
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 413 Session of
1997

INTRODUCED BY CALTAGIRONE, DeLUCA, STABACK, LUCYK, GEIST, CLARK,
DALEY, ROONEY, PESCI, BATTISTO, TIGUE, VAN HORNE, HERMAN,
McCALL, LAUGHLIN, TRELLO, MIHALICH, BOSCOLA AND PRESTON,
FEBRUARY 11, 1997

AMENDMENTS TO SENATE AMENDMENTS, HOUSE OF REPRESENTATIVES,
JUNE 9, 1998

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for restitution for
3 personal or property injuries, for arson and related offenses
4 ~~and for obscenity~~ AND, FOR AGRICULTURAL TRESPASS AND, FOR <—
5 CONTROL OF FIREARMS; ~~and prohibiting transportation of minors~~ <—
6 ~~PASSENGERS in open trucks~~, FOR SALE OR TRANSFER OF FIREARMS <—
7 AND FOR FIREARMS FUNCTIONS OF THE PENNSYLVANIA STATE POLICE.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 Section 1. Section 1106(a), (c), (e) and (f) of Title 18 of
11 the Pennsylvania Consolidated Statutes are amended to read:

12 § 1106. Restitution for injuries to person or property.

13 (a) General rule.--Upon conviction for any crime wherein
14 property has been stolen, converted or otherwise unlawfully
15 obtained, or its value substantially decreased as a direct
16 result of the crime, or wherein the victim suffered personal
17 injury directly resulting from the crime, the offender [may]
18 shall be sentenced to make restitution in addition to the

1 punishment prescribed therefor.

2 * * *

3 (c) Mandatory restitution.--

4 (1) The court shall order full restitution:

5 (i) Regardless of the current financial resources of
6 the defendant, so as to provide the victim with the
7 fullest compensation for the loss. The court shall not
8 reduce a restitution award by any amount that the victim
9 has received from the Crime Victim's Compensation Board
10 or other governmental agency but shall order the
11 defendant to pay any restitution ordered for loss
12 previously compensated by the board to the Crime Victim's
13 Compensation Fund or other designated account when the
14 claim involves a government agency in addition to or in
15 place of the board. The court shall not reduce a
16 restitution award by any amount that the victim has
17 received from an insurance company but shall order the
18 defendant to pay any restitution ordered for loss
19 previously compensated by an insurance company to the
20 insurance company.

21 (ii) If restitution to more than one person is set
22 at the same time, the court shall set priorities of
23 payment. However, when establishing priorities, the court
24 shall order payment in the following order:

25 (A) The victim.

26 (B) The Crime Victim's Compensation Board.

27 (C) Any other government agency which has
28 provided reimbursement to the victim as a result of
29 the defendant's criminal conduct.

30 (D) Any insurance company which has provided

1 reimbursement to the victim as a result of the
2 defendant's criminal conduct.

3 (2) At the time of sentencing the court shall specify
4 the amount and method of restitution. In determining the
5 amount and method of restitution, the court:

6 (i) Shall consider the extent of injury suffered by
7 the victim, the victim's request for restitution as
8 presented to the district attorney in accordance with
9 paragraph (4) and such other matters as it deems
10 appropriate.

11 (ii) May order restitution in a lump sum, by monthly
12 installments or according to such other schedule as it
13 deems just[, provided that the period of time during
14 which the offender is ordered to make restitution shall
15 not exceed the maximum term of imprisonment to which the
16 offender could have been sentenced for the crime of which
17 he was convicted].

18 [(iii) May at any time alter or amend any order of
19 restitution made pursuant to this section providing,
20 however, that the court state its reasons and conclusions
21 as a matter of record for any change or amendment to any
22 previous order.]

23 [(iv)] (iii) Shall not order incarceration of a
24 defendant for failure to pay restitution if the failure
25 results from the offender's inability to pay.

26 [(v)] (iv) Shall consider any other preexisting
27 orders imposed on the defendant, including, but not
28 limited to, orders imposed under this title or any other
29 title.

30 (3) The court may at any time, or upon the

recommendation of the district attorney that is based on
information received from the victim and the probation
section of the county or other agent designated by the county
commissioners of the county with the approval of the
president judge to collect restitution, alter or amend any
order of restitution made pursuant to paragraph (2),
provided, however, that the court states its reasons and
conclusions as a matter of record for any change or amendment
to any previous order.

(4) (i) It shall be the responsibility of the district
attorneys of the respective counties to make a
recommendation to the court at or prior to the time of
sentencing as to the amount of restitution to be ordered.
This recommendation shall be based upon information
solicited by the district attorney and received from the
victim.

(ii) Where the district attorney has solicited
information from the victims as provided in subparagraph
(i) and has received no response, the district attorney
shall, based on other available information, make a
recommendation to the court for restitution.

(iii) The district attorney may, as appropriate,
recommend to the court that the restitution order be
altered or amended as provided in paragraph (3).

* * *

(e) Restitution payments and records.--Restitution, when
ordered by a judge, shall be made by the offender to the
probation section of the county in which he was convicted or to
another agent designated by the county commissioners with the
approval of the president judge of the county to collect

1 restitution according to the order of the court or, when ordered
2 by a district justice, shall be made to the district justice.
3 The probation section or other agent designated by the county
4 commissioners of the county with the approval of the president
5 judge to collect restitution and the district justice shall
6 maintain records of the restitution order and its satisfaction
7 and shall forward to the victim the property or payments made
8 pursuant to the restitution order.

9 (f) Noncompliance with restitution order.--Whenever the
10 offender shall fail to make restitution as provided in the order
11 of a judge, the probation section or other agent designated by
12 the county commissioners of the county with the approval of the
13 president judge to collect restitution shall notify the court
14 within 20 days of such failure. Whenever the offender shall fail
15 to make restitution within 20 days to a district justice, as
16 ordered, the district justice shall declare the offender in
17 contempt and forward the case to the court of common pleas. Upon
18 such notice of failure to make restitution, or upon receipt of
19 the contempt decision from a district justice, the court shall
20 order a hearing to determine if the offender is in contempt of
21 court or has violated his probation or parole.

22 * * *

23 Section 2. Section 3301(d), (h) and (i) of Title 18 are
24 amended and the section is amended by adding a subsection to
25 read:

26 § 3301. Arson and related offenses.

27 * * *

28 (d) Reckless burning or exploding.--A person commits a
29 felony of the third degree if he intentionally starts a fire or
30 causes an explosion, or if he aids, counsels, pays or agrees to

1 pay another to cause a fire or explosion, whether on his own
2 property or on that of another, and thereby recklessly:

3 (1) places an uninhabited building or unoccupied
4 structure of another in danger of damage or destruction; or

5 (2) [places any personal property of another having a
6 value of \$5,000 or more] places any personal property of
7 another having a value that exceeds \$5,000, or if the
8 property is an automobile, airplane, motorcycle, motorboat or
9 other motor-propelled vehicle in danger of damage or
10 destruction.

11 (d.1) Dangerous burning.--A person commits a summary offense
12 if he intentionally or recklessly starts a fire to endanger any
13 person or property of another, whether or not any damage to
14 person or property actually occurs.

15 * * *

16 (h) Limitations on liability.--The provisions of subsections
17 (a), (b), (c), (d), (d.1) and (e) shall not be construed to
18 establish criminal liability upon any volunteer or paid
19 firefighter or volunteer or paid firefighting company or
20 association if said company or association endangers a
21 participating firefighter or real or personal property in the
22 course of an approved, controlled fire training program or fire
23 evolution, provided that said company or association has
24 complied with the following:

25 (1) a sworn statement from the owner of any real or
26 personal property involved in such program or evolution that
27 there is no fire insurance policy or no lien or encumbrance
28 exists which applies to such real or personal property;

29 (2) approval or permits from the appropriate local
30 government or State officials, if necessary, to conduct such

1 program or exercise have been received;

2 (3) precautions have been taken so that the program or
3 evolution does not affect any other persons or real or
4 personal property; and

5 (4) participation of firefighters in the program or
6 exercise if voluntary.

7 (i) Defenses.--It is a defense to prosecution under
8 subsections (c) [and (d)], (d) and (d.1) where a person is
9 charged with destroying a vehicle, lawful title to which is
10 vested in him, if the vehicle is free of any encumbrances, there
11 is no insurance covering loss by fire or explosion or both on
12 the vehicle and the person delivers to the nearest State Police
13 station at least 48 hours in advance of the planned destruction
14 a written sworn statement certifying that the person is the
15 lawful titleholder, that the vehicle is free of any encumbrances
16 and that there is no insurance covering loss by fire or
17 explosion or both on the vehicle.

18 * * *

19 ~~Section 3. Section 5903(a) of Title 18 is amended to read:~~ <—

20 ~~§ 5903. Obscene and other sexual materials and performances.~~

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

23 ~~(1) display or cause or permit the display of any~~
24 ~~explicit sexual materials as defined in subsection (c) in or~~
25 ~~on any window, showcase, newsstand, display rack, billboard,~~
26 ~~display board, viewing screen, motion picture screen, marquee~~
27 ~~or similar place in such manner that the display is visible~~
28 ~~from any public street, highway, sidewalk, transportation~~
29 ~~facility or other public thoroughfare, or in any business or~~
30 ~~commercial establishment where minors, as a part of the~~

1 ~~general public or otherwise, are or will probably be exposed~~
2 ~~to view all or any part of such materials;~~

3 ~~(2) sell, lend, distribute, exhibit, give away or show~~
4 ~~any obscene materials to any person 18 years of age or older~~
5 ~~or offer to sell, lend, distribute, exhibit or give away or~~
6 ~~show, or have in his possession with intent to sell, lend,~~
7 ~~distribute, exhibit or give away or show any obscene~~
8 ~~materials to any person 18 years of age or older, or~~
9 ~~knowingly advertise any obscene materials in any manner;~~

10 ~~(3) design, copy, draw, photograph, print, utter,~~
11 ~~publish or in any manner manufacture or prepare any obscene~~
12 ~~materials;~~

13 ~~(4) write, print, publish, utter or cause to be written,~~
14 ~~printed, published or uttered any advertisement or notice of~~
15 ~~any kind giving information, directly or indirectly, stating~~
16 ~~or purporting to state where, how, from whom, or by what~~
17 ~~means any obscene materials can be purchased, obtained or~~
18 ~~had;~~

19 ~~(5) produce, present or direct any obscene performance~~
20 ~~or participate in a portion thereof that is obscene or that~~
21 ~~contributes to its obscenity; [or]~~

22 ~~(6) hire, employ, use or permit any minor child to do or~~
23 ~~assist in doing any act or thing mentioned in this~~
24 ~~subsection[.];~~

25 ~~(7) knowingly take or deliver in any manner any obscene~~
26 ~~material into a State correctional institution, county~~
27 ~~prison, regional prison facility or any other type of~~
28 ~~correctional facility;~~

29 ~~(8) possess any obscene material while such person is an~~
30 ~~inmate of any State correctional institution, county prison,~~

~~regional prison facility or any other type of correctional facility; or~~

~~(9) 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.~~

~~* * *~~

~~Section 4. Title 18 is amended by adding a section to read:~~

~~§ 6320. Minors in open trucks.~~

~~(a) General rule. No person shall operate a vehicle which has an open truck bed area to transport passengers under 18 years of age in the bed area, except as provided in subsection (b).~~

~~(b) Exceptions. The following persons under 18 years of age may be transported in open truck bed areas, so long as the vehicle's speed does not exceed 35 miles per hour:~~

~~(1) Persons utilizing restraints as defined in 75 Pa.C.S. section 4581 (relating to restraint systems).~~

~~(2) Any child of a farmer who is being transported between parts of a farm or farms owned or operated by the farmer.~~

~~(3) Any person employed to perform farm labor who is being transported between parts of a farm or farms owned or operated by the farmer.~~

~~(4) Parade participants.~~

~~(c) Grading. A person who violates this section commits a summary offense and shall, upon conviction, be sentenced to pay a fine of not less than \$100 nor more than \$500.~~

~~SECTION 3. SECTION 3503 OF TITLE 18 IS AMENDED BY ADDING A~~

~~<—~~

1 SUBSECTION TO READ:

2 § 3503. CRIMINAL TRESPASS.

3 * * *

4 (B.2) AGRICULTURAL TRESPASSER.--

5 (1) A PERSON COMMITS AN OFFENSE IF, KNOWING THAT HE IS
6 NOT LICENSED OR PRIVILEGED TO DO SO, HE:

7 ~~(I) ENTERS OR REMAINS ON ANY AGRICULTURAL OR OTHER~~ <—
8 ~~OPEN LANDS;~~

9 ~~(II) (I) ENTERS OR REMAINS ON ANY AGRICULTURAL OR~~ <—
10 OTHER OPEN LANDS WHEN SUCH LANDS ARE POSTED IN A MANNER
11 PRESCRIBED BY LAW OR REASONABLY LIKELY TO COME TO THE
12 PERSON'S ATTENTION OR ARE FENCED OR ENCLOSED IN A MANNER
13 MANIFESTLY DESIGNED TO EXCLUDE TRESPASSERS OR TO CONFINE
14 DOMESTIC ANIMALS; OR

15 ~~(III) (II) ENTERS OR REMAINS ON ANY AGRICULTURAL OR~~ <—
16 OTHER OPEN LANDS AND DEFIES AN ORDER NOT TO ENTER OR TO
17 LEAVE THAT HAS BEEN PERSONALLY COMMUNICATED TO HIM BY THE
18 OWNER OF THE LANDS OR OTHER AUTHORIZED PERSON.

19 (2) AN OFFENSE UNDER THIS SUBSECTION SHALL BE GRADED AS
20 FOLLOWS:

21 ~~(I) AN OFFENSE UNDER PARAGRAPH (1)(I) CONSTITUTES A~~ <—
22 ~~SUMMARY OFFENSE AND IS PUNISHABLE BY IMPRISONMENT FOR A~~
23 ~~TERM OF NOT MORE THAN 90 DAYS AND A FINE OF NOT LESS THAN~~
24 ~~\$100 NOR MORE THAN \$300.~~

25 ~~(II) AN OFFENSE UNDER PARAGRAPH (1)(II) CONSTITUTES~~
26 (I) AN OFFENSE UNDER PARAGRAPH (1)(I) CONSTITUTES A <—
27 MISDEMEANOR OF THE THIRD DEGREE AND IS PUNISHABLE BY
28 IMPRISONMENT FOR A TERM OF NOT MORE THAN ONE YEAR AND A
29 FINE OF NOT LESS THAN \$250 NOR MORE THAN \$2,500. <—

30 ~~(III) (II) AN OFFENSE UNDER PARAGRAPH (1)(III)~~ <—

1 (1)(II) CONSTITUTES A MISDEMEANOR OF THE SECOND DEGREE <—
2 AND IS PUNISHABLE BY IMPRISONMENT FOR A TERM OF NOT MORE
3 THAN TWO YEARS AND A FINE OF NOT LESS THAN \$500 NOR MORE
4 THAN \$5,000.

5 (3) FOR THE PURPOSES OF THIS SUBSECTION, THE PHRASE <—
6 "AGRICULTURAL OR OTHER OPEN LANDS" SHALL MEAN ANY LAND ON
7 WHICH AGRICULTURAL ACTIVITY OR FARMING AS DEFINED IN SECTION
8 3309 (RELATING TO AGRICULTURAL VANDALISM) IS CONDUCTED, OR
9 ANY LAND POPULATED BY FOREST TREES OF ANY SIZE AND CAPABLE OF
10 PRODUCING TIMBER OR OTHER WOOD PRODUCTS OR ANY OTHER LAND IN
11 AN AGRICULTURAL SECURITY AREA AS DEFINED IN THE ACT OF JUNE
12 30, 1981 (P.L.128, NO.43), KNOWN AS THE AGRICULTURAL AREA
13 SECURITY LAW, OR ANY AREA ZONED FOR AGRICULTURAL USE.

14 * * *

15 SECTION 4. ~~SECTION 6105(C)(1) OF TITLE 18 IS~~ SECTIONS <—
16 6105(C)(1), 6111(B)(1.4) AND 6111.1(B)(3) OF TITLE 18 ARE
17 AMENDED TO READ:

18 § 6105. PERSONS NOT TO POSSESS, USE, MANUFACTURE, CONTROL, SELL
19 OR TRANSFER FIREARMS.

20 * * *

21 (C) OTHER PERSONS.--IN ADDITION TO ANY PERSON WHO HAS BEEN
22 CONVICTED OF ANY OFFENSE LISTED UNDER SUBSECTION (B), THE
23 FOLLOWING PERSONS SHALL BE SUBJECT TO THE PROHIBITION OF
24 SUBSECTION (A):

25 (1) A PERSON WHO IS A FUGITIVE FROM JUSTICE. THIS
26 PARAGRAPH DOES NOT APPLY TO AN INDIVIDUAL WHOSE FUGITIVE
27 STATUS IS BASED UPON A NONMOVING OR MOVING SUMMARY OFFENSE
28 UNDER TITLE 75 (RELATING TO VEHICLES).

29 * * *

30 § 6111. SALE OR TRANSFER OF FIREARMS. <—

* * *

(B) DUTY OF SELLER.--NO LICENSED IMPORTER, LICENSED MANUFACTURER OR LICENSED DEALER SHALL SELL OR DELIVER ANY FIREARM TO ANOTHER PERSON, OTHER THAN A LICENSED IMPORTER, LICENSED MANUFACTURER, LICENSED DEALER OR LICENSED COLLECTOR, UNTIL THE CONDITIONS OF SUBSECTION (A) HAVE BEEN SATISFIED AND UNTIL HE HAS:

* * *

(1.4) [PRIOR TO JANUARY 1, 1997, AND FOLLOWING] FOLLOWING IMPLEMENTATION OF THE INSTANTANEOUS RECORDS CHECK BY THE PENNSYLVANIA STATE POLICE ON OR BEFORE [OCTOBER 11, 1999] DECEMBER 1, 1998, NO APPLICATION/RECORD OF SALE SHALL BE COMPLETED FOR THE PURCHASE OR TRANSFER OF A FIREARM WHICH EXCEEDS THE BARREL LENGTHS SET FORTH IN SECTION 6102. A STATEMENT SHALL BE SUBMITTED BY THE DEALER TO THE PENNSYLVANIA STATE POLICE, POSTMARKED VIA FIRST CLASS MAIL, WITHIN 14 DAYS OF THE SALE, CONTAINING THE NUMBER OF FIREARMS SOLD WHICH EXCEED THE BARREL AND RELATED LENGTHS SET FORTH IN SECTION 6102, THE AMOUNT OF SURCHARGE AND OTHER FEES REMITTED AND A LIST OF THE UNIQUE APPROVAL NUMBERS GIVEN PURSUANT TO PARAGRAPH (4), TOGETHER WITH A STATEMENT THAT THE BACKGROUND CHECKS HAVE BEEN PERFORMED ON THE FIREARMS CONTAINED IN THE STATEMENT. THE FORM OF THE STATEMENT RELATING TO PERFORMANCE OF BACKGROUND CHECKS SHALL BE PROMULGATED BY THE PENNSYLVANIA STATE POLICE.

* * *

§ 6111.1. PENNSYLVANIA STATE POLICE.

* * *

(B) DUTY OF PENNSYLVANIA STATE POLICE.--

* * *

(3) THE PENNSYLVANIA STATE POLICE SHALL FULLY COMPLY,
EXECUTE AND ENFORCE THE DIRECTIVES OF THIS SECTION [WITHIN
FOUR YEARS OF THE ENACTMENT OF THIS SUBSECTION.] AS FOLLOWS:

(I) THE INSTANTANEOUS BACKGROUND CHECK FOR FIREARMS
AS DEFINED IN SECTION 6102 (RELATING TO DEFINITIONS)
SHALL BEGIN ON JULY 1, 1998.

(II) THE INSTANTANEOUS BACKGROUND CHECK FOR FIREARMS
THAT EXCEED THE BARREL LENGTHS SET FORTH IN SECTION 6102
SHALL BEGIN ON THE LATER OF:

(A) THE DATE OF PUBLICATION OF THE NOTICE UNDER
SECTION 6111(A)(2); OR

(B) DECEMBER 31, 1998.

* * *

~~SECTION 4 5. TITLE 18 IS AMENDED BY ADDING A SECTION TO~~
~~READ:~~

~~§ 6320. PASSENGERS IN OPEN TRUCKS AND TRAILERS.~~

~~(A) GENERAL RULE. AN OPEN BED PICKUP TRUCK, OPEN FLATBED
TRUCK OR MOTOR VEHICLE TOWING AN OPEN FLATBED TRAILER SHALL NOT
BE DRIVEN AT A SPEED OF MORE THAN 35 MILES PER HOUR IF ANY
PERSON IS OCCUPYING THE BED OF THE TRUCK OR TRAILER.~~

~~(B) CHILDREN.~~

~~(1) AN OPEN BED PICKUP TRUCK, OPEN FLATBED TRUCK OR
MOTOR VEHICLE TOWING AN OPEN FLATBED TRAILER SHALL NOT BE
DRIVEN AT ANY SPEED IF A CHILD UNDER 18 YEARS OF AGE IS
OCCUPYING THE BED OF THE TRUCK OR TRAILER.~~

~~(2) THIS SUBSECTION SHALL NOT APPLY TO:~~

~~(I) A CHILD OF A FARMER WHO IS BEING TRANSPORTED
BETWEEN PARTS OF A FARM OR FARMS OWNED OR OPERATED BY THE
FARMER IN ORDER TO PERFORM WORK ON THE FARM OR FARMS;~~

~~(II) A CHILD POSSESSING A VALID HUNTING LICENSE WHO~~

~~IS BEING TRANSPORTED BETWEEN A HUNTING CAMP AND A HUNTING
SITE OR BETWEEN HUNTING SITES DURING HUNTING SEASON;~~

~~(III) PARADE PARTICIPANTS;~~

~~(IV) A PERSON UTILIZING RESTRAINTS AS DEFINED IN 75
PA.C.S. § 4581 (RELATING TO RESTRAINT SYSTEMS); OR~~

~~(V) ANY PERSON EMPLOYED TO PERFORM FARM LABOR WHO IS
BEING TRANSPORTED BETWEEN PARTS OF A FARM OR FARMS OWNED
OR OPERATED BY THE FARMER.~~

~~(C) GRADING. A PERSON WHO VIOLATES THIS SECTION COMMITS A
SUMMARY OFFENSE AND SHALL, UPON CONVICTION, BE SENTENCED TO PAY
A FINE OF NOT LESS THAN \$25 NOR MORE THAN \$100.~~

Section ~~5-6~~ 5. This act shall take effect as follows: <—

(1) The amendment or addition of 18 Pa.C.S. §§ § <—
3301(d), (d.1), (h) and (i) and ~~5903(a)~~ shall take effect in <—
60 days.

(2) The remainder of this act shall take effect
immediately.