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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1068 Session of  
1989

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Report of the Committee of Conference

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To the Members of the House of Representatives and Senate:

We, the undersigned, Committee of Conference on the part of the House of Representatives and Senate for the purpose of considering House Bill No. 1068, entitled:

"An act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, EMPOWERING ARRESTING OFFICERS TO SEIZE AND TAKE POSSESSION OF CERTAIN VEHICLES; AND further providing for discrimination on account of guide dogs,"

respectfully submit the following bill as our report:

RUTH C. RUDY

RALPH ACOSTA

JOHN M. PERZEL

(Committee on the part of the House of Representatives.)

M. JOSEPH ROCKS

DAVID J. BRIGHTBILL

H. CRAIG LEWIS

(Committee on the part of the Senate.)

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AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, providing for the offense of flight to  
3 avoid apprehension, trial or punishment and for the offense  
4 of the scattering of rubbish; empowering arresting officers  
5 to seize and take possession of certain vehicles; and further  
6 providing for discrimination on account of guide dogs.

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

9 Section 1. Title 18 of the Pennsylvania Consolidated  
10 Statutes is amended by adding a section to read:

11 § 5126. Flight to avoid apprehension, trial or punishment.

12 (a) Offense defined.--A person who willfully conceals  
13 himself or moves or travels within or outside this Commonwealth  
14 with the intent to avoid apprehension, trial or punishment  
15 commits a felony of the third degree when the crime which he has  
16 been charged with or has been convicted of is a felony and  
17 commits a misdemeanor of the second degree when the crime which  
18 he has been charged with or has been convicted of is a  
19 misdemeanor.

20 (b) Exception.--Subsection (a) shall not apply to a person  
21 set at liberty by court order who fails to appear at the time or  
22 place specified in the order.

23 Section 2. Sections 6501 and 7325 of Title 18 are amended to  
24 read:

25 § 6501. Scattering rubbish.

26 (a) Offense defined.--A person is guilty of an offense if  
27 he:

28 (1) [throws] causes any waste paper, sweepings, ashes,  
29 household waste, glass, metal, refuse or rubbish, or any  
30 dangerous or detrimental substance to be deposited into or  
31 upon any road, street, highway, [or] alley or railroad right-

1 of-way, or upon the land of another or into [or upon any  
2 stream or navigable river] the waters of this Commonwealth;

3 (2) interferes with, scatters, or disturbs the contents  
4 of any receptacle containing ashes, garbage, household waste,  
5 or rubbish; or

6 (3) is the owner or operator, or an agent of either, of  
7 a trash, garbage or debris collection vehicle [or any other  
8 type of vehicle used for collecting trash, garbage or debris  
9 and deposits the vehicle's load or any part thereof upon any  
10 road, street, highway or alley or upon the land of another]  
11 including private automobiles and small trucks, or any other  
12 type of vehicles used to collect or transport trash, garbage  
13 or debris, who knowingly causes to be deposited or deposits  
14 the vehicle's load or any part thereof upon any road, street,  
15 highway, alley or railroad right-of-way, or upon the land of  
16 another or into the waters of this Commonwealth.

17 (b) Penalty.--

18 (1) A person who violates subsection (a)(1) or (2) is  
19 guilty of a summary offense for the first offense and upon  
20 conviction thereof shall be sentenced to pay a fine of not  
21 less than [\$10] \$50 nor more than \$300 or to imprisonment for  
22 not more than 90 days, or both.

23 [(2) A person who violates subsection (a)(3) is guilty  
24 of a misdemeanor of the third degree for the first offense, a  
25 misdemeanor of the second degree for the second offense and a  
26 misdemeanor of the first degree for the third or any  
27 subsequent offense.]

28 (2) A person who violates subsection (a)(1) or (2) is  
29 guilty of a misdemeanor of the third degree for the second  
30 and subsequent offense and upon conviction thereof shall be

1 sentenced to pay a fine of not less than \$300 nor more than  
2 \$1,000. The person also may be sentenced to imprisonment or  
3 to performing a community service for a period not to exceed  
4 one year.

5 (3) A person who violates subsection (a)(3) is guilty of  
6 a misdemeanor of the second degree for the first offense and  
7 upon conviction thereof shall be sentenced to pay a fine of  
8 not less than \$500 nor more than \$5,000. The person also may  
9 be sentenced to imprisonment or to performing a community  
10 service for a period not to exceed two years.

11 (4) A person who violates subsection (a)(3) is guilty of  
12 a misdemeanor of the first degree for the second or  
13 subsequent offense and upon conviction thereof shall be  
14 sentenced to pay a fine of not less than \$1,000 nor more than  
15 \$10,000. The person also may be sentenced to imprisonment or  
16 to performing a community service for a period not to exceed  
17 five years.

18 (5) Any vehicle, equipment, or conveyance, including any  
19 private automobile and small truck, used for the  
20 transportation or disposal of trash, garbage or debris in the  
21 commission of a second or subsequent offense under subsection  
22 (a)(3) may be deemed contraband and forfeited in accordance  
23 with the provisions set forth in this section.

24 (c) Arrest powers.--A police officer shall have the same  
25 right of arrest without a warrant as in a felony whenever the  
26 officer has probable cause to believe the defendant has violated  
27 subsection (a)(3), although the offense did not take place in  
28 the officer's presence. A police officer may not make a warrant-  
29 less arrest pursuant to this section without first observing  
30 recent evidence of a subsection (a)(3) offense or other

1 corroborative evidence.

2 (d) Forfeiture.--

3 (1) Property subject to forfeiture under this section  
4 may be seized by the law enforcement authority upon process  
5 issued by any court of common pleas having jurisdiction over  
6 the property.

7 (2) Property taken or detained under this section shall  
8 not be subject to replevin, but is deemed to be in the  
9 custody of the law enforcement authority subject only to the  
10 orders and decrees of the court of common pleas having  
11 jurisdiction over the forfeiture proceedings and of the  
12 district attorney. When property is seized under this  
13 section, the law enforcement authority shall place the  
14 property under seal and either:

15 (i) remove the property to a place designated by it;  
16 or

17 (ii) require that the district attorney take custody  
18 of the property and remove it to an appropriate location  
19 for disposition in accordance with law.

20 (3) Whenever property is forfeited under this section,  
21 the property shall be transferred to the custody of the  
22 municipal corporation. The municipal corporation shall sell  
23 any forfeited property but the proceeds from any such sale  
24 shall be used to pay all proper expenses of the proceedings  
25 for forfeiture and sale, including expenses of seizure,  
26 maintenance of custody, advertising and court costs. The  
27 balance of the proceeds shall be used for the enforcement of  
28 this act.

29 (4) The proceedings for the forfeiture or condemnation  
30 of property, the sale of which is provided for in this

1 section, shall be in rem, in which the Commonwealth shall be  
2 the plaintiff and the property the defendant. A petition  
3 shall be filed in the court of common pleas of the judicial  
4 district where the property is located, verified by oath or  
5 affirmation of an officer or citizen, containing the  
6 following:

7 (i) A description of the property seized.

8 (ii) A statement of the time and place where seized.

9 (iii) The owner, if known.

10 (iv) The person or persons in possession, if known.

11 (v) An allegation that the property is subject to  
12 forfeiture pursuant to this subsection and an averment of  
13 material facts upon which the forfeiture action is based.

14 (vi) A prayer for an order of forfeiture that the  
15 property be adjudged forfeited to the Commonwealth and  
16 condemned and be ordered sold according to law, unless  
17 cause be shown to the contrary.

18 (5) A copy of the petition required under paragraph (4)  
19 shall be served personally or by certified mail on the owner  
20 or upon the person or persons in possession at the time of  
21 the seizure. The copy shall have endorsed a notice, as  
22 follows:

23 To the Claimant of within Described Property:

24 You are required to file an answer to this petition,  
25 setting forth your title in, and right to possession of,  
26 the property within 30 days from the service hereof, and  
27 you are also notified that, if you fail to file the  
28 answer, a decree of forfeiture and condemnation will be  
29 entered against the property.

30 The notice shall be signed by the district attorney, deputy

1 district attorney or assistant district attorney.

2 (6) If the owner of the property is unknown or there was  
3 no person in possession of the property when seized or if the  
4 owner or such person or persons in possession at the time of  
5 the seizure cannot be personally served or located within the  
6 jurisdiction of the court, notice of the petition shall be  
7 given by the Commonwealth through an advertisement in only  
8 one newspaper of general circulation published in the county  
9 where the property shall have been seized, once a week for  
10 two successive weeks. No other advertisement of any sort  
11 shall be necessary, any other law to the contrary  
12 notwithstanding. The notice shall contain a statement of the  
13 seizure of the property with a description of the property  
14 and the place and date of seizure and shall direct any  
15 claimants to the property to file a claim on or before a date  
16 given in the notice, which date shall not be less than 30  
17 days from the date of the first publication. If no claims are  
18 filed within 30 days of publication, the property shall  
19 summarily forfeit to the Commonwealth.

20 (7) For purposes of this section, the owner or other  
21 such person cannot be found in the jurisdiction of the court  
22 if:

23 (i) a copy of the petition is mailed to the last  
24 known address by certified mail and is returned without  
25 delivery;

26 (ii) personal service is attempted once, but cannot  
27 be made at the last known address; and

28 (iii) a copy of the petition is left at the last  
29 known address.

30 (8) The notice provisions of this section are

1 automatically waived when the owner, without good cause,  
2 fails to appear in court in response to a subpoena on the  
3 underlying criminal charges. Forty-five days after such a  
4 failure to appear, if good cause has not been demonstrated,  
5 the property shall summarily forfeit to the Commonwealth.

6 (9) Upon the filing of a claim for the property setting  
7 forth a right of possession, the case shall be deemed at  
8 issue and a time shall be fixed for the hearing.

9 (10) At the time of the hearing, if the Commonwealth  
10 produces evidence that the property in question was  
11 unlawfully used, possessed or otherwise subject to forfeiture  
12 under this section, the burden shall be upon the claimant to  
13 show:

14 (i) That the claimant is the owner of the property  
15 or the holder of a chattel mortgage or contract of  
16 conditional sale thereon.

17 (ii) That the claimant lawfully acquired the  
18 property.

19 (iii) That it was not unlawfully used or possessed  
20 by him. In the event that it shall appear that the  
21 property was unlawfully used or possessed by a person  
22 other than the claimant, then the claimant shall show  
23 that the unlawful use or possession was without his  
24 knowledge or consent. Such absence of knowledge or  
25 consent must be reasonable under the circumstances  
26 presented.

27 (11) If a person claiming the ownership of or right of  
28 possession to or claiming to be the holder of a chattel  
29 mortgage or contract of conditional sale upon the property,  
30 the disposition of which is provided for in this section,

1 prior to the sale presents a petition to the court alleging  
2 over the property lawful ownership, right of possession, a  
3 lien or reservation of title and if, upon public hearing, due  
4 notice of which having been given to the district attorney,  
5 the claimant shall prove by competent evidence to the  
6 satisfaction of the court that the property was lawfully  
7 acquired, possessed and used by him or, it appearing that the  
8 property was unlawfully used by a person other than the  
9 claimant, that the unlawful use was without the claimant's  
10 knowledge or consent, then the court may order the property  
11 returned or delivered to the claimant. Such absence of  
12 knowledge or consent must be reasonable under the  
13 circumstances presented. Otherwise, it shall be retained for  
14 official use or sold in accordance with paragraph (4).

15 (e) Responsibility for costs.--The operator, owner or agent  
16 of any vehicle, equipment or conveyance including private  
17 automobiles and small trucks, forfeited under this section,  
18 shall be responsible for any costs incurred in properly  
19 disposing of waste in the vehicle, equipment or conveyance.

20 [(d)] (f) Exception.--Subsection (a)(3) does not apply to  
21 the lawful depositing of waste at any site regulated by the  
22 Department of Environmental Resources.

23 (g) Other available rights and remedies.--The proceedings  
24 specified in this section shall not, in any way, limit the right  
25 of the Commonwealth to exercise any rights or remedies otherwise  
26 provided by law.

27 § 7325. Discrimination on account of guide dog.

28 A person is guilty of a summary offense if he, being the  
29 proprietor, manager or employee of a theatre, hotel, restaurant  
30 or other place of public accommodation, entertainment or

1 amusement, refuses, withholds or denies any person, who is using  
2 a guide, signal or service dog, because of the physical  
3 disability, blindness or deafness of the user, the use of or  
4 access to any accommodation, advantage, facility or privilege of  
5 such theatre, hotel, restaurant or other place of public  
6 entertainment or amusement.

7 Section 3. The amendment to section 6501 shall apply to all  
8 offenses committed on or after the effective date of this act.

9 Section 4. This act shall take effect in 60 days.