

## 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 8, 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. <—

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

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

11 § 1106. Restitution for injuries to person or property.

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

1       \* \* \*

2       (c) Mandatory restitution.--

3           (1) The court shall order full restitution:

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

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

24               (A) The victim.

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

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

29               (D) Any insurance company which has provided  
30               reimbursement to the victim as a result of the

1 defendant's criminal conduct.

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

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

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

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

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

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

29 (3) The court may at any time, or upon the  
30 recommendation of the district attorney that is based on

1 information received from the victim and the probation  
2 section of the county or other agent designated by the county  
3 commissioners of the county with the approval of the  
4 president judge to collect restitution, alter or amend any  
5 order of restitution made pursuant to paragraph (2),  
6 provided, however, that the court states its reasons and  
7 conclusions as a matter of record for any change or amendment  
8 to any previous order.

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

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

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

24 \* \* \*

25 (e) Restitution payments and records.--Restitution, when  
26 ordered by a judge, shall be made by the offender to the  
27 probation section of the county in which he was convicted or to  
28 another agent designated by the county commissioners with the  
29 approval of the president judge of the county to collect  
30 restitution according to the order of the court or, when ordered

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

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

21 \* \* \*

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

25 § 3301. Arson and related offenses.

26 \* \* \*

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

property or on that of another, and thereby recklessly:

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

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

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

\* \* \*

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

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

(2) approval or permits from the appropriate local government or State officials, if necessary, to conduct such program or exercise have been received;

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

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

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

17       \* \* \*

18       ~~Section 3. Section 5903(a) of Title 18 is amended to read:~~       <—  
19       ~~§ 5903. Obscene and other sexual materials and performances.~~

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

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

1 ~~to view all or any part of such materials;~~

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

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

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

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

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

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

28 ~~(8) possess any obscene material while such person is an~~  
29 ~~inmate of any State correctional institution, county prison,~~  
30 ~~regional prison facility or any other type of correctional~~



1 ~~facility; or~~

2 ~~(9) knowingly permit any obscene material to enter any~~  
3 ~~State correctional institution, county prison, regional~~  
4 ~~prison facility or any other type of correctional facility if~~  
5 ~~such person is a prison guard or other employee of any~~  
6 ~~correctional facility described in this paragraph.~~

7 ~~\* \* \*~~

8 ~~Section 4. Title 18 is amended by adding a section to read:~~  
9 ~~§ 6320. Minors in open trucks.~~

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

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

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

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

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

25 ~~(4) Parade participants.~~

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

29 ~~SECTION 3. SECTION 3503 OF TITLE 18 IS AMENDED BY ADDING A~~  
30 ~~SUBSECTION TO READ:~~

<—

§ 3503. CRIMINAL TRESPASS.

\* \* \*

(B.2) AGRICULTURAL TRESPASSER.--

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

(I) ENTERS OR REMAINS ON ANY AGRICULTURAL OR OTHER OPEN LANDS;

(II) ENTERS OR REMAINS ON ANY AGRICULTURAL OR OTHER OPEN LANDS WHEN SUCH LANDS ARE POSTED IN A MANNER PRESCRIBED BY LAW OR REASONABLY LIKELY TO COME TO THE PERSON'S ATTENTION OR ARE FENCED OR ENCLOSED IN A MANNER MANIFESTLY DESIGNED TO EXCLUDE TRESPASSERS OR TO CONFIN DOMESTIC ANIMALS; OR

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

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

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

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

(III) AN OFFENSE UNDER PARAGRAPH (1)(III) CONSTITUTES A MISDEMEANOR OF THE SECOND DEGREE AND IS PUNISHABLE BY IMPRISONMENT FOR A TERM OF NOT MORE THAN

1           TWO YEARS AND A FINE OF NOT LESS THAN \$500 NOR MORE THAN  
2           \$5,000.

3           \* \* \*

4           SECTION 4.   SECTION 6105(C)(1) OF TITLE 18 IS AMENDED TO  
5 READ:

6   § 6105.   PERSONS NOT TO POSSESS, USE, MANUFACTURE, CONTROL, SELL  
7           OR TRANSFER FIREARMS.

8           \* \* \*

9           (C)   OTHER PERSONS.--IN ADDITION TO ANY PERSON WHO HAS BEEN  
10 CONVICTED OF ANY OFFENSE LISTED UNDER SUBSECTION (B), THE  
11 FOLLOWING PERSONS SHALL BE SUBJECT TO THE PROHIBITION OF  
12 SUBSECTION (A):

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

17           \* \* \*

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

20   § 6320.   PASSENGERS IN OPEN TRUCKS AND TRAILERS.

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

25           (B)   CHILDREN.--

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

30           (2)   THIS SUBSECTION SHALL NOT APPLY TO:

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

4           (II) A CHILD POSSESSING A VALID HUNTING LICENSE WHO  
5           IS BEING TRANSPORTED BETWEEN A HUNTING CAMP AND A HUNTING  
6           SITE OR BETWEEN HUNTING SITES DURING HUNTING SEASON;

7           (III) PARADE PARTICIPANTS;

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

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

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

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

17               (1) The amendment or addition of 18 Pa.C.S. ~~§§~~ § <—  
18               3301(d), (d.1), (h) and (i) ~~and 5903(a)~~ shall take effect in <—  
19               60 days.

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