

**TITLE 6: CRIMES AND CRIMINAL PROCEDURE**  
**DIVISION 1: CRIMES AGAINST THE PERSON**

**§ 1301. Sexual Assault in the First Degree.**

- (a) An offender commits the crime of sexual assault in the first degree if
- (1) the offender engages in sexual penetration with another person without consent of that person;
  - (2) the offender attempts to engage in sexual penetration with another person without consent of that person and causes serious bodily injury to that person;
  - (3) the offender engages in sexual penetration with another person
    - (A) who the offender knows is mentally incapable; and
    - (B) who is in the offender's care
      - (i) by authority of law; or
      - (ii) in a facility or program that is required by law to be licensed by the Commonwealth; or
  - (4) the offender engages in sexual penetration with a person who the offender knows is unaware that a sexual act is being committed and
    - (A) the offender is a health care worker; and
    - (B) the offense takes place during the course of professional treatment of the victim.
- (b) Sexual assault in the first degree is punishable by imprisonment for not more than 30 years, a fine of not more than \$50,000, or both, and the mandatory sentencing provisions of 6 CMC § 4102.

**Source:** PL 3-71, § 1 (§ 404); repealed and replaced by PL 12-82, § 3 (1301).

**Commission Comment:** PL 12-82 repealed and replaced 6 CMC §§ 1301-1311 (§ 1301. Rape Defined; § 1302. Rape of Spouse Defined; § 1303. Penalty for Rape; § 1304. Sodomy Defined; § 1305. Criminal Sodomy Defined and Penalized; § 1306. Oral Copulation Defined; § 1307. Criminal Oral Copulation Defined and Penalized; § 1308. Sexual Assault of an Animal; § 1309. Rape by Object; § 1310. Indecent Exposure; § 1311. Sexual Abuse of a Child) and added 6 CMC §§ 1314-1320. Moreover, 6 CMC §§ 1321 through 1325 (Child Pornography Act) were repealed, and 6 CMC §§ 107(d) and 4102 and 7 CMC § 3302 were amended by PL 12-82.

PL 12-82, which contained findings, severability, and savings clause provisions, took effect January 7, 2002. According to PL 12-82:

Section 1. Findings. The Legislature finds that the laws of the Commonwealth dealing with crimes of sexual assault and sexual abuse of children are in need of revision. This revision will correct a number of problems that have become evident in recent years. For example, the crime of Sexual Abuse of a Child, prior to revision, makes no distinction between different types of conduct that an offender might engage in; nor does it draw any distinction based on the respective ages of the offender

**TITLE 6: CRIMES AND CRIMINAL PROCEDURE**  
**DIVISION 1: CRIMES AGAINST THE PERSON**

and the victim. Under the current law, a 50-year-old offender having sexual intercourse with an infant child is treated the same as an 18-year-old offender who fondles the breast of his 15-year-old girlfriend. Both are charged with Sexual Abuse of a Child, both face a maximum sentence of only five years on each count charged, and both are required to serve a 20-month mandatory prison term under the mandatory sentencing provisions of 6 CMC § 4102 (d).

The revision would correct the deficiencies in the current code, by providing different levels of crime, such as Sexual Abuse of a Minor in the First Degree, Sexual Abuse of a Minor in the Second Degree, and so forth. Each of the new crimes proscribes different conduct, and provides more severe penalties for conduct which is more harmful and offensive to public safety.

The Legislature also finds that the code sections dealing with sex crimes do not provide penalties which are sever enough to ensure the protection of the community or to adequately deter persons from engaging in the prohibited conduct. Thus, this revision would increase the maximum penalty for the most severe sex crimes to imprisonment for not more than 30 years, a level of penalty more in line with that of other jurisdictions. By the same token, the Legislature finds that judges should have the discretion to sentence those accused of relatively minor sex offenses without the mandatory imposition of one-third the maximum sentence, and therefore removes those lower-level sex offenses from the mandatory sentencing provisions of 6 CMC § 4102 (d).

In increasing the penalties for the more severe crimes, the Legislature has found it necessary to restore the right of jury trial to those accused of such crimes. Those persons facing lengthy prison terms for their crimes should have the right to have a jury determine their guilt or innocence.

However, the Legislature finds that the rights of the accused are not unlimited, and must be balanced with the rights of the general public and individual victims, particularly when those victims are minors. Therefore, this revision authorizes minor children who testify in criminal proceedings to testify via closed-circuit television or behind one-way mirrors, if the trial judge finds that normal trial procedures would result in a minor child being unable to effectively communicate his or her knowledge to the trier of fact.

The revision also corrects a deficiency in the current statutes of limitation in operation under CNMI law, which provide too brief a period of discovery, investigation and prosecution of crimes of sexual abuse against minors. The current law prohibits the Commonwealth from filing charges for sexual abuse of a child after four years have elapsed from the date of the crime. In many instances, particularly when the victims are very young, such crimes may not even come to light until many more years have passed. In cases where the offender is a close family member of the victim, the offender may be able to exert influence over the victim to prevent any report of the crime for four years or more. In such situations, these crimes are unlikely to come to light, and if they do, they may come to light after the statute of limitations has passed. Other

**TITLE 6: CRIMES AND CRIMINAL PROCEDURE**  
**DIVISION 1: CRIMES AGAINST THE PERSON**

jurisdictions have responded to this problem in recent years by expanding their statutes of limitation. The Legislature finds this solution is preferable to the current situation, and has expanded the statute of limitations applicable to such crimes by tolling the period of limitation for sexual crimes against minors until the victim reaches the age of 18, after which the normal period of limitation will begin to run.

The revision also does away with the archaic terms of usage such as “rape” and “sodomy,” which carry connotations that may not accurately describe the prohibited conduct under the statutes, and which evoke a visceral response, in favor of more generic terms such as “sexual assault.”

The Legislature also finds that other sections of the code need revision, in order to bring the Commonwealth code in line with the law of other jurisdictions. This revision therefore authorizes by statute the admission of DNA evidence in criminal proceedings, provides for exceptions to the testimonial privileges based on marital status and confidentiality of marital communications in certain circumstances, and statutorily authorizes the admission of other acts evidence in the prosecution of sex crimes under certain limited circumstances.