

No. 53

AN ACT

HB 580

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for the exclusion to sexual offenses because of a spousal relationship and rules of evidence relating to sexual offenses; changing the age requirements for the offense of statutory rape and amending the indecent assault provisions.

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

Section 1. Sections 3102, 3103, 3104, 3105, 3122 and 3126 of Title 18, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, added December 6, 1972 (P.L.1482, No.334), are amended to read:

§ 3102. Mistake as to age.

Whenever in this chapter the criminality of conduct depends on a **[child's] child** being below the age of **[15]14** years, it is no defense that the actor did not know the age of the child, or reasonably believed the child to be **[older than 15 years] the age of 14 years or older**. When criminality depends on the child's being below a critical age other than **[15]14** years, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the child to be above the critical age.

§ 3103. Spouse relationships.

Whenever in this chapter the definition of an offense excludes conduct with a spouse, the exclusion shall be deemed to extend to persons living as man and wife, regardless of the legal status of their relationship **[. The] : *Provided, however, That the*** exclusion shall be inoperative as respects spouses living **[apart under a decree of judicial separation] *in separate residences, or in the same residence but under terms of a written separation agreement or an order of a court of record.*** Where the definition of an offense excludes conduct with a spouse **[or conduct by a woman]**, this shall not preclude conviction of a spouse **[or woman]** as accomplice in a sexual act which he or she causes another person, not within the exclusion, to perform.

§ 3104. **[Sexually promiscuous complainants.**

It is a defense to prosecution under section 3125 of this title (relating to corruption of minors) and section 3126(5) of this title (relating to indecent assault) for the actor to prove by a preponderance of the evidence that the alleged victim had, prior to the time of the offense charged, engaged promiscuously in sexual relations with others.]

Evidence of victim's sexual conduct.

(a) General rule.— Evidence of specific instances of the alleged victim's past sexual conduct, opinion evidence of the alleged victim's past sexual

conduct, and reputation evidence of the alleged victim's past sexual conduct shall not be admissible in prosecutions under this chapter except evidence of the alleged victim's past sexual conduct with the defendant where consent of the alleged victim is at issue and such evidence is otherwise admissible pursuant to the rules of evidence.

(b) Evidentiary proceedings.—A defendant who proposes to offer evidence of the alleged victim's past sexual conduct pursuant to subsection (a) shall file a written motion and offer of proof at the time of trial. If, at the time of trial, the court determines that the motion and offer of proof are sufficient on their faces, the court shall order an in camera hearing and shall make findings on the record as to the relevance and admissibility of the proposed evidence pursuant to the standards set forth in subsection (a).

§ 3105. Prompt complaint.

[No prosecution may be instituted or maintained under this chapter unless the alleged offense was brought to the notice of public authority within three months of its occurrence or, where the alleged victim was less than 16 years old or otherwise incompetent to make complaint, within three months after a parent, guardian or other competent person specially interested in the victim learns of the offense.]

Prompt reporting to public authority is not required in a prosecution under this chapter: Provided, however, That nothing in this section shall be construed to prohibit a defendant from introducing evidence of the alleged victim's failure to promptly report the crime if such evidence would be admissible pursuant to the rules of evidence.

§ 3122. Statutory rape.

A person who is [16] 18 years of age or older commits statutory rape, a felony of the second degree, when he engages in sexual intercourse with another person not his spouse who is less than [16] 14 years of age.

§ 3126. Indecent assault.

A person who has indecent contact with another not his spouse, or causes such other to have indecent contact with him is guilty of indecent assault, a misdemeanor of the second degree, if:

- (1) he [knows that the contact is offensive to] *does so without the consent of* the other person;
- (2) he knows that the other person suffers from a mental disease or defect which renders him or her incapable of appraising the nature of his or her conduct;
- (3) he knows that the other person is unaware that a indecent contact is being committed;
- (4) he has substantially impaired the other person's power to appraise or control his or her conduct, by administering or employing without the knowledge of the other drugs, intoxicants or other means for the purpose of preventing resistance; or
- (5) the other person is in custody of law or detained in a hospital or other institution and the actor has supervisory or disciplinary authority over him.

Section 2. Title 18 is amended by adding sections to read:

§ 3106. Testimony of complainants.

The credibility of an alleged victim of an offense under this chapter shall be determined by the same standard as is the credibility of an alleged victim of any other crime. The testimony of a victim need not be corroborated in prosecutions under this chapter. In any prosecution before a jury for an offense under this chapter, no instructions shall be given cautioning the jury to view the alleged victim's testimony in any other way than that in which all victims' testimony is viewed.

§ 3107. Resistance not required.

The alleged victim need not resist the actor in prosecutions under this chapter: Provided, however, That nothing in this section shall be construed to prohibit a defendant from introducing evidence that the alleged victim consented to the conduct in question.

Section 3. This act shall take effect in 30 days.

APPROVED—The 18th day of May, A. D. 1976.

MILTON J. SHAPP