

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



Handout #1
COMMITTEES

JUDICIARY, CHAIRMAN

House of Representatives
COMMONWEALTH OF PENNSYLVANIA
HARRISBURG

AGENDA

HB 160 Codification of Sex Crimes

September 1, 1993
11:00 AM
Room 418 Main Capitol

Representative Karen A. Ritter, Prime Sponsor

Suzanne Beck-Hummel
Lehigh Valley Crime Victims

Thomas Ritter
Allentown citizen

Round Table Participants

Judge Albert A. Stallone
Berks County

Judge Carolyn Engel Temin
Philadelphia

Judge John M. Cleland
McKean County

Sergeant Cindy Bogart
East Stroudsburg Universtiy Police Dept.

Suzanne Beck-Hummel
Lehigh Valley Crime Victims

Larry Frankel, Esq.
ACLU

Peter Rosalsky, Esq.
Defender Assn. of Philadelphia

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 160

Session of
1993

INTRODUCED BY RITTER, DeWEESE, E. Z. TAYLOR, HERMAN, DEMPSEY,
TRELLO, COY, STEELMAN, PESCI, ROONEY, LAUGHLIN, LaGROTTA,
DALEY, KELLER, CAPPABIANCA, GORDNER, ULIANA, BEBKO-JONES,
STABACK, CURRY, KIRKLAND, BISHOP, SAYLOR, BUTKOVITZ, PRESTON,
HANNA, JOSEPHS AND TRICH, FEBRUARY 1, 1993

REFERRED TO COMMITTEE ON RULES, FEBRUARY 1, 1993

AN ACT

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

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

9 Section 1. Sections 3101 and 3102 of Title 18 of the
10 Pennsylvania Consolidated Statutes are amended to read:

11 § 3101. Definitions.

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

17 "Aggravating circumstances." The following constitute
18 aggravating circumstances as that term is used in this

1 subchapter:

2 (1) The defendant is armed with a weapon, or any object
3 fashioned in such a manner as to lead the victim to
4 reasonably believe it to be a weapon, and threatens by word
5 or gesture to use the weapon or object.

6 (2) The defendant inflicts suffocation, strangulation or
7 serious bodily injury upon the victim or anyone else in the
8 course of committing the offense.

9 (3) The defendant and one or more other persons engage
10 in a sexual act with the victim without consent.

11 (4) The act is committed during the commission or
12 attempted commission of any other felony by the defendant.

13 (5) The defendant serves in a position of authority in
14 respect to the victim or is a family member of a victim under
15 18 years of age.

16 (6) The defendant commits the act upon a victim who is
17 mentally disabled, mentally incapacitated or physically
18 helpless.

19 "Consent." Intelligent, informed and voluntary affirmation
20 not to be construed as coerced or reluctant submission.

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

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

1 "Family member." The term includes:

2 (1) A parent, step-parent or foster parent.

3 (2) A grandparent or step-grandparent.

4 (3) A sibling, whether by whole blood, half-blood or a
5 step-sibling.

6 (4) Anyone who, by virtue of living arrangement, acts in
7 a position of authority over a victim under 18 years of age
8 within the household.

9 "Forcible compulsion." To compel by use of physical,
10 intellectual, moral, emotional or psychological force, either
11 expressed or implied.

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

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

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

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

24 "Mentally incapacitated." A condition in which the victim is
25 rendered temporarily incapable of appraising or controlling
26 conduct due to the influence of a narcotic, anesthetic,
27 intoxicant or other substance which rendered the victim
28 incapable of appraising or controlling his or her conduct.

29 "Physically helpless." A condition in which a person is
30 unconscious or is physically unable to flee or is physically

1 unable to communicate an unwillingness to act.

2 "Position of authority." A person who, in either a
3 professional or voluntary capacity, is charged with the care,
4 education, health, welfare or supervision of a victim and who
5 exploits the relationship of trust or authority established in
6 that professional or voluntary capacity.

7 "Sexual act." The term includes:

8 (1) Vaginal intercourse, cunnilingus, fellatio or anal
9 intercourse between persons.

10 (2) Insertion of any part of a person's body, or a
11 foreign object, in another person's genitals or anus for any
12 purpose other than good faith medical, hygienic or law
13 enforcement procedures.

14 (3) Any sexual act with an animal by the victim upon the
15 defendant's instruction.

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

23 ["Sexual intercourse." In addition to its ordinary meaning,
24 includes intercourse per os or per anus with some penetration
25 however slight; emission is not required.]

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

28 § 3102. Mistake as to age or condition.

29 [Whenever in this chapter the criminality of conduct depends
30 on a child being below the age of 14 years, it is no defense

1 that the actor did not know the age of the child, or reasonably
2 believed the child to be the age of 14 years or older. When
3 criminality depends on the child's being below a critical age
4 other than 14 years, it is a defense for the actor to prove by a
5 preponderance of the evidence that he reasonably believed the
6 child to be above the critical age.]

7 (a) Ignorance of age not defense.--Whenever in this chapter,
8 the criminality of conduct depends on a child being below a
9 certain age, ignorance of the age is no defense. Neither a
10 misrepresentation of age by a child nor a bona fide belief a
11 child is over the specified age shall be a defense.

12 (b) Victim with a disability.--Whenever in this chapter the
13 degree of criminality of conduct depends on a victim being
14 mentally disabled, mentally incapacitated or physically
15 helpless, the higher degree of criminality of conduct shall
16 apply only if the defendant had, or should have had, knowledge
17 of the victim's condition.

18 Section 2. Section 3103 of Title 18 is repealed.

19 Section 3. Sections 3105, 3106 and 3107 of Title 18 are
20 amended to read:

21 § 3105. Prompt complaint.

22 Prompt reporting to public authority is not required in a
23 prosecution under this chapter: Provided, however, That nothing
24 in this section shall be construed to prohibit a defendant from
25 introducing evidence of the alleged victim's failure to promptly
26 report the crime if such evidence would be admissible pursuant
27 to the rules of evidence. Where defendant introduces evidence of
28 victim's failure to promptly report, the prosecution may
29 introduce testimony regarding reasons for failure to make prompt
30 complaints.

1 § 3106. Testimony of complainants.

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

11 § 3107. Resistance not required.

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

17 The victim need not resist the use of or threat of forcible
18 compulsion, nor shall the prosecutor be required to offer proof
19 of such resistance by the victim. Lack of such resistance or
20 submission by the victim shall not constitute consent. Nothing
21 in this section shall be construed to prohibit a defendant from
22 introducing evidence that the victim consented to the conduct in
23 question.

24 Section 4. Title 18 is amended by adding sections to read:

25 § 3108. Evidence relating to manner in which victim was
26 dressed.

27 Evidence relating to the manner in which the victim was
28 dressed at the time of the offense to suggest that the victim
29 provoked the offense shall not be admissible in a prosecution
30 under this chapter. Nothing under this section shall prevent

1 introduction of evidence that would otherwise be relevant.

2 § 3109. Conditions constituting incapacity to consent.

3 A victim is considered incapable of consenting to a sexual
4 act if the victim is 13 years of age or younger.

5 § 3110. Lie detector tests.

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

15 Section 5. Sections 3121 and 3122 of Title 18 are amended to
16 read:

17 [§ 3121. Rape.

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

20 (1) by forcible compulsion;

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

23 (3) who is unconscious; or

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

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

29 § 3121. Aggravated sexual assault.

30 (a) Offense defined generally.--A defendant commits a felony

1 of the first degree when the defendant engages in a sexual act
2 with another person by forcible compulsion where an aggravating
3 circumstance is present.

4 (b) Victim incapable of consent.--A defendant commits a
5 felony of the first degree when the defendant engages in a
6 sexual act with another person incapable of consent.

7 [§ 3122. Statutory rape.

8 A person who is 18 years of age or older commits statutory
9 rape, a felony of the second degree, when he engages in sexual
10 intercourse with another person not his spouse who is less than
11 14 years of age.]

12 § 3122. Sexual assault.

13 A defendant commits a felony of the second degree when the
14 defendant engages in a sexual act with another person by
15 forcible compulsion or threat of forcible compulsion.

16 Section 6. Sections 3123, 3124, 3125 and 3126 of Title 18
17 are repealed.

18 Section 7. Section 3127 of Title 18 is amended to read:

19 § 3127. Indecent exposure.

20 [A person commits a misdemeanor of the second degree if, for
21 the purpose of arousing or gratifying sexual desire of himself
22 or of any person other than his spouse, he exposes his genitals
23 under circumstances in which he knows his conduct is likely to
24 cause affront or alarm.] A defendant commits a misdemeanor of
25 the second degree if the defendant exposes his or her genitals
26 in any public place or in any place where there are present
27 other persons under circumstances in which he or she knows his
28 or her conduct is likely to offend, affront or alarm. If the
29 defendant knows or should have known that any of the persons
30 present are 13 years of age or younger, indecent exposure is a

1 misdemeanor of the first degree.

2 Section 8. Section 3128 of Title 18 is repealed.

3 Section 9. Title 18 is amended by adding sections to read:

4 § 3129. Indecent contact.

5 (a) Offense defined generally.--A defendant commits a
6 misdemeanor of the second degree when the defendant engages in
7 indecent contact with another person or causes such person to
8 engage in indecent contact with the defendant if the defendant
9 does so without the victim's consent.

10 (b) Aggravated indecent assault.--A defendant commits a
11 misdemeanor of the first degree when the defendant engages in
12 indecent contact with another person or causes such person to
13 engage in indecent contact with the defendant if:

14 (1) the defendant serves in a position of authority in
15 respect to the victim or is a family member of a victim under
16 18 years of age;

17 (2) the defendant commits the act upon a victim who is
18 mentally disabled, mentally incapacitated or physically
19 helpless if the defendant does so without the victim's
20 consent; or

21 (3) the defendant is over 18 years of age and the victim
22 is incapable of consent.

23 § 3130. Sexual exploitation of child.

24 (a) Offense defined.--A defendant commits a felony of the
25 first degree when the defendant actively procures or arranges to
26 procure a child 18 years of age or younger for the purpose of
27 engaging in sexual activity with another person when the
28 defendant is a family member or in a position of authority over
29 the child or forcibly compels the child to participate. If the
30 child is under 14 years of age, forcible compulsion need not be

1 proven.

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

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

10 Section 10. Sections 4302, 4303 and 6312 of Title 18 are
11 amended to read:

12 § 4302. Incest.

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

21 § 4303. Concealing death of child [born out of wedlock].

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

28 (b) Procedure.--If the same indictment or information
29 charges any person with the murder of his or her child [born out
30 of wedlock], as well as with the offense of the concealment of

1 the death, the jury may acquit or convict him or her of both
2 offenses, or find him or her guilty of one and acquit him or her
3 of the other.

4 § 6312. Sexual abuse of children.

5 (a) Definition.--As used in this section, the term
6 "prohibited sexual act" means sexual [intercourse, anal
7 intercourse] acts as defined in section 3101 (relating to
8 definitions), masturbation, bestiality, sadism, masochism,
9 [fellatio, cunnilingus,] lewd exhibition of the genitals or
10 nudity if such nudity is [depicted] photographed, videotaped or
11 filmed for the purpose of sexual stimulation or gratification of
12 any person who might view such [depiction] photograph, videotape
13 or film.

14 (b) Photographing, videotaping or filming sexual acts.--Any
15 person who causes or knowingly permits a child under the age of
16 [17] 18 years to engage in a prohibited sexual act or in the
17 simulation of such act is guilty of a felony of the second
18 degree if such person knows, has reason to know or intends that
19 such act may be photographed, videotaped or filmed. Any person
20 who knowingly photographs, videotapes or films a child under the
21 age of [17] 18 years engaging in a prohibited sexual act or in
22 the simulation of such an act is guilty of a felony of the
23 second degree.

24 (c) Dissemination of photographs, videotapes and films.--Any
25 person who knowingly sells, distributes, delivers, disseminates,
26 transfers, displays or exhibits to others, or who possesses for
27 the purpose of sale, distribution, delivery, dissemination,
28 transfer, display or exhibition to others, any book, magazine,
29 pamphlet, slide, photograph, film, videotape or other material
30 [depicting] containing photographs, videotapes or films of a

1 child under the age of [17] 18 years engaging in a prohibited
2 sexual act or in the simulation of such act is guilty of a
3 felony of the third degree.

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

11 (e) [Evidence of age.--In the event a person involved in a
12 prohibited sexual act is alleged to be a child under the age of
13 17 years, competent expert testimony shall be sufficient to
14 establish the age of said person.] Mistake as to age.--Under
15 subsections (b) and (c) only, it is no defense that the actor
16 did not know the age of the child. Neither a misrepresentation
17 of age by the child nor a bona fide belief that the person is
18 over the specified age shall be a defense.

19 (f) Exceptions.--This section does not apply to any material
20 that is possessed, controlled, brought or caused to be brought
21 into this Commonwealth, or presented for a bona fide
22 educational, scientific, governmental or judicial purpose.

23 Section 11. Section 5303(b) of Title 23 is amended to read:
24 § 5303. Award of custody, partial custody or visitation.

25 * * *

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

1 custody, partial custody or visitation to that parent:

2 (1) 18 Pa.C.S. Ch. 25 (relating to criminal homicide);

3 (2) 18 Pa.C.S. § 2901 (relating to kidnapping);

4 (3) 18 Pa.C.S. § 2902 (relating to unlawful restraint);

5 (4) 18 Pa.C.S. § 3121 (relating to [rape] aggravated
6 sexual assault);

7 (5) 18 Pa.C.S. § 3122 (relating to [statutory rape]
8 sexual assault);

9 [(6) 18 Pa.C.S. § 3123 (relating to involuntary deviate
10 sexual intercourse);

11 (7) 18 Pa.C.S. § 3126 (relating to indecent assault);

12 (8)](6) 18 Pa.C.S. § 3127 (relating to indecent
13 exposure);

14 (7) 18 Pa.C.S. § 3129 (relating to indecent contact);

15 (8) 18 Pa.C.S. § 3130 (relating to sexual exploitation
16 of child);

17 (9) 18 Pa.C.S. § 4302 (relating to incest);

18 [(9)] (10) 18 Pa.C.S. § 4304 (relating to endangering
19 welfare of children);

20 [(10)] (11) 18 Pa.C.S. § 5902(b) (relating to
21 prostitution and related offenses); or

22 [(11)] (12) 18 Pa.C.S. § 6312 (relating to sexual abuse
23 of children).

24 * * *

25 Section 12. The definition of "abuse" in section 6102 of
26 Title 23 is amended to read:

27 § 6102. Definitions.

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

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

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

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

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

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

16 * * *

17 Section 13. The definition of "sexual abuse" in section 6303
18 of Title 23 is amended to read:

19 § 6303. Definitions.

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

23 * * *

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

1 * * *

2 Section 14. Section 6344(c) of Title 23 is amended to read:

3 § 6344. Information relating to prospective child-care
4 personnel.

5 * * *

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

17 Chapter 25 (relating to criminal homicide).

18 Section 2702 (relating to aggravated assault).

19 Section 2901 (relating to kidnapping).

20 Section 2902 (relating to unlawful restraint).

21 [Section 3121 (relating to rape).

22 Section 3122 (relating to statutory rape).

23 Section 3123 (relating to involuntary deviate sexual
24 intercourse).

25 Section 3126 (relating to indecent assault).

26 Section 3127 (relating to indecent exposure).]

27 Section 3121 (relating to aggravated sexual assault).

28 Section 3122 (relating to sexual assault).

29 Section 3127 (relating to indecent exposure).

30 Section 3129 (relating to indecent contact).

1 Section 3130 (relating to sexual exploitation of child).
2 Section 4303 (relating to concealing death of child [born
3 out of wedlock]).
4 Section 4304 (relating to endangering welfare of
5 children).
6 Section 4305 (relating to dealing in infant children).
7 A felony offense under section 5902(b) (relating to
8 prostitution and related offenses).
9 Section 5903(c) or (d) (relating to obscene and other
10 sexual materials).
11 Section 6301 (relating to corruption of minors).
12 Section 6312 (relating to sexual abuse of children).
13 * * *
14 Section 15. Sections 5552 and 5554 of Title 42 are amended
15 to read:
16 § 5552. Other offenses.
17 (a) General rule.--Except as otherwise provided in this
18 subchapter, a prosecution for an offense must be commenced
19 within two years after it is committed.
20 (b) Major offenses.--A prosecution for any of the following
21 offenses must be commenced within five years after it is
22 committed:
23 (1) Under the following provisions of Title 18 (relating
24 to crimes and offenses):
25 Section 911 (relating to corrupt organizations).
26 Section 2706 (relating to terroristic threats).
27 Section 2901 (relating to kidnapping).
28 [Section 3121 (relating to rape).
29 Section 3123 (relating to involuntary deviate sexual
30 intercourse).]

1 Section 3121 (relating to aggravated sexual assault).

2 Section 3122 (relating to sexual assault).

3 Section 3129 (relating to indecent contact).

4 Section 3130 (relating to sexual exploitation of
5 child).

6 Section 3301 (relating to arson and related
7 offenses).

8 Section 3502 (relating to burglary).

9 Section 3701 (relating to robbery).

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

13 Section 4101 (relating to forgery).

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

16 Section 4109 (relating to rigging publicly exhibited
17 contest).

18 [Section 4302 (relating to incest).]

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

22 Section 4902 (relating to perjury) through section
23 4912 (relating to impersonating a public servant).

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

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

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

30 Section 5512 (relating to lotteries, etc.) through

1 section 5514 (relating to pool selling and bookmaking).

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

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

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

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

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

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

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

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

30 (3) Any sexual offense committed against a minor who is

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

6 [Section 3121 (relating to rape).

7 Section 3122 (relating to statutory rape).

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

10 Section 3126 (relating to indecent assault).

11 Section 3127 (relating to indecent exposure).

12 Section 4302 (relating to incest).]

13 Section 3121 (relating to aggravated sexual assault).

14 Section 3122 (relating to sexual assault).

15 Section 3127 (relating to indecent exposure).

16 Section 3129 (relating to indecent contact).

17 Section 3130 (relating to sexual exploitation of
18 child).

19 Section 4304 (relating to endangering welfare of
20 children).

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

23 Section 6301 (relating to corruption of minors).

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

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

1 after the offense is committed.

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

10 § 5554. Tolling of statute.

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

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

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

19 (3) a child is under 18 years of age, where the crime
20 involves physical injuries to the person of the child caused
21 by the wrongful act, or neglect, or unlawful violence, or
22 negligence of the child's parents or by a person responsible
23 for the child's welfare, or any family member of the child or
24 any individual residing in the same home as the child, or a
25 paramour of the child's parent.

26 Section 16. Title 42 is amended by adding sections to read:

27 § 5989. Speedy disposition of cases.

28 All criminal actions in which a child is the victim or a
29 material witness shall be heard and disposed of as expeditiously
30 as possible. In ruling on any motion or request for delay or

1 continuance of any proceeding, the court shall consider and give
2 weight to any adverse impact that the requested delay or
3 continuance may have on the well-being of the child as well as
4 to any adverse impact on the defendant's right to a fair trial.
5 § 5990. Expert witness testimony.

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

13 § 5991. Competency of child victim witness.

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

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

22 (1) expressing himself or herself concerning the matter
23 so as to be understood by the judge and jury either directly
24 or through interpretation by a person with no direct interest
25 in the proceedings who can understand him or her; or

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

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

1 to tell the truth.

2 Section 17. This act shall apply as follows:

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

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

9 Section 18. This act shall take effect in 60 days.

SEXUAL OFFENSES - HOUSE BILL 160 - SESSION OF 1993
HEARING ON WEDNESDAY, SEPTEMBER 1, 1993, AT 11:00 A.M.
GALINA MILOHOV - RESEARCH ANALYST - HOUSE JUDICIARY COMMITTEE
(717) 787-3569

* * * * *

The sexual offenses enumerated under this proposed Act, where "consent" is at issue, either as an element of the crime or at least as a possible defense, are:

1. (Simple) Sexual Assault (Section 3122);
2. Aggravated Sexual Assault (Section 3121); and
3. Indecent Contact (Section 3129).

The sexual offenses where "consent" or "lack of consent" are neither elements of the crime or a matter of defense are:

4. Incest (Section 4302);
5. Concealing Death of a Child (Section 4303);
6. Indecent Exposure (Section 3127);
7. Sexual Exploitation of a Child (Section 3130); and
8. Sexual Abuse of Children (Section 6312).

The "titled" sexual offenses, as I understand it, that will be gone if this legislation is adopted are:

1. Rape;
2. Statutory Rape;
3. Involuntary Deviate Sexual Intercourse;
4. Voluntary Deviate Sexual Intercourse;
5. (Simple) Indecent Assault;

6. Aggravated Indecent Assault; and
7. Spousal Sexual Assault.

So we, as trial judges, now have only two (2) crimes where "consent" is a defense and a third where "lack of consent" is a material element of the crime itself.

And of those three (3) crimes, the two (2) I am here to express a "viewpoint" on are the two (2) sexual assaults (simple and aggravated) where the terms "consent" or "lack of consent", although material to the outcome of the case, are not even alluded to in House Bill No. 160. Instead, if this legislation is adopted as written, we will continue to use the term "forcible compulsion" or "threat of forcible compulsion" which came about several years ago when the Pennsylvania State Legislature employed that term to convey the thought that the result produced by the sexual act must be non-voluntary. The Legislature did not want to describe the character of the force that would bring about that result.

Beginning on line 12 of House Bill No. 160, we find that "Simple Sexual Assault" is defined as "when the defendant engages in a sexual act with another person by **forcible compulsion or threat of forcible compulsion**". (Parenthetically, I assume "Aggravated Assault", which is to apply where "an aggravating circumstance is present", was to have the same wording but does not include the words "threat of forcible compulsion".)

But be that as it may, I venture to say that if I were to ask you what "**forcible compulsion**" or "**threat of forcible compulsion**" meant - as opposed to the term "consent" or "lack of consent" - at

least as it is to be applied to a sexual assault, that each one of you would give me a different answer. My proposition is supported by the fact that someone decided in the April 7, 1992, "revisions" to totally eliminate the definition of that term because it was, at best, unwieldy, if not meaningless. And when it was put back into this 1993 Bill, the definition was far different than what it was in the 1991 House Bill. I further suggest to you that your task would become no easier if I were to ask you to first read the definition, which begins on line 9, and I quote:

"Forcible compulsion" means "To compel by use of physical, intellectual, moral, emotional or psychological force, either expressed or implied".

I say this even though I am well aware of where that definition came from. It came from our Pennsylvania Supreme Court's landmark decision of Commonwealth v. Rhodes, reported at 510 A.2d 1217 (1986), where, for the first time, the highest court in our state sought to define what the Legislature meant by the use of the term "forcible compulsion".

It would be my suggestion - and that is why I am here today - that you not only eliminate that term from the definition section of the Bill . . . but that you totally eliminate any and all references to it in the legislation . . . because its continued use by judges and juries will only lead to more confusion. And this is especially so when you consider what you have added to it in House Bill No. 161 including, but not limited to, those legal words of art, "either expressed or implied".

My original plan was to have you listen to a judge's instruction on "forcible compulsion" or "threat of forcible compulsion" and then ask you whether the use of that term by the judge in trying to explain the law to a lay jury makes it easier or harder for you, as a juror, to decide whether the criminal act of "sexual assault" - as defined by the use of the words "forcible compulsion" or "threat of forcible compulsion" - has any meaningful application to a particular set of facts. Facts, perhaps, similar to the ones you may have heard in my Maple Grove Raceway "date rape" case or in my Kutztown College co-ed dormitory case.

However, time will not permit me to read from my charge although it may become helpful later during the Round Table discussion.

What I would further suggest is that you simply **separate all other kinds of force from physical force.** Because "**forcible compulsion**", no matter how hard a judge tries to explain what it means to a jury, is still force . . . and force, to a layperson, implies some kind of "physical force". And this, in my mind, may very well be the reason we are getting verdicts that do not reflect the contempt we, in today's society, have for anyone's sexual domination over another.

Wouldn't it be far easier if you would go back to the common law that said that "a person commits a 'sexual assault' any time one engages in a sexual act without the other person's consent"; but then go on to set forth those circumstances in which a person is deemed to not have consented to the act.

Perhaps we could say that one acts **without the consent** of another if the victim is:

1. Mentally disabled or incapacitated;
2. Physically helpless;
3. Physically forced to submit; or
4. Is compelled to submit to a sexual act because of malicious intimidation.

You already have the definition of "Consent" beginning on line 19 as being the "Intelligent, informed and voluntary affirmation not to be construed as coerced or reluctant submission". "**Mentally disabled**" is defined on line 21, "mentally incapacitated" is defined on line 24 and "**Physically helpless**" is defined on line 29.

The term "**physical force**" should be defined in accordance with the "ordinary meaning" of that term as referenced in the Oxford English Dictionary, such as:

To exert physical strength of power upon another or to use physical strength to constrain the action of another person or to use violence or to violate or to ravish.

"**Malicious intimidation**" could have almost the same meaning as your "forcible compulsion" definition - except to eliminate the words "forcible" (which, again, I suggest implies physical force) and the words "either expressed or implied". I suggest that the wording could encompass one or more of the following:

- (a) To act under self-constraint and against one's natural impulses;
- (b) To exert mental or moral strength for the purpose of overcoming resistance; or
- (c) To influence, affect or control.

The Court, in Justice Larson's opinion in Commonwealth v. Rhoads, stated that there is one common thread to the meaning of the term "force" - or any of its synonyms ("compel", "coerce", "constrain", "oblige") and that is to make someone yield. Therefore, I would suggest that any definition used to define this illegal behavior, which is other than "physical force", encompass those concepts.

The reason I have chosen to encompass that behavior in the term "malicious intimidation" is because it is something that, I believe, everyone, at one time or other in their lives, experiences and, therefore, knows what it is. To be in fear because of "malicious intimidation" could come from something as simple as a change in a person's voice . . . but the effect, i.e., "fear", is as real as the threat of physical force. That, to me, is what we are trying to clarify in this new legislation.

My term, perhaps, together with the terms "compel", "coerce", "constrain", "oblige", etc., if used, needs to be clearly defined so that judges and jurors alike can apply them to the facts of a particular case with a greater degree of confidence than we can now apply to the term "forcible compulsion" or "threat of forcible compulsion".

In summary, and at the sake of repeating, let me say that it would be a lot easier if the crimes of "sexual assault" were considered, once again, in the context of "**consent**", "**incapacity**", "**force**" . . . together with the new term of "**malicious intimidation**", because the general public knows what those terms

mean. The same cannot be said of the term "forcible compulsion" or "threat of forcible compulsion".



HOUSE OF REPRESENTATIVES
DEMOCRATIC COMMITTEE

Handout #4

BILL ANALYSIS

BILL NUMBER: HB160 PN: 171

SPONSOR: Ritter

COMMITTEE: Judiciary

DATE: August 30, 1993

PROPOSAL/EXECUTIVE SUMMARY: To substantially overhaul and increase penalties for the sexual offense provisions of the Crimes Code and authorize certain expert witness testimony as to typical behavior patterns of victims in child abuse cases, such "syndrome" evidence having been prohibited by the Pennsylvania Supreme Court.

EXISTING LAW: Chapter 31 of Title 18, the Crimes Code, deals with the subject of "sexual offenses". §3101 is the "definitions" section of Chapter 31. §3102 deals with the subject of "mistake as to age". §3103 deals with the subject of "spouse relationships". §3105 deals with the subject of criminal complaints. §3106 deals with the subject of testimony of complainants. §3017 deals with the subject of nonresistance by victims. §3121 deals with the crime of rape. §3122 covers the crime of statutory rape. §3123 deals with the crime of "involuntary deviant sexual intercourse". §3124 deals with the subject of "voluntary deviate sexual intercourse". §3125 deals with the subject of "aggravated indecent assault". §3126 covers the subject of "indecent assault". §3127 deals with the crime of "indecent exposure". §3128 deals with the crime of "spousal sexual assault".

ANALYSIS: HB160 would repeal sections 3103, 3123, 3124, 3125, 3126, and 3128; combine the contents of the repealed sections in new provisions which do not eliminate any of the existing substantive crimes but rather rename them and upgrade certain penalties; and amend the other mentioned sections of the Crimes Code in particulars hereafter described. Also, HB160 would add §3108, 3109, 3110, 3129 and 3130 to the Crimes Code.

§3102 of the existing Crimes Code provides that whenever in Chapter 31 the criminality of conduct depends upon 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 14 years of age or older. But when the criminality depends upon 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.

HB160 would amend §3102 to provide that ignorance of a child's age is no defense at all whenever the criminality of conduct depends upon a child being below a certain age. Neither a misrepresentation of age by the child nor a bona fide belief that the child is over the specified age shall be a defense. Further, HB160 would modify §3102 to provide that whenever in Chapter 31 the degree of criminality of conduct depends upon a victim being mentally disabled, mentally incapacitated or "physically helpless", the higher degree of criminality of conduct shall apply only if the defendant knew or should have known of the victim's

condition. Parenthetically, the new concept of "physically helpless" is defined in HB160 as a condition in which a person is unconscious or physically unable to flee, or is physically unable to communicate an unwillingness to act.

§3105 of the Crimes Code would be amended by HB160 to provide that where a defendant is permitted to introduce evidence of the victim's failure to promptly report the alleged crime, the prosecution may introduce testimony regarding reasons for the failure to make prompt complaints.

§3107 currently provides that the alleged victim of a crime need not resist the actor in Chapter 31 prosecutions--however, this shall not be construed to prohibit a defendant from producing evidence that the alleged victim consented to the conduct in question. HB160 would amend §3107 to provide that the victim need not 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 resistance, or submission by the victim, shall not constitute consent.

Parenthetically, a definition of "consent" is added in §3101, to-wit: "Intelligent, informed and voluntary affirmation not to be construed as coerced or reluctant submission".

New §3108 would provide that evidence relating to the manner in which the victim was dressed at the time of the offense shall not be admissible in a Chapter 31 prosecution to suggest that the victim provoked the offense. Nothing in this section would be construed to prevent the introduction of evidence that would otherwise be relevant.

New §3109 would provide that a victim is considered incapable to consenting to a sexual act if the victim is 13 years of age or younger.

New §3110 would provide that no law enforcement officer, prosecuting attorney or other official shall require a victim of a Chapter 31 offense 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 prosecution of the alleged offense. Further, the section would provide that a victim's refusal to submit to a polygraph or other form of lie detector test shall not mitigate against the investigation, charging or prosecution of the pending case as originally charged.

§3121, formerly entitled "rape", would be retitled as "aggravated sexual assault". Under §3121, a defendant would be deemed to commit a felony of the first degree when the defendant engages in a sexual act (vaginal or anal intercourse, fellatio, or cunnilingus) with a person by forcible compulsion where an aggravating circumstance is present, or engages in such a sexual act with anyone incapable of consent. "Aggravating circumstance" would be defined in §3101 as involving any of the following:

(1) where the defendant is armed with a weapon or any object so fashioned as to leave the victim to reasonably believe it to be a weapon, and threatens by word or gesture to use such weapon or object; (2) where the defendant inflicts suffocation, strangulation, or serious bodily injury upon the victim or anyone else in the course of committing the offense; (3) where the defendant and one or more persons engage in a sexual act with the victim without consent; (4) where the act is committed during the commission or attempted commission of any other

felony by the defendant; (5) where the defendant serves in a position of authority over the victim (that is, a person who, in either a professional or voluntary capacity, is charged with the care, education, health, welfare or supervision of a victim and who exploits such relationship of trust or authority established in that professional or voluntary capacity) or is a family member of a victim under 18 years of age; (6) where the defendant commits the act upon a victim who is mentally disabled, mentally incapacitated, or "physically helpless". Again, the phrase "physically helpless" would be defined under HB160 to include anyone who is physically unable to flee the pending sexual offense.

Existing §3122, dealing with the subject of "statutory rape", would be retitled as "sexual assault". Under the revised §3122, a defendant would commit 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 without an aggravating circumstance being present or where the victim is capable of giving consent (at least 14 years old) but does not do so.

Clearly, the new format would upgrade what is presently called "statutory rape" from a second degree felony to a first degree felony even if the defendant reasonably believed or was lead to believe that the victim was at least 14 years of age. Proposed §3109 would provide, after all, that a victim is considered incapable of consenting to a sexual act if 13 years of age or younger. Also, under existing law, statutory rape can only be committed by a person 18 years of age or older. Under HB160, there would be no requirement that the defendant be substantially older or older at all than the alleged victim. If the alleged victim was under 14 years of age, then, even if the circumstances involved actual consent and the actor was himself under the age of 14, a first degree felony would be chargeable unless the matter is processed in Juvenile Court. See §6355 of Title 42.

The crime of "indecent exposure" under current §3127 is treated as a misdemeanor of the second degree under all circumstances. Under new HB160, it would generally continue to be a misdemeanor of the second degree, but would be a first degree misdemeanor if any of the persons "present" at the time of the exposure were known by the defendant or should have been known by him to be 13 years of age or younger. Because the crime involves exposure of the "genitals", it is assumed that the vulgarity and irreverence of "mooning" would not normally constitute "indecent exposure" under either the existing §3127 or the proposed revision. But one can visualize circumstances when it could, and under the revised version of §3127, such would constitute a first degree misdemeanor.

HB160 would introduce the crime of "indecent contact" under new §3129. A defendant would commit a second degree misdemeanor when he engages in "indecent contact with another person or causes such person to engage in indecent contact with the defendant" if done without the victim's consent. The crime would be a first degree misdemeanor as "aggravated indecent assault" if the defendant served in a position of authority in respect to the victim or was a family member of a victim under the age of 18, or if the defendant committed the act upon a victim who was mentally disabled, mentally incapacitated or "physically helpless" and such victim did not consent or if the defendant was over 18 years of age and the victim was incapable of consent. "Indecent contact" is defined as the "touching by the victim or defendant of the victim's or defendant's intimate parts either directly or indirectly", and the existing requirement that the touching be

done for the purpose of arousing or gratifying sexual desire would be discarded. Consider the ritualistic buttocks-pattings in athletics. Note that under HB160 the crime of "aggravated sexual assault" in §3121 would be a first degree felony, and the crime of "aggravated indecent assault" under §3129(b) would be a first degree misdemeanor--the former involving penetration, the latter fondling or patting.

Proposed new §3130 would deal with the crime of "sexual exploitation of child". A defendant would commit a first degree felony where he 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 victim is under 14 years of age, forcible compulsion need not be proven. It would be a defense to the charge of sexual exploitation of children that the defendant was compelled to commit the offense by either the use of physical force or a threat which placed the defendant in fear of immediate death, serious bodily injury, loss of personal liberty or retaliation.

Though the primary emphasis of HB160 is on Chapter 31, Title 18 "Sexual Offense Prosecutions", the Bill does touch upon other sections of the Crimes Code and the Judicial Code.

It would downgrade the seriousness of the offense of "incest" under §4302 by redefining incest to apply to only consensual acts of the Crimes Code from a second degree felony to a first degree misdemeanor and eliminate from the scope of such crime marriage or sexual intercourse between parent and child by adoption. Every sexual assault by an adult of a child of the family has an increased penalty to first degree felony penalty.

Under §4303, it is third degree misdemeanor to conceal the death of a child born out of wedlock. HB160 would eliminate the illegitimacy aspects so that henceforth it would be such a crime to conceal the death of a person's child whether born out of wedlock or not.

§6312 of the Crimes Code deals with the subject of "sexual abuse of children", making it a separate crime to photograph or film for sexual stimulation or gratification viewing purposes children under the age of 17 years engaging in sexual acts or in the simulation of such acts, and criminalizing as well the dissemination of photographs and films showing such prohibited sexual acts or simulations of such acts by children under the age of 17. It also criminalizes the possession of child pornography depicting children under the age of 17. Under current §6312(e), if a person involved in a prohibited sexual act depicted in a photo or film is alleged to be a child under the age of 17, competent expert testimony shall be sufficient to establish the age of such person.

§6312 would be amended by HB160 to include the videotaping of "sexual acts" as well as their photographing or filming. Also, the crime would exist where any depicted child is under the age of 18, and not just under 17 as the law presently reads. It would be no defense to a charge of photographing, videotaping or filming such sexual acts by children or disseminating such photographs, videotapes and films or possessing child pornography that the actor did not know the age of the child. Neither a misrepresentation of age by the child or bona fide belief that the child was over the specified age would be a defense. Nor, obviously, would the consent of such "child" be a defense.

that there are no such reliably "typical" behavior patterns.

Proposed new §5991 of the Judicial Code would provide that 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 of competency may be rebutted by evidence to the contrary. Further, the new section would provide that a child shall be disqualified to be a witness if the court finds that the child is incapable of expressing himself or herself concerning the matters 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 or where the proposed child victim witness is incapable of understanding the duty of a witness to tell the truth. On the other hand, the section says that a child under the age of 10, in the trial court's discretion, need not take an oath or make an affirmation or declaration but only be required to promise to tell the truth.

Effective dates of HB160 provisions: The amendment or addition of sections of Title 18, the Crimes Code, would apply to offenses committed on or after the effective date of HB160. The additions of §5989, 5990, and 5991 to Title 42 would apply to any court proceedings conducted on or after the effective date of HB160 even if the alleged crime was committed theretofore. The overall act would take effect in 60 days, including the technical amendments to Title 23.

PREPARED BY: Edward A. Mihalik, Esq. / Representative Karen Ritter
(717) 787-3569 (717) 787-5762

Suggested changes are
marked - no amendment has yet
been prepared.

HOUSE BILL 160
Session of 1993

INTRODUCED BY RITTER, DeWEESE, E. Z. TAYLOR, HERMAN, DEMPSEY,
TRELLO, COY, STEELMAN, PESCI, ROONEY, LAUGHLIN, LaGROTTA,
DALEY, KELLER, CAPPABIANCA, GORDNER, ULIANA, BEBKO-JONES,
STABACK, CURRY, KIRKLAND, BISHOP, SAYLOR, BUTKOVITZ, PRESTON,
HANNA, JOSEPHS AND TRICH, FEBRUARY 1, 1993

REFERRED TO COMMITTEE ON RULES, FEBRUARY 1, 1993

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 and 3102 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:

(1) 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.

(2) The defendant inflicts suffocation, strangulation or
serious bodily injury upon the victim or anyone else in the
course of committing the offense.

→ (3) The defendant and one or more other persons engage
in a sexual act with the victim without consent, WHETHER THE
ACTS OCCUR CONCURRENTLY OR CONSECUTIVELY.

(4) The act is committed during the commission or
attempted commission of any other felony by the defendant.

(5) The defendant serves in a position of authority in
respect to the victim.

→ (6) THE DEFENDANT is a family member OF VICTIM, OR IS A
PARAMOUR OR COMPANION OF PARENT of victim, AND THE VICTIM IS
under 18 years of age.

(7) The defendant commits the act upon a victim who is
mentally disabled, mentally incapacitated or physically
helpless.

"Consent." Intelligent, informed and voluntary affirmation
not to be construed as coerced or reluctant submission.

"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." The term includes:

- (1) A parent, step-parent, ADOPTIVE or foster parent.
(2) A grandparent or step-grandparent.
(3) A sibling, whether by whole blood, half-blood,

→ ADOPTION or a step-sibling.

(4) Anyone who, by virtue of living arrangement, acts in a position of authority over a victim under 18 years of age within the household.

"Forcible compulsion." To compel by use of physical, intellectual, moral, emotional or psychological force, either expressed or implied.

"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.

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.

["Sexual intercourse." In addition to its ordinary meaning, includes intercourse per os or per anus with some penetration however slight; emission is not required.]

"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.

(a) [Whenever in this chapter the criminality of conduct depends on a child being below ^{a certain} ~~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 ^{above the critical age.} ~~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) Ignorance of age not defense.--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) Victim with a disability.--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

* Suggestion made: eliminate this new language and revise old language as marked.

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 5. Sections 3121 and 3122 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).]

§ 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 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 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 defendant commits a felony of the second degree when the defendant engages in a sexual act with another person WITHOUT CONSENT OR by forcible compulsion or threat of forcible compulsion.

Section 6. Sections 3123, 3124, 3125 and 3126 of Title 18 are repealed.

Section 7. Section 3127 of Title 18 is amended to read:

§ 3127. 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 OR COMPELS ANOTHER PERSON TO EXPOSE HIS OR HER OWN GENITALS in any public place or in any place where there are present other persons under circumstances in which he or she knows OR SHOULD KNOW THAT ~~his or her~~ conduct is likely to offend, affront or alarm. If the defendant knows or should have known that any of the persons present are 13 years of age or younger, indecent exposure is a misdemeanor of the first degree.

Section 8. Section 3128 of Title 18 is repealed.

Section 9. Title 18 is amended by adding sections to read:
§ 3129. Indecent contact.

(a) Offense defined generally.--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.

(b) Aggravated indecent assault.--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:

(1) the defendant serves in a position of authority in respect to the victim;

→ (2) THE DEFENDANT is a family member, OR IS A PARAMOUR OR COMPANION OF PARENT of victim, AND THE VICTIM IS under 18 years of age;

(3) the defendant commits the act upon a victim who is mentally disabled, mentally incapacitated or physically helpless if the defendant does so without the victim's consent; or

→ (4) ~~the defendant is over 18 years of age~~ and the victim is incapable of consent.

§ 3130. Sexual PROCUREMENT ~~exploitation~~ of child.

Offense defined.--

→ (A) 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 acts, SADISM OR MASOCHISM 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 INCAPABLE OF CONSENT, ~~under 14 years of age,~~ forcible compulsion need not be proven.

(B) A DEFENDANT COMMITS A FELONY OF THE SECOND DEGREE WHEN THE DEFENDANT ACTIVELY PROCURES OR ARRANGES TO PROCURE FOR ANOTHER PERSON A CHILD 18 YEARS OF AGE OR YOUNGER FOR THE PURPOSE OF ENGAGING IN TOUCHING OR FONDLING OF INTIMATE PARTS OR MASTURBATION OR NUDITY, BY THE VICTIM OR ANOTHER PERSON.

~~(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, bestiality, sadism and masochism.~~

§ 3131. SEXUAL EXPLOITATION OF CHILD.

OFFENSE DEFINED.--A DEFENDANT COMMITS A FELONY OF THE THIRD DEGREE WHEN THE DEFENDANT KNOWINGLY ALLOWS A CHILD 13 YEARS OF AGE OR YOUNGER TO VIEW ANY SEXUAL ACT BY THE DEFENDANT OR BY ANY OTHER PERSONS, WHETHER LIVE OR ON VIDEOTAPE.

Section 10. Sections 4302, 4303 and 6312 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 [intercourse, anal intercourse] acts as defined in section 3101 (relating to definitions), masturbation, bestiality, sadism, masochism, [fellatio, cunnilingus,] lewd exhibition of the genitals or nudity if such nudity is [depicted] photographed, videotaped or filmed OR DEPICTED ON A COMPUTER for the purpose of sexual stimulation or gratification of any person who might view such [depiction] photograph, videotape, film, OR COMPUTER DEPICTION.

→ (b) Photographing, videotaping, DEPICTING ON COMPUTER, 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, videotaped,
→ DEPICTED ON COMPUTER or filmed. Any person who knowingly
→ photographs, videotapes, DEPICTS ON COMPUTER 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, videotapes, COMPUTER
DEPICTIONS 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]
→ containing photographs, videotapes, COMPUTER DEPICTIONS or films
of 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]
→ containing photographs, videotapes, COMPUTER DEPICTIONS or films
of 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.--Under subsections (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 the person is over the specified age shall be a defense.

(f) Exceptions.--This section does not apply to any material that is possessed, controlled, brought or caused to be brought into this Commonwealth, or presented for a bona fide educational, scientific, governmental or judicial purpose.

Section 11. 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 involuntary deviate sexual intercourse)];

(7) 18 Pa.C.S. § 3126 (relating to indecent assault);

(8)] (6) 18 Pa.C.S. § 3127 (relating to indecent exposure);

(7) 18 Pa.C.S. § 3129 (relating to indecent contact);

(8) 18 Pa.C.S. § 3130 (relating to sexual ~~exploitation~~ ^{procurement} of child);

(9) § 3131 - sexual exploitation

(10) 18 Pa.C.S. § 4302 (relating to incest);

[(11)] (10) 18 Pa.C.S. § 4304 (relating to endangering welfare of children);

[(12)] (12) 18 Pa.C.S. § 5902(b) (relating to prostitution and related offenses); or

[(13)] (13) 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

* * *

Section 12. 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 13. 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, [incest] indecent contact, prostitution or other forms of sexual ^{procurement or} 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 14. 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 3127 (relating to indecent exposure).

Section 3129 (relating to indecent contact).

Section 3130 (relating to sexual ^{procurement} ~~exploitation~~ of child).

Section 3131 -
Section 4303 (relating to ^{Sexual exploitation} 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 15. 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 3129 (relating to indecent contact).

Section 3130 (relating to sexual ^{procurement} exploitation of child).

Section 3131 - sexual exploitation

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 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 3127 (relating to indecent exposure).

Section 3129 (relating to indecent contact).

Section 3130 (relating to sexual ^{procurement} ~~exploitation~~ of child).

Section 3131 - Sexual exploitation

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 16. 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 17. 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 and 5991 shall apply to proceedings conducted on or after the effective date of this act.

Section 18. This act shall take effect in 60 days.