

No. 2002-162

AN ACT

HB 976

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for rape, for involuntary deviate sexual intercourse, for aggravated indecent assault and for reporting criminal injuries; defining "suspected criminal activity" for purposes of wiretapping and electronic surveillance; and further providing for certain exceptions, for order authorizing interception of wire, electronic or oral communications, for application for order and for emergency situations.

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

Section 1. Section 3101 of Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a definition 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:

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"Serious bodily injury." As defined in section 2301 (relating to definitions).

* * *

Section 2. Sections 3121, 3123, 3125 and 5106 of Title 18 are amended to read:

§ 3121. Rape.

(a) Offense defined.—A person commits a felony of the first degree when [he or she] *the person* engages in sexual intercourse with a complainant:

(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 where the person knows that the complainant is unaware that the sexual intercourse is occurring.

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

(5) Who suffers from a mental disability which renders the complainant incapable of consent.

[(6) Who is less than 13 years of age.]

(b) **Additional penalties.**—In addition to the penalty provided for by subsection (a), a person may be sentenced to an additional term not to exceed ten years' confinement and an additional amount not to exceed \$100,000 where the person engages in sexual intercourse with a complainant and has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, any substance for the purpose of preventing resistance through the inducement of euphoria, memory loss and any other effect of this substance.

(c) **Rape of a child.**—*A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant who is less than 13 years of age.*

(d) **Rape of a child with serious bodily injury.**—*A person commits a felony of the first degree when the person engages in sexual intercourse with a complainant who is less than 13 years of age and the complainant suffers serious bodily injury in the course of the offense.*

(e) **Sentences.**—*Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:*

(1) *Subsection (c) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.*

(2) *Subsection (d) shall be sentenced up to a maximum term of life imprisonment.*

§ 3123. Involuntary deviate sexual intercourse.

(a) **Offense defined.**—A person commits a felony of the first degree when [he or she] *the person* engages in deviate sexual intercourse with a complainant:

(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 where the person knows that the complainant is unaware that the sexual intercourse is occurring;

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

(5) who suffers from a mental disability which renders him or her incapable of consent; *or*

[(6) who is less than 13 years of age; or]

[(7)] (6) who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

(b) **Definition.**—As used in this section, the term "forcible compulsion" includes, but is not limited to, compulsion resulting in another person's

death, whether the death occurred before, during or after the sexual intercourse.

(c) Involuntary deviate sexual intercourse with a child.—A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age.

(d) Involuntary deviate sexual intercourse with a child with serious bodily injury.—A person commits a felony of the first degree when the person engages in deviate sexual intercourse with a complainant who is less than 13 years of age and the complainant suffers serious bodily injury in the course of the offense.

(e) Sentences.—Notwithstanding the provisions of section 1103 (relating to sentence of imprisonment for felony), a person convicted of an offense under:

(1) Subsection (c) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.

(2) Subsection (d) shall be sentenced up to a maximum term of life imprisonment.

§ 3125. Aggravated indecent assault.

(a) Offenses defined.—Except as provided in sections 3121 (relating to rape), 3122.1 (relating to statutory sexual assault), 3123 (relating to involuntary deviate sexual intercourse) and 3124.1 (relating to sexual assault), a person who engages in penetration, however slight, of the genitals or anus of a complainant with a part of the person's body for any purpose other than good faith medical, hygienic or law enforcement procedures commits aggravated indecent assault, [a felony of the second degree,] if:

(1) the person does so without the complainant's consent;

(2) the person does so by forcible compulsion;

(3) the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;

(4) the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;

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

(6) the complainant suffers from a mental disability which renders him or her incapable of consent;

(7) the complainant is less than 13 years of age; or

(8) the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) Aggravated indecent assault of a child.—A person commits aggravated indecent assault of a child when the person violates subsection

(a)(1), (2), (3), (4), (5) or (6) and the complainant is less than 13 years of age.

(c) *Grading and sentences.*—

(1) *An offense under subsection (a) is a felony of the second degree.*

(2) *An offense under subsection (b) is a felony of the first degree.*

§ 5106. Failure to report injuries by firearm or criminal act.

(a) *Offense defined.*—[A] *Except as set forth in subsection (a.1), a physician, intern or resident, or any person conducting, managing or in charge of any hospital or pharmacy, or in charge of any ward or part of a hospital, to whom shall come or be brought any person:*

(1) *suffering from any wound or other injury inflicted by his own act or by the act of another which caused death or serious bodily injury, or inflicted by means of a deadly weapon as defined in section 2301 [of this title] (relating to definitions); or*

(2) *upon whom injuries have been inflicted in violation of any penal law of this Commonwealth;*

commits a summary offense if [he] the reporting party fails to report such injuries immediately, both by telephone and in writing, to the chief of police or other head of the police department of the local government, or to the Pennsylvania State Police. The report shall state the name of the injured person, if known, [his] the injured person's whereabouts and the character and extent of [his] the person's injuries.

(a.1) *Exception.*—*In cases of bodily injury as defined in section 2301 (relating to definitions), failure to report under subsection (a)(2) does not constitute an offense if all of the following apply:*

(1) *The victim is an adult and has suffered bodily injury.*

(2) *The injury was inflicted by an individual who:*

(i) *is the current or former spouse of the victim;*

(ii) *is a current or former sexual or intimate partner of the victim;*

(iii) *shares biological parenthood with the victim; or*

(iv) *is or has been living as a spouse of the victim.*

(3) *The victim has been informed:*

(i) *of the duty to report under subsection (a)(2); and*

(ii) *that the report under subsection (a)(2) cannot be made without the victim's consent.*

(4) *The victim does not consent to the report under subsection (a)(2).*

(5) *The victim has been provided with a referral to the appropriate victim service agency such as a domestic violence or sexual assault program.*

(b) *Immunity granted.*—*No physician or other person shall be subject to civil or criminal liability by reason of [making a report required by] complying with this section.*

(c) Physician-patient privilege unavailable.—In any judicial proceeding resulting from a report pursuant to this section, the physician-patient privilege shall not apply in respect to evidence regarding such injuries or the cause thereof. *This subsection shall not apply where a report is not made pursuant to subsection (a.1).*

(d) *Reporting of crime encouraged.*—*Nothing in this chapter precludes a victim from reporting the crime that resulted in injury.*

(e) *Availability of information.*—*A physician or other individual may make available information concerning domestic violence or sexual assault to any individual subject to the provisions of this chapter.*

Section 3. Section 5702 of Title 18 is amended by adding a definition to read:

§ 5702. Definitions.

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

* * *

“Suspected criminal activity.” A particular offense that has been, is or is about to occur as set forth under section 5709(3)(ii) (relating to application for order), any communications to be intercepted as set forth under section 5709(3)(iii) or any of the criminal activity set forth under section 5709(3)(iv) establishing probable cause for the issuance of an order.

* * *

Section 4. Sections 5706(b)(2), 5708, 5709 and 5713(a) of Title 18 are amended to read:

§ 5706. Exceptions to prohibitions in possession, sale, distribution, manufacture or advertisement of electronic, mechanical or other devices.

* * *

(b) Responsibility.—

* * *

(2) The division or bureau or section of the Pennsylvania State Police responsible for conducting the training in the technical aspects of wiretapping and electronic surveillance as required by section 5724 (relating to training) may buy and possess any electronic, mechanical or other device which is to be used by investigative or law enforcement officers for purposes of interception as authorized under section 5704(2), (5) and (12), 5712, 5713 or 5713.1 for the purpose of training. However, any electronic, mechanical or other device bought or possessed under this provision may be loaned to or used by investigative or law enforcement officers for purposes of interception as authorized under section 5704(2), (5) and (12), 5712, 5713 or 5713.1 only upon written approval by the Attorney General or a deputy attorney general designated in writing by the Attorney General or the district attorney or an assistant

district attorney designated in writing by the district attorney of the county wherein [the interception is to be made] *the suspected criminal activity has been, is or is about to occur.*

* * *

§ 5708. Order authorizing interception of wire, electronic or oral communications.

The Attorney General, or, during the absence or incapacity of the Attorney General, a deputy attorney general designated in writing by the Attorney General, or the district attorney or, during the absence or incapacity of the district attorney, an assistant district attorney designated in writing by the district attorney of the county wherein [the interception is to be made] *the suspected criminal activity has been, is or is about to occur*, may make written application to any Superior Court judge for an order authorizing the interception of a wire, electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation involving suspected criminal activities when such interception may provide evidence of the commission of any of the following offenses, or may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the following offenses:

(1) Under this title:

Section 911 (relating to corrupt organizations)

Section 2501 (relating to criminal homicide)

Section 2502 (relating to murder)

Section 2503 (relating to voluntary manslaughter)

Section 2702 (relating to aggravated assault)

Section 2706 (relating to terroristic threats)

Section 2709(b) (relating to harassment and stalking)

Section 2716 (relating to weapons of mass destruction)

Section 2901 (relating to kidnapping)

Section 3121 (relating to rape)

Section 3123 (relating to involuntary deviate sexual intercourse)

Section 3124.1 (relating to sexual assault)

Section 3125 (relating to aggravated indecent assault)

Section 3301 (relating to arson and related offenses)

Section 3302 (relating to causing or risking catastrophe)

Section 3502 (relating to burglary)

Section 3701 (relating to robbery)

Section 3921 (relating to theft by unlawful taking or disposition)

Section 3922 (relating to theft by deception)

Section 3923 (relating to theft by extortion)

Section 4701 (relating to bribery in official and political matters)

Section 4702 (relating to threats and other improper influence in official and political matters)

Section 5512 (relating to lotteries, etc.)

Section 5513 (relating to gambling devices, gambling, etc.)

Section 5514 (relating to pool selling and bookmaking)

Section 5516 (relating to facsimile weapons of mass destruction)

Section 6318 (relating to unlawful contact or communication with minor)

(2) Under this title, where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year:

Section 910 (relating to manufacture, distribution or possession of devices for theft of telecommunications services)

Section 3925 (relating to receiving stolen property)

Section 3926 (relating to theft of services)

Section 3927 (relating to theft by failure to make required disposition of funds received)

Section 3933 (relating to unlawful use of computer)

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

Section 4109 (relating to rigging publicly exhibited contest)

Section 4117 (relating to insurance fraud)

Section 4305 (relating to dealing in infant children)

Section 4902 (relating to perjury)

Section 4909 (relating to witness or informant taking bribe)

Section 4911 (relating to tampering with public records or information)

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 5111 (relating to dealing in proceeds of unlawful activities)

Section 5121 (relating to escape)

Section 5504 (relating to harassment by communication or address)

Section 5902 (relating to prostitution and related offenses)

Section 5903 (relating to obscene and other sexual materials and performances)

Section 7313 (relating to buying or exchanging Federal food order coupons, stamps, authorization cards or access devices)

(3) Under the act of March 4, 1971 (P.L.6. No.2), known as the Tax Reform Code of 1971, where such offense is dangerous to life, limb or property and punishable by imprisonment for more than one year:

Section 1272 (relating to sales of unstamped cigarettes)

Section 1273 (relating to possession of unstamped cigarettes)

Section 1274 (relating to counterfeiting)

(4) Any offense set forth under section 13(a) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, not including the offense described in clause (31) of section 13(a).

(5) Any offense set forth under the act of November 15, 1972 (P.L.1227, No.272).

(6) Any conspiracy to commit any of the offenses set forth in this section.

(7) Under the act of November 24, 1998 (P.L.874, No.110), known as the Motor Vehicle Chop Shop and Illegally Obtained and Altered Property Act.

§ 5709. Application for order.

Each application for an order of authorization to intercept a wire, electronic or oral communication shall be made in writing upon the personal oath or affirmation of the Attorney General or a district attorney of the county wherein **[the interception is to be made] *the suspected criminal activity has been, is or is about to occur*** and shall contain all of the following:

(1) A statement of the authority of the applicant to make such application.

(2) A statement of the identity and qualifications of the investigative or law enforcement officers or agency for whom the authority to intercept a wire, electronic or oral communication is sought.

(3) A sworn statement by the investigative or law enforcement officer who has knowledge of relevant information justifying the application, which shall include:

(i) The identity of the particular person, if known, committing the offense and whose communications are to be intercepted.

(ii) The details as to the particular offense that has been, is being, or is about to be committed.

(iii) The particular type of communication to be intercepted.

(iv) A showing that there is probable cause to believe that such communication will be communicated on the wire communication facility involved or at the particular place where the oral communication is to be intercepted.

(v) The character and location of the particular wire communication facility involved or the particular place where the oral communication is to be intercepted.

(vi) A statement of the period of time for which the interception is required to be maintained, and, if the character of the investigation is such that the authorization for interception should not automatically terminate when the described type of communication has been first obtained, a particular statement of facts establishing probable cause to believe that additional communications of the same type will occur thereafter.

(vii) A particular statement of facts showing that other normal investigative procedures with respect to the offense have been tried and have failed, or reasonably appear to be unlikely to succeed if tried or are too dangerous to employ.

(4) Where the application is for the renewal or extension of an order, a particular statement of facts showing the results thus far obtained from the interception, or a reasonable explanation of the failure to obtain such results.

(5) A complete statement of the facts concerning all previous applications, known to the applicant made to any court for authorization to intercept a wire, electronic or oral communication involving any of the same facilities or places specified in the application or involving any person whose communication is to be intercepted, and the action taken by the court on each such application.

(6) A proposed order of authorization for consideration by the judge.

(7) Such additional testimony or documentary evidence in support of the application as the judge may require.

§ 5713. Emergency situations.

(a) Application.—Whenever, upon informal application by the Attorney General or a designated deputy attorney general authorized in writing by the Attorney General or a district attorney or an assistant district attorney authorized in writing by the district attorney of a county wherein **[the interception is to be made] *the suspected criminal activity has been, is or is about to occur***, a judge determines there are grounds upon which an order could be issued pursuant to this chapter, and that an emergency situation exists with respect to the investigation of an offense designated in section 5708 (relating to order authorizing interception of wire, electronic or oral communications), and involving conspiratorial activities characteristic of organized crime or a substantial danger to life or limb, dictating authorization for immediate interception of wire, electronic or oral communications before an application for an order could with due diligence be submitted to him and acted upon, the judge may grant oral approval for such interception without an order, conditioned upon the filing with him, within 48 hours thereafter, of an application for an order which, if granted, shall recite the oral approval and be retroactive to the time of such oral approval. Such interception shall immediately terminate when the communication sought is obtained or when the application for an order is denied, whichever is earlier. In the event no application for an order is made, the content of any wire, electronic or oral communication intercepted shall be treated as having been obtained in violation of this subchapter.

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Section 5. This act shall take effect in 60 days.

APPROVED—The 9th day of December, A.D. 2002.

MARK S. SCHWEIKER