

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1508 Session of  
1975

INTRODUCED BY ROSS, GIAMMARCO, TOLL, BLACKWELL, RUGGIERO, VANN,  
COHEN, A. P. KELLY, JOHNSON, LAUGHLIN, A. K. HUTCHINSON,  
MRKONIC, FLAHERTY, HAMMOCK, ABRAHAM, MISCEVICH, BARBER,  
OLIVER AND KERNICK, JUNE 17, 1975

REFERRED TO COMMITTEE ON HEALTH AND WELFARE, JUNE 23, 1975

AN ACT

1 Amending the act of April 14, 1972 (P.L.233, No.64), entitled  
2 "An act relating to the manufacture, sale and possession of  
3 controlled substances, other drugs, devices and cosmetics;  
4 conferring powers on the courts and the secretary and  
5 Department of Health, and a newly created Pennsylvania Drug,  
6 Device and Cosmetic Board; establishing schedules of  
7 controlled substances; providing penalties; requiring  
8 registration of persons engaged in the drug trade and for the  
9 revocation or suspension of certain licenses and  
10 registrations; and repealing an act," relating to the  
11 destruction of controlled substances or drugs in certain  
12 prosecutions.

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

15 Section 1. The act of April 14, 1972 (P.L.233, No.64), known  
16 as "The Controlled Substances, Drug, Device and Cosmetic Act,"  
17 is amended by adding a section to read:

18 Section 28.1. Destruction of Forfeited Property.--(a)  
19 Notwithstanding the provisions of section 28, the government  
20 attorney shall move the court of common pleas which has  
21 jurisdiction over any controlled substance or other drug, seized  
22 pursuant to section 28, to order the destruction of the

1 controlled substances or other drugs.

2 (b) A motion for an order of destruction of such controlled  
3 substances or other drugs under subsection (a) shall be in  
4 writing and have attached thereto a copy of the report of  
5 chemical analysis and may be made in the following circumstances  
6 and under the following procedures:

7 (1) Ex parte, where no persons have been arrested in  
8 connection with the seizure or forfeiture of such controlled  
9 substances or other drugs and a showing is made upon affidavit  
10 of the government attorney that the likelihood of any future  
11 arrests in connection therewith is nonexistent.

12 (2) Upon notice, where a person has been arraigned upon an  
13 indictment or district attorney's information, where permitted,  
14 charging such person with a violation of this act and where  
15 controlled substances or other drugs have been seized or  
16 forfeited in connection therewith and such controlled substances  
17 or other drugs are deemed material to the prosecution of the  
18 indictment or district attorney's information.

19 (3) When the motion is ex parte, the court may order the  
20 destruction of all or part of the subject controlled substances  
21 or other drugs.

22 (4) When the motion is upon notice, a hearing thereon shall  
23 be held by the court before which it is returnable not later  
24 than thirty days after the return date and the defendant or any  
25 interested party may be present and represented at such  
26 hearings.

27 (5) A hearing held pursuant to the provisions of this  
28 section shall be conducted and recorded in the same manner as  
29 would be required were the witnesses testifying at a trial. The  
30 government attorney shall establish by a fair preponderance of

the evidence that the controlled substances or other drugs which are the subject of the motion come within the purview of this act and are subject to forfeiture. Each party shall have the right to call and cross examine witnesses and to register objections and to receive rulings of the court thereon.

(6) If the court finds upon the conclusion of the hearing that neither the prosecution nor the defendant will be prejudiced thereby, it may grant the motion and it may make such order as it may deem appropriate for the destruction of part or all of such controlled substances or other drugs.

(7) A defendant may waive such hearing and consent to the granting of the motion and entry of an order of destruction either by sworn affidavit or by personal appearance in court and declaration on the record of such waiver and consent.

(8) In any proceeding brought pursuant to the provisions of this section, the court may grant or deny any motion made or the relief requested in whole or in part and issue any order thereon it may deem proper as the interests of justice and the intent of this act may require.

(9) An order of destruction of controlled substances or other drugs issued by the court shall state the time within which the provisions of such order are to be complied with, it shall direct the persons having custody of the controlled substances or other drugs to destroy such.

(c) Whenever the court orders the destruction of controlled substances or drugs, the destruction of such controlled substances or drugs shall be at a place open to the public. Public notice of such destruction shall be given pursuant to the act of July 19, 1974 (No.175), referred to as the Public Agency Open Meeting Law. Upon the completion of the destruction of the

1 controlled substances or drugs, the persons having custody shall  
2 file an affidavit, containing the date, time, place and manner  
3 of the destruction of the controlled substances or other drugs,  
4 reference to the order of the court and the report of chemical  
5 analysis or by another identifying number or system, with the  
6 court which issued the order.

7 (d) The secretary or the head of the law enforcement agency  
8 charged with custody of controlled substances or drugs seized or  
9 forfeited pursuant to section 28 shall:

10 (1) secure all such controlled substances or drugs in safe  
11 deposit boxes or other receptacles which have two independent  
12 locking systems; and

13 (2) designate two people, who shall be bonded, each of whom  
14 shall be able to unlock only one of the two independent locking  
15 systems.

16 (e) The destruction of controlled substances or other drugs  
17 pursuant to the provisions of this subsection shall not preclude  
18 the admission at any subsequent trial or further proceeding of  
19 any report or testimony of a chemist or other persons who  
20 analyzed or examined such controlled substances or other drugs  
21 where such testimony would otherwise have been legally  
22 admissible if such controlled substances or other drugs had not  
23 been destroyed.