
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1222 Session of 2003

INTRODUCED BY WEBER, ARMSTRONG, BUNT, CRAHALLA, DIGIROLAMO,
GABIG, GEIST, GILLESPIE, HERMAN, HICKERNELL, HORSEY, KELLER,
LEWIS, MARSICO, R. MILLER, O'NEILL, PAYNE, REICHLEY,
E. Z. TAYLOR, WATSON, YOUNGBLOOD AND HARPER, APRIL 24, 2003

SENATE AMENDMENTS TO HOUSE AMENDMENTS, DECEMBER 17, 2003

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 identification of incorrect debtor; further defining "other
4 specified offense" for purposes of DNA data and testing; and <—
5 further providing for summary offenses involving vehicles,
6 for law enforcement records, for duration of commitment and
7 review; ESTABLISHING A CAUSE OF ACTION FOR UNAUTHORIZED <—
8 ENACTMENT OR ENFORCEMENT OF LOCAL ORDINANCES GOVERNING
9 AGRICULTURAL OPERATIONS; PROVIDING FOR CERTAIN ATTORNEY FEES
10 AND COSTS; AND FURTHER PROVIDING for sentence of intermediate
11 punishment and for assessments.

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

14 Section 1. Section 2737.1 of Title 42 of the Pennsylvania
15 Consolidated Statutes is amended to read:

16 § 2737.1. Incorrect debtor identified.

17 [At the time a] (a) Procedure.--A creditor that files for a
18 judgment by confession under section 2737(3) (relating to powers
19 and duties of the office of the prothonotary)[, the creditor
20 filing the judgment shall provide the debtor with written
21 instructions regarding the procedure to follow to strike the

judgment.] shall comply with the Pennsylvania Rules of Civil Procedure regarding confession of judgment, including any notice provisions. A debtor who has been incorrectly identified and had a confession or judgment entered against him [shall be entitled to] may petition the court for costs and reasonable attorney fees as determined by the court. [The instructions provided to the debtor shall explain to the debtor that under this section he is entitled to costs and reasonable attorney fees as determined by the court if he was incorrectly identified.]

(b) Effect on judgment.--A judgment shall not be stricken or opened because of a creditor's failure to provide a correctly identified debtor with instructions pursuant to this section regarding procedures to follow to strike a judgment or regarding any rights available to an incorrectly identified debtor.

Section 2. The definition of "other specified offense" in section 4703 of Title 42 is amended to read:

§ 4703. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Other specified offense." An offense or an attempt, conspiracy or solicitation to commit an offense under any of the following:

18 Pa.C.S. § 2502 (relating to murder).

18 Pa.C.S. [§ 2709(c)(2)(ii) (relating to harassment and stalking)] § 2709.1(c)(2) (relating to stalking).

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

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

1 18 Pa.C.S. § 3126 (relating to indecent assault).

2 18 Pa.C.S. § 3502 (relating to burglary).

3 18 Pa.C.S. § 3701 (relating to robbery).

4 * * *

5 Section 3. Sections 5553(a), (b) and (c), ~~6308(b)(1) and~~ <—

6 ~~6404(e)(3)~~ AND 6308(B)(1) of Title 42 are amended to read: <—

7 § 5553. Summary offenses involving vehicles.

8 (a) General rule.--Except as provided in subsection (b) or
9 (c), proceedings for a summary [offenses] offense under Title 75
10 (relating to vehicles) must be commenced within 30 days after
11 the commission of the alleged offense or within 30 days after
12 the discovery of the commission of the offense or the identity
13 of the offender, whichever is later, and not thereafter.

14 [(b) Minor offenses.--Except as provided in subsection (c),
15 proceedings for summary offenses under the following provisions
16 of Title 75 must be commenced within 30 days after the
17 commission of the alleged offense or within 30 days after the
18 discovery of the commission of the offense or the identity of
19 the offender, whichever is later, and not thereafter:

20 Chapter 31 (relating to general provisions).

21 Chapter 33 (relating to rules of the road in general).

22 Chapter 35 (relating to special vehicles and
23 pedestrians).

24 Subchapters A (relating to offenses in general) and C
25 (relating to accidents and accident reports) of Chapter 37.

26 (c) Exception.--Where]

27 (c) Exceptions.--

28 (1) Where proceedings are timely commenced against a
29 person reasonably believed to have committed the [offense]
30 summary offense or offenses charged and it subsequently

1 appears that a person other than the person charged is the
2 offender, proceedings may be commenced against the other
3 person within 30 days after the identity of the person is
4 discovered and not thereafter.

5 (2) Where a police officer reasonably believes that
6 there are multiple summary offenses arising out of the same
7 conduct or the same criminal episode and that an offense
8 under 75 Pa.C.S. § 1543 (relating to driving while operating
9 privilege is suspended or revoked) has occurred, proceedings
10 on all summary offenses arising from the conduct or episode
11 may be commenced at the same time and must be commenced
12 within 30 days after the commission of the alleged offenses
13 or within 30 days after the discovery of the commission of
14 the offenses or the identity of the offender or within 30
15 days after the police officer receives verification of the
16 basis for the suspension from the Department of
17 Transportation as required under 75 Pa.C.S. § 1543(d),
18 whichever is later, and not thereafter.

19 * * *

20 § 6308. Law enforcement records.

21 * * *

22 (b) Public availability.--

23 (1) The contents of law enforcement records and files
24 concerning a child shall not be disclosed to the public
25 [except if the child is 14 or more years of age at the time
26 of the alleged conduct and if any of] unless any of the
27 following apply:

28 (i) The child has been adjudicated delinquent by a
29 court as a result of an act or acts [which include the
30 elements of rape, kidnapping, murder, robbery, arson,

burglary, violation of section 13(a)(30) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or other act involving the use of or threat of serious bodily harm.]
committed:

(A) when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult; or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1) (relating to arson and related offenses).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(ii) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has

1 committed an act or acts [which include the elements of
2 rape, kidnapping, murder, robbery, arson, burglary,
3 violation of section 13(a)(30) of The Controlled
4 Substance, Drug, Device and Cosmetic Act, or other act
5 involving the use of or threat of serious bodily harm]
6 subject to a hearing pursuant to section 6336(e) and the
7 child previously has been adjudicated delinquent by a
8 court as a result of an act or acts [which included the
9 elements of one of such crimes.] committed:

10 (A) when the child was 14 years of age or older
11 and the conduct would be considered a felony if
12 committed by an adult; or

13 (B) when the child was 12 or 13 years of age and
14 the conduct would have constituted one or more of the
15 following offenses if committed by an adult:

16 (I) Murder.

17 (II) Voluntary manslaughter.

18 (III) Aggravated assault as defined in 18
19 Pa.C.S. § 2702(a)(1) or (2) (relating to
20 aggravated assault).

21 (IV) Arson as defined in 18 Pa.C.S. §
22 3301(a)(1) (relating to arson and related
23 offenses).

24 (V) Involuntary deviate sexual intercourse.

25 (VI) Kidnapping.

26 (VII) Rape.

27 (VIII) Robbery as defined in 18 Pa.C.S. §
28 3701(a)(1)(i), (ii) or (iii) (relating to
29 robbery).

30 (IX) Robbery of motor vehicle.

1 (X) Attempt or conspiracy to commit any of
2 the offenses in this subparagraph.

3 * * *

4 SECTION 4. SECTION 6404(C)(3) OF TITLE 42, ADDED AUGUST 14, <—
5 2003 (P.L.97, NO.21), IS AMENDED TO READ:

6 § 6404. Duration of commitment and review.

7 * * *

8 (c) Discharge.--

9 * * *

10 (3) Within 15 days after [the petition has been filed,]
11 the receipt of the assessment from the board, the court shall
12 hold a hearing pursuant to section 6403(c). If the court
13 determines [the person no longer has serious difficulty
14 controlling sexually violent behavior, the court shall order
15 the discharge of the person. If the court denies the
16 petition, the person shall be subject to the remainder of the
17 period of commitment.] by clear and convincing evidence that
18 the person continues to have serious difficulty controlling
19 sexually violent behavior due to a mental abnormality or
20 personality disorder that makes the person likely to engage
21 in an act of sexual violence, the court shall order that the
22 person be subject to the remainder of the period of
23 commitment. Otherwise, the court shall order the discharge of
24 the person.

25 * * *

26 SECTION 5. SECTION 8542(B) OF TITLE 42 IS AMENDED BY ADDING <—
27 A PARAGRAPH TO READ:

28 § 8542. EXCEPTIONS TO GOVERNMENTAL IMMUNITY.

29 * * *

30 (B) ACTS WHICH MAY IMPOSE LIABILITY.--THE FOLLOWING ACTS BY

1 A LOCAL AGENCY OR ANY OF ITS EMPLOYEES MAY RESULT IN THE
2 IMPOSITION OF LIABILITY ON A LOCAL AGENCY:

3 * * *

4 (9) UNAUTHORIZED ENACTMENT OR ENFORCEMENT OF LOCAL
5 ORDINANCES GOVERNING NORMAL AGRICULTURAL OPERATIONS, AS
6 PROVIDED IN SECTION 8550.1 (RELATING TO UNAUTHORIZED
7 ENACTMENT OR ENFORCEMENT OF LOCAL ORDINANCES GOVERNING NORMAL
8 AGRICULTURAL OPERATIONS).

9 SECTION 6. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ:

10 § 8550.1. UNAUTHORIZED ENACTMENT OR ENFORCEMENT OF LOCAL
11 ORDINANCES GOVERNING NORMAL AGRICULTURAL OPERATIONS.

12 (A) RIGHT OF ACTION.--ANY PERSON WHO IS AGGRIEVED BY AN
13 ENACTMENT OR ENFORCEMENT OF AN UNAUTHORIZED LOCAL ORDINANCE
14 GOVERNING NORMAL AGRICULTURAL OPERATIONS MAY BRING AN ACTION
15 AGAINST THE LOCAL AGENCY IN A COURT OF APPROPRIATE JURISDICTION
16 TO INVALIDATE THE ORDINANCE OR ENJOIN THE ENFORCEMENT THEREOF.

17 (B) ATTORNEY FEES AND COSTS.--

18 (1) IF THE COURT DETERMINES THAT THE LOCAL AGENCY
19 ENACTED OR ENFORCED AN UNAUTHORIZED LOCAL ORDINANCE GOVERNING
20 NORMAL AGRICULTURAL OPERATIONS WILLFULLY OR WITH WANTON
21 DISREGARD OF THE LIMITATION OF AUTHORITY ESTABLISHED UNDER
22 STATE LAW, THE COURT MAY ORDER THE LOCAL AGENCY TO PAY THE
23 PLAINTIFF REASONABLE ATTORNEY FEES AND OTHER LITIGATION COSTS
24 INCURRED BY THE PLAINTIFF IN CONNECTION WITH THE ACTION.

25 (2) IF THE COURT DETERMINES THAT THE ACTION BROUGHT BY
26 THE PLAINTIFF WAS FRIVOLOUS OR WAS BROUGHT WITHOUT
27 SUBSTANTIAL JUSTIFICATION IN CLAIM THAT THE LOCAL ORDINANCE
28 IN QUESTION WAS UNAUTHORIZED, THE COURT MAY ORDER THE
29 PLAINTIFF TO PAY THE LOCAL AGENCY REASONABLE ATTORNEY FEES
30 AND OTHER LITIGATION COSTS INCURRED BY THE LOCAL AGENCY IN

1 DEFENDING THE ACTION.

2 (C) EFFECT ON OTHER POWERS AND DUTIES.--NOTHING IN THIS
3 SECTION SHALL BE CONSTRUED TO DIMINISH, EXPAND OR OTHERWISE
4 AFFECT THE AUTHORITY PROVIDED TO ANY MUNICIPALITY:

5 (1) UNDER OTHER LAWS TO REGULATE, CONTROL OR REQUIRE
6 PERMITTING FOR THE LAND APPLICATION OF CLASS A OR B SEWAGE
7 SLUDGE.

8 (2) TO REGULATE AGRICULTURAL OPERATIONS OTHERWISE
9 PROVIDED TO ANY MUNICIPALITY UNDER THE ACT OF MAY 20, 1993
10 (P.L.12, NO.6), KNOWN AS THE NUTRIENT MANAGEMENT ACT, OR
11 OTHER LAWS OF THIS COMMONWEALTH.

12 (D) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
13 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
14 SUBSECTION:

15 "NORMAL AGRICULTURAL OPERATION." AS DEFINED IN THE ACT OF
16 JUNE 10, 1982 (P.L.454, NO.133), ENTITLED "AN ACT PROTECTING
17 AGRICULTURAL OPERATIONS FROM NUISANCE SUITS AND ORDINANCES UNDER
18 CERTAIN CIRCUMSTANCES."

19 "UNAUTHORIZED LOCAL ORDINANCE." ANY ORDINANCE WHICH:

20 (1) PROHIBITS OR LIMITS OR ATTEMPTS TO PROHIBIT OR LIMIT
21 THE PERFORMANCE OF NORMAL AGRICULTURAL OPERATIONS; AND

22 (2) THE LOCAL AGENCY HAD NO LEGAL AUTHORITY TO ENACT OR
23 ENFORCE UNDER STATE LAW OR THE LOCAL AGENCY WAS PROHIBITED OR
24 PREEMPTED UNDER STATE LAW FROM ENACTING OR ENFORCING.

25 Section 4 7. Section 9763(c)(3) of Title 42, added September <—
26 30, 2003 (P.L.120, No.24), is amended to read:

27 § 9763. Sentence of intermediate punishment.

28 * * *

29 (c) Restriction.--

30 * * *

1 (3) If the defendant is determined not to be in need of
2 drug and alcohol treatment, the defendant may only be
3 sentenced to intermediate punishment:

4 (i) by house arrest [or] and electronic
5 surveillance;

6 (ii) partial confinement programs, such as work
7 release, work camps and halfway facilities; or

8 (iii) any combination of the programs set forth in
9 this subsection.

10 * * *

11 Section ~~5~~ 8. Section 9795.4(b)(4) and (h) of Title 42, <—
12 amended August 14, 2003 (P.L.97, No.21), are amended to read:

13 § 9795.4. Assessments.

14 * * *

15 (b) Assessment.--Upon receipt from the court of an order for
16 an assessment, a member of the board as designated by the
17 administrative officer of the board shall conduct an assessment
18 of the individual to determine if the individual should be
19 classified as a sexually violent predator. The board shall
20 establish standards for evaluations and for evaluators
21 conducting the assessments. An assessment shall include, but not
22 be limited to, an examination of the following:

23 * * *

24 (4) Factors that are supported in [a] the sexual
25 offender assessment [filed] field as criteria reasonably
26 related to the risk of reoffense.

27 * * *

28 (h) Delinquent children.--Except where section 6358(b.1)
29 (relating to assessment of delinquent children by the State
30 Sexual Offenders Assessment Board) is applicable, the probation

1 officer shall notify the board 90 days prior to the 20th
2 birthday of the child of the status of the delinquent child who
3 is committed to an institution or other facility pursuant to
4 section 6352 (relating to disposition of delinquent child) after
5 having been found delinquent for an act of sexual violence which
6 if committed by an adult would be a violation of 18 Pa.C.S. §
7 3121 (relating to rape), 3123 (relating to involuntary deviate
8 sexual intercourse), 3124.1 (relating to sexual assault), 3125
9 (relating to aggravated indecent assault), 3126 (relating to
10 indecent assault) or 4302 (relating to incest), together with
11 the location of the facility where the child is committed. The
12 board shall conduct an assessment of the child, which shall
13 include the board's determination of whether or not the child is
14 in need of commitment due to a mental abnormality as defined in
15 section 6402 (relating to definitions) or a personality
16 disorder, either of which results in serious difficulty in
17 controlling sexually violent behavior, and provide a report to
18 the court [no later than 90 days after the child's 20th
19 birthday] within the time frames set forth in section 6358(c)
20 (relating to assessment of delinquent children by the State
21 Sexual Offenders Assessment Board). The probation officer shall
22 assist the board in obtaining access to the child and any
23 records or information as requested by the board in connection
24 with the assessment. The assessment shall be conducted pursuant
25 to subsection (b).

26 Section ~~6~~ 9. The addition of 42 Pa.C.S. § 2737.1(b) is
27 intended to clarify and confirm the original intent of the
28 General Assembly in adding 42 Pa.C.S. § 2737.1 in the act of
29 December 20, 2000 (P.L.742, No.105), entitled "An act amending
30 Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania

<—

1 Consolidated Statutes, further providing for the number of
2 judges of the courts of common pleas in certain judicial
3 districts; providing for reimbursement for common pleas court
4 costs and for judgment by confession filed against incorrectly
5 identified debtors; further providing for county judicial center
6 or courthouse, for composition of investigating grand jury and
7 for confidential communications with sexual assault counselors;
8 providing for confidential communications to crime stopper or
9 similar anticrime program; and further providing for exemption
10 from attachment of retirement funds and accounts." To the extent
11 necessary to clarify the meaning and interpretation of 42
12 Pa.C.S. § 2737.1, the addition of 42 Pa.C.S. § 2737.1(b) shall
13 apply retroactively to causes of action which arose on or before
14 the effective date of this section.

15 SECTION 10. ALL ACTS AND PARTS OF ACTS ARE REPEALED INSOFAR <—
16 AS THEY ARE INCONSISTENT WITH THIS ACT.

17 SECTION 11. THE ADDITION OF 42 PA.C.S. § 8550.1 SHALL APPLY
18 TO ENFORCEMENT OF LOCAL ORDINANCES EXISTING UPON THE EFFECTIVE
19 DATE OF THIS SECTION AND TO THE ENACTMENT OR ENFORCEMENT OF
20 LOCAL ORDINANCES ENACTED THEREAFTER.

21 Section 7 12. This act shall take effect as follows: <—

22 (1) The following provisions shall take effect
23 immediately:

24 (i) This section.

25 (ii) The amendment of 42 Pa.C.S. § 2737.1.

26 (iii) The amendment of the definition of "other
27 specified offense" in 42 Pa.C.S. § 4703.

28 (IV) THE ADDITION OF 42 PA.C.S. § 8542(B)(9). <—

29 (V) THE ADDITION OF 42 PA.C.S. § 8550.1.

30 (VI) SECTIONS 10 AND 11 OF THIS ACT.

1 (2) The amendment of 42 Pa.C.S. § 9763(c)(3) shall take
2 effect February 1, 2004, or immediately, whichever is later.

3 (3) THE AMENDMENT OF 42 PA.C.S. §§ 6404(C)(3) AND <—
4 9795.4(B)(4) AND (H) SHALL TAKE EFFECT FEBRUARY 10, 2004, OR
5 IMMEDIATELY, WHICHEVER IS LATER.

6 ~~(3)~~ (4) The remainder of this act shall take effect in <—
7 60 days.