

TITLE 6: CRIMES AND CRIMINAL PROCEDURE
DIVISION 4: DISPOSITION OF OFFENDERS

§ 4102. Mandatory Sentencing.

(a) Any person who is armed with a dangerous weapon in the commission of an offense shall be sentenced to serve no less than one-third the maximum term of imprisonment which may otherwise be imposed upon conviction of the offense, which sentence may not be suspended unless the court determines that unique circumstances exist in the light of which imprisonment of the convicted person is inhumane, cruel or otherwise extremely detrimental to the interest of justice, and is not necessary for the protection of the public or any witness.

(b) Any person who is armed with a dangerous weapon which is also a firearm in the commission of an offense shall be sentenced to serve no less than one-third the maximum term of imprisonment which may otherwise be imposed upon conviction of the offense, which sentence may not be suspended.

(c) No penalties pursuant to this section shall be imposed unless being armed with a dangerous weapon is alleged and proved as an element of the underlying offense.

(d) Notwithstanding any provisions in this section, any person convicted of sexual assault in the first degree or sexual abuse of a minor in the first degree as adopted, shall be sentenced to serve a mandatory term of imprisonment of no less than

(i) eight years if the person convicted has no record of prior felony conviction, which sentence may not be suspended unless the court determines that unique circumstances exist in the light of which imprisonment of the convicted person is inhumane, cruel or otherwise extremely detrimental to the interest of justice, and is not necessary for the protection of the public or any witness; and

(ii) fifteen years if the person convicted has a prior felony conviction.

(e) For purposes of this section, "prior felony conviction" means a conviction in this or another jurisdiction of an offense having elements similar to those of a felony defined as such under the laws of the Commonwealth at the time the offense was committed. A prior felony conviction may not be considered if a period of ten years or more has elapsed since the defendant's unconditional discharge from all disability arising under the sentence on the preceding offense, including probation and parole, and the commission of the present offense.

(f) A defendant convicted of assault and battery in violation of 6 CMC § 1202 that is a crime involving domestic violence shall be sentenced to serve no less than

(1) 72 consecutive hours, less any credit for time served while in pre-trial custody upon the defendant's arrest, if the defendant has not been previously convicted of a crime against a person or a crime involving domestic violence;

(2) 30 days if the defendant has been previously convicted of a crime against a person or a crime involving domestic violence;

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(3) 60 days if the defendant has been previously convicted two or more times of a crime against a person or a crime involving domestic violence, or a combination of those crimes.

A minimum term of imprisonment imposed under this subsection may not be suspended, and shall run consecutively to any other term of imprisonment.

(g) If it has been charged and specially found to be true that any person convicted of a crime against a person that is also a crime involving domestic violence, committed that crime in the presence of a child, the court shall consider the harm to the child in whose presence the crime was committed, and may increase the mandatory minimum jail term provided for in subsection (f), in the court's discretion, not to exceed the maximum term allowable under the law.

(h) For purposes of this section

(1) "Crime against a person" means a crime under Title 6, Division 1, Part 1, or a crime in this or another jurisdiction having elements similar to those of a crime under Title 6, Division 1, Part 1;

(2) "Crime involving domestic violence" has the meaning given in 6 CMC § 1461;

(3) "In the presence of a child" means

(A) In the physical presence of a child under the age of 16 years; or

(B) Having knowledge that a child under the age of 16 years is present and may see or hear an act of domestic violence.

(4) "Previously convicted" means convicted in this or another jurisdiction of an offense having elements similar to those of an offense defined as such under the laws of the Commonwealth at the time the offense was committed. A defendant may not be considered to have been previously convicted if a period of ten years or more has elapsed since the defendant's unconditional discharge from all disability arising under the sentence on the preceding offense, including probation and parole, and the commission of the present offense.

Source: PL 3-71, § 1 (§ 1202); amended by PL 7-15, § 1; subsection (d) amended and subsection (e) added by PL 12-82, § 9; (f), (g), and (h) added by PL 14-9, § 5(a), modified.

Commission Comment: 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 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

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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. Incases 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 jurisdictions have responded to this problem in recent years by expanding their statutes of limitation. The Legislature finds this solution is preferable to

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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.

The Commission made some conforming changes to the above section pursuant to 1 CMC § 3806. PL 14-9, known as the Domestic Violence Criminal Act of 2004, became effective on May 28, 2004 and contained, among other enactments, findings, severability, and savings clause provisions. See the comment to 6 CMC § 1461 regarding PL 14-9.