

No. 2005-76

## AN ACT

HB 1400

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for indecent assault.

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

Section 1. Section 3126 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 3126. Indecent assault.

(a) Offense defined.—A [person who has indecent contact with the complainant or causes the complainant to have indecent contact with the] person is guilty of indecent assault if *the person has indecent contact with the complainant, causes the complainant to have indecent contact with the person or intentionally causes the complainant to come into contact with seminal fluid, urine or feces for the purpose of arousing sexual desire in the person or the complainant and:*

- (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 indecent contact 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] *the complainant* 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) Grading.—Indecent assault [under subsection (a)(7) is a misdemeanor of the first degree. Otherwise, indecent assault is a misdemeanor of the second degree.] *shall be graded as follows:*

- (1) *An offense under subsection (a)(1) or (8) is a misdemeanor of the second degree.*
- (2) *An offense under subsection (a)(2), (3), (4), (5) or (6) is a misdemeanor of the first degree.*

***(3) An offense under subsection (a)(7) is a misdemeanor of the first degree unless any of the following apply, in which case it is a felony of the third degree:***

***(i) It is a second or subsequent offense.***

***(ii) There has been a course of conduct of indecent assault by the person.***

***(iii) The indecent assault was committed by touching the complainant's sexual or intimate parts with sexual or intimate parts of the person.***

***(iv) The indecent assault is committed by touching the person's sexual or intimate parts with the complainant's sexual or intimate parts.***

Section 2. This act shall take effect in 60 days.

APPROVED—The 23rd day of November, A.D. 2005.

EDWARD G. RENDELL