
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 AND BOSCOLA, MARCH 15, 2013

REFERRED TO JUDICIARY, MARCH 15, 2013

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, 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; 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:

23 (1) attempts to cause or intentionally, knowingly or

1 recklessly causes bodily injury to another;

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

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

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

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

14 * * *

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

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

21 § 2702. Aggravated assault.

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

24 * * *

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

29 (7) uses tear or noxious gas as defined in section
30 2708(b) (relating to use of tear or noxious gas in labor

1 disputes) or uses an electric or electronic incapacitation
2 device against any officer, employee or other person
3 enumerated in subsection (c) while acting in the scope of his
4 employment[.];

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

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

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

15 * * *

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

19 § 4304. Endangering welfare of children.

20 (a) Offense defined.--

21 * * *

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

27 (2.1) A person commits an offense if the person:

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

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

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

6 (2.2) A person commits an offense if the person
7 intentionally or knowingly acts to prevent the discovery by
8 law enforcement or a county agency of an abused or neglected
9 child under 23 Pa.C.S. Ch. 63.

10 * * *

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

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

20 Any person who intentionally makes a false report of
21 suspected child abuse against a person, school, private
22 residential rehabilitative institution, detention facility,
23 school employee, private residential rehabilitative institution
24 employee or detention facility employee commits a misdemeanor of
25 the second degree.

26 § 4958. Intimidation or retaliation in child abuse cases.

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

28 (1) The person has knowledge or intends that the
29 person's conduct under paragraph (2) will obstruct, impede,
30 impair, prevent or interfere with the making of a child abuse

1 report or the conducting of an investigation into suspected
2 child abuse under 23 Pa.C.S. Ch. 63 (relating to child
3 protective services) or prosecuting a child abuse case.

4 (2) The person intimidates or attempts to intimidate any
5 reporter, victim or witness to engage in any of the following
6 actions:

7 (i) Refrain from making a report of suspected child
8 abuse or not cause a report of suspected child abuse to
9 be made.

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

14 (iii) Give false or misleading information,
15 documentation, testimony or evidence to any person
16 regarding a child abuse investigation or proceeding.

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

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

25 (b) Retaliation.--A person commits an offense if the person
26 harms another person by any unlawful act or engages in a course
27 of conduct or repeatedly commits acts which threaten another
28 person in retaliation for anything that the other person has
29 lawfully done in the capacity of a reporter, witness or victim
30 of child abuse.

1 (c) Grading.--

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

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

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

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

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

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

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

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

26 "Child abuse." Except as otherwise provided in 23 Pa.C.S. §
27 6304 (relating to exclusions from child abuse), any of the
28 following with respect to a child:

29 (1) Recklessly or intentionally acting against a child
30 with either of the following outcomes which occurred within

1 two years of the date of the report to the department or
2 county agency:

3 (i) Causing bodily injury or serious bodily injury
4 to a child.

5 (ii) Creating a reasonable likelihood of bodily
6 injury or serious bodily injury to a child.

7 (2) Recklessly or intentionally engaging in any of the
8 following conduct that has occurred within two years of the
9 date of the report to the department or county agency:

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

12 (ii) Unreasonably confining or restraining a child,
13 based upon the method, location or the duration of the
14 confinement or restraint.

15 (iii) Forcefully shaking a child if the child is
16 under one year of age.

17 (iv) Forcefully slapping a child if the child is
18 under one year of age.

19 (v) Interfering with the breathing of a child.

20 (vi) Causing the child to be present at a location
21 where any of the following is occurring:

22 (A) A violation of 18 Pa.C.S. § 7508.2 (relating
23 to operation of methamphetamine laboratory).

24 (B) A felony violation of the act of April 14,
25 1972 (P.L.233, No.64), known as The Controlled
26 Substance, Drug, Device and Cosmetic Act.

27 (vii) Operating a vehicle in which the child is a
28 passenger while a violation of 75 Pa.C.S. § 3802
29 (relating to driving under influence of alcohol or
30 controlled substance) is occurring.

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

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

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

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

10 (6) Attempting to engage in any conduct under paragraph
11 (1), (2), (3) or (4).

12 (7) Failing to act which:

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

15 (ii) does any of the following:

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

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

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

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

24 Section 5. Title 23 is amended by adding a section to read:

25 § 6304. Exclusions from child abuse.

26 (a) Environmental factors.--No child shall be deemed to be
27 physically or mentally abused based on injuries that result
28 solely from environmental factors that are beyond the control of
29 the parent or person responsible for the child's welfare, such
30 as inadequate housing, furnishings, income, clothing and medical

1 care.

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

18 (c) Use of force for disciplinary purposes.--Subject to
19 subsection (d), the use of reasonable force under the
20 circumstances against a child by a person responsible for a
21 child's welfare shall not be considered child abuse if any of
22 the following conditions apply:

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

26 (2) The use of reasonable force is necessary:

27 (i) to quell a disturbance or remove the child from
28 the scene of a disturbance that threatens physical injury
29 to persons or damage to property;

30 (ii) to prevent the child from self-inflicted

1 physical harm;
2 (iii) for self-defense or the defense of another
3 individual; or
4 (iv) to obtain possession of weapons or other
5 dangerous objects or controlled substances or
6 paraphernalia that are on the child or within the control
7 of the child.

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

15 (e) Participation in events that involve physical contact
16 with child.--An individual participating in a practice or
17 competition in an interscholastic sport, physical education or
18 an extracurricular activity that involves physical contact with
19 a child does not, in itself, constitute contact that is subject
20 to the reporting requirements of this chapter.

21 (f) Peer-on-peer contact.--No child shall be deemed to be
22 physically or mentally abused based on injuries that result
23 solely from a fight or scuffle mutually entered into by mutual
24 consent.

25 Section 6. Section 9718(a) of Title 42 is amended to read:
26 § 9718. Sentences for offenses against infant persons.

27 (a) Mandatory sentence.--

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

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

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

5 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual
6 intercourse) - not less than ten years.

7 18 Pa.C.S. § 3125(a)(1) through (6) (relating to
8 aggravated indecent assault) - not less than five years.

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

12 18 Pa.C.S. § 2702(a)(1) - not less than five years.

13 18 Pa.C.S. § 2702(a)(9) - not less than five years.

14 (2.1) A person convicted of the following offenses when
15 the victim is less than six years of age:

16 18 Pa.C.S. § 2702(a)(8) - not less than two years.

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

19 18 Pa.C.S. § 3121(c) and (d) - not less than ten years.

20 18 Pa.C.S. § 3125(a)(7) - not less than five years.

21 18 Pa.C.S. § 3125(b) - not less than ten years.

22 * * *

23 Section 7. This act shall take effect in 60 days.