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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 854 Session of  
2019

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INTRODUCED BY ECKER, McCLINTON, MOUL, KAUFFMAN, ZIMMERMAN, MURT,  
MILLARD, READSHAW, STEPHENS, ROTHMAN, KLUNK, SAYLOR, TOOHL,  
GROVE, HEFFLEY, OBERLANDER, BERNSTINE, KORTZ, SCHWEYER,  
CIRESI, YOUNGBLOOD, HERSHEY, SCHLEGEL CULVER AND GILLEN,  
MARCH 18, 2019

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REFERRED TO COMMITTEE ON JUDICIARY, MARCH 18, 2019

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AN ACT

1 Amending Titles 18 (Crimes and Offenses), 23 (Domestic  
2 Relations) and 42 (Judiciary and Judicial Procedure) of the  
3 Pennsylvania Consolidated Statutes, in assault, further  
4 providing for the offense of stalking; in wiretapping and  
5 electronic surveillance, further providing for definitions;  
6 in child custody, further providing for consideration of  
7 criminal conviction; in domestic and sexual violence victim  
8 address confidentiality, further providing for penalties;  
9 and, in sentencing, further providing for sentences for  
10 second and subsequent offenses.

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

13 Section 1. Section 2709.1(c)(2) of Title 18 of the  
14 Pennsylvania Consolidated Statutes is amended to read:

15 § 2709.1. Stalking.

16 \* \* \*

17 (c) Grading.--

18 \* \* \*

19 (2) A second or subsequent offense under this section or  
20 a first offense under subsection (a) if the person has been

1 previously convicted of a crime of violence involving the  
2 same victim, family or household member, including, but not  
3 limited to, a violation of section 2701 (relating to simple  
4 assault), 2702 (relating to aggravated assault), 2705  
5 (relating to recklessly endangering another person), 2718  
6 (relating to strangulation), 2901 (relating to kidnapping),  
7 3121 (relating to rape) or 3123 (relating to involuntary  
8 deviate sexual intercourse), an order issued under section  
9 4954 (relating to protective orders) or an order issued under  
10 23 Pa.C.S. § 6108 (relating to relief) shall constitute a  
11 felony of the third degree.

12 \* \* \*

13 Section 2. The definition of "crime of violence" in section  
14 5702 of Title 18 is amended to read:

15 § 5702. Definitions.

16 As used in this chapter, the following words and phrases  
17 shall have the meanings given to them in this section unless the  
18 context clearly indicates otherwise:

19 \* \* \*

20 "Crime of violence." Any of the following:

21 (1) Any of the following crimes:

22 (i) Murder in any degree as defined in section  
23 2502(a), (b) or (c) (relating to murder).

24 (ii) Voluntary manslaughter as defined in section  
25 2503 (relating to voluntary manslaughter), drug delivery  
26 resulting in death as defined in section 2506(a)  
27 (relating to drug delivery resulting in death),

28 aggravated assault as defined in section 2702(a)(1) or  
29 (2) (relating to aggravated assault), strangulation as  
30 defined in section 2718 (relating to strangulation),

1 kidnapping as defined in section 2901(a) or (a.1)  
2 (relating to kidnapping), rape as defined in section  
3 3121(a), (c) or (d) (relating to rape), involuntary  
4 deviate sexual intercourse as defined in section 3123(a),  
5 (b) or (c) (relating to involuntary deviate sexual  
6 intercourse), sexual assault as defined in section 3124.1  
7 (relating to sexual assault), aggravated indecent assault  
8 as defined in section 3125(a) or (b) (relating to  
9 aggravated indecent assault), incest as defined in  
10 section 4302(a) or (b) (relating to incest), arson as  
11 defined in section 3301(a) (relating to arson and related  
12 offenses), burglary as defined in section 3502(a) (1)  
13 (relating to burglary), robbery as defined in section  
14 3701(a) (1) (i), (ii) or (iii) (relating to robbery) or  
15 robbery of a motor vehicle as defined in section 3702(a)  
16 (relating to robbery of [a] motor vehicle).

17 (iii) Intimidation of witness or victim as defined  
18 in section 4952(a) and (b) (relating to intimidation of  
19 witnesses or victims).

20 (iv) Retaliation against witness, victim or party as  
21 defined in section 4953(a) and (b) (relating to  
22 retaliation against witness, victim or party).

23 (v) Criminal attempt as defined in section 901(a)  
24 (relating to criminal attempt), criminal solicitation as  
25 defined in section 902(a) (relating to criminal  
26 solicitation) or criminal conspiracy as defined in  
27 section 903(a) (relating to criminal conspiracy) to  
28 commit any of the offenses specified in this definition.

29 (2) Any offense equivalent to an offense under paragraph  
30 (1) under the laws of this Commonwealth in effect at the time

1 of the commission of that offense or under the laws of  
2 another jurisdiction.

3 \* \* \*

4 Section 3. Section 5329(a) of Title 23, amended May 4, 2018  
5 (P.L.112, No.21), is amended to read:

6 § 5329. Consideration of criminal conviction.

7 (a) Offenses.--Where a party seeks any form of custody, the  
8 court shall consider whether that party or member of that  
9 party's household has been convicted of or has pleaded guilty or  
10 no contest to any of the offenses in this section or an offense  
11 in another jurisdiction substantially equivalent to any of the  
12 offenses in this section. The court shall consider such conduct  
13 and determine that the party does not pose a threat of harm to  
14 the child before making any order of custody to that party when  
15 considering the following offenses:

16 18 Pa.C.S. Ch. 25 (relating to criminal homicide).

17 18 Pa.C.S. § 2702 (relating to aggravated assault).

18 18 Pa.C.S. § 2706 (relating to terroristic threats).

19 18 Pa.C.S. § 2709.1 (relating to stalking).

20 18 Pa.C.S. § 2718 (relating to strangulation).

21 18 Pa.C.S. § 2901 (relating to kidnapping).

22 18 Pa.C.S. § 2902 (relating to unlawful restraint).

23 18 Pa.C.S. § 2903 (relating to false imprisonment).

24 18 Pa.C.S. § 2910 (relating to luring a child into a motor  
25 vehicle or structure).

26 18 Pa.C.S. § 3121 (relating to rape).

27 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

28 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual  
29 intercourse).

30 18 Pa.C.S. § 3124.1 (relating to sexual assault).

1 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

2 18 Pa.C.S. § 3126 (relating to indecent assault).

3 18 Pa.C.S. § 3127 (relating to indecent exposure).

4 18 Pa.C.S. § 3129 (relating to sexual intercourse with  
5 animal).

6 18 Pa.C.S. § 3130 (relating to conduct relating to sex  
7 offenders).

8 18 Pa.C.S. § 3301 (relating to arson and related offenses).

9 18 Pa.C.S. § 4302 (relating to incest).

10 18 Pa.C.S. § 4303 (relating to concealing death of child).

11 18 Pa.C.S. § 4304 (relating to endangering welfare of  
12 children).

13 18 Pa.C.S. § 4305 (relating to dealing in infant children).

14 18 Pa.C.S. § 5902(b) (relating to prostitution and related  
15 offenses).

16 18 Pa.C.S. § 5903(c) or (d) (relating to obscene and other  
17 sexual materials and performances).

18 18 Pa.C.S. § 6301 (relating to corruption of minors).

19 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

20 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

21 18 Pa.C.S. § 6320 (relating to sexual exploitation of  
22 children).

23 Section 6114 (relating to contempt for violation of order or  
24 agreement).

25 The former 75 Pa.C.S. § 3731 (relating to driving under  
26 influence of alcohol or controlled substance).

27 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol  
28 or utilizing drugs).

29 Section 13(a)(1) of the act of April 14, 1972 (P.L.233,  
30 No.64), known as The Controlled Substance, Drug, Device and

1 Cosmetic Act, to the extent that it prohibits the manufacture,  
2 sale or delivery, holding, offering for sale or possession of  
3 any controlled substance or other drug or device.

4 \* \* \*

5 Section 4. Section 6711(b)(2) of Title 23 is amended to  
6 read:

7 § 6711. Penalties.

8 \* \* \*

9 (b) Access by fraud or misrepresentation.--

10 \* \* \*

11 (2) A first offense under paragraph (1) shall be graded  
12 as a felony of the third degree if it is committed by any  
13 person who has previously been convicted of a crime of  
14 violence involving the program participant under paragraph  
15 (1) or the program participant's family or household member  
16 as defined in section 6102 (relating to definitions),  
17 including:

18 18 Pa.C.S. § 2701 (relating to simple assault);

19 18 Pa.C.S. § 2702 (relating to aggravated assault);

20 18 Pa.C.S. § 2705 (relating to recklessly endangering  
21 another person);

22 18 Pa.C.S. § 2709 (relating to harassment);

23 18 Pa.C.S. § 2709.1 (relating to stalking);

24 18 Pa.C.S. § 2718 (relating to strangulation);

25 18 Pa.C.S. § 2901 (relating to kidnapping);

26 18 Pa.C.S. § 3121 (relating to rape);

27 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual  
28 intercourse);

29 18 Pa.C.S. § 4954 (relating to protective orders); or

30 23 Pa.C.S. § 6108 (relating to relief).

1 \* \* \*

2 Section 5. Section 9714(g) of Title 42 is amended to read:  
3 § 9714. Sentences for second and subsequent offenses.

4 \* \* \*

5 (g) Definition.--As used in this section, the term "crime of  
6 violence" means murder of the third degree, voluntary  
7 manslaughter, manslaughter of a law enforcement officer as  
8 defined in 18 Pa.C.S. § 2507(c) or (d) (relating to criminal  
9 homicide of law enforcement officer), murder of the third degree  
10 involving an unborn child as defined in 18 Pa.C.S. § 2604(c)  
11 (relating to murder of unborn child), aggravated assault of an  
12 unborn child as defined in 18 Pa.C.S. § 2606 (relating to  
13 aggravated assault of unborn child), aggravated assault as  
14 defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to  
15 aggravated assault), assault of law enforcement officer as  
16 defined in 18 Pa.C.S. § 2702.1 (relating to assault of law  
17 enforcement officer), use of weapons of mass destruction as  
18 defined in 18 Pa.C.S. § 2716(b) (relating to weapons of mass  
19 destruction), terrorism as defined in 18 Pa.C.S. § 2717(b)(2)  
20 (relating to terrorism), strangulation as defined in 18 Pa.C.S.  
21 § 2718 (relating to strangulation), trafficking of persons when  
22 the offense is graded as a felony of the first degree as  
23 provided in [18 Pa.C.S. § 3002 (relating to trafficking of  
24 persons)] 18 Pa.C.S. § 3011 (relating to trafficking in  
25 individuals), rape, involuntary deviate sexual intercourse,  
26 aggravated indecent assault, incest, sexual assault, arson  
27 endangering persons or aggravated arson as defined in 18 Pa.C.S.  
28 § 3301(a) or (a.1) (relating to arson and related offenses),  
29 ecoterrorism as classified in 18 Pa.C.S. § 3311(b)(3) (relating  
30 to ecoterrorism), kidnapping, burglary as defined in 18 Pa.C.S.

1 § 3502(a)(1) (relating to burglary), robbery as defined in 18  
2 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), or  
3 robbery of a motor vehicle, drug delivery resulting in death as  
4 defined in 18 Pa.C.S. § 2506(a) (relating to drug delivery  
5 resulting in death), or criminal attempt, criminal conspiracy or  
6 criminal solicitation to commit murder or any of the offenses  
7 listed above, or an equivalent crime under the laws of this  
8 Commonwealth in effect at the time of the commission of that  
9 offense or an equivalent crime in another jurisdiction.

10 Section 6. This act shall take effect in 60 days.