



**Pennsylvania
Commission
on
Sentencing**

TESTIMONY

House Judiciary Committee

Public Hearing on HB 1625

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Chair**

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Vice Chair**

**Mark H. Bergstrom
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Good morning Chairman Caltagirone, Chairman Marsico and members of the House Judiciary Committee. I am Mark Bergstrom, Executive Director of the Pennsylvania Commission on Sentencing. Thank you for providing this opportunity to comment very briefly on the offense of Indecent Assault (18 Pa.C.S. §3126) and the amendments proposed in HB 1625.

As you may be aware, the indecent assault statute was substantially amended during the 1995 Special Session on Crime (Act 10 of 1995, Special Session 1) as part of a comprehensive re-writing of sexual offenses (Title 18, Chapter 31). As a result of those amendments, indecent assault was generally classified as a Misdemeanor of the Second Degree, with the one exception being indecent assault of a victim less than 13 years of age, which was classified as a misdemeanor of the first degree.

In 2005, the indecent assault statute was again amended (Act 76 of 2005), resulting in the re-classification of numerous subsections. While subsections (a)(1) (indecent assault without consent) and (a)(8) (victim less than 16 years of age and offender at least four years older) remained classified as an M2, those subsections including forcible compulsion and victim impairment were increased to an M1, and subsection (a)(7) (victim less than 13 years of age) was increased to an F3 when certain aggravating factors were present. Based on these recent amendments to the statute, the Commission provided three levels of recommendations in the sentencing guidelines (i.e., OGS 4 for M2 convictions; OGS 5 for M1 convictions; and OGS 6 for F3 convictions).

OGS	Examples	0	1	2	3	4	5	RFEL	REVOC	AGG/MIT
6 (F3)	(a)(7) 2nd & subseq.	3-12 BC	6-14 BC	9-16 BC	12-18 BC	15-21 BC	21-27 BC	27-40 BC	NA	+/- 6
5 (M1)	(a)(2) - (a)(7)	RS-9	1-12 BC	3-14 BC	6-16 BC	9-16 BC	12-18 BC	24-36 BC	NA	+/- 3
4 (M2)	(a)(1), (a)(8)	RS-3	RS-9	RS-12	3-14	6-16 BC	9-16 BC	21-30 BC	NA	+/- 3

HB 1625 (PN 2023), if adopted, would increase the grading of an offense under subsection (a)(1) (without consent) from an M2 to M1; increase the grading of an offense under subsection (a)(7) (victim under 13 years of age, no aggravating factors) from an M1 to an F3; and increase the grading of an offense under subsection (a)(8) (victim under 16 years of age and offender at least four years older)

from an M2 to an F3. Only the proposed change to the grading of subsection (a)(8) would trigger an immediate change in the sentencing guideline recommendations; an increase from an M2 to an F3 would automatically increase the offense gravity score (OGS) assignment from an OGS 4 to an OGS 5. Aside from sentencing, this bill would also amend the Juvenile Act (42 Pa.C.S. §6302) to include all convictions for indecent assault by a parent under the definition of 'aggravated circumstances' in matters relating to dependent children.

During calendar year 2008, 1,148 sentences were reported to the Commission for convictions under the indecent assault statute (18 Pa.C.S. §3126) (Attachment 1), involving 438 unique offenders (Attachment 2). Of the 25 individuals convicted under subsection (a)(8), two (8%) received a state prison sentence with an average minimum sentence of 12.0 months; 11 (44%) received a county jail sentence with an average minimum sentence of 4.1 months; and 12 (48%) received a probation sentence with an average term of 21.9 months.

Based on a simulation of sentences imposed for similar offenses, the changes proposed in HB 1625 would increase the number of admissions to state prison from two to seven, and would increase the average minimum sentence for those presently receiving a DOC sentence from 12 months to 15.2 months. The result would be a need for 2,505 additional bed-days (82.4 months), or approximately 7 additional state prison beds each year.

While this is a relatively small impact, I think it is important to note that changes to the grade of one offense or one subsection of a statute may have ripple effects across other statutes. A decision to apply the penalties for indecent assault involving a victim less than 13 years of age to an incident involving a victim less than 16 years of age could bring into question the age-based provisions of rape (18 Pa.C.S. §3121) and IDSI (18 Pa.C.S. §3123) as well as the age-based mandatory sentencing statutes (42 Pa.C.S. §9718). As noted in a recent report submitted to this Committee by law students of the University of Pennsylvania, there may be a need for a comprehensive review of the classification of offenses in Pennsylvania, and such a review should address any changes to the assignment of grades for indecent assault and the other Chapter 31 sexual offenses.

I hope this information is helpful as you consider the legislation before you. Thank you again for providing this opportunity to testify.

Pennsylvania Commission on Sentencing

Summary of Sentences by Offense Category, Statewide, 2008

Unit of Analysis: All Offenses

Year	Section	Offense Description	Code	Count	Min	Max	Avg	Std Dev	Min	Max	Avg	Std Dev	Min	Max	Avg	Std Dev	Min	Max	Avg	Std Dev			
18	3126	Indecent Assault	M-2	4	177	30	17	8.8	23.4	-	-	49	28	4.9	19.5	-	-	64	35	20.1	34	19	
		Indecent Assault - Complainant Suffers Mental Disability	M-1	5	8	-	-	-	-	-	-	4	50	9.5	23.2	-	-	3	38	36.0	1	13	
		Indecent Assault - Complainant Unconscious	M-1	5	20	4	20	16.8	51.0	-	-	11	55	5.2	19.5	-	-	5	25	44.4	-	-	
		Indecent Assault - Forcible Compulsion	M-1	5	47	12	26	12.5	36.4	-	-	16	34	7.3	21.6	-	-	15	32	37.2	4	9	
		Indecent Assault - Person Under 13 Yrs.	M-1	5	358	139	39	13.4	41.3	-	-	81	23	7.4	21.5	1	<1	4.0	98	27	45.9	39	11
		Indecent Assault - Person Under 13 Yrs/Course of Conduct	F-3	5	20	14	70	12.6	32.0	-	-	1	5	10.0	23.0	-	-	5	23	74.4	-	-	
		Indecent Assault - Person Under 13 Yrs/Touching Sexual Parts	F-3	5	21	9	43	26.3	58.0	-	-	5	24	8.6	23.4	-	-	5	24	50.4	2	10	
		Indecent Assault - Person Under 13 yrs/2nd or Subsq	F-3	5	4	4	100	15.8	48.0	-	-	-	-	-	-	-	-	-	-	-	-	-	
		Indecent Assault - Person Under 16 Yrs.	M-2	4	192	53	28	6.5	17.9	-	-	29	15	4.6	19.3	-	-	66	34	21.8	44	23	
		Indecent Assault - Substantially Impaired Complainant	M-1	5	3	1	33	12.0	24.0	-	-	2	67	10.5	23.5	-	-	-	-	-	-	-	
		Indecent Assault - Threat of Forcible Compulsion	M-1	5	9	3	33	21.0	42.0	-	-	2	22	7.0	23.7	-	-	2	22	24.0	2	22	
		Indecent Assault - Without Consent	M-2	4	289	29	10	9.6	22.1	-	-	84	29	4.0	18.6	-	-	136	47	20.6	40	14	
		Subtotal			1,148	298	26	11.8	33.5	-	-	284	25	5.7	20.1	1	<1	4.0	399	35	29.1	166	14
To					1,148	298	26	11.8	33.5	-	-	284	25	5.7	20.1	1	<1	4.0	399	35	29.1	166	14

Based on information reported on paper and electronic Guideline Sentence Forms to the Commission on Sentencing; therefore the Commission warrants neither the accuracy nor completeness of the data herein provided.

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Pennsylvania Commission on Sentencing

Summary of Sentences by Offense Category, Statewide, 2008

Unit of Analysis: Most Serious Offense per Body

Title	Section	Offense Description	Grade	OGS	Total Number	State Prison				County Jail				CIP		Probation		Other RS					
						Num	%	Mean Min	Mean Max	Num	%	Mean Min	Mean Max	Num	%	Length of RIP	Num	%	Length of Probation	Num	%		
18	3126	Indecent Assault	M-2	4	70	6	9	10.7	24.0	-	-	29	41	4.5	19.7	-	-	-	33	47	19.1	2	3
		Indecent Assault - Complainant Suffers Mental Disability	M-1	5	6	-	-	-	-	-	-	4	67	9.5	23.2	-	-	-	2	33	42.0	-	-
		Indecent Assault - Complainant Unconscious	M-1	5	17	2	12	23.0	60.0	-	-	11	65	5.2	19.5	-	-	-	4	24	40.5	-	-
		Indecent Assault - Forcible Compulsion	M-1	5	23	3	13	14.0	28.0	-	-	13	57	7.2	21.2	-	-	-	7	30	37.7	-	-
		Indecent Assault - Person Under 13 Yrs.	M-1	5	120	33	28	15.2	44.4	-	-	56	47	7.5	22.0	1	<1	4.0	29	24	44.0	1	<1
		Indecent Assault - Person Under 13 Yrs/Course of Conduct	F-3	5	2	1	50	12.0	36.0	-	-	1	50	10.0	23.0	-	-	-	-	-	-	-	-
		Indecent Assault - Person Under 13 Yrs/Touching Sexual Parts	F-3	5	9	3	33	25.0	50.0	-	-	4	44	7.9	23.5	-	-	-	2	22	54.0	-	-
		Indecent Assault - Person Under 16 Yrs.	M-2	4	25	2	8	12.0	24.0	-	-	11	44	4.1	20.7	-	-	-	12	48	21.9	-	-
		Indecent Assault - Substantially Impaired Complainant	M-1	5	1	-	-	-	-	-	-	1	100	9.0	23.0	-	-	-	-	-	-	-	-
		Indecent Assault - Threat of Forcible Compulsion	M-1	5	3	1	33	9.0	18.0	-	-	2	67	7.0	23.7	-	-	-	-	-	-	-	-
		Indecent Assault - Without Consent	M-2	4	162	11	7	10.4	23.4	-	-	61	38	4.2	19.8	-	-	-	89	55	20.3	1	<1
	Subtotal				438	62	14	14.3	37.5	-	-	193	44	6.7	20.8	1	<1	4.0	178	41	25.8	4	<1
	To				438	62	14	14.3	37.5	-	-	193	44	6.7	20.8	1	<1	4.0	178	41	25.8	4	<1

Based on information reported on paper and electronic Guideline Sentence Forms to the Commission on Sentencing; therefore the Commission warrants neither the accuracy nor completeness of the data herein provided.

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Sub-section	Description	Grade Current	Grade Proposed	OGS			N in 2008 (persons)
				6th Ed.	Rev.	Omnibus	
(a)	Indecent Assault	M-2	M-1	4	same	3	70
(a)(1)	-without consent	M-2	M-1	4	same	3	162
(a)(2)	-forcible compulsion	M-1	M-1	5	same	3	23
(a)(3)	-threat of forcible compulsion	M-1	M-1	5	same	3	3
(a)(4)	-complainant unconscious	M-1	M-1	5	same	3	17
(a)(5)	-substantially impaired complainant	M-1	M-1	5	same	3	1
(a)(6)	-complainant suffers mental disability	M-1	M-1	5	same	3	6
(a)(7)	-person under 13 yrs.	M-1	F-3	5	same	5	120
(a)(7)	-person under 13 yrs./course of conduct	F-3	F-3	5	6	5	2
(a)(7)	-person under 13 yrs./touching sexual	F-3	F-3	5	6	5	9
(a)(7)	-person under 13 yrs./2nd or subsequent	F-3	F-3	5	6	5	0
(a)(8)	-person under 16 yrs.	M-2	F-3	4	same	5	25

PENNSYLVANIA COMMISSION ON SENTENCING
18-3126 -- INDECENT ASSAULT
HB 1625
FEBRUARY 26, 2010

Proposed change in grade

○ Anticipated OGS

	N in 2008 (persons)	% Prison	N Prison	Ave. P. Min.	Ave. P. Max.	% Jail	N Jail	Ave. J. Min.	Ave. J. Max.	% Prob.	N Prob.
(a)(7) -person under 13 yrs.	120	28%	33	15.2	44.4	47%	56	7.5	22.0	24%	29
(a)(8) -person under 16 yrs.	25	8%	2	12.0	24.0	44%	11	4.1	20.7	48%	12
Difference in % Location and in Average Sentences		20%	↓ 28% of 25 5 additional	3.2	20.4	3%	↓ 47% of 25 1 additional	3.4	1.3	-24%	↓ 24% of 25 6 fewer

- * Expect that (a)(8) 'person under 16 years' (N=25) would shift to omnibus OGS of 5 and begin to follow a pattern similar to (a)(7) 'person under 13 years'. Expect no changes in sentencing patterns in all other subsections due to the OGS already being the same or higher than the OGS of the proposed grade. The cumulative effect in sentencing would be 5 additional prison sentences and 1 additional jail sentence with 6 fewer probation sentences. The sentence minimum could be expected to average 15.2 months prison and 7.5 months jail [as it is now for the comparable (a)(7) offense]. The sentence maximum could be expected to average 44.4 months prison and 22.0 months jail [as it is now for the comparable (a)(7) offense].