

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 73

Session of
2009

INTRODUCED BY GREENLEAF, ERICKSON, FONTANA, TARTAGLIONE,
GORDNER, TOMLINSON, FOLMER, BAKER, ORIE, RAFFERTY, FERLO,
BROWNE, EARLL, WAUGH, O'PAKE, COSTA, LOGAN AND BOSCOLA,
JANUARY 29, 2009

AS AMENDED ON SECOND CONSIDERATION, MARCH 10, 2009

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in obstructing governmental
3 operations, further providing for the offense of weapons or
4 implements for escape and for contraband; and making a
5 conforming amendment.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Sections 5122 and 5123 of Title 18 of the
9 Pennsylvania Consolidated Statutes are amended to read:

10 § 5122. Weapons [or], implements for escape or dangerous
11 material.

12 (a) Offenses defined.--

13 (1) [A person commits a misdemeanor of the first] An
14 individual commits a felony of the second degree if he
15 [unlawfully introduces within a detention facility,
16 correctional institution or mental hospital, or unlawfully
17 provides an inmate thereof with any weapon, tool, implement,
18 or other thing] delivers to a confined person a weapon,

1 implement for escape, dangerous material or other item which
2 may be used for escape.

3 (2) [An inmate] A confined person commits a [misdemeanor
4 of the first] felony of the second degree if he [unlawfully
5 procures, makes or otherwise provides himself with, or
6 unlawfully has in his possession or under his control, any
7 weapon, tool, implement or other thing] possesses a weapon,
8 implement for escape, dangerous material or other item which
9 may be used for escape.

10 (b) [Definitions.--

11 (1) As used in this section, the word "unlawfully" means
12 surreptitiously or contrary to law, regulation or order of
13 the detaining authority.

14 (2) As used in this section, the word "weapon" means any
15 implement readily capable of lethal use and shall include any
16 firearm, ammunition, knife, dagger, razor, other cutting or
17 stabbing implement or club, including any item which has been
18 modified or adopted so that it can be used as a firearm,
19 ammunition, knife, dagger, razor, other cutting or stabbing
20 implement, or club. The word "firearm" includes an unloaded
21 firearm and the unassembled components of a firearm.]

22 Definitions.--As used in this section, the following words
23 and phrases shall have the meanings given to them in this
24 subsection:

25 "Confined person." An individual committed pursuant to a
26 court order to a facility, regardless of whether the individual
27 is temporarily absent from the facility due to medical
28 treatment, transportation, court appearance or other reason for
29 a temporary absence.

30 "Dangerous material." Any incendiary material or device,

1 highly flammable or caustic liquid, explosive, bullet or other
2 material readily capable of causing death or serious bodily
3 injury.

4 "Delivers." The transfer of a weapon, implement for escape
5 or dangerous material to a confined person in a facility. The
6 term includes taking or introducing a weapon, implement for
7 escape or dangerous material into a facility, on land granted
8 to, owned by or leased by the Commonwealth or a political
9 subdivision that is related to the confinement of persons. The
10 term includes putting a weapon, implement for escape or
11 dangerous material in a place where it may be obtained by a
12 confined person.

13 "Facility." Correctional institution, FORENSIC UNIT OF A
14 STATE mental hospital, youth development center, youth forestry
15 camp or other facility for the detention or incarceration of
16 individuals pursuant to court order, building appurtenant
17 thereto or any other place where a confined person is located.

18 "Implement for escape." A tool, implement, device, equipment
19 or other item that can facilitate, aid or conceal an escape or
20 attempted escape by a confined person.

21 "Weapon." An implement readily capable of lethal use,
22 including any firearm, knife, dagger, razor, other cutting or
23 stabbing implement or club. The term includes any item which has
24 been modified or adapted so that it can be used as a firearm,
25 knife, dagger, razor, other cutting or stabbing implement or
26 club. For purposes of this definition, the term "firearm"
27 includes an unloaded firearm or the unassembled components of a
28 firearm.

29 § 5123. Contraband.

30 (a) [Controlled] Delivery of controlled substance contraband

1 to confined persons prohibited.--[A person] An individual
2 commits a felony of the second degree if he [sells, gives,
3 transmits or furnishes to any convict in a prison, or inmate in
4 a mental hospital, or gives away in or brings into any prison,
5 mental hospital, or any building appurtenant thereto, or on the
6 land granted to or owned or leased by the Commonwealth or county
7 for the use and benefit of the prisoners or inmates, or puts in
8 any place where it may be secured by a convict of a prison,
9 inmate of a mental hospital, or employee thereof, any] delivers
10 a controlled substance included in Schedules I through V of the
11 act of April 14, 1972 (P.L.233, No.64), known as The Controlled
12 Substance, Drug, Device and Cosmetic Act, to a confined person
13 or employee of a facility (except the ordinary hospital supply
14 of the [prison or mental hospital] facility) without a written
15 permit signed by the physician of [such institution] the
16 facility, specifying the quantity and quality of the substance
17 which may be furnished to [any convict, inmate, or employee in
18 the prison or mental hospital,] the confined person, the name of
19 the [prisoner, inmate, or employee for whom,] confined person
20 and the time when the same may be furnished[, which permit shall
21 be delivered to and kept by the warden or superintendent of the
22 prison or mental hospital].

23 (a.1) Mandatory minimum penalty.--[Any person]

24 (1) An individual convicted of a violation of subsection
25 (a) shall be sentenced to a minimum sentence of at least two
26 years of total confinement, notwithstanding any other
27 provision of this title or any other statute to the contrary.
28 Nothing in this subsection shall prevent the sentencing court
29 from imposing a sentence greater than that provided in this
30 subsection, up to the maximum penalty prescribed by this

1 title for a felony of the second degree. There shall be no
2 authority in any court to impose on an offender to which this
3 subsection is applicable any lesser sentence than provided
4 for in subsection (a) or to place such offender on probation
5 or to suspend sentence. Sentencing guidelines promulgated by
6 the Pennsylvania Commission on Sentencing shall not supersede
7 the mandatory sentences provided in this subsection. If a
8 sentencing court refuses to apply this subsection where
9 applicable, the Commonwealth shall have the right to
10 appellate review of the action of the sentencing court. The
11 appellate court shall vacate the sentence and remand the case
12 to the sentencing court for imposition of a sentence in
13 accordance with this subsection if it finds that the sentence
14 was imposed in violation of this subsection.

15 (2) Nothing in this subsection shall be construed to
16 preclude prosecution for a more serious violation of The
17 Controlled Substance, Drug, Device and Cosmetic Act.

18 (a.2) Possession of controlled substance contraband by
19 [inmate] confined persons prohibited.--[A prisoner or inmate] A
20 confined person commits a felony of the second degree if he
21 unlawfully has in his possession or under his control any
22 controlled substance in violation of section 13(a)(16) of The
23 Controlled Substance, Drug, Device and Cosmetic Act. For
24 purposes of this subsection, no amount shall be deemed de
25 minimis.

26 (b) [Money] Delivery of money to inmates prohibited.--[A
27 person] An individual commits a misdemeanor of the [third] first
28 degree if he [gives or furnishes money to any inmate confined in
29 a State or county] delivers money to an inmate committed to a
30 correctional institution as defined in section 501 (relating to

1 definitions), provided notice of this prohibition is adequately
2 posted at the institution. [A person] An individual may,
3 however, deposit money with the superintendent, warden, or other
4 authorized individual in charge of a [State or county]
5 correctional institution for the benefit and use of an inmate
6 confined therein, which shall be credited to the inmate's
7 account and expended in accordance with the rules and
8 regulations of the institution. The person making the deposit
9 shall be provided with a written receipt for the amount
10 deposited.

11 (c) [Contraband other than controlled substance.--A person]
12 Delivery of other contraband to confined persons prohibited.--An
13 individual commits a misdemeanor of the first degree if he
14 [sells, gives or furnishes to any convict in a prison, or inmate
15 in a mental hospital, or gives away in or brings into any
16 prison, mental hospital, or any building appurtenant thereto, or
17 on the land granted to or owned or leased by the Commonwealth or
18 county for the use and benefit of the prisoners or inmates, or
19 puts in any place where it may be secured by a convict of a
20 prison, inmate of a mental hospital, or employee thereof,]
21 delivers to a confined person:

22 (1) any kind of spirituous or fermented liquor, poison
23 or medicine [or poison] (except the ordinary hospital supply
24 of the [prison or mental hospital] facility) without a
25 written permit signed by the physician of [such institution]
26 the facility, specifying the quantity and quality of the
27 substance which may be furnished to [any convict, inmate or
28 employee in the prison or mental hospital, the name of the
29 prisoner, inmate or employee for whom,] the confined person,
30 the name of the confined person and the time when the same

1 may be furnished[, which permit shall be delivered to and
2 kept by the warden or superintendent of the prison or mental
3 hospital.]; or

4 (2) an unauthorized item that is readily capable of
5 concealing an item prohibited under section 5122 (relating to
6 weapons, implements for escape or dangerous material) or this
7 section.

8 (c.1) [Telecommunication] Delivery of telecommunication
9 devices to [inmates] confined persons prohibited.--A person
10 commits a misdemeanor of the first degree if, without the
11 written permission of superintendent, warden or otherwise
12 authorized individual in charge of a [correctional institution,
13 prison, jail, detention facility or mental hospital, he sells,
14 gives or furnishes] facility, he delivers to any [inmate]
15 confined person in a [correctional institution, prison, jail,
16 detention facility or mental hospital, or any building
17 appurtenant thereto] facility, or puts in any place where it may
18 be obtained by [an inmate] a confined person [of a correctional
19 institution, prison, jail, detention facility or mental
20 hospital], any telecommunication device.

21 (c.2) Possession of telecommunication devices by [inmates]
22 confined persons prohibited.--[An inmate in a correctional
23 institution, prison, jail, detention facility or mental
24 hospital, or any building appurtenant thereto,] A confined
25 person in a facility commits a misdemeanor of the first degree
26 if he has in his possession any telecommunication device without
27 the written permission of the superintendent, warden or
28 otherwise authorized individual in charge of [a correctional
29 institution, prison, jail, detention facility or mental
30 hospital] the facility.

1 (c.3) Possession of money or other contraband by a confined
2 person.--A confined person commits a misdemeanor of the first
3 degree if he possesses anything the delivery of which is
4 prohibited under subsection (b) or (c).

5 ~~(c.4) Applicability. The provisions of subsections (c.1)~~ ←
6 ~~and (c.2) shall not apply to civil units of mental hospitals.~~

7 (d) Drug-sniffing animals.--Any jail or prison may use dogs
8 or other animals trained to sniff [controlled substances or
9 other contraband] anything the delivery of which is prohibited
10 under this section for such purposes in or on any part of the
11 jail or prison at any time.

12 (e) Definitions.--As used in this section, the following
13 words and phrases shall have the meanings given to them in this
14 subsection:

15 "Confined person." An individual committed pursuant to a
16 court order to a facility, regardless of whether the individual
17 is temporarily absent due to medical treatment, transportation,
18 court appearance or other reason for a temporary absence.

19 "Delivers." Sells, gives, transmits, furnishes or otherwise
20 transfers anything prohibited under this section to a confined
21 person in a facility.

22 "Facility." Correctional institution, FORENSIC UNIT OF A ←
23 STATE mental hospital, youth development center, youth forestry
24 camp or other facility for the detention or incarceration of
25 individuals pursuant to court order, building appurtenant
26 thereto or any other place where a confined person is located.

27 ["Inmate." A male or female offender who is committed to,
28 under sentence to or confined in a penal or correctional
29 institution.]

30 "Telecommunication device." Any type of instrument, device,

1 machine or equipment which is capable of transmitting
2 telephonic, electronic, digital, cellular or radio
3 communications or any part of such instrument, device, machine
4 or equipment which is capable of facilitating the transmission
5 of telephonic, electronic, digital, cellular or radio
6 communications. The term shall include, but not be limited to,
7 cellular phones, digital phones and modem equipment devices.

8 Section 2. Section 6105(b) of Title 18, amended October 17,
9 2008 (P.L.1628, No.131), is amended to read:

10 § 6105. Persons not to possess, use, manufacture, control, sell
11 or transfer firearms.

12 * * *

13 (b) Enumerated offenses.--The following offenses shall apply
14 to subsection (a):

15 Section 908 (relating to prohibited offensive weapons).

16 Section 911 (relating to corrupt organizations).

17 Section 912 (relating to possession of weapon on school
18 property).

19 Section 2502 (relating to murder).

20 Section 2503 (relating to voluntary manslaughter).

21 Section 2504 (relating to involuntary manslaughter) if
22 the offense is based on the reckless use of a firearm.

23 Section 2702 (relating to aggravated assault).

24 Section 2703 (relating to assault by prisoner).

25 Section 2704 (relating to assault by life prisoner).

26 Section 2709.1 (relating to stalking).

27 Section 2716 (relating to weapons of mass destruction).

28 Section 2901 (relating to kidnapping).

29 Section 2902 (relating to unlawful restraint).

30 Section 2910 (relating to luring a child into a motor

1 vehicle or structure).

2 Section 3121 (relating to rape).

3 Section 3123 (relating to involuntary deviate sexual
4 intercourse).

5 Section 3125 (relating to aggravated indecent assault).

6 Section 3301 (relating to arson and related offenses).

7 Section 3302 (relating to causing or risking
8 catastrophe).

9 Section 3502 (relating to burglary).

10 Section 3503 (relating to criminal trespass) if the
11 offense is graded a felony of the second degree or higher.

12 Section 3701 (relating to robbery).

13 Section 3702 (relating to robbery of motor vehicle).

14 Section 3921 (relating to theft by unlawful taking or
15 disposition) upon conviction of the second felony offense.

16 Section 3923 (relating to theft by extortion) when the
17 offense is accompanied by threats of violence.

18 Section 3925 (relating to receiving stolen property) upon
19 conviction of the second felony offense.

20 Section 4906 (relating to false reports to law
21 enforcement authorities) if the fictitious report involved
22 the theft of a firearm as provided in section 4906(c)(2).

23 Section 4912 (relating to impersonating a public servant)
24 if the person is impersonating a law enforcement officer.

25 Section 4952 (relating to intimidation of witnesses or
26 victims).

27 Section 4953 (relating to retaliation against witness,
28 victim or party).

29 Section 5121 (relating to escape).

30 Section 5122 (relating to weapons [or] implements for

1 escape or dangerous material).

2 Section 5501(3) (relating to riot).

3 Section 5515 (relating to prohibiting of paramilitary
4 training).

5 Section 5516 (relating to facsimile weapons of mass
6 destruction).

7 Section 6110.1 (relating to possession of firearm by
8 minor).

9 Section 6301 (relating to corruption of minors).

10 Section 6302 (relating to sale or lease of weapons and
11 explosives).

12 Any offense equivalent to any of the above-enumerated
13 offenses under the prior laws of this Commonwealth or any
14 offense equivalent to any of the above-enumerated offenses under
15 the statutes of any other state or of the United States.

16 * * *

17 Section 3. This act shall take effect in 60 days.