable to flee" would be subject on the face of this statute to a first degree felony (§ 3121(B)) for engaging in a sexual act. Similarly, the same person would be subject to first degree misdemeanor (§ 3124(b)) for initiating any intimate contact with the other party. It would be no defense that the sexual act or contact were made at the invitation of the disabled partner, since the express language of Section 3109 is that a "physically helpless" person is "incapable of consenting to a sexual act."

The definition of "physically helpless" also includes a person who is "physically unable to communicate an unwillingness to act." Under this definition the spouse of a stroke victim with a profound verbal disability would be guilty of indecent contact as a misdemeanor of the first degree if he or she were to come into contact with an "intimate part" of the other in the course of bathing or caring for the spouse, since there is no exception under this section for medical, hygienic, or even unintentional contact. See §§ 3101 and 3124(b).

While the desire to protect persons who are defenseless as a result of their disability is clearly an appropriate goal of the proposed statute, the mechanism that has been adopted to achieve that goal is the wrong one. Rather than impose an additional disability on severely disabled persons by declaring them incapable of giving consent, the proposed statute might add to the list of aggravating factors in Section 3101 the fact that "the defendant committed the act upon a victim who was physically unable to flee or to verbally resist." The problem of proving lack of consent under such circumstances would be negligible under most circumstances.

#### Mentally Disabled Persons Incapable Of Consenting To A Sexual Act

A similar problem exists with persons who are mentally disabled; i.e., persons who suffer "from a mental state which renders the person temporarily or permanently incapable of appraising the nature of one's conduct." § 3101 (Definitions). Thus, the spouse or sexual partner of a person who has become

"mentally disabled" would be subject to a first degree felony (§ 3121(B)) for continuing to engage in sexual acts, or would be subject to a first degree misdemeanor (§ 3124(b)) for initiating any intimate contact with the other party, even if the other party continued to expect such behavior. Nor should our society disregard the needs that mentally disabled persons may have for the satisfaction of their sexual desires in some form or context. Section 3109, however, would legally stigmatize all such individuals as social pariah for whom all intimate physical contact with others would be forbidden.

Not only is the protection afforded "mentally disabled" and "physically helpless" persons overbroad in the sense that it would create an additional social disability, but the criminalization of all sexual contact with such persons would encourage social discrimination against all former mental patients, mildly retarded persons and the severely physically handicapped. Any intimate social contact with such persons would be seriously chilled by the prospect of possible criminal prosecution.

To the extent that this section totally deprives the physically or mentally handicapped of the right to make choices (guided or otherwise) about their own sensuality, it is wrong. To the extent that it fosters social discrimination against persons who may fall outside a strict interpretation of those definitions, it is bad public policy.



As above, the proper alternative might be to treat knowing victimization of the mentally disabled as an aggravating factor, and to leave the determination of consent to a case by case determination in the courts.

Criminalization Of Sexual Activity Among Teenagers.

House Bill 2302 would repeal the crime of Statutory Rape (a felony in the second degree), which is defined as sexual intercourse by a person 18 or older with a person less than fourteen years of age, and would replace that statute with a set of provisions that would have the effect of criminalizing all sexual acts and intimate contact between a thirteen and a fourteen year old. This is accomplished by three sections of the Bill. The first, Section 3109, declares that persons thirteen years of age or younger are incapable of consenting to a sexual act. The second, Section 3121(B), declares that a defendant commits a felony of the first degree when that persons engages in a sexual act with another person "who is incapable of consent." And the third, Section 3124, declares that a defendant commits a misdemeanor in the third degree if that person "engages in indecent contact with another person, or causes such person to engage in indecent contact with the defendant, when the victim is incapable of consent."

This extreme change in the criminal laws is unwarranted. Until now the goal underlying the sexual offense statutes has been the protection of victims from sexual acts and indecent contacts that are uninvited and/or accomplished by forcible

compulsion. It is highly unlikely that any criminalization of teenage sexuality is going to succeed in dissuading young teenagers from occasionally engaging in acts of sexuality or touching. Nor is it likely that stigmatizing teenagers with delinquency adjudications or the threat of such adjudications will promote their general well-being. Finally, it is highly probable that the enactment of such statutes will only serve to alienate young people from government and diminish their respect for the law.

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A better approach would be to retain the current statutory rape provisions and redraft it to reflect a prohibition of statutory "sexual assault." Simultaneously, the designation of persons "thirteen years of age or younger" should be removed from the list of persons "incapable of consenting to a sexual act," and recast as an aggravating circumstance. These changes would continue to prohibit sexual activity between persons thirteen years of age or younger and those eighteen years of age or older, while punishing more harshly sexual assaults against children that are accomplished by forcible compulsion.

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#### Imposition Of Strict Liability.

Section 3102 of House Bill 2302 provides that mistake of age is no defense to any provision of this bill regardless of whether the defendant has a bona fide belief that the child is over a specific age, even when based upon an affirmative misrepresentation.

The imposition of strict liability, i.e., punishment for a crime where there is no mens rea, constitutes a violation of due process of law in the absence of a compelling reason for the strict punishment of that offense. Strict liability offenses normally involve crimes that consist of behavior that is absolutely prohibited regardless of the circumstances. Consensual sex is not the type of behavior that is absolutely prohibited. While it is appropriate for the legislature to define an age below which consensual sex with an adult will not be allowed in an effort to protect those who are too immature to intelligently consent, the elimination of reasonable mistake of age as a defense, particularly where there has been a deliberate misrepresentation of age by the "victim", goes too far. The imposition of strict liability in this context results in turning a defendant who is without mens rea, or knowledge that a crime is being committed into a victim.

Where a defendant has a bona fide and reasonable belief that his/her partner is of the age of consent, that person should not suffer the sanction of a criminal penalty. Under the current bill, most of those who will be swept up by the strict liability provisions of the proposed statutes will be teenagers between the age of fourteen and eighteen. Given the prevalence of false identifications and pretence among young teenagers, teenage defendants may be more in need of protection than their "victims". To deny them a defense not only is contrary to notions of due process notions; it is wrong.

First Amendment Violations That Will Be Caused By The Amendments To The Child Pornography Statute.

Section 6312 (Sexual Abuse Of Children) criminalizes the production, distribution or dissemination of films or photographs of any person under 18 engaged in a "prohibited sexual act." By definition, that term includes, in addition to certain sexually explicit acts, the following behavior: "lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction." Although the original statute provided exceptions for material that has a "bona fide educational, scientific, governmental or judicial purpose," those exceptions have been taken out. Furthermore, another amendment to the statute would provide that mistake of age is no defense to the photographer or the distributor of such material, whether or not the actor had a bona fide belief that the person photographed was over the age of eighteen. These provisions taken together present serious violations of the due process and first amendment rights of all citizens, as those rights have been defined by recent decisions of the United States Supreme Courts and other federal courts.

In a close decision, the United States Supreme Court recently upheld the right of a state to prohibit the production, dissemination and, specifically, the possession of child pornography. Osborne v. Ohio, 495 U.S. 103, 110 S.Ct. 1691 (1990). The defendant in Osborne challenged the statute,

claiming that it was overbroad and impermissibly infringed upon First Amendment rights. The Court in its majority opinion recognized "that depictions of nudity, without more, constitute protected expression." 110 S.Ct. at 1698. In upholding the statute as written and interpreted by the state courts, however, the Supreme Court relied upon the fact that the statute provided important protections to the right of free expression. Specifically, it noted that the statute,

~~does not impose criminal liability if either "[t]he material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into the state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance," or "[t]he person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred."~~

110 S.Ct. at 1698 n.9. Even then the Court stated that it could "imagine circumstances in which the statute, by its terms, criminalized constitutionally protected conduct. Id. By contrast, the current statute contains none of these protections and is, therefore, open to direct attack on First Amendment grounds.

Similarly, the Court noted that the Ohio courts had interpreted the statute as requiring "scienter" in an effort to protect it from a First Amendment challenge. 110 S.Ct. at 1703. "Scienter" is described by Black's Law Dictionary as a term that

is used "to signify the defendant's guilty knowledge." In the present bill the element of scienter has been removed in part from the statute by denying the defense of mistake of age to those who produce or distribute material. Thus, one who gives a friend a pinup calendar without knowing that it contains a nude photograph of a seventeen year old would-be model is guilty of a felony in the third degree.

The same due process and fundamental fairness problems that are presented by other sections of House Bill 2302 that prohibit a defendant from raising mistake of age as a defense are presented by subsection 6312(e) of this provision. The imposition of strict criminal liability in this context, however, has far more severe constitutional implications, given the chilling effect that this doctrine will have on protected forms of expression.

Under section 6312, age would form the boundary between expression that is constitutionally protected, and that which is not. Thus, much of what this section prohibits would be lawful if it did not involve a person under 18 - because it would not constitute unlawful obscenity. Playboy magazine is a prime example. While a person could legally possess or distribute such non-obscene material, a mistake of age regarding the person depicted would make the distributor or producer liable to prosecution for a third degree felony.

The test for obscenity as articulated by the United States Supreme Court is as follows:

The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Miller v. California, 413 U.S. 15, 24, 93 S.Ct. 2607, 2615 (1973)  
(citations omitted).

Where, as here, a producer or distributor would be held strictly liable despite lack of knowledge or even where age has been misrepresented, the collateral effect would be to severely inhibit or chill otherwise lawful forms of expression involving the depiction of persons over the age of eighteen. The one federal circuit court of appeals that has addressed this issue has held that prohibition of the defense of mistake of age in this context is a violation of the First Amendment. See United States v. U.S. Dist. Court for Cent. Dist. of Cal., 858 F.2d 534 (1988). That court explained that, "the first amendment does not permit the imposition of criminal sanctions on the basis of strict liability where doing so would seriously chill protected speech." Id. at 540.

The ACLU urges that this committee delete the amendment that deals with mistake of age, and restore to Section 6312 the full range of exceptions recognized as legitimate by the United States Supreme Court.

THOMAS R. CALTAGIRONE, MEMBER  
HOUSE POST OFFICE BOX 209  
ROOM 106, SOUTH OFFICE BUILDING  
HARRISBURG, PENNSYLVANIA 17120-0028  
PHONE: (717) 787-3525

127 SOUTH TENTH STREET  
READING, PENNSYLVANIA 19602  
PHONE: (215) 376-1529



COMMITTEES  
JUDICIARY, CHAIRMAN

**House of Representatives**  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

AGENDA

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Public Hearing regarding HB 2302--Grading of Sexual Offences

10:00 AM Room 140 MC Wed., April 15, 1992

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Honorable Karen Ritter  
Prime Sponsor

Sue Cameron, Exec. Director  
Pennsylvania Coalition Against Rape

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American Civil Liberties Union  
Karl Baker, Esq.  
President, Philadelphia Board of Directors

Mary Beth Seiverling, Esq.  
Deputy Attorney General  
Appeals and Legal Services Section

County Commissioner Maryann Conway  
Former Assistant D.A., Schuylkill County



**AS AMENDED BY RITTER AMENDMENT -- REVISED 4/7/92**

HOUSE BILL 2302  
Session of 1992

INTRODUCED BY RITTER, BLAUM, E. Z. TAYLOR, DeWEESE, JOSEPHS,  
KRUSZEWSKI, KUKOVICH, COWELL, HARPER, PRESTON, HERMAN,  
VAN HORNE, ROBINSON, STETLER, MUNDY, DEMPSEY, LESCOVITZ,  
COLAIZZO, D. W. SNYDER, McHALE, PESCI, LAUGHLIN AND LINTON,  
JANUARY 21, 1992

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 21, 1992

AN ACT

Amending Titles 18 (Crimes and Offenses), 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for sexual offenses and the consequences of committing sexual offenses; providing for the testimony of children; and imposing penalties.

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

Section 1. Sections 3101, 3102, 3103, 3104(a), 3105, 3106 and 3107 of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 3101. Definitions.

Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"AGGRAVATING CIRCUMSTANCES." THE FOLLOWING CONSTITUTE  
AGGRAVATING CIRCUMSTANCES AS THAT TERM IS USED IN THIS  
SUBCHAPTER:

(A) THE DEFENDANT IS ARMED WITH A WEAPON, OR ANY OBJECT  
FASHIONED IN SUCH A MANNER AS TO LEAD THE VICTIM TO REASONABLY  
BELIEVE IT TO BE A WEAPON, AND THREATENS BY WORD OR GESTURE TO  
USE THE WEAPON OR OBJECT; OR

(B) THE DEFENDANT INFLECTS SUFFOCATION, STRANGULATION OR  
SERIOUS BODILY INJURY UPON THE VICTIM OR ANYONE ELSE IN THE  
COURSE OF COMMITTING THE OFFENSE; OR

(C) THE DEFENDANT THREATENS OR PLACES THE VICTIM OR  
ANOTHER PERSON IN FEAR OF IMMINENT DEATH, SUFFOCATION,  
STRANGULATION, SERIOUS BODILY INJURY OR KIDNAPPING; OR

(D) THE DEFENDANT AND ONE OR MORE OTHER PERSONS ENGAGE  
IN A SEXUAL ACT WITH THE VICTIM; OR

(E) THE ACT IS COMMITTED DURING THE COMMISSION OR  
ATTEMPTED COMMISSION OF ANY OTHER FELONY BY THE DEFENDANT; OR

(F) THE DEFENDANT IS A FAMILY MEMBER OR SERVES IN A  
POSITION OF AUTHORITY IN RESPECT TO THE VICTIM.

"Defendant." A person accused of an offense under the  
specific provisions of this chapter.

["Deviate sexual intercourse." Sexual intercourse per os or  
per anus between human beings who are not husband and wife,  
except as provided in section 3128 (relating to spousal sexual  
assault), and any form of sexual intercourse with an animal. The  
term also includes penetration, however slight, of the genitals  
or anus of another person with a foreign object for any purpose  
other than good faith medical, hygienic or law enforcement  
procedures.]

"Family member." A SPOUSE OR PERSON WHO HAS BEEN A SPOUSE; A PERSON LIVING AS A SPOUSE OR WHO HAS LIVED AS A SPOUSE; A PARENT, STEP-PARENT OR FOSTER PARENT; A GRANDPARENT OR STEP-GRANDPARENT; A CHILD, WHETHER BY WHOLE BLOOD, HALF-BLOOD, ADOPTION OR A STEP-CHILD; A SIBLING, WHETHER BY WHOLE BLOOD, HALF-BLOOD OR A STEP-SIBLING; OR ANYONE WHO, BY VIRTUE OF LIVING ARRANGEMENT, ACTS IN A POSITION OF AUTHORITY OVER A VICTIM UNDER 18 YEARS OF AGE WITHIN THE HOUSEHOLD.

"Foreign object." Includes any physical object not a part of the actor's body.

"Indecent contact." [Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.] Touching by the victim or defendant of the victim's or defendant's intimate parts, either directly or indirectly.

"Intimate parts." Sexual organs, the genital area, anal area, inner thigh, groin, buttock or breast of a person.

"Mentally disabled." A condition in which a person suffers from a mental state which renders the person temporarily or permanently incapable of appraising the nature of one's conduct.

"Mentally incapacitated." A condition in which the victim is rendered temporarily incapable of appraising or controlling conduct due to the influence of a narcotic, anesthetic, intoxicant or other substance administered without prior knowledge or consent or due to any other act committed upon the victim which rendered the victim incapable of appraising or controlling his or her conduct.

"Physically helpless." A condition in which a person is unconscious or is physically unable to flee or is physically unable to communicate an unwillingness to act.

"Position of authority." A person serving in a professional or voluntary capacity who is charged with the care, education, health, welfare or supervision of a victim.

"SEXUAL ACT." THE TERM INCLUDES:

(A) VAGINAL INTERCOURSE, CUNNILINGUS, FELLATIO OR ANAL INTERCOURSE BETWEEN PERSONS;

(B) INSERTION OF ANY PART OF A PERSON'S BODY, OR A FOREIGN OBJECT, IN ANOTHER PERSON'S GENITALS OR ANUS FOR ANY PURPOSE OTHER THAN GOOD FAITH MEDICAL, HYGIENIC OR LAW ENFORCEMENT PROCEDURES;

(C) ANY SEXUAL ACT WITH AN ANIMAL BY THE VICTIM UPON THE DEFENDANT'S INSTRUCTION.

"Sexual conduct." Any conduct or behavior relating to sexual activities of the victim, including, but not limited to, previous or subsequent experience of sexual penetration or sexual activity, use of contraceptives, living arrangement, marital status and sexual lifestyle. The term includes any sexual offense committed, or alleged to have been committed, against the victim.

"Victim." A person alleging to have been subjected to an offense under the specific provisions of this chapter.

§ 3102. Mistake as to age OR CONDITION.

[Whenever in this chapter the criminality of conduct depends on a child being below the age of 14 years, it is no defense that the actor did not know the age of the child, or reasonably believed the child to be the age of 14 years or older. When criminality depends on the child's being below a critical age other than 14 years, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.] (A) Whenever in this

chapter, the criminality of conduct depends on a child being below a certain age, ignorance of the age is no defense. Neither a misrepresentation of age by a child nor a bona fide belief a child is over the specified age shall be a defense.

(B) WHENEVER IN THIS CHAPTER THE DEGREE OF CRIMINALITY OF CONDUCT DEPENDS ON A VICTIM BEING MENTALLY DISABLED, MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS, THE HIGHER DEGREE OF CRIMINALITY OF CONDUCT SHALL APPLY ONLY IF THE DEFENDANT HAD, OR SHOULD HAVE HAD, KNOWLEDGE OF THE VICTIM'S CONDITION.

[§ 3103. Spouse relationships.

Except as provided in section 3128 (relating to spousal sexual assault), whenever in this chapter the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship: Provided, however, That the exclusion shall be inoperative as respects spouses living in separate residences, or in the same residence but under terms of a written separation agreement or an order of a court of record. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse as accomplice in a sexual act which he or she causes another person, not within the exclusion, to perform.]

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§ 3105. Prompt complaint.

Prompt reporting to public authority is not required in a prosecution under this chapter: Provided, however, That nothing in this section shall be construed to prohibit a defendant from introducing evidence of the alleged victim's failure to promptly report the crime if such evidence would be admissible pursuant to the rules of evidence. Where DEFENDANT INTRODUCES evidence of

VICTIM'S failure to promptly report, the prosecution may introduce testimony regarding reasons for failure to make prompt complaints.

§ 3106. Testimony of complainants.

The credibility of an alleged victim of an offense under this chapter shall be determined by the same standard as is the credibility of an alleged victim of any other crime. The testimony of a victim need not be corroborated in prosecutions under this chapter. [In any prosecution before a jury for an offense under this chapter, no] No instructions shall be given cautioning the jury to view the alleged victim's testimony in any other way than that in which all victims' testimony is viewed.

§ 3107. Resistance not required.

[The alleged victim need not resist the actor in prosecutions under this chapter: Provided, however, That nothing in this section shall be construed to prohibit a defendant from introducing evidence that the alleged victim consented to the conduct in question.]

THE VICTIM NEED NOT PHYSICALLY OR VERBALLY RESIST THE USE OF, OR THREAT OF, FORCIBLE COMPULSION, NOR SHALL THE PROSECUTOR BE REQUIRED TO OFFER PROOF OF SUCH RESISTANCE BY THE VICTIM. LACK OF SUCH VERBAL OR PHYSICAL RESISTANCE OR SUBMISSION BY THE VICTIM SHALL NOT CONSTITUTE CONSENT. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT A DEFENDANT FROM INTRODUCING EVIDENCE OF THE VICTIM'S CONSENT TO THE CONDUCT IN QUESTION.

Section 2. Title 18 is amended by adding sections to read:

§ 3108. Evidence relating to manner in which victim was dressed.

Evidence relating to the manner in which the victim was dressed at the time of the offense to suggest that the victim provoked the offense shall not be admissible in a prosecution under this chapter. NOTHING HEREIN SHALL PREVENT THE INTRODUCTION OF EVIDENCE THAT WOULD OTHERWISE BE RELEVANT.

§ 3109. Conditions constituting incapacity to consent.

A victim is considered incapable of consenting to a sexual act if the victim is:

- (1) thirteen years of age or younger;
- (2) mentally disabled;
- (3) mentally incapacitated; or
- (4) physically helpless.

§ 3110. Lie detector tests.

No law enforcement officer, prosecuting attorney or other official shall require a victim of an offense described in this chapter to submit to a polygraph examination or any form of a mechanical or electrical lie detector test as a condition for proceeding with the investigation, charging or prosecuting of the offense. A victim's refusal to submit to a polygraph or any form of a mechanical or electrical lie detector test shall not mitigate against the investigation, charging or prosecuting of the pending case as originally charged.

Section 3. Sections 3121, 3122, 3123, 3124, 3125, 3126, 3127 and 3128 of Title 18 are amended to read:

[§ 3121. Rape.

A person commits a felony of the first degree when he engages in sexual intercourse with another person not his spouse:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;

(3) who is unconscious; or

(4) who is so mentally deranged or deficient that such person is incapable of consent.

Whenever the term "rape" is used in this title or any other title, it is deemed to include spousal sexual assault as further defined in section 3128 (relating to spousal sexual assault).]

SECTION 3121. AGGRAVATED SEXUAL ASSAULT.

(A) OFFENSE DEFINED GENERALLY.-- A DEFENDANT COMMITS A FELONY OF THE FIRST DEGREE WHEN THE DEFENDANT ENGAGES IN A SEXUAL ACT WITH ANOTHER PERSON BY FORCIBLE COMPULSION, OR THREAT OF FORCIBLE COMPULSION, WHERE AN AGGRAVATING CIRCUMSTANCE IS PRESENT.

(B) VICTIM INCAPABLE OF CONSENT.-- A DEFENDANT COMMITS A FELONY OF THE FIRST DEGREE WHEN THE DEFENDANT ENGAGES IN A SEXUAL ACT WITH ANOTHER PERSON WHO IS INCAPABLE OF CONSENT.

[§ 3122. Statutory rape.

A person who is 18 years of age or older commits statutory rape, a felony of the second degree, when he engages in sexual intercourse with another person not his spouse who is less than 14 years of age.]

§ 3122. Sexual assault.

(a) Offense defined generally.--A defendant commits a felony of the second degree when the defendant engages in A sexual ACT with another person by forcible compulsion, or threat of forcible compulsion.

[§ 3123. Involuntary deviate sexual intercourse.

A person commits a felony of the first degree when he engages in deviate sexual intercourse with another person:

(1) by forcible compulsion;



(2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;

(3) who is unconscious;

(4) who is so mentally deranged or deficient that such person is incapable of consent; or

(5) who is less than 16 years of age.]

[§ 3124. Voluntary deviate sexual intercourse.

A person who engages in deviate sexual intercourse under circumstances not covered by section 3123 of this title (relating to involuntary deviate sexual intercourse) is guilty of a misdemeanor of the second degree.]

[Section 3125. Aggravated indecent assault.

Except as provided in sections 3121 (relating to rape), 3122 (relating to statutory rape) and 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when he engages in penetration, however slight, of the genitals or anus of another with a part of the actor's body for any purpose other than good faith medical, hygienic or law enforcement procedures if:

(1) he does so without the consent of the other person;

(2) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;

(3) he knows that the other person is unaware that the indecent contact is being committed;

(4) he has substantially impaired the other person's power to appraise or control his or her conduct by administering or employing, without the knowledge of the other, drugs, intoxicants or other means for the purpose of preventing resistance;

(5) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him; or

(6) he is over 18 years of age and the other person is under 14 years of age.]

[Section 3126. Indecent assault.

(a) Offense defined.--A person who has indecent contact with another not his spouse, or causes such other to have indecent contact with him, is guilty of indecent assault if:

~~(1) he does so without the consent of the other person;~~

(2) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;

(3) he knows that the other person is unaware that a indecent contact is being committed;

~~(4) he has substantially impaired the other person's~~  
power to appraise or control his or her conduct by administering or employing without the knowledge of the other drugs, intoxicants or other means for the purpose of preventing resistance;

(5) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him; or

(6) he is over 18 years of age and the other person is under 14 years of age.

(b) Grading.--Indecent assault under subsection (a)(6) is a misdemeanor of the first degree. Otherwise, indecent assault is a misdemeanor of the second degree.]

§ [3127] 3123. Indecent exposure.

[A person commits a misdemeanor of the second degree if, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm.] A defendant commits a misdemeanor of the second degree if the defendant exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows his or her conduct is likely to offend, affront or alarm. If any of the persons present are 13 years of age or younger, indecent exposure is a misdemeanor of the first degree.

[§ 3128. Spousal sexual assault.

(a) Sexual assault.--A person commits a felony of the second degree when that person engages in sexual intercourse with that person's spouse:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; or
- (3) who is unconscious.

(b) Involuntary spousal deviate sexual intercourse.--A person commits a felony of the second degree when that person engages in deviate sexual intercourse with that person's spouse:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; or
- (3) who is unconscious.

(c) Crime to be reported.--The crime of spousal sexual assault shall be personally reported by the victim or her agent to a law enforcement agency having the requisite jurisdiction within 90 days of the commission of the offense.]

§ [3128] 3124. Indecent contact.

(a) Offense defined generally.--A defendant commits a misdemeanor of the FIRST degree when the defendant engages in indecent contact with another person, or causes such person to engage in indecent contact with the defendant, if the defendant does so by forcible compulsion or threat of forcible compulsion.

(b) Victim incapable of consent.--A defendant commits a misdemeanor of the first degree when the defendant engages in indecent contact with another person, or causes such person to engage in indecent contact with the defendant, when the victim is incapable of consent.

(C) A DEFENDANT COMMITS A MISDEMEANOR OF THE SECOND DEGREE WHEN THE DEFENDANT ENGAGES IN INDECENT CONTACT WITH ANOTHER PERSON, OR CAUSES SUCH PERSON TO ENGAGE IN INDECENT CONTACT WITH THE DEFENDANT, IF THE DEFENDANT DOES SO WITHOUT THE VICTIM'S CONSENT.

Section [3130] 3125. Sexual exploitation of child.

(a) Offense defined.--A defendant commits a felony of the first degree when the defendant actively procures or arranges to procure a child 18 years of age or younger for the purpose of engaging in sexual activity with another person, WHEN THE DEFENDANT IS A FAMILY MEMBER OR IN A POSITION OF AUTHORITY OVER THE CHILD OR FORCIBLY COMPELS THE CHILD TO PARTICIPATE. IF THE CHILD IS UNDER AGE 14, FORCIBLE COMPUSSION NEED NOT BE PROVEN.

(b) Defense.--It is a defense to prosecution based on this section that the defendant was compelled to commit the offense by either the use of physical force or threat which placed the defendant in fear of immediate death, serious bodily injury, loss of personal liberty or retaliation.

(c) Definition.--As used in this section, the term "sexual activity" includes SEXUAL ACTS, touching or fondling of intimate parts, masturbation, sadism and masochism.

Section 5. Sections 4302, 4303 and 6312(a) through (e) of Title 18 are amended to read:

§ 4302. Incest.

A person is guilty of incest, a [felony of the second degree, if he] misdemeanor of the first degree, if the person knowingly and with consent marries or [cohabits or] has sexual intercourse OR lives as a spouse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. The relationships referred to in this section include blood relationships without regard to legitimacy[, and relationship of parent and child by adoption].

§ 4303. Concealing death of child [born out of wedlock].

(a) Offense defined.--A person is guilty of a misdemeanor of the third degree if he or she endeavors privately, either alone or by the procurement of others, to conceal the death of his or her child [born out of wedlock], so that it may not come to light, whether it was born dead or alive or whether it was murdered or not.

(b) Procedure.--If the same indictment or information charges any person with the murder of his or her child [born out of wedlock], as well as with the offense of the concealment of the death, the jury may acquit or convict him or her of both offenses, or find him or her guilty of one and acquit him or her of the other.

§ 6312. Sexual abuse of children.

(a) Definition.--As used in this section, the term "prohibited sexual act" means sexual ACTS, AS DEFINED IN SECTION

3101, masturbation, sadism, masochism, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

(b) Photographing or filming sexual acts.--Any person who causes or knowingly permits a child under the age of [17] 18 years to engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know or intends that such act may be photographed or filmed. Any person who knowingly photographs or films a child under the age of [17] 18 years engaging in a prohibited sexual act or in the simulation of such an act is guilty of a felony of the second degree.

(c) Dissemination of photographs and films.--Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape or other material depicting a child under the age of [17] 18 years engaging in a prohibited sexual act or in the simulation of such act is guilty of a felony of the third degree.

(d) Possession of child pornography.--Any person who knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape or other material depicting a child under the age of [17] 18 years engaging in a prohibited sexual act or in the simulation of such act is guilty of a felony of the third degree.

(e) [Evidence of age.--In the event a person involved in a prohibited sexual act is alleged to be a child under the age of

17 years, competent expert testimony shall be sufficient to establish the age of said person.] Mistake as to age.--AS TO SECTIONS 6312(B) AND (C) ONLY, it is no defense that the actor did not know the age of the child. Neither a misrepresentation of age by the child nor a bona fide belief that such person is over the specified age shall be a defense.

Section 6. Section 5303(b) of Title 23 is amended to read:  
§ 5303. Award of custody, partial custody or visitation.

\* \* \*

(b) Consideration of criminal conviction.--If a parent has been convicted of or has pleaded guilty or no contest to an offense as set forth below, the court shall consider such criminal conduct and shall determine that the parent does not pose a threat of harm to the child before making an order of custody, partial custody or visitation to that parent:

- (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
- (2) 18 Pa.C.S. § 2901 (relating to kidnapping);
- (3) 18 Pa.C.S. § 2902 (relating to unlawful restraint);
- (4) 18 Pa.C.S. § 3121 (relating to [rape] aggravated sexual assault);
- (5) 18 Pa.C.S. § 3122 (relating to [statutory rape] sexual assault);
- (6) 18 Pa.C.S. § 3123 (relating to indecent exposure);
- (7) 18 Pa.C.S. § 3124 (relating to indecent contact);
- (8) 18 Pa.C.S. § 3125 (relating to sexual exploitation of child);
- [(8)] (9) 18 Pa.C.S. § 4302 (relating to incest);
- [(9)] (10) 18 Pa.C.S. § 4304 (relating to endangering welfare of children);

[(10)] (11) 18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses); or

[(11)] (12) 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

\* \* \*

Section 7. The definition of "abuse" in section 6102 of Title 23 is amended to read:

§ 6102. Definitions.

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Abuse." The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, [rape, spousal sexual assault or involuntary deviate sexual intercourse] aggravated sexual assault or sexual assault, with or without a deadly weapon.

(2) Placing by physical menace another in fear of imminent serious bodily injury.

(3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).

(4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).

\* \* \*

Section 8. The definition of "sexual abuse" in section 6303 of Title 23 is amended to read:

§ 6303. Definitions.



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

\* \* \*

"Sexual abuse." The obscene or pornographic photographing, filming or depiction of children for commercial purposes or the [rape] sexual assault, molestation, indecent contact, [incest] prostitution or other forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations of the department.

\* \* \*

Section 9. Section 6344(c) of Title 23 is amended to read:  
§ 6344. Information relating to prospective child-care personnel.

\* \* \*

(c) Grounds for denying employment.--In no case shall an administrator hire an applicant where the department has verified that the applicant is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section. In no case shall an administrator hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted, within five years immediately preceding the date of the report, of one or more of the following offenses under Title 18 (relating to crimes and offenses):

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

[Section 3121 (relating to rape).

Section 3122 (relating to statutory rape).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).]

Section 3121 (relating to aggravated sexual assault).

Section 3122 (relating to sexual assault).

Section 3123 (relating to indecent exposure).

Section 3124 (relating to indecent contact).

Section 3125 (relating to sexual exploitation of child).

Section 4303 (relating to concealing death of child [born out of wedlock]).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

\* \* \*

Section 10. Sections 5552 and 5554 of Title 42 are amended to read:

§ 5552. Other offenses.

(a) General rule.--Except as otherwise provided in this subchapter, a prosecution for an offense must be commenced within two years after it is committed.

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

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

Section 911 (relating to corrupt organizations).

Section 2706 (relating to terroristic threats).

Section 2901 (relating to kidnapping).

[Section 3121 (relating to rape).

Section 3123 (relating to involuntary deviate sexual intercourse).]

Section 3121 (relating to aggravated sexual assault).

Section 3122 (relating to sexual assault).

Section 3124 (relating to indecent contact).

Section 3125 (relating to sexual exploitation of child).

Section 3301 (relating to arson and related offenses).

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

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

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 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 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.["]

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

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

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

(1) Any offense a material element of which is either fraud or a breach of fiduciary obligation within one year

after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than three years.

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

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

[Section 3121 (relating to rape).

Section 3122 (relating to statutory rape).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124 (relating to voluntary deviate sexual intercourse).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).]

Section 3121 (relating to aggravated sexual assault).

Section 3122 (relating to sexual assault).

Section 3123 (relating to indecent exposure).

Section 3124 (relating to indecent contact).

Section 3125 (relating to sexual exploitation of child).

Section 4304 (relating to endangering welfare of children).

Section 5902 (relating to prostitution and related offenses).

Section 6301 (relating to corruption of minors).

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

(d) Commission of offense.--An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the complicity of the defendant therein is terminated. Time starts to run on the day after the offense is committed.

(e) Commencement of prosecution.--Except as otherwise provided by general rule adopted pursuant to section 5503 (relating to commencement of matters), a prosecution is commenced either when an indictment is found or an information under section 8931(b) (relating to indictment and information) is issued, or when a warrant, summons or citation is issued, if such warrant, summons or citation is executed without unreasonable delay.

§ 5554. Tolling of statute.

Except as provided by section 5553(e) (relating to disposition of proceedings within two years), the period of limitation does not run during any time when:

(1) the accused is continuously absent from this Commonwealth or has no reasonably ascertainable place of abode or work within this Commonwealth;

(2) a prosecution against the accused for the same conduct is pending in this Commonwealth; or

(3) a child is under 18 years of age, where the crime involves physical injuries to the person of the child caused by the wrongful act, or neglect, or unlawful violence, or negligence of the child's parents or by a person responsible for the child's welfare, or any FAMILY MEMBER OF THE CHILD or any individual residing in the same home as the child, or a paramour of the child's parent.

Section 11. Title 42 is amended by adding sections to read:  
§ 5989. Speedy disposition of cases.

All criminal actions in which a child is the victim or a material witness shall be heard and disposed of as expeditiously as possible. In ruling on any motion or request for delay or continuance of any proceeding, the court shall consider and give weight to any adverse impact that the requested delay or continuance may have on the well-being of the child, AS WELL AS TO ANY ADVERSE IMPACT ON THE DEFENDANT'S RIGHT TO A FAIR TRIAL.

§ 5990. Expert witness testimony.

When a prosecution is brought for offenses committed against children, the court shall have the discretion to permit the introduction of expert witness testimony of a general nature for the purpose of educating the jury regarding any area where the testimony might be useful and beneficial in helping the jury understand the typical behaviors of children who are victims of sexual assault.

§ 5991. Competency of child victim witness.

(a) General rule.--Every child who is an alleged victim of a sexual offense, abuse or neglect shall be presumed competent to testify in any judicial proceeding regarding the alleged offense; however, the presumption may be rebutted by evidence to the contrary.

(b) Disqualification.--A child shall be disqualified to be a witness if the court finds that the proposed witness is incapable of:

(1) expressing himself or herself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by A PERSON WITH NO DIRECT INTEREST IN THE PROCEEDINGS who can understand him or her; or

(2) understanding the duty of a witness to tell the truth.

(c) Oath not required.--A child under ten years of age, in the court's discretion, need not take an oath or make an affirmation or declaration but may be required only to promise to tell the truth.

Section 12. This act shall apply as follows:

(1) The amendment or addition of sections of 18 Pa.C.S. shall apply to offenses committed on or after the effective date of this act.

(2) The addition of 42 Pa.C.S. §§ 5989, 5990, 5991 and 5992 shall apply to proceedings conducted on or after the effective date of this act.

Section 13. This act shall take effect in 60 days.





125 South Ninth Street, Suite 701  
P.O. Box 1161  
Philadelphia, PA 19105-1161  
215-592-1513, ext. 18  
215-592-1343 (FAX)

James D. Crawford  
PRESIDENT

Deborah Leavy  
EXECUTIVE DIRECTOR

TESTIMONY OF THE AMERICAN CIVIL LIBERTIES UNION

ON HOUSE BILL 2302

BEFORE THE HOUSE OF REPRESENTATIVES JUDICIARY COMMITTEE

April 15, 1992

Good morning Chairman Caltegirone and members of the House Judiciary Committee. My name is Karl Baker, and I serve as president of the Philadelphia Branch of the American Civil Liberties Committee. Speaking on behalf of the ACLU of Pennsylvania, I would like to praise the efforts of this committee to simplify and rationalize the existing sexual offense legislation in Pennsylvania. It is obvious that a great deal of thought has gone into the preparation of these amendments, and we appreciate the efforts that have been made to accommodate the concerns of a number of groups raised at an earlier stage. Nevertheless, the ACLU feels constrained to offer additional criticisms of several provisions in the current amendments that will violate rights protected by the United States and Pennsylvania Constitutions and/or violate sound social policy.

The principle concerns of the ACLU are as follows:

- 1) The use of marriage as an aggravating factor to enhance the felony grade of a sexual assault.
- 2) The use of membership in a family as an

aggravating factor to enhance the felony grade of a sexual assault.

3) The classification of disabled persons who are "physically unable to flee" as persons who are "incapable of consenting to a sexual act."

4) The similar criminalization of "sexual" or "indecent" contact with those who are mentally disabled or unable to communicate, regardless of the prior existence of a consensual or spousal relationship.

5) The criminalization of all sexual activity and "indecent contact" (i.e., the touching of another's "intimate parts") between teenagers, where one teenager is below the age of fourteen.

6) The imposition of strict liability for offenses involving children, regardless of whether the defendant had a reasonable or bona fide belief that the child was over the prohibited age, and even when that reasonable belief was based upon a misrepresentation.

7) The criminalization under section 6312, "sexual abuse of children," of the production, distribution and possession of all pictures depicting minors in a state of nudity, without any restriction with regard to the purpose the pictures serve or the actor's knowledge that they depict minors, both in violation of recent decisions of the United States

Supreme Court and other federal courts interpreting the First Amendment.

I will address each of these concerns in the order mentioned above.

Marriage As An Aggravating Factor.

The statutes have been redrafted to consolidate several types of sexual assaults under the categories "Aggravated Sexual Assault" (§ 3121) and "Sexual Assault" (§ 3122). The former is a felony in the first degree with a maximum sentence of twenty years, while the later is a felony in the second degree with a maximum sentence of ten years. The offense of sexual assault is made "aggravated" either by the presence of an "aggravated circumstance", or by the fact that the victim is a person who is deemed "incapable of consent." Aggravated circumstances are set forth and defined in § 3101 (Definitions).

House Bill 2302, § 3101(F), proposes to make the status of being married an aggravating factor that would raise the grade of a Sexual Assault ("a sexual act with another person by forcible compulsion, or threat of forcible compulsion") from a felony in the second degree to a felony in the first degree. That subsection identifies "a family member" as an aggravating factor, and subsequently defines "family member" in part as "a spouse or person who has been a spouse; a person living as a spouse or who has lived as a spouse . . . ."

The ACLU believes that the use of legal or common law marriage (a fundamental right) as an aggravating factor to

enhance punishment is a denial of due process and of equal protection. Rather, it is our belief that a husband or wife should be treated no differently under the law than any other person when the allegation is made and proven that the defendant has "engage[d] in a sexual act with another person by forcible compulsion, or threat of forcible compulsion." Thus, the grade of sexual assault should be raised to a felony in the first degree for a spouse only when it can be proven that another legitimate aggravating circumstance was present.

When the Crimes Code of 1972 was enacted the Legislature excluded a "spouse" from those who could be convicted of the crime of rape. In 1984 this Legislature enacted a special provision, Spousal Sexual Assault (§ 3128), that recognized that the crime of rape could be committed against a spouse, but which made it a lesser offense with the added requirement that the offense be reported within ninety days. House Bill 2302 would swing the law to the opposite extreme by making spousal sexual assault a greater offense than sexual assault. We urge this committee delete the provision that would make the spousal relationship an aggravating factor. We believe that when a legal or common law spouse commits a crime, he or she should be treated just like any other defendant.

#### Family Membership As An Aggravating Circumstance.

The same provision that makes a spousal relationship an aggravating circumstance, also makes other family relationships aggravating circumstances in the context of the sexual assault

statutes. Where a parent abuses a minor child, that abuse of parental authority may justify an aggravation of the punishment. Where, however, a sexual assault occurs between siblings who are related "whether by whole blood, half-blood or a[s] sibling[s]," that justification may be absent.

Clearly the evil that this provision is directed at is the abuse of authority that one family member may exercise over another. As it is currently as drafted, however, the provision is overbroad. In order to correct this overbreadth, one possible alternative might be to redraft the aggravating circumstance in § 3101(F) as follows:

(F) The defendant serves in a position of authority in respect to the victim, or is a family member who serves in a position of authority over a victim under 18 years of age within the household.

The terms "position of authority" and "family member" are both separately defined under § 3101. "Spouse" should be removed from the definition of "family member."

The Classification Of Disabled Persons As Being Incapable Of Consenting To A Sexual Act.

As noted above, the offense of sexual assault may be "aggravated" either by the presence of an "aggravated circumstance," or by the fact that the victim is a person who is deemed "incapable of consent." Section 3109 classifies certain groups of persons as being incapable of consent. Sections 3121(B) (Aggravated Sexual Assault) and 3124(b) (Indecent Contact) then criminalizes all sexual contact with such persons. In so doing House Bill 3202 creates several classes of persons

for whom all sexual contact with others will be forbidden by law. Given that all persons (over some undefined age) are entitled to a fundamental right to privacy in personal matters, including their sexuality, any step in the direction of creating a class of persons for whom all sexual contact is forbidden by law should be taken with the greatest of caution.

While society may have a significant interest in protecting from sexual exploitation a person who is unconscious, who has been mentally incapacitated against his/her will, or who is "temporarily or permanently incapable of appraising the nature of [his/her] conduct," there is no excuse for society to prohibit a disabled person who "is physically unable to flee" from having any sexual contact with another. The proposed statute, however, does just that by making any sexual act or intimate contact with such a person punishable by law.

For example, the spouse or sexual partner of a person deemed "physically helpless" because he or she is "physically unable to flee" would be subject on the face of this statute to a first degree felony (§ 3121(B)) for engaging in a sexual act. Similarly, the same person would be subject to first degree misdemeanor (§ 3124(b)) for initiating any intimate contact with the other party. It would be no defense that the sexual act or contact were made at the invitation of the disabled partner, since the express language of Section 3109 is that a "physically helpless" person is "incapable of consenting to a sexual act."

The definition of "physically helpless" also includes a person who is "physically unable to communicate an unwillingness to act." Under this definition the spouse of a stroke victim with a profound verbal disability would be guilty of indecent contact as a misdemeanor of the first degree if he or she were to come into contact with an "intimate part" of the other in the course of bathing or caring for the spouse, since there is no exception under this section for medical, hygienic, or even unintentional contact. See §§ 3101 and 3124(b).

While the desire to protect persons who are defenseless as a result of their disability is clearly an appropriate goal of the proposed statute, the mechanism that has been adopted to achieve that goal is the wrong one. Rather than impose an additional disability on severely disabled persons by declaring them incapable of giving consent, the proposed statute might add to the list of aggravating factors in Section 3101 the fact that "the defendant committed the act upon a victim who was physically unable to flee or to verbally resist." The problem of proving lack of consent under such circumstances would be negligible under most circumstances.

#### Mentally Disabled Persons Incapable Of Consenting To A Sexual Act

A similar problem exists with persons who are mentally disabled; i.e., persons who suffer "from a mental state which renders the person temporarily or permanently incapable of appraising the nature of one's conduct." § 3101 (Definitions). Thus, the spouse or sexual partner of a person who has become

"mentally disabled" would be subject to a first degree felony (§ 3121(B)) for continuing to engage in sexual acts, or would be subject to a first degree misdemeanor (§ 3124(b)) for initiating any intimate contact with the other party, even if the other party continued to expect such behavior. Nor should our society disregard the needs that mentally disabled persons may have for the satisfaction of their sexual desires in some form or context. Section 3109, however, would legally stigmatize all such individuals as social pariah for whom all intimate physical contact with others would be forbidden.

Not only is the protection afforded "mentally disabled" and "physically helpless" persons overbroad in the sense that it would create an additional social disability, but the criminalization of all sexual contact with such persons would encourage social discrimination against all former mental patients, mildly retarded persons and the severely physically handicapped. Any intimate social contact with such persons would be seriously chilled by the prospect of possible criminal prosecution.

To the extent that this section totally deprives the physically or mentally handicapped of the right to make choices (guided or otherwise) about their own sensuality, it is wrong. To the extent that it fosters social discrimination against persons who may fall outside a strict interpretation of those definitions, it is bad public policy.



As above, the proper alternative might be to treat knowing victimization of the mentally disabled as an aggravating factor, and to leave the determination of consent to a case by case determination in the courts.

Criminalization Of Sexual Activity Among Teenagers.

House Bill 2302 would repeal the crime of Statutory Rape (a felony in the second degree), which is defined as sexual intercourse by a person 18 or older with a person less than fourteen years of age, and would replace that statute with a set of provisions that would have the effect of criminalizing all sexual acts and intimate contact between a thirteen and a fourteen year old. This is accomplished by three sections of the Bill. The first, Section 3109, declares that persons thirteen years of age or younger are incapable of consenting to a sexual act. The second, Section 3121(B), declares that a defendant commits a felony of the first degree when that persons engages in a sexual act with another person "who is incapable of consent." And the third, Section 3124, declares that a defendant commits a misdemeanor in the third degree if that person "engages in indecent contact with another person, or causes such person to engage in indecent contact with the defendant, when the victim is incapable of consent."

This extreme change in the criminal laws is unwarranted. Until now the goal underlying the sexual offense statutes has been the protection of victims from sexual acts and indecent contacts that are uninvited and/or accomplished by forcible

compulsion. It is highly unlikely that any criminalization of teenage sexuality is going to succeed in dissuading young teenagers from occasionally engaging in acts of sexuality or touching. Nor is it likely that stigmatizing teenagers with delinquency adjudications or the threat of such adjudications will promote their general well-being. Finally, it is highly probable that the enactment of such statutes will only serve to alienate young people from government and diminish their respect for the law.

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A better approach would be to retain the current statutory rape provisions and redraft it to reflect a prohibition of statutory "sexual assault." Simultaneously, the designation of persons "thirteen years of age or younger" should be removed from the list of persons "incapable of consenting to a sexual act," and recast as an aggravating circumstance. These changes would continue to prohibit sexual activity between persons thirteen years of age or younger and those eighteen years of age or older, while punishing more harshly sexual assaults against children that are accomplished by forcible compulsion.

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#### Imposition Of Strict Liability.

Section 3102 of House Bill 2302 provides that mistake of age is no defense to any provision of this bill regardless of whether the defendant has a bona fide belief that the child is over a specific age, even when based upon an affirmative misrepresentation.

The imposition of strict liability, i.e., punishment for a crime where there is no mens rea, constitutes a violation of due process of law in the absence of a compelling reason for the strict punishment of that offense. Strict liability offenses normally involve crimes that consist of behavior that is absolutely prohibited regardless of the circumstances. Consensual sex is not the type of behavior that is absolutely prohibited. While it is appropriate for the legislature to define an age below which consensual sex with an adult will not be allowed in an effort to protect those who are too immature to intelligently consent, the elimination of reasonable mistake of age as a defense, particularly where there has been a deliberate misrepresentation of age by the "victim", goes too far. The imposition of strict liability in this context results in turning a defendant who is without mens rea, or knowledge that a crime is being committed into a victim.

Where a defendant has a bona fide and reasonable belief that his/her partner is of the age of consent, that person should not suffer the sanction of a criminal penalty. Under the current bill, most of those who will be swept up by the strict liability provisions of the proposed statutes will be teenagers between the age of fourteen and eighteen. Given the prevalence of false identifications and pretence among young teenagers, teenage defendants may be more in need of protection than their "victims". To deny them a defense not only is contrary to notions of due process notions; it is wrong.

First Amendment Violations That Will Be Caused By The Amendments To The Child Pornography Statute.

Section 6312 (Sexual Abuse Of Children) criminalizes the production, distribution or dissemination of films or photographs of any person under 18 engaged in a "prohibited sexual act." By definition, that term includes, in addition to certain sexually explicit acts, the following behavior: "lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction." Although the original statute provided exceptions for material that has a "bona fide educational, scientific, governmental or judicial purpose," those exceptions have been taken out. Furthermore, another amendment to the statute would provide that mistake of age is no defense to the photographer or the distributor of such material, whether or not the actor had a bona fide belief that the person photographed was over the age of eighteen. These provisions taken together present serious violations of the due process and first amendment rights of all citizens, as those rights have been defined by recent decisions of the United States Supreme Courts and other federal courts.

In a close decision, the United States Supreme Court recently upheld the right of a state to prohibit the production, dissemination and, specifically, the possession of child pornography. Osborne v. Ohio, 495 U.S. 103, 110 S.Ct. 1691 (1990). The defendant in Osborne challenged the statute,

claiming that it was overbroad and impermissibly infringed upon First Amendment rights. The Court in its majority opinion recognized "that depictions of nudity, without more, constitute protected expression." 110 S.Ct. at 1698. In upholding the statute as written and interpreted by the state courts, however, the Supreme Court relied upon the fact that the statute provided important protections to the right of free expression. Specifically, it noted that the statute,

~~does not impose criminal liability if either "[t]he material or performance is sold, disseminated, displayed, possessed, controlled, brought or caused to be brought into the state, or presented for a bona fide artistic, medical, scientific, educational, religious, governmental, judicial, or other proper purpose, by or to a physician, psychologist, sociologist, scientist, teacher, person pursuing bona fide studies or research, librarian, clergyman, prosecutor, judge, or other person having a proper interest in the material or performance," or "[t]he person knows that the parents, guardian, or custodian has consented in writing to the photographing or use of the minor in a state of nudity and to the manner in which the material or performance is used or transferred."~~

110 S.Ct. at 1698 n.9. Even then the Court stated that it could "imagine circumstances in which the statute, by its terms, criminalized constitutionally protected conduct. Id. By contrast, the current statute contains none of these protections and is, therefore, open to direct attack on First Amendment grounds.

Similarly, the Court noted that the Ohio courts had interpreted the statute as requiring "scienter" in an effort to protect it from a First Amendment challenge. 110 S.Ct. at 1703. "Scienter" is described by Black's Law Dictionary as a term that

is used "to signify the defendant's guilty knowledge." In the present bill the element of scienter has been removed in part from the statute by denying the defense of mistake of age to those who produce or distribute material. Thus, one who gives a friend a pinup calendar without knowing that it contains a nude photograph of a seventeen year old would-be model is guilty of a felony in the third degree.

The same due process and fundamental fairness problems that are presented by other sections of House Bill 2302 that prohibit a defendant from raising mistake of age as a defense are presented by subsection 6312(e) of this provision. The imposition of strict criminal liability in this context, however, has far more severe constitutional implications, given the chilling effect that this doctrine will have on protected forms of expression.

Under section 6312, age would form the boundary between expression that is constitutionally protected, and that which is not. Thus, much of what this section prohibits would be lawful if it did not involve a person under 18 - because it would not constitute unlawful obscenity. Playboy magazine is a prime example. While a person could legally possess or distribute such non-obscene material, a mistake of age regarding the person depicted would make the distributor or producer liable to prosecution for a third degree felony.

The test for obscenity as articulated by the United States Supreme Court is as follows:

The basic guidelines for the trier of fact must be: (a) whether "the average person, applying contemporary community standards" would find that the work, taken as a whole, appeals to the prurient interest; (b) whether the work depicts or describes, in a patently offensive way, sexual conduct specifically defined by the applicable state law; and (c) whether the work, taken as a whole, lacks serious literary, artistic, political, or scientific value.

Miller v. California, 413 U.S. 15, 24, 93 S.Ct. 2607, 2615 (1973)  
(citations omitted).

Where, as here, a producer or distributor would be held strictly liable despite lack of knowledge or even where age has been misrepresented, the collateral effect would be to severely inhibit or chill otherwise lawful forms of expression involving the depiction of persons over the age of eighteen. The one federal circuit court of appeals that has addressed this issue has held that prohibition of the defense of mistake of age in this context is a violation of the First Amendment. See United States v. U.S. Dist. Court for Cent. Dist. of Cal., 858 F.2d 534 (1988). That court explained that, "the first amendment does not permit the imposition of criminal sanctions on the basis of strict liability where doing so would seriously chill protected speech." Id. at 540.

The ACLU urges that this committee delete the amendment that deals with mistake of age, and restore to Section 6312 the full range of exceptions recognized as legitimate by the United States Supreme Court.

THOMAS R. CALTAGIRONE, MEMBER  
HOUSE POST OFFICE BOX 209  
ROOM 106, SOUTH OFFICE BUILDING  
HARRISBURG, PENNSYLVANIA 17120-0028  
PHONE: (717) 787-3525

127 SOUTH TENTH STREET  
READING, PENNSYLVANIA 19602  
PHONE: (215) 376-1529



COMMITTEES  
JUDICIARY, CHAIRMAN

**House of Representatives**  
COMMONWEALTH OF PENNSYLVANIA  
HARRISBURG

AGENDA

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Public Hearing regarding HB 2302--Grading of Sexual Offences

10:00 AM Room 140 MC Wed., April 15, 1992

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Honorable Karen Ritter  
Prime Sponsor

Sue Cameron, Exec. Director  
Pennsylvania Coalition Against Rape

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American Civil Liberties Union  
Karl Baker, Esq.  
President, Philadelphia Board of Directors

Mary Beth Seiverling, Esq.  
Deputy Attorney General  
Appeals and Legal Services Section

County Commissioner Maryann Conway  
Former Assistant D.A., Schuylkill County



**AS AMENDED BY RITTER AMENDMENT -- REVISED 4/7/92**

HOUSE BILL 2302  
Session of 1992

INTRODUCED BY RITTER, BLAUM, E. Z. TAYLOR, DeWEESE, JOSEPHS,  
KRUSZEWSKI, KUKOVICH, COWELL, HARPER, PRESTON, HERMAN,  
VAN HORNE, ROBINSON, STETLER, MUNDY, DEMPSEY, LESCOVITZ,  
COLAIZZO, D. W. SNYDER, McHALE, PESCI, LAUGHLIN AND LINTON,  
JANUARY 21, 1992

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 21, 1992

AN ACT

Amending Titles 18 (Crimes and Offenses), 23 (Domestic Relations) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for sexual offenses and the consequences of committing sexual offenses; providing for the testimony of children; and imposing penalties.

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

Section 1. Sections 3101, 3102, 3103, 3104(a), 3105, 3106 and 3107 of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 3101. Definitions.

Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"AGGRAVATING CIRCUMSTANCES." THE FOLLOWING CONSTITUTE  
AGGRAVATING CIRCUMSTANCES AS THAT TERM IS USED IN THIS  
SUBCHAPTER:

(A) THE DEFENDANT IS ARMED WITH A WEAPON, OR ANY OBJECT  
FASHIONED IN SUCH A MANNER AS TO LEAD THE VICTIM TO REASONABLY  
BELIEVE IT TO BE A WEAPON, AND THREATENS BY WORD OR GESTURE TO  
USE THE WEAPON OR OBJECT; OR

(B) THE DEFENDANT INFLECTS SUFFOCATION, STRANGULATION OR  
SERIOUS BODILY INJURY UPON THE VICTIM OR ANYONE ELSE IN THE  
COURSE OF COMMITTING THE OFFENSE; OR

(C) THE DEFENDANT THREATENS OR PLACES THE VICTIM OR  
ANOTHER PERSON IN FEAR OF IMMINENT DEATH, SUFFOCATION,  
STRANGULATION, SERIOUS BODILY INJURY OR KIDNAPPING; OR

(D) THE DEFENDANT AND ONE OR MORE OTHER PERSONS ENGAGE  
IN A SEXUAL ACT WITH THE VICTIM; OR

(E) THE ACT IS COMMITTED DURING THE COMMISSION OR  
ATTEMPTED COMMISSION OF ANY OTHER FELONY BY THE DEFENDANT; OR

(F) THE DEFENDANT IS A FAMILY MEMBER OR SERVES IN A  
POSITION OF AUTHORITY IN RESPECT TO THE VICTIM.

"Defendant." A person accused of an offense under the  
specific provisions of this chapter.

["Deviate sexual intercourse." Sexual intercourse per os or  
per anus between human beings who are not husband and wife,  
except as provided in section 3128 (relating to spousal sexual  
assault), and any form of sexual intercourse with an animal. The  
term also includes penetration, however slight, of the genitals  
or anus of another person with a foreign object for any purpose  
other than good faith medical, hygienic or law enforcement  
procedures.]

"Family member." A SPOUSE OR PERSON WHO HAS BEEN A SPOUSE; A PERSON LIVING AS A SPOUSE OR WHO HAS LIVED AS A SPOUSE; A PARENT, STEP-PARENT OR FOSTER PARENT; A GRANDPARENT OR STEP-GRANDPARENT; A CHILD, WHETHER BY WHOLE BLOOD, HALF-BLOOD, ADOPTION OR A STEP-CHILD; A SIBLING, WHETHER BY WHOLE BLOOD, HALF-BLOOD OR A STEP-SIBLING; OR ANYONE WHO, BY VIRTUE OF LIVING ARRANGEMENT, ACTS IN A POSITION OF AUTHORITY OVER A VICTIM UNDER 18 YEARS OF AGE WITHIN THE HOUSEHOLD.

"Foreign object." Includes any physical object not a part of the actor's body.

"Indecent contact." [Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.] Touching by the victim or defendant of the victim's or defendant's intimate parts, either directly or indirectly.

"Intimate parts." Sexual organs, the genital area, anal area, inner thigh, groin, buttock or breast of a person.

"Mentally disabled." A condition in which a person suffers from a mental state which renders the person temporarily or permanently incapable of appraising the nature of one's conduct.

"Mentally incapacitated." A condition in which the victim is rendered temporarily incapable of appraising or controlling conduct due to the influence of a narcotic, anesthetic, intoxicant or other substance administered without prior knowledge or consent or due to any other act committed upon the victim which rendered the victim incapable of appraising or controlling his or her conduct.

"Physically helpless." A condition in which a person is unconscious or is physically unable to flee or is physically unable to communicate an unwillingness to act.

"Position of authority." A person serving in a professional or voluntary capacity who is charged with the care, education, health, welfare or supervision of a victim.

"SEXUAL ACT." THE TERM INCLUDES:

(A) VAGINAL INTERCOURSE, CUNNILINGUS, FELLATIO OR ANAL INTERCOURSE BETWEEN PERSONS;

(B) INSERTION OF ANY PART OF A PERSON'S BODY, OR A FOREIGN OBJECT, IN ANOTHER PERSON'S GENITALS OR ANUS FOR ANY PURPOSE OTHER THAN GOOD FAITH MEDICAL, HYGIENIC OR LAW ENFORCEMENT PROCEDURES;

(C) ANY SEXUAL ACT WITH AN ANIMAL BY THE VICTIM UPON THE DEFENDANT'S INSTRUCTION.

"Sexual conduct." Any conduct or behavior relating to sexual activities of the victim, including, but not limited to, previous or subsequent experience of sexual penetration or sexual activity, use of contraceptives, living arrangement, marital status and sexual lifestyle. The term includes any sexual offense committed, or alleged to have been committed, against the victim.

"Victim." A person alleging to have been subjected to an offense under the specific provisions of this chapter.

§ 3102. Mistake as to age OR CONDITION.

[Whenever in this chapter the criminality of conduct depends on a child being below the age of 14 years, it is no defense that the actor did not know the age of the child, or reasonably believed the child to be the age of 14 years or older. When criminality depends on the child's being below a critical age other than 14 years, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.] (A) Whenever in this

chapter, the criminality of conduct depends on a child being below a certain age, ignorance of the age is no defense. Neither a misrepresentation of age by a child nor a bona fide belief a child is over the specified age shall be a defense.

(B) WHENEVER IN THIS CHAPTER THE DEGREE OF CRIMINALITY OF CONDUCT DEPENDS ON A VICTIM BEING MENTALLY DISABLED, MENTALLY INCAPACITATED OR PHYSICALLY HELPLESS, THE HIGHER DEGREE OF CRIMINALITY OF CONDUCT SHALL APPLY ONLY IF THE DEFENDANT HAD, OR SHOULD HAVE HAD, KNOWLEDGE OF THE VICTIM'S CONDITION.

[§ 3103. Spouse relationships.

Except as provided in section 3128 (relating to spousal sexual assault), whenever in this chapter the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship: Provided, however, That the exclusion shall be inoperative as respects spouses living in separate residences, or in the same residence but under terms of a written separation agreement or an order of a court of record. Where the definition of an offense excludes conduct with a spouse, this shall not preclude conviction of a spouse as accomplice in a sexual act which he or she causes another person, not within the exclusion, to perform.]

\* \* \*

§ 3105. Prompt complaint.

Prompt reporting to public authority is not required in a prosecution under this chapter: Provided, however, That nothing in this section shall be construed to prohibit a defendant from introducing evidence of the alleged victim's failure to promptly report the crime if such evidence would be admissible pursuant to the rules of evidence. Where DEFENDANT INTRODUCES evidence of

VICTIM'S failure to promptly report, the prosecution may introduce testimony regarding reasons for failure to make prompt complaints.

§ 3106. Testimony of complainants.

The credibility of an alleged victim of an offense under this chapter shall be determined by the same standard as is the credibility of an alleged victim of any other crime. The testimony of a victim need not be corroborated in prosecutions under this chapter. [In any prosecution before a jury for an offense under this chapter, no] No instructions shall be given cautioning the jury to view the alleged victim's testimony in any other way than that in which all victims' testimony is viewed.

§ 3107. Resistance not required.

[The alleged victim need not resist the actor in prosecutions under this chapter: Provided, however, That nothing in this section shall be construed to prohibit a defendant from introducing evidence that the alleged victim consented to the conduct in question.]

THE VICTIM NEED NOT PHYSICALLY OR VERBALLY RESIST THE USE OF, OR THREAT OF, FORCIBLE COMPULSION, NOR SHALL THE PROSECUTOR BE REQUIRED TO OFFER PROOF OF SUCH RESISTANCE BY THE VICTIM. LACK OF SUCH VERBAL OR PHYSICAL RESISTANCE OR SUBMISSION BY THE VICTIM SHALL NOT CONSTITUTE CONSENT. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PROHIBIT A DEFENDANT FROM INTRODUCING EVIDENCE OF THE VICTIM'S CONSENT TO THE CONDUCT IN QUESTION.

Section 2. Title 18 is amended by adding sections to read:

§ 3108. Evidence relating to manner in which victim was dressed.

Evidence relating to the manner in which the victim was dressed at the time of the offense to suggest that the victim provoked the offense shall not be admissible in a prosecution under this chapter. NOTHING HEREIN SHALL PREVENT THE INTRODUCTION OF EVIDENCE THAT WOULD OTHERWISE BE RELEVANT.

§ 3109. Conditions constituting incapacity to consent.

A victim is considered incapable of consenting to a sexual act if the victim is:

- (1) thirteen years of age or younger;
- (2) mentally disabled;
- (3) mentally incapacitated; or
- (4) physically helpless.

§ 3110. Lie detector tests.

No law enforcement officer, prosecuting attorney or other official shall require a victim of an offense described in this chapter to submit to a polygraph examination or any form of a mechanical or electrical lie detector test as a condition for proceeding with the investigation, charging or prosecuting of the offense. A victim's refusal to submit to a polygraph or any form of a mechanical or electrical lie detector test shall not mitigate against the investigation, charging or prosecuting of the pending case as originally charged.

Section 3. Sections 3121, 3122, 3123, 3124, 3125, 3126, 3127 and 3128 of Title 18 are amended to read:

[§ 3121. Rape.

A person commits a felony of the first degree when he engages in sexual intercourse with another person not his spouse:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;

(3) who is unconscious; or

(4) who is so mentally deranged or deficient that such person is incapable of consent.

Whenever the term "rape" is used in this title or any other title, it is deemed to include spousal sexual assault as further defined in section 3128 (relating to spousal sexual assault).]

SECTION 3121. AGGRAVATED SEXUAL ASSAULT.

(A) OFFENSE DEFINED GENERALLY.-- A DEFENDANT COMMITS A FELONY OF THE FIRST DEGREE WHEN THE DEFENDANT ENGAGES IN A SEXUAL ACT WITH ANOTHER PERSON BY FORCIBLE COMPULSION, OR THREAT OF FORCIBLE COMPULSION, WHERE AN AGGRAVATING CIRCUMSTANCE IS PRESENT.

(B) VICTIM INCAPABLE OF CONSENT.-- A DEFENDANT COMMITS A FELONY OF THE FIRST DEGREE WHEN THE DEFENDANT ENGAGES IN A SEXUAL ACT WITH ANOTHER PERSON WHO IS INCAPABLE OF CONSENT.

[§ 3122. Statutory rape.

A person who is 18 years of age or older commits statutory rape, a felony of the second degree, when he engages in sexual intercourse with another person not his spouse who is less than 14 years of age.]

§ 3122. Sexual assault.

(a) Offense defined generally.--A defendant commits a felony of the second degree when the defendant engages in A sexual ACT with another person by forcible compulsion, or threat of forcible compulsion.

[§ 3123. Involuntary deviate sexual intercourse.

A person commits a felony of the first degree when he engages in deviate sexual intercourse with another person:

(1) by forcible compulsion;



(2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;

(3) who is unconscious;

(4) who is so mentally deranged or deficient that such person is incapable of consent; or

(5) who is less than 16 years of age.]

[§ 3124. Voluntary deviate sexual intercourse.

A person who engages in deviate sexual intercourse under circumstances not covered by section 3123 of this title (relating to involuntary deviate sexual intercourse) is guilty of a misdemeanor of the second degree.]

[Section 3125. Aggravated indecent assault.

Except as provided in sections 3121 (relating to rape), 3122 (relating to statutory rape) and 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when he engages in penetration, however slight, of the genitals or anus of another with a part of the actor's body for any purpose other than good faith medical, hygienic or law enforcement procedures if:

(1) he does so without the consent of the other person;

(2) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;

(3) he knows that the other person is unaware that the indecent contact is being committed;

(4) he has substantially impaired the other person's power to appraise or control his or her conduct by administering or employing, without the knowledge of the other, drugs, intoxicants or other means for the purpose of preventing resistance;

(5) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him; or

(6) he is over 18 years of age and the other person is under 14 years of age.]

[Section 3126. Indecent assault.

(a) Offense defined.--A person who has indecent contact with another not his spouse, or causes such other to have indecent contact with him, is guilty of indecent assault if:

~~(1) he does so without the consent of the other person;~~

(2) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;

(3) he knows that the other person is unaware that a indecent contact is being committed;

~~(4) he has substantially impaired the other person's power to appraise or control his or her conduct by administering or employing without the knowledge of the other drugs, intoxicants or other means for the purpose of preventing resistance;~~

(5) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him; or

(6) he is over 18 years of age and the other person is under 14 years of age.

(b) Grading.--Indecent assault under subsection (a)(6) is a misdemeanor of the first degree. Otherwise, indecent assault is a misdemeanor of the second degree.]

§ [3127] 3123. Indecent exposure.

[A person commits a misdemeanor of the second degree if, for the purpose of arousing or gratifying sexual desire of himself or of any person other than his spouse, he exposes his genitals under circumstances in which he knows his conduct is likely to cause affront or alarm.] A defendant commits a misdemeanor of the second degree if the defendant exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows his or her conduct is likely to offend, affront or alarm. If any of the persons present are 13 years of age or younger, indecent exposure is a misdemeanor of the first degree.

[§ 3128. Spousal sexual assault.

(a) Sexual assault.--A person commits a felony of the second degree when that person engages in sexual intercourse with that person's spouse:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; or
- (3) who is unconscious.

(b) Involuntary spousal deviate sexual intercourse.--A person commits a felony of the second degree when that person engages in deviate sexual intercourse with that person's spouse:

- (1) by forcible compulsion;
- (2) by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution; or
- (3) who is unconscious.

(c) Crime to be reported.--The crime of spousal sexual assault shall be personally reported by the victim or her agent to a law enforcement agency having the requisite jurisdiction within 90 days of the commission of the offense.]

§ [3128] 3124. Indecent contact.

(a) Offense defined generally.--A defendant commits a misdemeanor of the FIRST degree when the defendant engages in indecent contact with another person, or causes such person to engage in indecent contact with the defendant, if the defendant does so by forcible compulsion or threat of forcible compulsion.

(b) Victim incapable of consent.--A defendant commits a misdemeanor of the first degree when the defendant engages in indecent contact with another person, or causes such person to engage in indecent contact with the defendant, when the victim is incapable of consent.

(C) A DEFENDANT COMMITS A MISDEMEANOR OF THE SECOND DEGREE WHEN THE DEFENDANT ENGAGES IN INDECENT CONTACT WITH ANOTHER PERSON, OR CAUSES SUCH PERSON TO ENGAGE IN INDECENT CONTACT WITH THE DEFENDANT, IF THE DEFENDANT DOES SO WITHOUT THE VICTIM'S CONSENT.

Section [3130] 3125. Sexual exploitation of child.

(a) Offense defined.--A defendant commits a felony of the first degree when the defendant actively procures or arranges to procure a child 18 years of age or younger for the purpose of engaging in sexual activity with another person, WHEN THE DEFENDANT IS A FAMILY MEMBER OR IN A POSITION OF AUTHORITY OVER THE CHILD OR FORCIBLY COMPELS THE CHILD TO PARTICIPATE. IF THE CHILD IS UNDER AGE 14, FORCIBLE COMPUSSION NEED NOT BE PROVEN.

(b) Defense.--It is a defense to prosecution based on this section that the defendant was compelled to commit the offense by either the use of physical force or threat which placed the defendant in fear of immediate death, serious bodily injury, loss of personal liberty or retaliation.

(c) Definition.--As used in this section, the term "sexual activity" includes SEXUAL ACTS, touching or fondling of intimate parts, masturbation, sadism and masochism.

Section 5. Sections 4302, 4303 and 6312(a) through (e) of Title 18 are amended to read:

§ 4302. Incest.

A person is guilty of incest, a [felony of the second degree, if he] misdemeanor of the first degree, if the person knowingly and with consent marries or [cohabits or] has sexual intercourse OR lives as a spouse with an ancestor or descendant, a brother or sister of the whole or half blood or an uncle, aunt, nephew or niece of the whole blood. The relationships referred to in this section include blood relationships without regard to legitimacy[, and relationship of parent and child by adoption].

§ 4303. Concealing death of child [born out of wedlock].

(a) Offense defined.--A person is guilty of a misdemeanor of the third degree if he or she endeavors privately, either alone or by the procurement of others, to conceal the death of his or her child [born out of wedlock], so that it may not come to light, whether it was born dead or alive or whether it was murdered or not.

(b) Procedure.--If the same indictment or information charges any person with the murder of his or her child [born out of wedlock], as well as with the offense of the concealment of the death, the jury may acquit or convict him or her of both offenses, or find him or her guilty of one and acquit him or her of the other.

§ 6312. Sexual abuse of children.

(a) Definition.--As used in this section, the term "prohibited sexual act" means sexual ACTS, AS DEFINED IN SECTION

3101, masturbation, sadism, masochism, lewd exhibition of the genitals or nudity if such nudity is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

(b) Photographing or filming sexual acts.--Any person who causes or knowingly permits a child under the age of [17] 18 years to engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know or intends that such act may be photographed or filmed. Any person who knowingly photographs or films a child under the age of [17] 18 years engaging in a prohibited sexual act or in the simulation of such an act is guilty of a felony of the second degree.

(c) Dissemination of photographs and films.--Any person who knowingly sells, distributes, delivers, disseminates, transfers, displays or exhibits to others, or who possesses for the purpose of sale, distribution, delivery, dissemination, transfer, display or exhibition to others, any book, magazine, pamphlet, slide, photograph, film, videotape or other material depicting a child under the age of [17] 18 years engaging in a prohibited sexual act or in the simulation of such act is guilty of a felony of the third degree.

(d) Possession of child pornography.--Any person who knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape or other material depicting a child under the age of [17] 18 years engaging in a prohibited sexual act or in the simulation of such act is guilty of a felony of the third degree.

(e) [Evidence of age.--In the event a person involved in a prohibited sexual act is alleged to be a child under the age of

17 years, competent expert testimony shall be sufficient to establish the age of said person.] Mistake as to age.--AS TO SECTIONS 6312(B) AND (C) ONLY, it is no defense that the actor did not know the age of the child. Neither a misrepresentation of age by the child nor a bona fide belief that such person is over the specified age shall be a defense.

Section 6. Section 5303(b) of Title 23 is amended to read:  
§ 5303. Award of custody, partial custody or visitation.

\* \* \*

(b) Consideration of criminal conviction.--If a parent has been convicted of or has pleaded guilty or no contest to an offense as set forth below, the court shall consider such criminal conduct and shall determine that the parent does not pose a threat of harm to the child before making an order of custody, partial custody or visitation to that parent:

- (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);
- (2) 18 Pa.C.S. § 2901 (relating to kidnapping);
- (3) 18 Pa.C.S. § 2902 (relating to unlawful restraint);
- (4) 18 Pa.C.S. § 3121 (relating to [rape] aggravated sexual assault);
- (5) 18 Pa.C.S. § 3122 (relating to [statutory rape] sexual assault);
- (6) 18 Pa.C.S. § 3123 (relating to indecent exposure);
- (7) 18 Pa.C.S. § 3124 (relating to indecent contact);
- (8) 18 Pa.C.S. § 3125 (relating to sexual exploitation of child);
- [(8)] (9) 18 Pa.C.S. § 4302 (relating to incest);
- [(9)] (10) 18 Pa.C.S. § 4304 (relating to endangering welfare of children);

[(10)] (11) 18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses); or

[(11)] (12) 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

\* \* \*

Section 7. The definition of "abuse" in section 6102 of Title 23 is amended to read:

§ 6102. Definitions.

(a) General rule.--The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Abuse." The occurrence of one or more of the following acts between family or household members, sexual or intimate partners or persons who share biological parenthood:

(1) Attempting to cause or intentionally, knowingly or recklessly causing bodily injury, serious bodily injury, [rape, spousal sexual assault or involuntary deviate sexual intercourse] aggravated sexual assault or sexual assault, with or without a deadly weapon.

(2) Placing by physical menace another in fear of imminent serious bodily injury.

(3) The infliction of false imprisonment pursuant to 18 Pa.C.S. § 2903 (relating to false imprisonment).

(4) Physically or sexually abusing minor children, including such terms as defined in Chapter 63 (relating to child protective services).

\* \* \*

Section 8. The definition of "sexual abuse" in section 6303 of Title 23 is amended to read:

§ 6303. Definitions.



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

\* \* \*

"Sexual abuse." The obscene or pornographic photographing, filming or depiction of children for commercial purposes or the [rape] sexual assault, molestation, indecent contact, [incest] prostitution or other forms of sexual exploitation of children under circumstances which indicate that the child's health or welfare is harmed or threatened thereby, as determined in accordance with regulations of the department.

\* \* \*

Section 9. Section 6344(c) of Title 23 is amended to read:  
§ 6344. Information relating to prospective child-care personnel.

\* \* \*

(c) Grounds for denying employment.--In no case shall an administrator hire an applicant where the department has verified that the applicant is named in the central register as the perpetrator of a founded report of child abuse committed within the five-year period immediately preceding verification pursuant to this section. In no case shall an administrator hire an applicant if the applicant's criminal history record information indicates the applicant has been convicted, within five years immediately preceding the date of the report, of one or more of the following offenses under Title 18 (relating to crimes and offenses):

Chapter 25 (relating to criminal homicide).

Section 2702 (relating to aggravated assault).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

[Section 3121 (relating to rape).

Section 3122 (relating to statutory rape).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).]

Section 3121 (relating to aggravated sexual assault).

Section 3122 (relating to sexual assault).

Section 3123 (relating to indecent exposure).

Section 3124 (relating to indecent contact).

Section 3125 (relating to sexual exploitation of child).

Section 4303 (relating to concealing death of child [born out of wedlock]).

Section 4304 (relating to endangering welfare of children).

Section 4305 (relating to dealing in infant children).

A felony offense under section 5902(b) (relating to prostitution and related offenses).

Section 5903(c) or (d) (relating to obscene and other sexual materials).

Section 6301 (relating to corruption of minors).

Section 6312 (relating to sexual abuse of children).

\* \* \*

Section 10. Sections 5552 and 5554 of Title 42 are amended to read:

§ 5552. Other offenses.

(a) General rule.--Except as otherwise provided in this subchapter, a prosecution for an offense must be commenced within two years after it is committed.

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

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

Section 911 (relating to corrupt organizations).

Section 2706 (relating to terroristic threats).

Section 2901 (relating to kidnapping).

[Section 3121 (relating to rape).

Section 3123 (relating to involuntary deviate sexual intercourse).]

Section 3121 (relating to aggravated sexual assault).

Section 3122 (relating to sexual assault).

Section 3124 (relating to indecent contact).

Section 3125 (relating to sexual exploitation of child).

Section 3301 (relating to arson and related offenses).

Section 3502 (relating to burglary).

Section 3701 (relating to robbery).

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

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 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 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.[" ]

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

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

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

(1) Any offense a material element of which is either fraud or a breach of fiduciary obligation within one year

after discovery of the offense by an aggrieved party or by a person who has a legal duty to represent an aggrieved party and who is himself not a party to the offense, but in no case shall this paragraph extend the period of limitation otherwise applicable by more than three years.

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

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

[Section 3121 (relating to rape).

Section 3122 (relating to statutory rape).

Section 3123 (relating to involuntary deviate sexual intercourse).

Section 3124 (relating to voluntary deviate sexual intercourse).

Section 3125 (relating to aggravated indecent assault).

Section 3126 (relating to indecent assault).

Section 3127 (relating to indecent exposure).

Section 4302 (relating to incest).]

Section 3121 (relating to aggravated sexual assault).

Section 3122 (relating to sexual assault).

Section 3123 (relating to indecent exposure).

Section 3124 (relating to indecent contact).

Section 3125 (relating to sexual exploitation of child).

Section 4304 (relating to endangering welfare of children).

Section 5902 (relating to prostitution and related offenses).

Section 6301 (relating to corruption of minors).

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

(d) Commission of offense.--An offense is committed either when every element occurs, or, if a legislative purpose to prohibit a continuing course of conduct plainly appears, at the time when the course of conduct or the complicity of the defendant therein is terminated. Time starts to run on the day after the offense is committed.

(e) Commencement of prosecution.--Except as otherwise provided by general rule adopted pursuant to section 5503 (relating to commencement of matters), a prosecution is commenced either when an indictment is found or an information under section 8931(b) (relating to indictment and information) is issued, or when a warrant, summons or citation is issued, if such warrant, summons or citation is executed without unreasonable delay.

§ 5554. Tolling of statute.

Except as provided by section 5553(e) (relating to disposition of proceedings within two years), the period of limitation does not run during any time when:

(1) the accused is continuously absent from this Commonwealth or has no reasonably ascertainable place of abode or work within this Commonwealth;

(2) a prosecution against the accused for the same conduct is pending in this Commonwealth; or

(3) a child is under 18 years of age, where the crime involves physical injuries to the person of the child caused by the wrongful act, or neglect, or unlawful violence, or negligence of the child's parents or by a person responsible for the child's welfare, or any FAMILY MEMBER OF THE CHILD or any individual residing in the same home as the child, or a paramour of the child's parent.

Section 11. Title 42 is amended by adding sections to read:  
§ 5989. Speedy disposition of cases.

All criminal actions in which a child is the victim or a material witness shall be heard and disposed of as expeditiously as possible. In ruling on any motion or request for delay or continuance of any proceeding, the court shall consider and give weight to any adverse impact that the requested delay or continuance may have on the well-being of the child, AS WELL AS TO ANY ADVERSE IMPACT ON THE DEFENDANT'S RIGHT TO A FAIR TRIAL.

§ 5990. Expert witness testimony.

When a prosecution is brought for offenses committed against children, the court shall have the discretion to permit the introduction of expert witness testimony of a general nature for the purpose of educating the jury regarding any area where the testimony might be useful and beneficial in helping the jury understand the typical behaviors of children who are victims of sexual assault.

§ 5991. Competency of child victim witness.

(a) General rule.--Every child who is an alleged victim of a sexual offense, abuse or neglect shall be presumed competent to testify in any judicial proceeding regarding the alleged offense; however, the presumption may be rebutted by evidence to the contrary.

(b) Disqualification.--A child shall be disqualified to be a witness if the court finds that the proposed witness is incapable of:

(1) expressing himself or herself concerning the matter so as to be understood by the judge and jury either directly or through interpretation by A PERSON WITH NO DIRECT INTEREST IN THE PROCEEDINGS who can understand him or her; or

(2) understanding the duty of a witness to tell the truth.

(c) Oath not required.--A child under ten years of age, in the court's discretion, need not take an oath or make an affirmation or declaration but may be required only to promise to tell the truth.

Section 12. This act shall apply as follows:

(1) The amendment or addition of sections of 18 Pa.C.S. shall apply to offenses committed on or after the effective date of this act.

(2) The addition of 42 Pa.C.S. §§ 5989, 5990, 5991 and 5992 shall apply to proceedings conducted on or after the effective date of this act.

Section 13. This act shall take effect in 60 days.