

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 28 Session of 2013

INTRODUCED BY BROWNE, LEACH, SCARNATI, PILEGGI, VANCE, BAKER, WAUGH, TOMLINSON, WARD, WASHINGTON, FONTANA, YUDICHAK, ERICKSON, RAFFERTY, SCHWANK, TARTAGLIONE, TEPLITZ, FOLMER, SOLOBAY, KASUNIC, FARNESE, BOSCOLA, HUGHES, COSTA, WILLIAMS AND STACK, MARCH 15, 2013

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, OCTOBER 1, 2013

AN ACT

1 Amending ~~Titles~~ TITLE 18 (Crimes and Offenses), ~~23~~ (Domestic <--  
2 ~~Relations~~) and ~~42~~ (Judiciary and Judicial Procedure) of the  
3 Pennsylvania Consolidated Statutes, in assault, further  
4 providing for the offense of simple assault and for the  
5 offense of aggravated assault; ~~in offenses against the~~ <--  
6 ~~family, further providing for the offense of endangering~~  
7 ~~welfare of children;~~ AND, in falsification and intimidation, <--  
8 providing for the offense of false reports of child abuse and  
9 for the offense of intimidation or retaliation in child abuse  
10 cases; ~~in wiretapping and electronic surveillance, providing~~ <--  
11 ~~for administrative subpoena; in child protective services,~~  
12 ~~providing for exclusions from child abuse; and in sentencing,~~  
13 ~~further providing for sentences for offense against infant~~  
14 ~~persons.~~

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

17 Section 1. Section 2701(a) and (b) (2) of Title 18 of the  
18 Pennsylvania Consolidated Statutes are amended to read:

19 § 2701. Simple assault.

20 (a) Offense defined.--[A] Except as provided under section  
21 2702 (relating to aggravated assault), a person is guilty of  
22 assault if he:

1 (1) attempts to cause or intentionally, knowingly or  
2 recklessly causes bodily injury to another;

3 (2) negligently causes bodily injury to another with a  
4 deadly weapon;

5 (3) attempts by physical menace to put another in fear  
6 of imminent serious bodily injury; or

7 (4) conceals or attempts to conceal a hypodermic needle  
8 on his person and intentionally or knowingly penetrates a law  
9 enforcement officer or an officer or an employee of a  
10 correctional institution, county jail or prison, detention  
11 facility or mental hospital during the course of an arrest or  
12 any search of the person.

13 (b) Grading.--Simple assault is a misdemeanor of the second  
14 degree unless committed:

15 \* \* \*

16 (2) against a child under 12 years of age by [an adult  
17 21] a person 18 years of age or older, in which case it is a  
18 misdemeanor of the first degree.

19 Section 2. Section 2702(a)(6) and (7) and (b) of Title 18  
20 are amended and subsection (a) is amended by adding paragraphs  
21 to read:

22 § 2702. Aggravated assault.

23 (a) Offense defined.--A person is guilty of aggravated  
24 assault if he:

25 \* \* \*

26 (6) attempts by physical menace to put any of the  
27 officers, agents, employees or other persons enumerated in  
28 subsection (c), while in the performance of duty, in fear of  
29 imminent serious bodily injury; [or]

30 (7) uses tear or noxious gas as defined in section

1 2708(b) (relating to use of tear or noxious gas in labor  
2 disputes) or uses an electric or electronic incapacitation  
3 device against any officer, employee or other person  
4 enumerated in subsection (c) while acting in the scope of his  
5 employment[.];

6 (8) attempts to cause or intentionally, knowingly or  
7 recklessly causes bodily injury to a child less than six  
8 years of age, by a person 18 years of age or older; or

9 (9) attempts to cause or intentionally, knowingly or  
10 recklessly causes serious bodily injury to a child less than  
11 13 years of age, by a person 18 years of age or older.

12 (b) Grading.--Aggravated assault under subsection (a) (1)  
13 [and], (2) and (9) is a felony of the first degree. Aggravated  
14 assault under subsection (a) (3), (4), (5), (6) [and (7)], (7)  
15 and (8) is a felony of the second degree.

16 \* \* \*

17 ~~Section 3. Section 4304(a) (2) and (b) of Title 18 are~~ <--  
18 ~~amended and subsection (a) is amended by adding paragraphs to~~  
19 ~~read:~~

20 ~~§ 4304. Endangering welfare of children.~~

21 ~~(a) Offense defined.~~

22 ~~\* \* \*~~

23 ~~(2) A person commits an offense if the person[, in an~~  
24 ~~official capacity,] intentionally or knowingly prevents or~~  
25 ~~interferes with the making of a report of suspected child~~  
26 ~~abuse under 23 Pa.C.S. Ch. 63 (relating to child protective~~  
27 ~~services).~~

28 ~~(2.1) A person commits an offense if the person:~~

29 ~~(i) is 18 years of age or older and resides in the~~  
30 ~~home of a child or is a paramour of a parent of the~~

1 child;

2 ~~(ii) has knowledge or reason to believe that the~~  
3 ~~child is being endangered as described in paragraph (1);~~

4 and

5 ~~(iii) fails to report the endangerment under 23~~  
6 ~~Pa.C.S. Ch. 63.~~

7 ~~(2.2) A person commits an offense if the person~~  
8 ~~intentionally or knowingly acts to prevent the discovery by~~  
9 ~~law enforcement or a county agency of an abused or neglected~~  
10 ~~child under 23 Pa.C.S. Ch. 63.~~

11 ~~\* \* \*~~

12 ~~(b) Grading. [An] Except for an offense under subsection~~  
13 ~~(a) (2.2), an offense under this section constitutes a~~  
14 ~~misdemeanor of the first degree. However, where there is a~~  
15 ~~course of conduct of endangering the welfare of a child, the~~  
16 ~~offense constitutes a felony of the third degree. An offense~~  
17 ~~under subsection (a) (2.2) constitutes a felony of the third~~  
18 ~~degree.~~

19 Section 4 3. Title 18 is amended by adding sections to read: <--  
20 § 4906.1. False reports of child abuse.

21 Any person who intentionally makes a false report of  
22 suspected child abuse against a person, school, private <--  
23 residential rehabilitative institution, detention facility,  
24 school employee, private residential rehabilitative institution  
25 employee or detention facility EMPLOYEE, PRIVATE RESIDENTIAL <--  
26 REHABILITATIVE INSTITUTION EMPLOYEE, DETENTION FACILITY EMPLOYEE  
27 OR CHILD-CARE SERVICES employee commits a misdemeanor of the  
28 second degree.

29 § 4958. Intimidation or retaliation in child abuse cases.

30 (a) Intimidation.--A person commits an offense if:

1           (1) The person has knowledge or intends that the  
2 person's conduct under paragraph (2) will obstruct, impede,  
3 impair, prevent or interfere with the making of a child abuse  
4 report or the conducting of an investigation into suspected  
5 child abuse under 23 Pa.C.S. Ch. 63 (relating to child  
6 protective services) or prosecuting a child abuse case.

7           (2) The person intimidates or attempts to intimidate any  
8 reporter, victim or witness to engage in any of the following  
9 actions:

10           (i) Refrain from making a report of suspected child  
11 abuse or not cause a report of suspected child abuse to  
12 be made.

13           (ii) Refrain from providing or withholding  
14 information, documentation, testimony or evidence to any  
15 person regarding a child abuse investigation or  
16 proceeding.

17           (iii) Give false or misleading information,  
18 documentation, testimony or evidence to any person  
19 regarding a child abuse investigation or proceeding.

20           (iv) Elude, evade or ignore any request or legal  
21 process summoning the reporter, victim or witness to  
22 appear to testify or supply evidence regarding a child  
23 abuse investigation or proceeding.

24           (v) Fail to appear at or participate in a child  
25 abuse proceeding or meeting involving a child abuse  
26 investigation to which the reporter, victim or witness  
27 has been legally summoned.

28           (b) Retaliation.--A person commits an offense if the person  
29 harms another person by any unlawful act or engages in a course  
30 of conduct or repeatedly commits acts which threaten another

1 person in retaliation for anything that the other person has  
2 lawfully done in the capacity of a reporter, witness or victim  
3 of child abuse.

4 (c) Grading.--

5 (1) An offense under this section is a felony of the  
6 second degree if:

7 (i) The actor employs force, violence or deception  
8 or threatens to employ force, violence or deception upon  
9 the reporter, witness or victim or, with reckless intent  
10 or knowledge, upon any other person.

11 (ii) The actor offers pecuniary or other benefit to  
12 the reporter, witness or victim.

13 (iii) The actor's conduct is in furtherance of a  
14 conspiracy to intimidate or retaliate against the  
15 reporter, witness or victim.

16 (iv) The actor accepts, agrees or solicits another  
17 person to accept any pecuniary benefit to intimidate or  
18 retaliate against the reporter, witness or victim.

19 (v) The actor has suffered a prior conviction for a  
20 violation of this section or has been convicted under a  
21 Federal statute or statute of any other state of an act  
22 which would be a violation of this section if committed  
23 in this Commonwealth.

24 (2) An offense not otherwise addressed in paragraph (1)  
25 is a misdemeanor of the second degree.

26 (d) Definitions.--The following words and phrases when used  
27 in this section shall have the meanings given to them in this  
28 subsection unless the context clearly indicates otherwise:

29 "Child abuse." Except as otherwise provided in 23 Pa.C.S. § <--  
30 6304 (relating to exclusions from child abuse), any of the

1 ~~following with respect to a child:~~

2 ~~(1) Recklessly or intentionally acting against a child~~  
3 ~~with either of the following outcomes which occurred within~~  
4 ~~two years of the date of the report to the department or~~  
5 ~~county agency:~~

6 ~~(i) Causing bodily injury or serious bodily injury~~  
7 ~~to a child.~~

8 ~~(ii) Creating a reasonable likelihood of bodily~~  
9 ~~injury or serious bodily injury to a child.~~

10 ~~(2) Recklessly or intentionally engaging in any of the~~  
11 ~~following conduct that has occurred within two years of the~~  
12 ~~date of the report to the department or county agency:~~

13 ~~(i) Kicking, burning, biting, stabbing, cutting or~~  
14 ~~throwing a child in a manner that may endanger the child.~~

15 ~~(ii) Unreasonably confining or restraining a child,~~  
16 ~~based upon the method, location or the duration of the~~  
17 ~~confinement or restraint.~~

18 ~~(iii) Forcefully shaking a child if the child is~~  
19 ~~under one year of age.~~

20 ~~(iv) Forcefully slapping a child if the child is~~  
21 ~~under one year of age.~~

22 ~~(v) Interfering with the breathing of a child.~~

23 ~~(vi) Causing the child to be present at a location~~  
24 ~~where any of the following is occurring:~~

25 ~~(A) A violation of 18 Pa.C.S. § 7508.2 (relating~~  
26 ~~to operation of methamphetamine laboratory).~~

27 ~~(B) A felony violation of the act of April 14,~~  
28 ~~1972 (P.L.233, No.64), known as The Controlled~~  
29 ~~Substance, Drug, Device and Cosmetic Act.~~

30 ~~(vii) Operating a vehicle in which the child is a~~

~~passenger while a violation of 75 Pa.C.S. § 3802  
(relating to driving under influence of alcohol or  
controlled substance) is occurring.~~

~~(viii) Leaving a child alone with an individual who  
is 14 years of age or older and subject to registration  
under 42 Pa.C.S. Ch. 97 Subch. H (relating to  
registration of sexual offenders).~~

~~(3) Causing or significantly contributing, by an act or  
series of acts, to the serious mental injury to a child.~~

~~(4) Recklessly or intentionally acting to cause the  
sexual abuse or exploitation of a child.~~

~~(5) Causing serious physical neglect of a child.~~

~~(6) Attempting to engage in any conduct under paragraph  
(1), (2), (3) or (4).~~

~~(7) Failing to act which:~~

~~(i) has occurred within two years of the date of the  
report to the department or county agency; and~~

~~(ii) does any of the following:~~

~~(A) Causes bodily injury or creates a reasonable  
likelihood of bodily injury to a child.~~

~~(B) Recklessly or intentionally engages in  
conduct under paragraph (2).~~

~~(8) Causing harm or injury as set forth in paragraph (3)  
or (4) by failing to act.~~

~~(9) Recklessly or intentionally performing an act which  
results in the death of a child.~~

~~"CHILD ABUSE." AS DEFINED IN 23 PA.C.S. § 6303(B) <--  
(RELATING TO DEFINITIONS).~~

~~Section 5. Title 23 is amended by adding a section to read: <--  
§ 6304. Exclusions from child abuse.~~

1 ~~(a) Environmental factors. No child shall be deemed to be~~  
2 ~~physically or mentally abused based on injuries that result~~  
3 ~~solely from environmental factors that are beyond the control of~~  
4 ~~the parent or person responsible for the child's welfare, such~~  
5 ~~as inadequate housing, furnishings, income, clothing and medical~~  
6 ~~care.~~

7 ~~(b) Practice of religious beliefs. If, upon investigation,~~  
8 ~~the county agency determines that a child has not been provided~~  
9 ~~needed medical or surgical care because of seriously held~~  
10 ~~religious beliefs of the child's parents, guardian or person~~  
11 ~~responsible for the child's welfare, which beliefs are~~  
12 ~~consistent with those of a bona fide religion, the child shall~~  
13 ~~not be deemed to be physically or mentally abused. The county~~  
14 ~~agency shall closely monitor the child and shall seek court~~  
15 ~~ordered medical intervention when the lack of medical or~~  
16 ~~surgical care threatens the child's life or long term health. In~~  
17 ~~cases involving religious circumstances, all correspondence with~~  
18 ~~a subject of the report and the records of the Department of~~  
19 ~~Public Welfare and the county agency shall not reference "child~~  
20 ~~abuse" and shall acknowledge the religious basis for the child's~~  
21 ~~condition, and the family shall be referred for general~~  
22 ~~protective services, if appropriate.~~

23 ~~(c) Use of force for disciplinary purposes. Subject to~~  
24 ~~subsection (d), the use of reasonable force under the~~  
25 ~~circumstances against a child by a person responsible for a~~  
26 ~~child's welfare shall not be considered child abuse if any of~~  
27 ~~the following conditions apply:~~

28 ~~(1) The use of reasonable force constitutes incidental,~~  
29 ~~minor or reasonable physical contact with the child or other~~  
30 ~~actions that are designed to maintain order and control.~~

1 ~~(2) The use of reasonable force is necessary:~~

2 ~~(i) to quell a disturbance or remove the child from~~  
3 ~~the scene of a disturbance that threatens physical injury~~  
4 ~~to persons or damage to property;~~

5 ~~(ii) to prevent the child from self-inflicted~~  
6 ~~physical harm;~~

7 ~~(iii) for self-defense or the defense of another~~  
8 ~~individual; or~~

9 ~~(iv) to obtain possession of weapons or other~~  
10 ~~dangerous objects or controlled substances or~~  
11 ~~paraphernalia that are on the child or within the control~~  
12 ~~of the child.~~

13 ~~(d) Effect on rights of parents. Notwithstanding subsection~~  
14 ~~(c), this chapter does not restrict the generally recognized~~  
15 ~~existing rights of parents to use reasonable supervision and~~  
16 ~~control when raising their children, subject to the provisions~~  
17 ~~of 18 Pa.C.S. § 509 (relating to use of force by persons with~~  
18 ~~special responsibility for care, discipline or safety of~~  
19 ~~others).~~

20 ~~(e) Participation in events that involve physical contact~~  
21 ~~with child. An individual participating in a practice or~~  
22 ~~competition in an interscholastic sport, physical education or~~  
23 ~~an extracurricular activity that involves physical contact with~~  
24 ~~a child does not, in itself, constitute contact that is subject~~  
25 ~~to the reporting requirements of this chapter.~~

26 ~~(f) Peer on peer contact. No child shall be deemed to be~~  
27 ~~physically or mentally abused based on injuries that result~~  
28 ~~solely from a fight or scuffle mutually entered into by mutual~~  
29 ~~consent.~~

30 Section 6. Section 9718(a) of Title 42 is amended to read:

1 ~~§ 9718. Sentences for offenses against infant persons.~~

2 ~~(a) Mandatory sentence.~~

3 ~~(1) A person convicted of the following offenses when~~  
4 ~~the victim is under 16 years of age shall be sentenced to a~~  
5 ~~mandatory term of imprisonment as follows:~~

6 ~~18 Pa.C.S. § 2702(a)(1) and (4) (relating to aggravated~~  
7 ~~assault) not less than two years.~~

8 ~~18 Pa.C.S. § 3121(a)(1), (2), (3), (4) and (5) (relating~~  
9 ~~to rape) not less than ten years.~~

10 ~~18 Pa.C.S. § 3123 (relating to involuntary deviate sexual~~  
11 ~~intercourse) not less than ten years.~~

12 ~~18 Pa.C.S. § 3125(a)(1) through (6) (relating to~~  
13 ~~aggravated indecent assault) not less than five years.~~

14 ~~(2) A person convicted of the following offenses when~~  
15 ~~the victim is less than 13 years of age shall be sentenced to~~  
16 ~~a mandatory term of imprisonment as follows:~~

17 ~~18 Pa.C.S. § 2702(a)(1) not less than five years.~~

18 ~~18 Pa.C.S. § 2702(a)(9) not less than five years.~~

19 ~~(2.1) A person convicted of the following offenses when~~  
20 ~~the victim is less than six years of age:~~

21 ~~18 Pa.C.S. § 2702(a)(8) not less than two years.~~

22 ~~(3) A person convicted of the following offenses shall~~  
23 ~~be sentenced to a mandatory term of imprisonment as follows:~~

24 ~~18 Pa.C.S. § 3121(c) and (d) not less than ten years.~~

25 ~~18 Pa.C.S. § 3125(a)(7) not less than five years.~~

26 ~~18 Pa.C.S. § 3125(b) not less than ten years.~~

27 ~~\* \* \*~~

28 ~~Section 7. This act shall take effect in 60 days.~~

29 SECTION 4. THIS ACT SHALL TAKE EFFECT JANUARY 1, 2014, OR <--  
30 IMMEDIATELY, WHICHEVER IS LATER.