

Pennsylvania

CHAPTER 31. SEXUAL OFFENSES

Subchapter A. General Provisions

§ 3101. Definitions.

Subject to additional definitions contained in subsequent provisions of this chapter which are applicable to specific provisions of this chapter, the following words and phrases when used in this chapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

"Complainant."

An alleged victim of a crime under this chapter.

"Deviate sexual intercourse."

Sexual intercourse per os or per anus between human beings and any form of sexual intercourse with an animal. The term also includes penetration, however slight, of the genitals or anus of another person with a foreign object for any purpose other than good faith medical, hygienic or law enforcement procedures.

"Forcible compulsion."

Compulsion by use of physical, intellectual, moral, emotional or psychological force, either express or implied. The term includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after sexual intercourse.

"Foreign object."

Includes any physical object not a part of the actor's body.

"Indecent contact."

Any touching of the sexual or other intimate parts of the person for the purpose of arousing or gratifying sexual desire, in either person.

"Sexual intercourse."

In addition to its ordinary meaning, includes intercourse per os or per anus, with some penetration however slight; emission is not required.

Subchapter A. General Provisions

§ 3102. Mistake as to age.

Except as otherwise provided, whenever in this chapter the criminality of conduct depends on a child being below the age of 14 years, it is no defense that the defendant did not know the age of the child or reasonably believed the child to be the age of 14 years or older. When criminality depends on the child's being below a critical age older than 14 years, it is a defense for the defendant to prove by a preponderance of the evidence that he or she reasonably believed the child to be above the critical age.

Subchapter A. General Provisions

§ 3104. 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.

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 complainant's failure to promptly report the crime if such evidence would be admissible pursuant to the rules of evidence.

§ 3106. Testimony of complainants.

The credibility of a complainant of an offense under this chapter shall be determined by the same standard as is the credibility of a complainant of any other crime. The testimony of a complainant need not be corroborated in prosecutions under this chapter. No instructions shall be given cautioning the jury to view the complainant's testimony in any other way than that in which all complainants' 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.

§ 3122.1. Statutory sexual assault.

Except as provided in section 3121 (relating to rape), a person commits a felony of the second degree when that person engages in sexual intercourse with a complainant under the age of 16 years and that person is four or more years older than the complainant and the complainant and the person are not married to each other.

Subchapter B. Definition Of Offenses

§ 3123. Involuntary deviate sexual intercourse.

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

- by forcible compulsion;
- by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- who is unconscious or where the person knows that the complainant is unaware that the sexual intercourse is occurring;
- where the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- who suffers from a mental disability which renders him or her incapable of consent;
- who is less than 13 years of age; or
- who is less than 16 years of age and the person is four or more years older than the complainant and the complainant and person are not married to each other.

(b) Definition.--As used in this section, the term "forcible compulsion" includes, but is not limited to, compulsion resulting in another person's death, whether the death occurred before, during or after the sexual intercourse.

Webmaster note: Involuntary deviate sexual intercourse prohibits both use of one's mouth and of one's genitals in the act of oral sexual intercourse. Commonwealth v. Bruner, 527 A.2d 575 (Pa. Superior Ct.: 1987). Cunnilingus is also prohibited as involuntary deviate sexual intercourse. Commonwealth v. Westcott, 523 A.2d 1140 (Pa.Superior Ct.: 1987).

Subchapter B. Definition Of Offenses

§ 3124.1. Sexual assault.

Except as provided in section 3121 (relating to rape) or 3123 (relating to involuntary deviate sexual intercourse), a person commits a felony of the second degree when that person engages in sexual intercourse or deviate sexual intercourse with a complainant without the complainant's consent.

[Webmaster note: This section was enacted by the legislature to reverse the holding in Commonwealth v. Berkowitz, ___ Pa. ___, 641 A.2d 1161 (1994), wherein the Pennsylvania Supreme Court had held that the rape statute required proof of physical force as an element of the offense.]

§ 3125. Aggravated indecent assault.

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

- the person does so without the complainant's consent;
- the person does so by forcible compulsion;
- the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- the complainant is unconscious or the person knows that the complainant is unaware that the penetration is occurring;
- the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- the complainant suffers from a mental disability which renders him or her incapable of consent;
- the complainant is less than 13 years of age; or
- the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

§ 3126. Indecent assault.

(a) Offense defined.--A person who has indecent contact with the complainant or causes the complainant to have indecent contact with the person is guilty of indecent assault if:

- the person does so without the complainant's consent;
- the person does so by forcible compulsion;
- the person does so by threat of forcible compulsion that would prevent resistance by a person of reasonable resolution;
- the complainant is unconscious or the person knows that the complainant is unaware that the indecent contact is occurring;
- the person has substantially impaired the complainant's power to appraise or control his or her conduct by administering or employing, without the knowledge of the complainant, drugs, intoxicants or other means for the purpose of preventing resistance;
- the complainant suffers from a mental disability which renders him or her incapable of consent;
- the complainant is less than 13 years of age; or
- the complainant is less than 16 years of age and the person is four or more years older than the complainant and the complainant and the person are not married to each other.

(b) Grading.--Indecent assault under subsection (a)(7) is a misdemeanor of the first degree. Otherwise, indecent assault is a misdemeanor of the second degree.

[Webmaster note: Touching the genitals of another while the victim is clothed may constitute the indecent assault; skin to skin contact is not essential. Commonwealth v. Ricco, 650 A.2d 1084 (Pa.Superior Ct.: 1994).]

§ 3127. Indecent exposure.

(a) Offense defined.--A person commits indecent exposure if that person exposes his or her genitals in any public place or in any place where there are present other persons under circumstances in which he or she knows or should know that this conduct is likely to offend, affront or alarm.

(b) Grading.--If the person knows or should have known that any of the persons present are less than 16 years of age, indecent exposure under subsection (a) is a misdemeanor of the first degree. Otherwise, indecent exposure under subsection (a) is a misdemeanor of the second degree.

[Webmaster note: Section 5901 (relating to open lewdness) formerly was distinguished from an offense under this section by the fact that indecent exposure required the indecent act to be for purposes of sexual gratification. Since a change was made in the statutory definition of the offense in this section, there no longer is much to distinguish the two offenses.]

CHAPTER 59. PUBLIC INDECENCY

- § 5901. Open lewdness.
- § 5902. Prostitution and related offenses.
- § 5903. Obscene and other sexual materials and performances.
- § 5904. Public exhibition of insane or deformed person.

§ 5901. Open lewdness.
 A person commits a misdemeanor of the third degree if he does any lewd act which he knows is likely to be observed by others who would be affronted or alarmed.

[Webmaster note: Section 3127 (relating to indecent exposure) formerly was distinguished from an offense under this section by the fact that indecent exposure required the indecent act to be for purposes of sexual gratification. Since a change was made in the statutory definition of the offense in that section, there no longer is much to distinguish the two offenses.]

§ 5902. Prostitution and related offenses.

(a) Prostitution.--A person is guilty of prostitution; a misdemeanor of the third degree, if he or she:

is an inmate of a house of prostitution or otherwise engages in sexual activity as a business; or loiters in or within view of any public place for the purpose of being hired to engage in sexual activity.

(a.1) Grading of offenses under subsection (a).--An offense under subsection (a) constitutes a

- Misdemeanor of the third degree when the offense is a first or second offense.
- Misdemeanor of the second degree when the offense is a third offense.
- Misdemeanor of the first degree when the offense is a fourth or subsequent offense.
- Felony of the third degree if the person who committed the offense knew that he or she was human immunodeficiency virus (HIV) positive or manifesting acquired immune deficiency syndrome (AIDS).

(b) Promoting prostitution.--A person who knowingly promotes prostitution of another commits a misdemeanor or felony as provided in subsection (c) of this section. The following acts shall, without limitation of the foregoing, constitute promoting prostitution:

- owning, controlling, managing, supervising or otherwise keeping, alone or in association with others, a house of prostitution or a prostitution business;
- procuring an inmate for a house of prostitution or a place in a house of prostitution for one who would be an inmate;
- encouraging, inducing, or otherwise intentionally causing another to become or remain a prostitute;
- soliciting a person to patronize a prostitute;
- procuring a prostitute for a patron;
- transporting a person into or within this Commonwealth with intent to promote the engaging in prostitution by that person, or procuring or paying for transportation with that intent;
- leasing or otherwise permitting a place controlled by the actor, alone or in association with others, to be regularly used for prostitution or the promotion of prostitution, or failure to make reasonable effort to abate such use by ejecting the tenant, notifying law enforcement authorities, or other legally available means; or
- soliciting, receiving, or agreeing to receive any benefit for doing or agreeing to do anything forbidden by this subsection.

(c) Grading of offenses under subsection (b).--

An offense under subsection (b) constitutes a felony of the third degree if:
the offense falls within paragraphs (b)(1), (b)(2) or (b)(3);
the actor compels another to engage in or promote prostitution;
the actor promotes prostitution of a child under the age of 16 years, whether or not he is aware of the age of the child;
the actor promotes prostitution of his spouse, child, ward or any person for whose care, protection or support he is responsible; or
the person knowingly promoted prostitution of another who was HIV positive or infected with the AIDS virus.

Otherwise the offense is a misdemeanor of the second degree.

(d) Living off prostitutes.--A person, other than the prostitute or the prostitute's minor child or other legal dependent incapable of self-support, who is knowingly supported in whole or substantial part by the proceeds of prostitution is promoting prostitution in violation of subsection (b) of this section.

(e) Patronizing prostitutes.--A person commits the offense of patronizing prostitutes if that person hires a prostitute or any other person to engage in sexual activity with him or her or if that person enters or remains in a house of prostitution for the purpose of engaging in sexual activity.

(e.1) Grading of offenses under subsection (e).--An offense under subsection (e) constitutes a:

Misdemeanor of the third degree when the offense is a first or second offense.

Misdemeanor of the second degree when the offense is a third offense.

Misdemeanor of the first degree when the offense is a fourth or subsequent offense.

Felony of the third degree if the person who committed the offense knew that he or she was human immunodeficiency virus (HIV) positive or manifesting acquired immune deficiency syndrome (AIDS).

(e.2) Publication of sentencing order.--A court imposing a sentence for a second or subsequent offense committed under paragraph (e) shall publish the sentencing order in a newspaper of general circulation in the judicial district in which the court sits, and the court costs imposed on the person sentenced shall include the cost of publishing the sentencing order.

(f) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"House of prostitution."

Any place where prostitution or promotion of prostitution is regularly carried on by one person under the control, management or supervision of another.

"Inmate."

A person who engages in prostitution in or through the agency of a house of prostitution.

"Public place."

Any place to which the public or any substantial group thereof has access.

"Sexual activity."

Includes homosexual and other deviate sexual relations.

[Webmaster note: The United States Supreme Court has repeatedly addressed the issue of obscenity. At present, the landmark case in this area is Miller v. California, 413 U.S. 15, ___ S.Ct. ___, ___ L.Ed.2d ___ (1973). See, too, McKinney v. Alabama, 424 U.S. 669, 96 S.Ct. 1189, 47 L.Ed.2d 387 (1976), Splawn v. California, 431 U.S. 595, 97 S.Ct. 1987, 52 L.Ed.2d 606 (1977), Hamling v. United States, 418 U.S. 87, 94 S.Ct. 2887, 41 L.Ed. 2D 590 (1974), Jenkins v. Georgia, 418 U.S. 153, 94 S.Ct. 2750, 41 L.Ed. 2D 642

(1974), *Smith v. United States*, 431 U.S. 291, 97 S.Ct. 1756, 52 L.Ed.2d 324 (1977), and *United States v. X-Citement Video, Inc.*, 513 U.S. 64, 115 S.Ct. 464, 130 L.Ed.2d 372 (1994).]

§ 5903. Obscene and other sexual materials and performances.

(a) Offenses defined.--No person, knowing the obscene character of the materials or performances involved, shall:

display or cause or permit the display of any explicit sexual materials as defined in subsection (c) in or on any window, showcase, newsstand, display rack, billboard, display board, viewing screen, motion picture screen, marquee or similar place in such manner that the display is visible from any public street, highway, sidewalk, transportation facility or other public thoroughfare, or in any business or commercial establishment where minors, as a part of the general public or otherwise, are or will probably be exposed to view all or any part of such materials;

sell, lend, distribute, exhibit, give away or show any obscene materials to any person 18 years of age or older or offer to sell, lend, distribute, transmit, exhibit or give away or show, or have in his possession with intent to sell, lend, distribute, transmit, exhibit or give away or show any obscene materials to any person 18 years of age or older, or knowingly advertise any obscene materials in any manner;

design, copy, draw, photograph, print, utter, publish or in any manner manufacture or prepare any obscene materials;

write, print, publish, utter or cause to be written, printed, published or uttered any advertisement or notice of any kind giving information, directly or indirectly, stating or purporting to state where, how, from whom, or by what means any obscene materials can be purchased, obtained or had;

produce, present or direct any obscene performance or participate in a portion thereof that is obscene or that contributes to its obscenity;

hire, employ, use or permit any minor child to do or assist in doing any act or thing mentioned in this subsection;

knowingly take or deliver in any manner any obscene material into a State correctional institution, county prison, regional prison facility or any other type of correctional facility;

possess any obscene material while such person is an inmate of any State correctional institution, county prison, regional prison facility or any other type of correctional facility; or

knowingly permit any obscene material to enter any State correctional institution, county prison, regional prison facility or any other type of correctional facility if such person is a prison guard or other employee of any correctional facility described in this paragraph.

(a.1) Dissemination of explicit sexual material via an electronic communication.--No person, knowing the content of the advertisement to be explicit sexual materials as defined in subsection (c)(1) and (2), shall transmit or cause to be transmitted an unsolicited advertisement in an electronic communication as defined in section 5702 (relating to definitions) to one or more persons within this Commonwealth that contains explicit sexual materials as defined in subsection (c)(1) and (2) without including in the advertisement the term "ADV-ADULT" at the beginning of the subject line of the advertisement.

(b) Definitions.--As used in this section the following words and phrases shall have the meanings given to them in this subsection:

"Community."

For the purpose of applying the "contemporary community standards" in this section, community means the State.

"Knowing."

As used in subsections (a) and (a.1), knowing means having general knowledge of, or reason to know or a belief or ground for belief which warrants further inspection or inquiry of, the character and content of any material or performance described therein which is reasonably susceptible of examination by the defendant.

"Material."

Any literature, including any book, magazine, pamphlet, newspaper, storypaper, bumper sticker, comic book or writing; any figure, visual representation, or image, including any drawing, photograph, picture, videotape or motion picture.

"Nude."

Means showing the human male or female genitals, pubic area or buttocks with less than a fully opaque covering, or showing the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple.

"Obscene."

Any material or performance, if:

the average person applying contemporary community standards would find that the subject matter taken as a whole appeals to the prurient interest;

the subject matter depicts or describes in a patently offensive way, sexual conduct of a type described in this section; and

the subject matter, taken as a whole, lacks serious literary, artistic, political, educational or scientific value.

"Performance."

Means any play, dance or other live exhibition performed before an audience.

"Sadomasochistic abuse."

Means, in a sexual context, flagellation or torture by or upon a person who is nude or clad in undergarments, a mask or in a bizarre costume or the condition of being fettered, bound or otherwise physically restrained on the part of one who is nude or so clothed.

"Sexual conduct."

Patently offensive representations or descriptions of ultimate sexual acts, normal or perverted, actual or simulated, including sexual intercourse, anal or oral sodomy and sexual bestiality; and patently offensive representations or descriptions of masturbation, excretory functions, sadomasochistic abuse and lewd exhibition of the genitals.

"Subject line."

The area of an electronic communication that contains a summary description of the content of the message.

"Transportation facility."

Any conveyance, premises or place used for or in connection with public passenger transportation, whether by air, rail, motor vehicle or any other method, including aircraft, watercraft, railroad cars, buses, and air, boat, railroad and bus terminals and stations.

(c) Dissemination to minors.--No person shall knowingly disseminate by sale, loan or otherwise explicit sexual materials to a minor. "Explicit sexual materials," as used in this subsection, means materials which are obscene or:

any picture, photograph, drawing, sculpture, motion picture film, videotape or similar visual representation or image of a person or portion of the human body which depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors; or

any book, pamphlet, magazine, printed matter however reproduced, or sound recording which contains any matter enumerated in paragraph (1), or explicit and detailed verbal descriptions or narrative accounts of sexual excitement, sexual conduct, or sadomasochistic abuse and which, taken as a whole, is harmful to minors.

(d) Admitting minor to show.--It shall be unlawful for any person knowingly to exhibit for monetary consideration to a minor or knowingly to sell to a minor an admission ticket or pass or knowingly to admit a minor for a monetary consideration to premises whereon there is exhibited, a motion picture show or other presentation or performance which, in whole or in part, depicts nudity, sexual conduct, or sadomasochistic abuse and which is harmful to minors, except that the foregoing shall not apply to any minor accompanied by his parent.

(e) Definitions.--As used in subsections (c) and (d) of this section:

"Minor" means any person under the age of 18 years.

"Nudity" means the showing of the human male or female genitals, pubic area, or buttocks with less than a fully opaque covering, or the showing of the female breast with less than a fully opaque covering of any portion thereof below the top of the nipple, or the depiction of covered male genitals in a discernibly turgid state.

"Sexual conduct" means acts of masturbation, homosexuality, sexual intercourse, sexual bestiality or physical contact with a person's clothed or unclothed genitals, pubic area, buttocks or, if such person be a female, breast.

"Sexual excitement" means the condition of human male or female genitals when in a state of sexual stimulation or arousal.

"Sadomasochistic abuse" means flagellation or torture by or upon a person clad in undergarments, a mask or bizarre costume, or the condition of being fettered, bound or otherwise physically restrained on the part of one so clothed.

"Harmful to minors" means that quality of any description or representation, in whatever form, of nudity, sexual conduct, sexual excitement, or sadomasochistic abuse, when it:

predominantly appeals to the prurient, shameful, or morbid interest of minors; and

is patently offensive to prevailing standards in the adult community as a whole with respect to what is suitable material for minors; and

taken as a whole, lacks serious literary, artistic, political, educational or scientific value for minors.

"Knowingly" means having general knowledge of, or reason to know, or a belief or ground for belief which warrants further inspection or inquiry of both:

the character and content of any material or performance described herein which is reasonably susceptible of examination by the defendant; and

the age of the minor: Provided, however, That an honest mistake shall constitute an excuse from liability hereunder if the defendant made a reasonable bona fide attempt to ascertain the true age of such minor.

(f) Requiring sale as condition of business dealings.--No person shall knowingly require any distributor or retail seller as a condition to sale or delivery for resale or consignment of any literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, videotape, figure or image, or any written or printed matter, or any article or instrument to purchase or take by consignment for purposes of sale, resale or distribution any obscene literature, book, magazine, pamphlet, newspaper, storypaper, paper, comic book, writing, drawing, photograph, videotape, figure or image, or any written or printed matter of an obscene nature or any article or instrument of an obscene nature.

(g) Injunction.--The attorney for the Commonwealth may institute proceedings in equity in the court of common pleas of the county in which any person violates or clearly is about to violate this section for the purpose of enjoining such violation. The court shall issue an injunction only after written notice and hearing and only against the defendant to the action. The court shall hold a hearing within three days after demand by the attorney for the Commonwealth, one of which days must be a business day for the court, and a final decree shall be filed in the office of the prothonotary within 24 hours after the close of the hearing. A written memorandum supporting the decree shall be filed within five days of the filing of the decree. The attorney for the Commonwealth shall prove the elements of the violation beyond a reasonable doubt. The defendant shall have the right to trial by jury at the said hearing.

(h) Criminal prosecution.--

Any person who violates subsection (a), (a.1) or (f) is guilty of a misdemeanor of the first degree. Violation of subsection (a) is a felony of the third degree if the offender has previously been convicted of a violation of subsection (a) or if the material was sold, distributed, prepared or published for the purpose of resale.

Any person who violates subsection (c) or (d) is guilty of a felony of the third degree. Violation of subsection (c) or (d) is a felony of the second degree if the offender has previously been convicted of a violation of subsection (c) or (d).

Findings made in an equity action shall not be binding in the criminal proceedings.

(i) Right to jury trial.--The right to trial by jury shall be preserved in all proceedings under this section.

(j) Exemptions.--Nothing in this section shall apply to any recognized historical society or museum accorded charitable status by the Federal Government, any county, city, borough, township or town library, any public library, any library of any school, college or university or any archive or library under the supervision and control of the Commonwealth or a political subdivision.

(k) Ordinances or resolutions.--Nothing in this chapter shall be construed to invalidate, supersede, repeal or preempt any ordinance or resolution of any political subdivision insofar as it is consistent with this chapter, and political subdivisions further retain the right to regulate any activities, displays, exhibitions or materials not specifically regulated by this chapter.

(l) Penalty for attempt to evade prosecution.--Any person who violates subsection (a.1) and attempts to avoid prosecution by knowingly including false or misleading information in the return address portion of the electronic communications such that the recipient would be unable to send a reply message to the original, authentic sender shall, in addition to any other penalty imposed, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$500 per message or to imprisonment for not more than 90 days, or both, for a first offense and a fine of not less than \$500 nor more than \$1000 or to imprisonment for not more than one year, or both, for a second or subsequent offense.

(m) Concurrent jurisdiction to prosecute.--The Attorney General shall have the concurrent prosecutorial jurisdiction with the district attorney for cases arising under subsection (a.1) and may refer to the district attorney, with the district attorney's consent, any violation or alleged violation of subsection (a.1) which may come to the Attorney General's attention.

[Webmaster note: An municipal executive may not coerce magazine vendors to withdraw from sale particular publications deemed offensive, apart from use of state procedures to determine obscenity, since the First Amendment guarantees certain such freedoms as protection from prior restraint of publication. See, American Civil Liberties Union vs. City of Pittsburgh, 586 F. Supp. 417 (W.D.Pa: 1984).]

§ 6301. Corruption of minors.

(a) Offense defined.--

Whoever, being of the age of 18 years and upwards, by any act corrupts or tends to corrupt the morals of any minor less than 18 years of age, or who aids, abets, entices or encourages any such minor in the commission of any crime, or who knowingly assists or encourages such minor in violating his or her parole or any order of court, commits a misdemeanor of the first degree.

Any person who knowingly aids, abets, entices or encourages a minor younger than 18 years of age to commit truancy commits a summary offense. Any person who violates this paragraph within one year of the date of a first conviction under this section commits a misdemeanor of the third degree. A conviction under this paragraph shall not, however, constitute a prohibition under section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms).

(b) Adjudication of delinquency unnecessary.--A conviction under the provisions of this section may be had whether or not the jurisdiction of any juvenile court has attached or shall thereafter attach to such minor or whether or not such minor has been adjudicated a delinquent or shall thereafter be adjudicated a delinquent.

(c) Presumptions.--In trials and hearings upon charges of violating the provisions of this section, knowledge of the minor's age and of the court's orders and decrees concerning such minor shall be presumed in the absence of proof to the contrary.

(d) Mistake as to age.--

Whenever in this section the criminality of conduct depends upon the corruption of a minor whose actual age is under 16 years, it is no defense that the actor did not know the age of the minor or reasonably believed the minor to be older than 18 years.

Whenever in this section the criminality of conduct depends upon the corruption of a minor whose actual age is 16 years or more but less than 18 years, it is a defense for the actor to prove by a preponderance of the evidence that he reasonably believed the minor to be 18 years or older.

§ 6318. Unlawful contact or communication with minor.

(a) Offense defined.-A person whether within or without this Commonwealth commits an offense if he, knowing that he is contacting or communicating with a minor within this Commonwealth, intentionally contacts or communicates with that minor for the purpose of engaging in activity prohibited under any of the following:

Any of the offenses enumerated in Chapter 31 (relating to sexual offenses).

Open lewdness as defined in section 5901 (relating to open lewdness).

Prostitution as defined in section 5902 (relating to prostitution and related offenses).

Obscene and other sexual materials and performances as defined in section 5903 (relating to obscene and other sexual materials and performances).

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

(b) Grading.-A violation of subsection (a) is:

an offense of the same grade and degree as the most serious underlying offense in subsection (a) for which the defendant contacted or communicated with the minor; and
a misdemeanor of the first degree;
whichever is greater.

(c) Definitions.-As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Contacts or communicates with."

Direct or indirect contact or communication by any means, method or device, including contact or communication in person or through an agent or agency, through any print medium, the mails, a common carrier or communication common carrier, any electronic communication system and any telecommunications, wire, computer or radio communications device or system.

"Minor."

An individual under 18 years of age.

[§ 6318 added by Act of December 19, 1997, No. 62.]

§ 6320. Sexual exploitation of children.

(a) Offense defined.- A person commits the offense of sexual exploitation of children if he procures for another person a child under 18 years of age for the purpose of sexual exploitation.

(b) Penalty.- An offense under this section is a felony of the second degree.

(c) Definitions.- As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Procure."

To obtain or make available for sexual exploitation.

"Sexual exploitation."

Actual or simulated sexual activity or nudity arranged for the purpose of sexual stimulation or gratification of any person.

[§ 6320 added by Act of May 10, 2000, No. 14.]
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