

No. 2000-98

AN ACT

HB 47

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for unlawful restraint, for false imprisonment and for obscenity; and providing for sex offender treatment.

It is the intent of the General Assembly to protect our most vulnerable and precious citizens, the Commonwealth's children, from the ravages of sexual abuse. Because sexual crimes committed against children are among the most heinous imaginable, the General Assembly declares it to be in the public interest to enact this act.

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

Section 1. Sections 2902, 2903 and 5903(h)(2) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 2902. Unlawful restraint.

(a) Offense defined.—A person commits [a misdemeanor of the first degree] *an offense* if he knowingly:

- (1) restrains another unlawfully in circumstances exposing him to risk of serious bodily injury; or
- (2) holds another in a condition of involuntary servitude.

(b) Grading.—

- (1) *Except as provided in paragraph (2), an offense under subsection (a) is a misdemeanor of the first degree.*
- (2) *If the victim of the offense is an individual under 18 years of age, an offense under subsection (a) is a felony of the second degree.*

§ 2903. False imprisonment.

(a) Offense defined.—A person commits [a misdemeanor of the second degree] *an offense* if he knowingly restrains another unlawfully so as to interfere substantially with his liberty.

(b) Grading.—

- (1) *Except as provided in paragraph (2), an offense under subsection (a) is a misdemeanor of the second degree.*
- (2) *If the victim of the offense is an individual under 18 years of age, an offense under subsection (a) is a felony of the second degree.*

§ 5903. Obscene and other sexual materials and performances.

* * *

(h) Criminal prosecution.—

* * *

(2) Any person who violates subsection (c) or (d) is guilty of a [misdemeanor] *felony* of the [first] *third* degree. Violation of subsection

(c) or (d) is a felony of the [third] *second* degree if the offender has previously been convicted of a violation of subsection (c) or (d).

* * *

Section 2. Title 42 is amended by adding a section to read:

§ 9718.1. Sexual offender treatment.

(a) *General rule.*—A person, including an offender designated as a “sexually violent predator” as defined in section 9792 (relating to definitions), shall attend and participate in a Department of Corrections program of counseling or therapy designed for incarcerated sex offenders if the person is incarcerated in a State institution for any of the following provisions under 18 Pa.C.S. (relating to crimes and offenses):

(1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses) if the offense involved a minor under 18 years of age.

(2) Section 4304 (relating to endangering welfare of children) if the offense involved sexual contact with the victim.

(3) Section 6301 (relating to corruption of minors) if the offense involved sexual contact with the victim.

(4) Open lewdness, as defined in section 5901 (relating to open lewdness), if the offense involved a minor under 18 years of age.

(5) Prostitution, as defined in section 5902 (relating to prostitution and related offenses), if the offense involved a minor under 18 years of age.

(6) Obscene and other sexual materials and performances, as defined in section 5903 (relating to obscene and other sexual materials and performances), if the offense involved a minor under 18 years of age.

(7) Sexual abuse of children, as defined in section 6312 (relating to sexual abuse of children).

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

(9) Section 6320 (relating to sexual exploitation of children).

(10) Section 4302 (relating to incest) if the offense involved a minor under 18 years of age.

(11) An attempt or solicitation to commit any of the offenses listed in this subsection.

(b) *Eligibility for parole.*—For an offender required to participate in the program under subsection (a), all of the following apply:

(1) The offender shall not be eligible for parole unless the offender has:

(i) served the minimum term of imprisonment;

(ii) participated in the program under subsection (a); and

(iii) agreed to comply with any special conditions of parole imposed for therapy or counseling for sex offenders, including sexually violent predators.

(2) *Notwithstanding paragraph (1)(iii), an offender who is a sexually violent predator is subject to section 9799.4 (relating to counseling of sexually violent predators).*

(c) *Department.—The department shall develop and provide the program of counseling or therapy for offenders as provided in subsection (a). The department shall have the sole discretion with respect to counseling or therapy program contents and administration, including the scheduling of an offender's attendance and participation.*

(d) *No right of action created.—Notwithstanding any other provision of law to the contrary, this section shall not be construed to confer any legal right upon any individual, including an individual required to participate in the department's programs of counseling or therapy for incarcerated offenders, seeking to:*

(1) *participate and attend the program provided in subsection (a) at a time of the individual's own choosing;*

(2) *modify the contents of the program provided in subsection (a);*

(3) *be paroled; or*

(4) *file any other cause of action in any court regarding the program provided in subsection (a).*

Section 3. This act shall apply as follows:

(1) The amendment of 18 Pa.C.S. §§ 2902, 2903 and 5903(h)(2) and the addition of 42 Pa.C.S. § 9718.1 shall apply to offenses committed on or after the effective date of this act.

(2) The addition of 42 Pa.C.S. § 9718.1 shall not preclude consideration of the factors set forth in that section in granting or denying parole for offenses committed before the effective date of this act, except to the extent that consideration of such factors is precluded by the Constitution of the United States or the Constitution of the Commonwealth of Pennsylvania.

Section 4. This act shall take effect immediately.

APPROVED—The 20th day of December, A.D. 2000.

THOMAS J. RIDGE