

No. 1988-31

AN ACT

HB 668

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for the rights of a district attorney in litigation involving prisoners; further providing for offenses relating to alcohol; providing for drug trafficking to minors; further providing for scattering rubbish; regulating matters relating to the performance and funding of abortions, the protection of women who undergo abortion, and the protection of children subject to abortion; revising the penalties for false reports to law enforcement authorities; making an editorial change; and making repeals.

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

Section 1. Section 1101 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 1101. Fines.

A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

- (1) \$25,000, when the conviction is of a felony of the first or second degree.
- (2) \$15,000, when the conviction is of a felony of the third degree.
- (3) \$10,000, when the conviction is of a misdemeanor of the first degree.
- (4) \$5,000, when the conviction is of a misdemeanor of the second degree.
- (5) \$2,500, when the conviction is of a misdemeanor of the third degree.
- (6) \$300, when the conviction is of a summary offense *for which no higher fine is established*.
- (7) Any higher amount equal to double the pecuniary gain derived from the offense by the offender.
- (8) Any higher or lower amount specifically authorized by statute.

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

§ 1108. *District attorneys' standing and interest in prisoner litigation.*

The district attorney shall receive written notice of, and shall have automatic standing and a legal interest in, any proceeding which may involve the release or nonadmission of county prisoners, delinquents or detainees due to the fact, duration or other conditions of custody. In addition to the district attorney's rights in such a proceeding, the district attorney may seek any equitable relief necessary to protect the district attorney's interest in the continued institutional custody and admission of county prisoners, delinquents or detainees.

Section 3. The definition of "medical emergency" in section 3203 of Title 18 is amended and the section is amended by adding a definition to read:

§ 3203. Definitions.

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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“Medical emergency.” That condition which, on the basis of the physician’s [best] *good faith* clinical judgment, so complicates [a pregnancy] *the medical condition of a pregnant woman* as to necessitate the immediate abortion of [same] *her pregnancy* to avert [the] *her* death [of the mother] or for which a [24-hour] delay will create [grave peril] *serious risk* of [immediate] *substantial* and irreversible [loss] *impairment* of major bodily function.

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“Physician.” *Any person licensed to practice medicine in this Commonwealth. The term includes medical doctors and doctors of osteopathy.*

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Section 4. Sections 3204(d), 3205, 3206(a), (e), (f), (g), (h) and (i), 3207(b) and 3208 of Title 18 are amended to read:

§ 3204. Medical consultation and judgment.

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(d) Penalty.—Any physician who violates the provisions of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of [July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974”] *October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, or their successor acts.*

§ 3205. Informed consent.

(a) General rule.—No abortion shall be performed or induced except with the voluntary and informed consent of the woman upon whom the abortion is to be performed or induced. Except in the case of a medical emergency, consent to an abortion is voluntary and informed if and only if:

(1) **The woman is provided, at least 24 hours before the abortion, with the following information by the physician who is to perform the abortion or by the referring physician but not by the agent or representative of either.**

(i) **The name of the physician who will perform the abortion.**

(ii) **The fact that there may be detrimental physical and psychological effects which are not accurately foreseeable.**

(iii) **The particular medical risks associated with the particular abortion procedure to be employed including, when medically accurate, the risks of infection, hemorrhage, danger to subsequent pregnancies and infertility.**

(iv) **The probable gestational age of the unborn child at the time the abortion is to be performed.**

(v) **The medical risks associated with carrying her child to term.**

(2) The woman is informed, by the physician or his agent, at least 24 hours before the abortion:

(i) The fact that medical assistance benefits may be available for prenatal care, childbirth and neonatal care.

(ii) The fact that the father is liable to assist in the support of her child, even in instances where the father has offered to pay for the abortion.

(iii) That she has the right to review the printed materials described in section 3208 (relating to printed information). The physician or his agent shall orally inform the woman that the materials describe the unborn child and list agencies which offer alternatives to abortion. If the woman chooses to view the materials, copies of them shall be furnished to her. If the woman is unable to read the materials furnished her, the materials shall be read to her. If the woman seeks answers to questions concerning any of the information or materials, answers shall be provided her in her own language.

(3) The woman certifies in writing, prior to the abortion, that the information described in paragraphs (1) and (2) has been furnished her, and that she has been informed of her opportunity to review the information referred to in paragraph (2).

(4) Prior to the performance of the abortion, the physician who is to perform or induce the abortion or his agent receives a copy of the written certification prescribed by paragraph (3), *prior to the consent having been given, the physician who is to perform the abortion, or the referring physician, or a qualified physician assistant, health care practitioner, or technician to whom the responsibility has been delegated by either physician, has orally informed the woman of the nature of the proposed procedure or treatment and of those risks and alternatives to the procedure or treatment that a reasonable patient would consider material to the decision whether or not to undergo the abortion, and the woman certifies in writing prior to the abortion that she has been provided such information.*

(b) Emergency.—Where a medical emergency compels the performance of an abortion, the physician shall inform the woman, prior to the abortion if possible, of the medical indications supporting his judgment that an abortion is necessary to avert her death *or to avert substantial and irreversible impairment of major bodily function.*

(c) Penalty.—Any physician who violates the provisions of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of [July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974.” Any other person obligated under this chapter to give information relating to informed consent to a woman before an abortion is performed, and who fails to give such information, shall, for the first offense be guilty of a summary offense and, for each subsequent offense, be guilty of a misdemeanor of the third degree] *October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L.457, No.112), known as the Medical Prac-*

tice Act of 1985, or their successor acts. No physician shall be guilty of "unprofessional conduct" for failure to furnish the information required by subsection (a) if he or she can demonstrate, by a preponderance of the evidence, that furnishing the information would have resulted in a severely adverse effect on the physical or mental health of the patient.

(d) Limitation on civil liability.—Any physician who complies with the provisions of this section may not be held civilly liable to his patient for failure to obtain informed consent to the abortion within the meaning of that term as defined by the act of October 15, 1975 (P.L.390, No.111), known as the [“]Health Care Services Malpractice Act.[”]

§ 3206. Parental consent.

(a) General rule.—Except in the case of a medical emergency, *or* except as provided in this section, if a pregnant woman is less than 18 years of age and not emancipated, or if she has been adjudged an incompetent under 20 Pa.C.S. § 5511 (relating to petition and hearing; examination by court-appointed physician), a physician shall not perform an abortion upon her unless, in the case of a woman who is less than 18 years of age, he first obtains the *informed* consent both of the pregnant woman and of one of her parents; or, in the case of a woman who is incompetent, he first obtains the *informed* consent of her guardian. In deciding whether to grant such consent, a pregnant woman’s parent or guardian shall consider only their child’s or ward’s best interests. [In obtaining the consent of the woman’s parent or guardian, the physician shall provide them the information and materials specified in section 3205 (relating to informed consent), and shall further obtain from them the certification required by section 3205(a)(3).] In the case of a pregnancy that is the result of incest where the father is a party to the incestuous act, the pregnant woman need only obtain the consent of her mother.

* * *

(e) Representation in proceedings.—The pregnant woman may participate in proceedings in the court on her own behalf and the court may appoint a guardian ad litem [for] *to assist* her. The court shall, however, advise her that she has a right to court appointed counsel, and shall[, upon her request,] provide her with such counsel *unless she wishes to appear with private counsel or has knowingly and intelligently waived representation by counsel.*

(f) Proceedings [confidential].—

(1) Court proceedings under this section shall be confidential and shall be given such precedence over other pending matters as will ensure that the court may reach a decision promptly and without delay in order to serve the best interests of the pregnant woman[, but in]. *In* no case shall the court *of common pleas* fail to rule within three business days of the date of application. A court of common pleas which conducts proceedings under this section shall make in writing specific factual findings and legal conclusions supporting its decision and shall order a sealed record of the *pleadings, submissions, transcripts, exhibits, orders, evidence and any other written material* to be maintained which shall include its own findings and conclusions.

(2) *The application to the court of common pleas shall be accompanied by a non-notarized verification stating that the information therein is true and correct to the best of the applicant's knowledge, and the application shall set forth the following facts:*

(i) *The initials of the pregnant woman.*

(ii) *The age of the pregnant woman.*

(iii) *The names and addresses of each parent, guardian or, if the minor's parents are deceased and no guardian has been appointed, any other person standing in loco parentis to the minor.*

(iv) *That the pregnant woman has been fully informed of the risks and consequences of the abortion.*

(v) *Whether the pregnant woman is of sound mind and has sufficient intellectual capacity to consent to the abortion.*

(vi) *A prayer for relief asking the court to either grant the pregnant woman full capacity for the purpose of personal consent to the abortion, or to give judicial consent to the abortion under subsection (d) based upon a finding that the abortion is in the best interest of the pregnant woman.*

(vii) *That the pregnant woman is aware that any false statements made in the application are punishable by law.*

(viii) *The signature of the pregnant woman. Where necessary to serve the interest of justice, the orphans' court division, or, in Philadelphia, the family court division, shall refer the pregnant woman to the appropriate personnel for assistance in preparing the application.*

(3) *The name of the pregnant woman shall not be entered on any docket which is subject to public inspection. All persons shall be excluded from hearings under this section except the applicant and such other persons whose presence is specifically requested by the applicant or her guardian.*

(4) *At the hearing, the court shall hear evidence relating to the emotional development, maturity, intellect and understanding of the pregnant woman, the fact and duration of her pregnancy, the nature, possible consequences and alternatives to the abortion and any other evidence that the court may find useful in determining whether the pregnant woman should be granted full capacity for the purpose of consenting to the abortion or whether the abortion is in the best interest of the pregnant woman. The court shall also notify the pregnant woman at the hearing that it must rule on her application within three business days of the date of its filing and that, should the court fail to rule in favor of her application within the allotted time, she has the right to appeal to the Superior Court.*

(g) *Coercion prohibited.*—Except in a medical emergency, no parent, guardian or other person standing in loco parentis shall coerce a minor or incompetent woman to undergo an abortion. *Any minor or incompetent woman who is threatened with such coercion may apply to a court of common pleas for relief.* The court shall *provide the minor or incompetent woman with counsel, give the matter expedited consideration and grant such relief as may be necessary to prevent such coercion. Should a minor be*

denied the financial support of her parents by reason of her refusal to undergo abortion, she shall be considered emancipated for purposes of eligibility for assistance benefits.

(h) Regulation of proceedings.—No filing fees shall be required of any woman availing herself of the procedures provided by this section. An expedited confidential appeal shall be available to any pregnant woman whom the court [denies] fails to grant an order authorizing an abortion *within the time specified in this section*. Any court to which an appeal is taken under this section shall give prompt and confidential attention thereto and shall rule thereon within five business days of the filing of the appeal. The Supreme Court of Pennsylvania [shall] may issue [promptly] such rules as may [be necessary to] further assure that the process provided in this section is conducted in such a manner as will ensure confidentiality and sufficient precedence over other pending matters to ensure promptness of disposition.

(i) Penalty.—Any person who performs an abortion upon a woman who is an unemancipated minor or incompetent to whom this section applies either with knowledge that she is a minor or incompetent to whom this section applies, or with reckless disregard or negligence as to whether she is a minor or incompetent to whom this section applies, and who intentionally, knowingly or recklessly fails to conform to any requirement of this section is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be suspended in accordance with procedures provided under the act of [July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974,”] October 5, 1978 (P.L.1109, No.261), known as the *Osteopathic Medical Practice Act*, the act of December 20, 1985 (P.L.457, No.112), known as the *Medical Practice Act of 1985*, or their successor acts, for a period of at least three months. Failure to comply with the requirements of this section is prima facie evidence of failure to obtain informed consent and of interference with family relations in appropriate civil actions. The law of this Commonwealth shall not be construed to preclude the award of exemplary damages or damages for emotional distress even if unaccompanied by physical complications in any appropriate civil action relevant to violations of this section. Nothing in this section shall be construed to limit the common law rights of parents.

§ 3207. Abortion facilities.

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(b) Reports.—Within 30 days after the effective date of this chapter, every facility at which abortions are performed shall file, and update immediately upon any change, a report with the department, [which shall be open to public inspection and copying,] containing the following information:

- (1) Name and address of the facility.
- (2) Name and address of any parent, subsidiary or affiliated organizations, corporations or associations.
- (3) Name and address of any parent, subsidiary or affiliated organizations, corporations or associations having contemporaneous commonality of ownership, beneficial interest, directorship or officership with any other facility.

The information contained in those reports which are filed pursuant to this subsection by facilities which receive State appropriated funds during the 12-calendar-month period immediately preceding a request to inspect or copy such reports shall be deemed public information. Reports filed by facilities which do not receive State appropriated funds shall only be available to law enforcement officials, the State Board of Medicine and the State Board of Osteopathic Medicine for use in the performance of their official duties. Any facility failing to comply with the provisions of this subsection shall be assessed by the department a fine of \$500 for each day it is in violation hereof.

§ 3208. Printed information.

(a) General rule.—The department shall cause to be published in English, Spanish and Vietnamese, within 60 days after this chapter becomes law, *and shall update on an annual basis*, the following easily comprehensible printed materials:

(1) Geographically indexed materials designed to inform the woman of public and private agencies and services available to assist a woman through pregnancy, upon childbirth and while the child is dependent, including adoption agencies, which shall include a comprehensive list of the agencies available, a description of the services they offer and a description of the manner, including telephone numbers, in which they might be contacted, or, at the option of the department, printed materials including a toll-free, 24-hour a day telephone number which may be called to obtain, orally, such a list and description of agencies in the locality of the caller and of the services they offer. The materials shall include the following statement:

“There are many public and private agencies willing and able to help you to carry your child to term, and to assist you and your child after your child is born, whether you choose to keep your child or to place her or him for adoption. The Commonwealth of Pennsylvania strongly urges you to contact them before making a final decision about abortion. [The law requires that your physician or his agent give you the opportunity to call agencies like these before you undergo an abortion.]”

The materials shall state that medical assistance benefits may be available for prenatal care, childbirth and neonatal care, that it is unlawful for any individual to coerce a woman to undergo abortion, that any physician who performs an abortion upon a woman without obtaining her informed consent or without according her a private medical consultation may be liable to her for damages in a civil action at law, that the father of a child is liable to assist in the support of that child, even in instances where the father has offered to pay for an abortion and that the law permits adoptive parents to pay costs of prenatal care, childbirth and neonatal care.

(2) Materials designed to inform the woman of the probable anatomical and physiological characteristics of the unborn child at two-week gestational increments from fertilization to full term, including any relevant information on the possibility of the unborn child's survival. The materi-

als shall be objective, nonjudgmental and designed to convey only accurate scientific information about the unborn child at the various gestational ages. *The material shall also contain objective information describing the methods of abortion procedures commonly employed, the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion and the medical risks commonly associated with each such procedure, the possible detrimental psychological effects of abortion and the medical risks commonly associated with carrying a child to term.*

(b) Format.—The materials shall be printed in a typeface large enough to be clearly legible.

(c) Free distribution.—The materials required under this section shall be available at no cost from the department upon request and in appropriate number to any person, facility or hospital.

Section 5. Section 3209 of Title 18 is repealed.

Section 6. Sections 3210(b) and (c) and 3211 of Title 18 are amended to read:

§ 3210. Abortion after viability.

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(b) Degree of care.—**[Every]** *Except in the case of a medical emergency, every* person who performs or induces an abortion after *he has determined* an unborn child **[has been determined]** to be viable shall exercise that degree of professional skill, care and diligence which **[such person]** would *reasonably* be **[required to exercise]** *necessary* in order to preserve the life and health of any unborn child intended to be born and not aborted, and the abortion technique employed shall be that which would provide the best opportunity for the unborn child to be **[aborted]** *delivered* alive unless, in the good faith judgment of the physician, that method or technique would present a **[significantly]** greater medical risk to the life or health of the pregnant woman than would another available method or technique **[and the]**. *The* physician **[reports]** *shall report* the basis for his judgment *pursuant to section 3214(a) (relating to reporting)*. The potential psychological or emotional impact on the mother of the unborn child's survival shall not be deemed a medical risk to the mother. Any person who intentionally, knowingly or recklessly violates the provisions of this subsection commits a felony of the third degree.

(c) Second physician.—**[Any]** *Except in the case of a medical emergency, any* person who intends to perform an abortion *after he has determined an unborn child to be viable*, the method chosen for which *abortion*, in his good faith judgment, does not preclude the possibility of the child surviving the abortion, shall arrange for the attendance, in the same room in which the abortion is to be completed, of a second physician. Immediately after the complete expulsion or extraction of the child, the second physician shall take control of the child and shall provide immediate medical care for the child, taking all reasonable steps necessary, in his judgment, to preserve the child's life and health. Any person who intentionally, knowingly or recklessly violates the provisions of this subsection commits a felony of the third degree.

§ 3211. Viability.

(a) Determination of viability.—**[Prior]** *Except in the case of a medical emergency, prior to performing any abortion upon a woman subsequent to her first [trimester] 19 weeks of pregnancy, the physician shall determine whether, in his good faith judgment, the child is viable. When [a] the physician has determined that a child is viable, he shall, pursuant to section 3214(a) (relating to reporting), report the basis for his determination that the abortion is necessary to preserve maternal life or health. When [a] the physician has determined that a child is not viable after the first 19 weeks of pregnancy, he shall report the basis for such determination pursuant to section 3214(a).*

(b) Unprofessional conduct.—Failure of any physician to conform to any requirement of this section constitutes “unprofessional conduct” within the meaning of the act of **[July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974.”] October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, or their successor acts.** Upon a finding by the State Board of **[Medical Education and Licensure] Medicine or the State Board of Osteopathic Medicine** that any physician has failed to conform to any requirement of this section, the board shall not fail to suspend that physician’s license for a period of at least three months. Intentional, knowing or reckless falsification of any report required under this section is a misdemeanor of the third degree.

Section 7. Section 3213(c) of Title 18 is amended and the section is amended by adding a subsection to read:

§ 3213. Prohibited acts.

* * *

(c) Regulations.—The department shall issue regulations to assure that prior to the performance of any abortion, including abortions performed in the first trimester of pregnancy, the maternal Rh status shall be determined and that anti-Rh sensitization prophylaxis shall be provided to each patient at risk of sensitization unless the patient refuses to accept the treatment. Except when there exists a medical emergency or, in the judgment of the physician, there exists no possibility of Rh sensitization, the intentional, knowing, or reckless failure to conform to the regulations issued pursuant to this subsection constitutes “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of **[July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974.”] October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, or their successor acts.**

* * *

(f) Notice.—

(1) *Except for a facility devoted exclusively to the performance of abortions, every facility performing abortions shall prominently post a notice, not less than eight and one-half inches by eleven inches in size, enti-*

tled "Right of Conscience," for the exclusive purpose of informing medical personnel, employees, agents and students of such facilities of their rights under subsection (d) and under section 5.2 of the Pennsylvania Human Relations Act. The facility shall post the notice required by this subsection in a location or locations where notices to employees, medical personnel and students are normally posted or, if notices are not normally posted, in a location or locations where the notice required by this subsection is likely to be seen by medical personnel, employees or students of the facility. The department shall prescribe a model notice which may be used by any facility, and any facility which utilizes the model notice or substantially similar language shall be deemed in compliance with this subsection.

(2) The department shall have the authority to assess a civil penalty of up to \$5,000 against any facility for each violation of this subsection, giving due consideration to the appropriateness of the penalty with respect to the size of the facility, the gravity of the violation, the good faith of the facility and the history of previous violations. Civil penalties due under this subsection shall be paid to the department for deposit in the State Treasury and may be collected by the department in the appropriate court of common pleas. The department shall send a copy of its model notice to every facility which files a report under section 3207(b) (relating to abortion facilities). Failure to receive a notice shall not be a defense to any civil action brought pursuant to this subsection.

Section 8. Section 3214(a), (e), (f), (h) and (i) of Title 18 are amended to read:

§ 3214. Reporting.

(a) General rule.—[A] *For the purpose of promotion of maternal health and life by adding to the sum of medical and public health knowledge through the compilation of relevant data, and to promote the Commonwealth's interest in protection of the viable unborn child, a report of each abortion performed shall be made to the department on forms prescribed by it. The report forms shall not identify the individual patient by name and shall include the following information:*

(1) Identification of the physician who performed the abortion and the facility where the abortion was performed and of the referring physician, agency or service, if any.

(2) The [political subdivision] county and state in which the woman resides.

(3) The woman's age[, race and marital status].

(4) The number of prior pregnancies *and prior abortions of the woman.*

(5) The [date of the woman's last menstrual period and the] probable gestational age of the unborn child.

(6) The type of procedure performed or prescribed and the date of the abortion.

(7) [Complications] *Medical complications of the pregnancy, if any, including but not limited to, rubella disease, hydatid mole, endocervical polyp and malignancies, and, if known, any medical complication which resulted from the abortion itself.*

(8) The information required to be reported under section 3211(a) (relating to viability).

(9) The length and weight of the aborted unborn child **[when measurable] for any abortion performed subsequent to the first 19 weeks of pregnancy.**

(10) Basis for any medical judgment that a medical emergency existed as required by any part of this chapter.

[(11) The date of the medical consultation required by section 3204(b) (relating to medical consultation and judgment).

(12) The date on which any determination of pregnancy was made.

(13)] (11) The information required to be reported under section 3210(b) (relating to abortion after viability).

[(14) Whether the abortion was paid for by the patient, by medical assistance, or by medical insurance coverage.]

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(e) Statistical reports; public availability of reports.—

(1) The department shall prepare **[an] a comprehensive** annual statistical report for the General Assembly based upon the data gathered under **[subsection] subsections (a) and (h)**. Such report shall not lead to the disclosure of the identity of any person filing a report or about whom a report is filed, and shall be available for public inspection and copying.

(2) Reports filed pursuant to subsection (a) **or (h)** shall not be deemed public records within the meaning of that term as defined by the act of June 21, 1957 (P.L.390, No.212), referred to as the Right-to-Know Law, **[but] and shall [be made available for public inspection and copying within 15 days of receipt in a form which will not lead to the disclosure of the identity of any person filing a report. On those reports available for public inspection and copying, the department shall substitute for the name of any physician which appears on the report, a unique identifying number. The identity of the physician shall constitute a confidential record of the department. The department may set a reasonable per copy fee to cover the cost of making any copies authorized hereunder.] remain confidential, except that disclosure may be made to law enforcement officials upon an order of a court of common pleas after application showing good cause therefor. The court may condition disclosure of the information upon any appropriate safeguards it may impose.**

(3) Original copies of all reports filed under **[subsection (a)] subsections (a), (f) and (h)** shall be available to the State Board of **[Medical Education and Licensure,] Medicine and the State Board of Osteopathic Medicine [and to law enforcement officials,]** for use in the performance of their official duties.

(4) Any person who willfully discloses any information obtained from reports filed pursuant to subsection (a) **or (h)**, other than that disclosure authorized under paragraph (1), (2) or (3) hereof or as otherwise authorized by law, shall commit a misdemeanor of the third degree.

(f) Report by facility.—Every facility in which an abortion is performed within this Commonwealth during any quarter year shall file with the depart-

ment a report showing the total number of abortions performed within the hospital or other facility during that quarter year. This report shall also show the total abortions performed in each trimester of pregnancy. **[These reports]** *Any report* shall be available for public inspection and copying *only if the facility receives State-appropriated funds within the 12-calendar-month period immediately preceding the filing of the report. These reports shall be submitted on a form prescribed by the department which will enable a facility to indicate whether or not it is receiving State-appropriated funds. If the facility indicates on the form that it is not receiving State-appropriated funds, the department shall regard its report as confidential unless it receives other evidence which causes it to conclude that the facility receives State-appropriated funds.*

* * *

(h) Report of complications.—Every physician who is called upon to provide medical care or treatment to a woman who is in need of medical care because of a complication or complications resulting, in the good faith judgment of the physician, from having undergone an abortion or attempted abortion shall prepare a report thereof and file the report with the department within 30 days of the date of his first examination of the woman, which report **[shall be open to public inspection and copying and]** shall be on forms prescribed by the department, which forms shall contain the following information, as received, and such other information except the name of the patient as the department may from time to time require:

- (1) Age of patient.
- (2) Number of pregnancies patient may have had prior to the abortion.
- (3) Number and type of abortions patient may have had prior to this abortion.
- (4) Name and address of the facility where the abortion was performed.
- (5) Gestational age of the unborn child at the time of the abortion, if known.
- (6) Type of abortion performed, if known.
- (7) Nature of complication or complications.
- (8) Medical treatment given.
- (9) The nature and extent, if known, of any permanent condition caused by the complication.

(i) Penalties.—

(1) Any person required under this section to file a report, keep any records or supply any information, who willfully fails to file such report, keep such records or supply such information at the time or times required by law or regulation is guilty of “unprofessional conduct” and his license for the practice of medicine and surgery shall be subject to suspension or revocation in accordance with procedures provided under the act of **[July 20, 1974 (P.L.551, No.190), known as the “Medical Practice Act of 1974.”]** *October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, or their successor acts.*

(2) Any person who willfully delivers or discloses to the department any report, record or information known by him to be false commits a misdemeanor of the first degree.

(3) In addition to the above penalties, any person, organization or facility who willfully violates any of the provisions of this section requiring reporting shall upon conviction thereof:

(i) For the first time, have its license suspended for a period of six months.

(ii) For the second time, have its license suspended for a period of one year.

(iii) For the third time, have its license revoked.

Section 9. Section 3215(c) and (e) of Title 18 are amended and the section is amended by adding subsections to read:

§ 3215. Publicly owned facilities; public officials and public funds.

* * *

(c) Public funds.—No Commonwealth funds and no Federal funds which are appropriated by the Commonwealth shall be expended by any State or local government agency for the performance of abortion, except:

(1) When abortion is necessary to avert the death of the mother on certification by a physician. When such physician will perform the abortion or has a pecuniary or proprietary interest in the abortion there shall be a separate certification from a physician who has no such interest.

(2) When abortion is performed in the case of pregnancy caused by rape which, *prior to the performance of the abortion*, has been reported [within 72 hours of the rape], *together with the identity of the offender, if known*, to a law enforcement agency having the requisite jurisdiction and has been personally reported by the victim [or her agent].

(3) When abortion is performed in the case of pregnancy caused by incest which, *prior to the performance of the abortion*, has been *personally* reported by the victim to a law enforcement agency having the requisite jurisdiction, or, in the case of a minor, to the county child protective service agency [within 72 hours from the date when the female first learns she is pregnant] and [she has named] the other party to the incestuous act *has been named in such report*. [Such information shall be turned over by the department to a law enforcement agency.]

* * *

(e) Insurance policies.—All insurers who make available health care and disability insurance policies in this Commonwealth shall make available such policies which contain an express exclusion of coverage for abortion services not necessary to avert the death of the woman or to terminate pregnancies caused by rape or incest. [Any such policy shall contain a premium which is lower than that which is contained in policies offering additional abortion coverage.]

* * *

(i) *Public funds for legal services.*—No Federal or State funds which are appropriated by the Commonwealth for the provision of legal services by private agencies, and no public funds generated by collection of interest on

lawyer's trust accounts, as authorized by statute previously or subsequently enacted, may be used, directly or indirectly, to:

- (1) Advocate the freedom to choose abortion or the prohibition of abortion.
- (2) Provide legal assistance with respect to any proceeding or litigation which seeks to procure or prevent any abortion or to procure or prevent public funding for any abortion.
- (3) Provide legal assistance with respect to any proceeding or litigation which seeks to compel or prevent the performance or assistance in the performance of any abortion, or the provision of facilities for the performance of any abortion.

Nothing in this subsection shall be construed to require or prevent the expenditure of funds pursuant to a court order awarding fees for attorney's services under the Civil Rights Attorney's Fees Awards Act of 1976 (Public law 94-559, 90 Stat. 2641), nor shall this subsection be construed to prevent the use of public funds to provide court appointed counsel in any proceeding authorized under section 3206 (relating to parental consent).

(j) *Required statements.*—No Commonwealth agency shall make any payment from Federal or State funds appropriated by the Commonwealth for the performance of any abortion pursuant to subsection (c)(2) or (3) unless the Commonwealth agency first:

(1) receives from the physician or facility seeking payment a statement signed by the physician performing the abortion stating that, prior to performing the abortion, he obtained a non-notarized, signed statement from the pregnant woman stating that she was a victim of rape or incest, as the case may be, and that she reported the crime, including the identity of the offender, if known, to a law enforcement agency having the requisite jurisdiction or, in the case of incest where a pregnant minor is the victim, to the county child protective service agency and stating the name of the law enforcement agency or child protective service agency to which the report was made and the date such report was made;

(2) receives from the physician or facility seeking payment, the signed statement of the pregnant woman which is described in paragraph (1). The statement shall bear the notice that any false statements made therein are punishable by law and shall state that the pregnant woman is aware that false reports to law enforcement authorities are punishable by law; and

(3) verifies with the law enforcement agency or child protective service agency named in the statement of the pregnant woman whether a report of rape or incest was filed with the agency in accordance with the statement.

The Commonwealth agency shall report any evidence of false statements, of false reports to law enforcement authorities or of fraud in the procurement or attempted procurement of any payment from Federal or State funds appropriated by the Commonwealth pursuant to this section to the district attorney of appropriate jurisdiction and, where appropriate, to the Attorney General.

Section 10. Sections 3217, 3218, 3219, 6307, 6308, 6309 and 6310 of Title 18 are amended to read:

§ 3217. Civil penalties.

Any physician who knowingly violates any of the provisions of section 3204 (relating to medical consultation and judgment) or 3205 (relating to informed consent) shall, in addition to any other penalty prescribed in this chapter, be civilly liable to his patient for any damages caused thereby and, in addition, shall be liable to his patient for punitive damages in the amount of ~~[\$1,000]~~ \$5,000.

§ 3218. Criminal penalties.

(a) *Application of chapter.*—Notwithstanding any other provision of this chapter, no criminal penalty shall apply to a woman who violates any provision of this chapter solely in order to perform or induce or attempt to perform or induce an abortion upon herself.

(b) *False statement, etc.*—*A person commits a misdemeanor of the second degree if, with intent to mislead a public servant in performing his official function under this chapter, such person:*

(1) *makes any written false statement which he does not believe to be true; or*

(2) *submits or invites reliance on any writing which he knows to be forged, altered or otherwise lacking in authenticity.*

(c) *Statements "under penalty".*—*A person commits a misdemeanor of the third degree if such person makes a written false statement which such person does not believe to be true on a statement submitted as required under this chapter, bearing notice to the effect that false statements made therein are punishable.*

(d) *Perjury provisions applicable.*—*Section 4902(c) through (f) (relating to perjury) apply to subsections (b) and (c).*

§ 3219. State Board of [Medical Education and Licensure] *Medicine; State Board of Osteopathic Medicine.*

(a) *Enforcement.*—It shall be the duty of the State Board of [Medical Education and Licensure] *Medicine and the State Board of Osteopathic Medicine* to vigorously enforce those provisions of this chapter, violation of which constitutes "unprofessional conduct" within the meaning of the act of [July 20, 1974 (P.L.551, No.190), known as the "Medical Practice Act of 1974." The] *October 5, 1978 (P.L.1109, No.261), known as the Osteopathic Medical Practice Act, the act of December 20, 1985 (P.L.457, No.112), known as the Medical Practice Act of 1985, or their successor acts.* Each board shall have the power to conduct, and its responsibilities shall include, systematic review of all reports filed under this chapter.

(b) *Penalties.*—Except as otherwise herein provided, upon a finding of "unprofessional conduct" under the provisions of this chapter, the board shall, for the first such offense, prescribe such penalties as it deems appropriate; for the second such offense, suspend the license of the physician for at least 90 days; and, for the third such offense, revoke the license of the physician.

(c) *Reports.*—The board shall prepare and submit an annual report of its enforcement efforts under this chapter to the General Assembly, which shall contain the following items:

- (1) number of violations investigated, by section of this chapter;
- (2) number of physicians complained against;
- (3) number of physicians investigated;
- (4) penalties imposed; and
- (5) such other information as any committee of the General Assembly shall require.

Such reports shall be available for public inspection and copying.

§ 6307. Misrepresentation of age to secure liquor *or malt or brewed beverages*.

(a) *Offense defined.*—A person is guilty of a *summary offense for a first violation and a misdemeanor of the third degree for any subsequent violations* if he, being under the age of 21 years, knowingly and falsely represents himself to be 21 years of age *or older* to any licensed dealer, *distributor* or other person, for the purpose of procuring or having furnished to him, any [intoxicating liquors.] *liquor or malt or brewed beverages*.

(b) *Minimum penalty.*—*In addition to any other penalty imposed pursuant to section 6310.4 (relating to restriction of operating privileges) or this title or other statute, a person who is convicted of violating subsection (a) may be sentenced to pay a fine of not more than \$500 for subsequent violations. No court shall have the authority to suspend any sentence as defined in this section.*

(c) *Adjudication of delinquency.*—*In addition to any other disposition authorized by law, a person adjudicated delinquent under subsection (a) may be ordered to pay a fine not exceeding \$500 for an adjudication of delinquency.*

(d) *Preadjudication disposition.*—

(1) *When a person is charged with violating subsection (a), the court may admit the offender to an adjudication alternative program under 42 Pa.C.S. § 1520 (relating to adjudication alternative program) or to any other preadjudication disposition, if the offender has not previously received a preadjudication disposition for violating subsection (a).*

(2) *The use of a preadjudication disposition shall be considered a first or subsequent offense, whichever is applicable, for the purpose of further adjudication under this section or under section 6310.4.*

§ 6308. Purchase, consumption, possession or transportation of [intoxicating beverages] *liquor or malt or brewed beverages*.

(a) *Offense defined.*—A person commits a summary offense if he, being less than 21 years of age, attempts to purchase, purchases, consumes, possesses or *knowingly and intentionally* transports any [alcohol,] *liquor or malt or brewed beverages, as defined in section 6310.6 (relating to definitions).*

(b) *Penalty.*—*In addition to the penalty imposed pursuant to section 6310.4 (relating to restriction of operating privileges), a person convicted of violating subsection (a) may be sentenced to pay a fine of not more than \$500 for the second and each subsequent violation.*

(c) *Preadjudication disposition.*—

(1) *When a person is charged with violating subsection (a), the district justice may admit the offender to the adjudication alternative as autho-*

rizid in 42 Pa.C.S. § 1520 (relating to adjudication alternative program) or any other preadjudication disposition if the offender has not previously received a preadjudication disposition for violating subsection-(a).

(2) The use of a preadjudication disposition shall be considered a first or subsequent offense, whichever is applicable, for the purpose of further adjudication under this section or under section 6310.4.

(d) Notification.—The police department making an arrest for a suspected violation of subsection (a) shall so notify the parents or guardian of the minor charged.

§ 6309. Representing [to liquor dealers] that minor is of age.

(a) Offense defined.—A person is guilty of a misdemeanor of the third degree if he knowingly, willfully, and falsely represents to any licensed dealer, or other person, any minor to be of full age, for the purpose of inducing any such licensed dealer or other person, to sell or furnish any [intoxicating liquors] liquor or malt or brewed beverages, as defined in section 6310.6 (relating to definitions), to the minor.

(b) Minimum penalty.—In addition to any other penalty imposed pursuant to this title or other statute, a person committing an offense under this section shall be sentenced to pay a fine of not less than \$300. There shall be no authority in any court to impose on an offender any lesser sentence than the minimum sentence mandated by this subsection. In no case shall the sentence exceed the maximum sentence prescribed by law. No court shall have the authority to suspend any sentence as defined in this section.

§ 6310. Inducement of minors to buy liquor or malt or brewed beverages.

(a) Offense defined.—A person is guilty of a misdemeanor of the third degree if he hires or requests or induces any minor to purchase, or offer to purchase, [spirituous, vinous or brewed and malt liquors] liquor or malt or brewed beverages, as defined in section 6310.6 (relating to definitions), from a duly licensed dealer for any purpose.

(b) Minimum penalty.—In addition to any other penalty imposed pursuant to this title or other statute, a person convicted of an offense under this section shall be sentenced to pay a fine of not less than \$300. There shall be no authority in any court to impose on an offender any lesser sentence than the minimum sentence mandated by this subsection. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than the minimum sentence mandated in this subsection. In no case shall the sentence exceed the maximum sentence prescribed by law. No court shall have the authority to suspend any sentence as defined in this section.

Section 11. Title 18 is amended by adding sections to read:

§ 6310.1. Selling or furnishing liquor or malt or brewed beverages to minors.

(a) Offense defined.—Except as provided in subsection (b), a person commits a misdemeanor of the third degree if he intentionally and knowingly sells or intentionally and knowingly furnishes, or purchases with the intent to sell or furnish, any liquor or malt or brewed beverages to a person who is less than 21 years of age.

(b) *Exceptions.*—The provisions of this section shall not apply to any religious service or ceremony which may be conducted in a private home or a place of worship where the amount of wine served does not exceed the amount reasonably, customarily and traditionally required as an integral part of the service or ceremony.

(c) *Minimum penalty.*—In addition to any other penalty imposed pursuant to this title or other statute, a person who is convicted of violating subsection (a) shall be sentenced to pay a fine of not less than \$1,000 for the first violation and a fine of \$2,500 for each subsequent violation. There shall be no authority in any court to impose on an offender any lesser sentence than the minimum sentence mandated by this subsection. No court shall have the authority to suspend any sentence as defined in this section. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than the minimum sentence mandated in this subsection. In no case shall the sentence exceed the maximum sentence prescribed by law.

§ 6310.2. *Manufacture or sale of false identification card.*

(a) *Offense defined.*—A person commits a misdemeanor of the second degree if he intentionally, knowingly or recklessly manufactures, makes, alters, sells or attempts to sell an identification card falsely representing the identity, birth date or age of another.

(b) *Minimum penalty.*—In addition to any other penalty imposed pursuant to this title or any other statute, a person who is convicted of violating subsection (a) shall be sentenced to pay a fine of not less than \$1,000 for the first violation and a fine of not less than \$2,500 for each subsequent violation. There shall be no authority in any court to impose on an offender any lesser sentence than the minimum sentence mandated by this subsection. In no case shall the sentence exceed the maximum sentence prescribed by law. No court shall have the authority to suspend any sentence as defined in this section.

(c) *Adjudication of delinquency.*—In addition to any other disposition authorized by law, a person adjudicated delinquent under subsection (a) shall be ordered to pay a fine of \$500 for the first adjudication of delinquency and a fine of \$1,000 for each subsequent adjudication of delinquency.

§ 6310.3. *Carrying a false identification card.*

(a) *Offense defined.*—A person commits a summary offense for a first violation and a misdemeanor of the third degree for any subsequent violation if he, being under 21 years of age, possesses an identification card falsely identifying that person by name, age, date of birth or photograph as being 21 years of age or older or obtains or attempts to obtain liquor or malt or brewed beverages by using the identification card of another or by using an identification card that has not been lawfully issued to or in the name of that person who possesses the card.

(b) *Minimum penalty.*—In addition to any other penalty imposed pursuant to section 6310.4 (relating to restriction of operating privileges) or any other statute, a person who is convicted of violating subsection (a) shall be sentenced to pay a fine of not more than \$500 for the second and subsequent

violations. No court shall have the authority to suspend any sentence as defined in this section.

(c) *Adjudication of delinquency.*—In addition to any other disposition authorized by law, a person adjudicated delinquent under subsection (a) may be ordered to pay a fine not exceeding \$500 for an adjudication of delinquency.

(d) *Preadjudication disposition.*—

(1) When a person is charged with violating subsection (a), the court may admit the offender to the adjudication alternative as authorized in 42 Pa.C.S. § 1520 (relating to adjudication alternative program) or any other preadjudication disposition if the offender has not previously received a preadjudication disposition for violating subsection (a).

(2) The use of a preadjudication disposition shall be considered a first or subsequent offense, whichever is applicable, for the purpose of further adjudication under this section or under section 6310.4.

(e) *Notification.*—The police department making an arrest for a suspected violation of subsection (a) shall so notify the parents or guardian of the minor charged.

§ 6310.4. *Restriction of operating privileges.*

(a) *General rule.*—Whenever a person is convicted or is adjudicated delinquent or is admitted to any preadjudication program for a violation of section 6307 (relating to misrepresentation of age to secure liquor or malt or brewed beverages), 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages) or 6310.3 (relating to carrying a false identification card), the court, including a court not of record if it is exercising jurisdiction pursuant to 42 Pa.C.S. § 1515(a) (relating to jurisdiction and venue), shall order the operating privilege of the person suspended. A copy of the order shall be transmitted to the Department of Transportation.

(b) *Duration of suspension.*—When the department suspends the operating privilege of a person under subsection (a), the duration of the suspension shall be as follows:

(1) For a first offense, a period of 90 days from the date of suspension.

(2) For a second offense, a period of one year from the date of suspension.

(3) For a third offense, and any offense thereafter, a period of two years from the date of suspension. Any multiple sentences imposed shall be served consecutively.

Reinstatement of operating privilege shall be governed by 75 Pa.C.S. § 1545 (relating to restoration of operating privilege).

(c) *Nondrivers.*—Any person whose record is received by the department under subsection (a) and who does not have a driver's license shall be ineligible to apply for a learner's permit under 75 Pa.C.S. §§ 1505 (relating to learners' permits) and 1507 (relating to application for driver's license or learner's permit by minor) for the time periods specified in subsection (b). If the person is under 16 years of age when he is convicted or adjudicated delin-

quent or admitted to a preadjudication program, his suspension of operating privileges shall commence upon his 16th birthday for the time periods specified in subsection (b).

(d) *Insurance premiums.*—An insurer shall not increase premiums, impose any surcharge or rate penalty, or make any driver record point assignment for automobile insurance, nor shall an insurer cancel or refuse to renew an automobile insurance policy on account of a suspension under this section.

§ 6310.5. *Predisposition evaluation.*

(a) *General rule.*—If an individual is convicted, adjudicated delinquent or offered preadjudication disposition for a violation of section 6307 (relating to misrepresentation of age to secure liquor or malt or brewed beverages), 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages) or 6310.3 (relating to carrying a false identification card), the following shall apply:

(1) For a first violation of any of the preceding offenses, the court may, in addition to other requirements, require the individual to be evaluated prior to an adjudication of delinquency, sentencing or receiving preadjudication disposition.

(2) For a subsequent violation of any of the preceding offenses, the court shall, in addition to other requirements, require the individual to be evaluated prior to sentencing or receiving preadjudication disposition.

(3) Evaluation under this subsection may consist of evaluation techniques if deemed appropriate by the court to determine the extent of the individual's involvement with alcohol.

(b) *Program of education, intervention and counseling.*—Based on the results of the evaluation authorized under subsection (a) and any additional information, the court may require that the person successfully complete a prescribed program of education, intervention or counseling approved by the Department of Health.

(c) *Costs.*—Costs of any and all requirements applied under this section shall be in addition to any other penalty required or allowed by law and shall be the responsibility of the person upon whom the requirement is placed.

§ 6310.6. *Definitions.*

The following words and phrases when used in sections 6307 (relating to misrepresentation of age to secure liquor or malt or brewed beverages) through 6310.3 (relating to carrying a false identification card) shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Furnish.” To supply, give or provide to, or allow a minor to possess on premises or property owned or controlled by the person charged.

“Identification card.” A driver's license, a Department of Transportation nondriver's identification card or a card issued by the Pennsylvania Liquor Control Board for the purpose of identifying a person desiring liquor or malt or brewed beverages, a card which falsely purports to be any of the foregoing, or any card, paper or document which falsely identifies the person by name, photograph, age or date of birth as being 21 years of age or older.

“Liquor.” Includes any alcoholic, spirituous, vinous, fermented or other alcoholic beverage, or combination of liquors and mixed liquor a part of which is spirituous, vinous, fermented or otherwise alcoholic, including all drinks or drinkable liquids, preparations or mixtures and reused, recovered or redistilled denatured alcohol usable or taxable for beverage purposes which contain more than 0.50% of alcohol by volume, except pure ethyl alcohol and malt or brewed beverages.

“Malt or brewed beverages.” Any beer, lager beer, ale, porter or similar fermented malt beverage containing 0.50% or more of alcohol by volume, by whatever name such beverage may be called.

§ 6313. Special information.

(a) **General rule.**—At the time of conviction or admission to a preadjudication disposition for a violation of section 6307 (relating to misrepresentation of age to secure liquor or malt or brewed beverages), 6308 (relating to purchase, consumption, possession or transportation of liquor or malt or brewed beverages) or 6310.3 (relating to carrying a false identification card), the court shall provide to the Department of Transportation, in such form as prescribed by the department, the name of the offender, the offender's date of birth, the disposition of the case and the duration of any license suspension.

(b) **Availability.**—Information under this section shall be available to law enforcement agencies and the judicial system for the purpose of determining whether the offender has a prior record of violation of the offenses listed in subsection (a).

§ 6314. Sentencing and penalties for trafficking drugs to minors.

(a) **General rule.**—A person over 18 years of age who is convicted in any court of this Commonwealth of a violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, shall, if the delivery or possession with intent to deliver of the controlled substance was to a minor, be sentenced to a minimum sentence of at least one year total confinement, notwithstanding any other provision of this title or other statute to the contrary.

(b) **Additional penalties.**—In addition to the mandatory minimum sentence set forth in subsection (a), the person shall be sentenced to an additional minimum sentence of at least two years total confinement, notwithstanding any other provision of this title or other statute to the contrary, if the person did any of the following:

(1) Committed the offense with the intent to promote the habitual use of the controlled substance.

(2) Intended to engage the minor in the trafficking, transportation, delivery, manufacturing, sale or conveyance.

(3) Committed the offense within 1,000 feet of the real property on which is located a public, private or parochial school or a college or university.

(c) **Proof at sentencing.**—The provisions of this section shall not be an element of the crime. Notice of the applicability of this section to the defendant shall not be required prior to conviction, but reasonable notice of the

Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.

(d) Authority of court in sentencing.—There shall be no authority for a court to impose on a defendant to which this section is applicable a lesser sentence than provided for in subsection (a), to place the defendant on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section. Disposition under section 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a defendant to which this section applies.

(e) Appeal by Commonwealth.—If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(f) Forfeiture.—Assets against which a forfeiture petition has been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition shall not be subject to a fine under this section.

(g) Definition.—As used in this section, the term "minor" means an individual under 18 years of age.

Section 12. Section 6501 of Title 18 is amended to read:

§ 6501. Scattering rubbish.

(a) Offense defined.—A person is guilty of an offense if he:

(1) throws any waste paper, sweepings, ashes, household waste, glass, metal, refuse or rubbish, or any dangerous or detrimental substance into or upon any road, street, highway, or alley, or upon the land of another or into or upon any stream or navigable river; [or]

(2) interferes with, scatters, or disturbs the contents of any receptacle containing ashes, garbage, household waste, or rubbish[.]; or

(3) is the operator of a trash, garbage or debris collection vehicle or any other type of vehicle used for collecting trash, garbage or debris and deposits the vehicle's load or any part thereof upon any road, street, highway or alley or upon the land of another.

(b) Penalty.—

(1) A person who violates [the provisions of this section] subsection (a)(1) or (2) is guilty of a summary offense and upon conviction thereof shall be sentenced to pay a fine of not less than \$10 nor more than \$300 or to imprisonment for not more than 90 days, or both.

(2) A person who violates subsection (a)(3) is guilty of a misdemeanor of the third degree for the first offense, a misdemeanor of the second degree for the second offense and a misdemeanor of the first degree for the third or any subsequent offense.

(c) Disposition of fines.—(Repealed).

(d) Exception.—Subsection (a)(3) does not apply to the lawful depositing of waste at any site regulated by the Department of Environmental Resources.

Section 13. Title 18 is amended by adding a section to read:

§ 7508. Drug trafficking sentencing and penalties.

(a) General rule.—Notwithstanding any other provisions of this or any other act to the contrary, the following provisions shall apply:

(1) A person who is convicted of violating section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, where the controlled substance is marijuana shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) upon the first conviction when the amount of marijuana involved is at least two pounds, but less than ten pounds; one year in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; two years in prison and a fine of \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity;

(ii) upon the first conviction when the amount of marijuana involved is at least ten pounds, but less than 50 pounds; three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; four years in prison and a fine of \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(iii) upon conviction when the amount of marijuana involved is at least 50 pounds; five years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(2) A person who is convicted of violating section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance or a mixture containing it is classified in Schedule I or Schedule II under section 4 of that act and is a narcotic drug shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) upon the first conviction when the amount of the substance involved is at least 2.0 grams and less than ten grams; two years in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity

and, upon conviction for another offense subject to sentencing under this section; three years in prison and \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity;

(ii) upon the first conviction when the amount of the substance involved is at least ten grams and less than 100 grams; three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(iii) upon the first conviction when the amount of the substance involved is at least 100 grams; five years in prison and a fine of \$25,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; seven years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(3) A person who is convicted of violating section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance is coca leaves or is any salt, compound, derivative or preparation of coca leaves or is any salt, compound, derivative or preparation which is chemically equivalent or identical with any of these substances or is any mixture containing any of these substances except decocainized coca leaves or extracts of coca leaves which (extracts) do not contain cocaine or ecgonine shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) upon the first conviction when the amount of the substance involved is at least 2.0 grams and less than ten grams; one year in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; three years in prison and \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity;

(ii) upon the first conviction when the amount of the substance involved is at least ten grams and less than 100 grams; three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(iii) upon the first conviction when the amount of the substance involved is at least 100 grams; four years in prison and a fine of \$25,000

or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; seven years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(4) A person who is convicted of violating section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance is methamphetamine or is a salt, isomer or salt of an isomer of methamphetamine or is phencyclidine or is a mixture containing methamphetamine, containing a salt of methamphetamine, containing an isomer of methamphetamine, containing a salt of an isomer of methamphetamine or containing phencyclidine shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) upon the first conviction when the amount of the substance involved is at least five grams and less than ten grams; three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity;

(ii) upon the first conviction when the amount of the substance involved is at least ten grams and less than 100 grams; four years in prison and a fine of \$25,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; seven years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(iii) upon the first conviction when the amount of the substance involved is at least 100 grams; five years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; eight years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(5) A person who is convicted of violating section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act, and who, in the course of the offense, manufactures, delivers, brings into this Commonwealth or possesses with intent to manufacture or deliver amphetamine or any salt, optical isomer, or salt of an optical isomer, or a mixture containing any such substances shall, upon the first conviction when the amount of the substance involved is at least five grams, be sentenced to two and one-half years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for a subsequent offense

under this section, be sentenced to five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(6) A person who is convicted of violating section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance is methaqualone shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) upon the first conviction when the amount of the substance involved is at least 50 tablets, capsules, caplets or other dosage units, or the equivalent quantity and less than 200 tablets, capsules, caplets or other dosage units, or the equivalent quantity; one year in prison and a fine of \$2,500 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; three years in prison and \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(ii) upon the first conviction when the amount of the substance involved is at least 200 tablets, capsules, caplets or other dosage units, or the equivalent quantity; two and one-half years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity and, upon conviction for another offense subject to sentencing under this section; five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(b) Proof of sentencing.—Provisions of this section shall not be an element of the crime. Notice of the applicability of this section to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.

(c) Mandatory sentencing.—There shall be no authority in any court to impose on an offender to which this section is applicable a lesser sentence than provided for herein or to place the offender on probation, parole, work release or prerelease or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than provided herein. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided herein. Disposition under section 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a defendant to which this section applies.

(d) Appellate review.—If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review

of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(e) Forfeiture.—*Assets against which a forfeiture petition has been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition shall not be subject to a fine.*

Section 14. The provisions of this act are severable. If any provision of this act or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act which can be given effect without the invalid provision or application.

Section 15. (a) The first sentence of section 494(a) of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code, is repealed to the extent that the penalty provisions contained therein apply to conduct concurrently prohibited by section 493(1) of the Liquor Code and 18 Pa.C.S. § 6310.1 (relating to selling or furnishing liquor or malt or brewed beverages to minors).

(b) The following acts or parts of acts are repealed:

Section 495(d) of the act of April 12, 1951 (P.L.90, No.21), known as the Liquor Code.

(c) The act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, is repealed insofar as it subjects to a fine assets against which a forfeiture petition has been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition.

Section 16. This act shall take effect as follows:

(1) The amendments to Chapter 32 of Title 18 shall take effect in 30 days.

(2) Section 11 (section 6314) and section 13 (section 7508) shall take effect July 1, 1988, or immediately, whichever is later.

(3) Section 12 (section 6501), section 15(c) and this section shall take effect immediately.

(4) The remainder of this act shall take effect in 60 days.

APPROVED—The 25th day of March, A. D. 1988.

ROBERT P. CASEY