

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1153 Session of
2003

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WANSACZ AND WATSON, APRIL 14, 2003

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 14, 2003

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, providing for the offenses of soliciting or
4 providing support for an act of terrorism and hindering
5 prosecution for an act of terrorism; establishing a civil
6 action to recover damages caused by terrorism; and providing
7 for sentencing for terrorism and for penalties.

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

10 Section 1. This act shall be known and may be cited as the
11 Anti-Terrorism Act.

12 Section 2. Title 18 of the Pennsylvania Consolidated
13 Statutes is amended by adding sections to read:

14 § 2717. Soliciting or providing support for terrorism and
15 terrorist organizations.

16 (a) Offense.--A person commits the offense of soliciting or
17 providing support for terrorism or a terrorist organization
18 when, with the intent that the material support or resources
19 will be used, in whole or in part, to plan, prepare, carry out

1 or aid in terrorism or the concealment of, or an escape from,
2 terrorism, he raises, solicits, collects or provides material
3 support or resources.

4 (b) Grading.--If the total value of material support or
5 resources exceeds \$1,000, an offense under this section is a
6 felony of the second degree; otherwise, an offense under this
7 section is a felony of the third degree.

8 (c) Definitions.--As used in this section, the following
9 words and phrases shall have the meanings given to them in this
10 subsection:

11 "Material support or resources." Currency or other financial
12 securities, financial services, lodging, training, safe houses,
13 false documentation or identification, communications equipment,
14 facilities, weapons, lethal substances, explosives, personnel,
15 transportation and other physical assets, except medicine or
16 religious materials.

17 "Terrorism." Any act intended to:

18 (1) Intimidate or coerce a civilian population by
19 violence or threat of violence.

20 (2) Influence the policy of a government by intimidation
21 or coercion.

22 (3) Affect the conduct of a government by mass
23 destruction, assassination or kidnapping.

24 "Terrorist organization." The term includes any
25 organization, domestic or foreign, which directly engages in the
26 planning, preparation, carrying out or aiding of any act of
27 terrorism and includes, but is not limited to, any organization
28 under section 219 of the Immigration and Nationality Act (66
29 Stat. 163, 8 U.S.C. § 1189) as a foreign terrorist organization.
30 § 2718. Hindering prosecution for terrorism.

1 (a) Offense.--A person commits the offense of hindering
2 prosecution for terrorism if he renders criminal assistance to a
3 person who has committed terrorism, knowing or believing that
4 such person engaged in conduct constituting terrorism.

5 (b) Grading.--If the terrorism resulted in the death of a
6 person other than one of the participants, an offense under this
7 section is a felony of the second degree; otherwise, an offense
8 under this section is a felony of the third degree.

9 (c) Definitions.--As used in this section, the following
10 words and phrases shall have the meanings given to them in this
11 subsection:

12 "Renders criminal assistance." With the intent to prevent,
13 hinder or delay the discovery or apprehension of, or the
14 bringing of a criminal charge against, a person who he knows or
15 believes has committed an act of terrorism, or is being sought
16 by law enforcement officials for the commission of an act of
17 terrorism, or with intent to assist a person in profiting or
18 benefiting from the commission of an act of terrorism, he:

19 (1) harbors or conceals such person;

20 (2) warns such person of impending discovery or
21 apprehension;

22 (3) provides such person with money, transportation,
23 weapon, disguise or other means of avoiding discovery or
24 apprehension;

25 (4) prevents or obstructs, by means of force,
26 intimidation or deception, anyone from performing an act
27 which might aid in the discovery or apprehension of such
28 person or in the bringing of a criminal charge against him;
29 or

30 (5) suppresses, by any act of concealment, alteration or

1 destruction, any physical evidence which might aid in the
2 discovery or apprehension of such person or in the bringing
3 of a criminal charge against him.

4 "Terrorism." Any act intended to:

5 (1) Intimidate or coerce a civilian population by
6 violence or threat of violence.

7 (2) Influence the policy of a government by intimidation
8 or coercion.

9 (3) Affect the conduct of a government by mass
10 destruction, assassination or kidnapping.

11 Section 3. Title 42 is amended by adding sections to read:

12 § 8317. Terrorism action.

13 (a) General rule.--In addition to any other right of action
14 and any other remedy provided by law, an action may be brought
15 to recover damages against the terrorist, terrorist organization
16 or person who knowingly provided material support or resources
17 to or aided a terrorist or terrorist organization for the death
18 of an individual or for an injury to an individual or damage to
19 or loss of property caused by an act of terrorism.

20 (b) Application of section.--This section shall not apply
21 to:

22 (1) A financial institution as defined by 31 U.S.C. §
23 5312(a)(2) (relating to definitions and application),
24 including an operating or financial subsidiary, that complies
25 with Federal laws and regulations relating to a financial
26 transaction at the time the transaction occurs including, to
27 the extent applicable, the International Money Laundering
28 Abatement and Anti-Terrorist Financing Act of 2001 (Title III
29 of Public Law 107-56).

30 (2) Conduct by a party to a labor dispute as defined in

1 the act of June 2, 1937 (P.L.1198, No.308), known as the
2 Labor Anti-Injunction Act, or to any constitutionally
3 protected activity.

4 (c) Recovery.--The plaintiff may seek recovery for any of
5 the following:

6 (1) General and special damages, including damages for
7 emotional distress.

8 (2) Punitive damages.

9 (3) Reasonable attorney fees and costs.

10 (4) Such other relief that the court deems necessary and
11 proper.

12 (d) Assets.--In making a recovery under this section, the
13 plaintiff may enforce the judgment against the assets of the
14 terrorist, terrorist organization or person who knowingly
15 provided material support or resources to or aided the terrorist
16 or terrorist organization.

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

20 "Act of terrorism." An act or acts constituting a specified
21 offense under 18 Pa.C.S. Part II (relating to definition of
22 specific offenses) that involve a violent act or an act
23 dangerous to human life, including an attempt or conspiracy to
24 commit any such offense, intended to intimidate or coerce a
25 civilian population; influence the policy of a government by
26 intimidation or coercion; or affect the conduct of a government
27 by mass destruction, assassination or kidnapping.

28 "Dangerous to human life." An act which is intended to or
29 likely to cause death or serious bodily injury.

30 "Mass destruction." An act which is intended to or likely to

destroy or cause serious damage to transportation-related infrastructure or facilities, energy-related infrastructure or facilities, public or private buildings, places of public accommodation or public works under circumstances evincing depraved indifference to human life or property.

"Material support or resources." Currency or other financial securities, financial services, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation and other physical assets, except medicine or religious materials.

§ 9720.2. Sentence enhancement for terrorism.

(a) General rule.--In addition to any penalty provided by law, a person may be sentenced to an additional term not to exceed ten years' confinement and an additional fine not to exceed \$100,000 for an offense if, at trial, the prosecution proves beyond a reasonable doubt that the person committed the offense with the intent to do any of the following:

(1) Intimidate or coerce a civilian population by violence or threat of violence.

(2) Influence the policy of a unit of government by intimidation or coercion by violence or threat of violence.

(3) Affect the conduct of a unit of government by mass destruction, assassination or kidnapping.

(b) Inchoate crimes.--Subsection (a) applies to any attempt, conspiracy or solicitation to commit an offense.

(c) Procedure.--The prosecution must indicate intent to proceed under this section in the indictment or information which commences the prosecution.

(d) Forfeiture.--

1 (1) The following property may be deemed contraband and
2 forfeited under this section:

3 (i) All assets, foreign or domestic:

4 (A) Of an individual, entity or organization
5 engaged in planning or perpetrating an act in this
6 Commonwealth to which subsection (a) is applicable
7 and all assets, foreign or domestic, affording a
8 person a source of influence over such an entity or
9 organization.

10 (B) Acquired or maintained in this Commonwealth
11 by a person with the intent and for the purpose of
12 supporting, planning, conducting or concealing an act
13 to which subsection (a) is applicable.

14 (C) Derived from, involved in or used or
15 intended to be used to commit an act in this
16 Commonwealth to which subsection (a) is applicable.

17 (ii) All assets within this Commonwealth:

18 (A) Of an individual, entity or organization
19 engaged in planning or perpetrating an unlawful act,
20 either foreign or domestic, with the intent to do any
21 of the following:

22 (I) Intimidate or coerce a civilian
23 population, either foreign or domestic, by
24 violence or threat of violence.

25 (II) Influence the policy of a unit of
26 government by intimidation or coercion, either
27 foreign or domestic, by violence or threat of
28 violence.

29 (III) Affect the conduct of a unit of
30 government, either foreign or domestic, by mass

1 destruction, assassination or kidnapping.

2 (B) Acquired or maintained with the intent and
3 for the purpose of supporting, planning, conducting
4 or concealing an unlawful act under clause (A); or

5 (C) Derived from, involved in or used or
6 intended to be used to commit an unlawful act under
7 clause (A).

8 (2) (i) Property subject to forfeiture under this
9 section may be seized by the law enforcement authority
10 upon process issued by a court of common pleas having
11 jurisdiction over the property.

12 (ii) Seizure without process may be made if any of
13 the following apply:

14 (A) The seizure is incident to an arrest, a
15 search under a search warrant or an inspection under
16 an administrative inspection warrant.

17 (B) The property subject to seizure has been the
18 subject of a prior judgment in favor of the
19 Commonwealth in a criminal injunction or forfeiture
20 proceeding under this chapter.

21 (C) There is probable cause to believe that the
22 property is dangerous to health or safety.

23 (D) There is probable cause to believe that the
24 property has been or is intended to be used in the
25 commission of an action to which subsection (a) is
26 applicable.

27 (iii) In the event seizure is made without process,
28 proceedings for the issuance of process shall be
29 instituted forthwith.

30 (3) Property taken or detained under this section shall

1 not be subject to replevin, but is deemed to be in the
2 custody of the law enforcement authority, subject only to the
3 orders and decrees of the court of common pleas having
4 jurisdiction over the forfeiture proceedings and of the
5 district attorney or the Attorney General. When property is
6 seized under this subsection, the law enforcement authority
7 shall place the property under seal and either:

8 (i) remove the property to a place determined by the
9 law enforcement authority; or

10 (ii) request that the district attorney or Attorney
11 General take custody of the property and remove it to an
12 appropriate location for disposition in accordance with
13 law.

14 (4) Property forfeited under this chapter shall be
15 transferred to the custody of the district attorney if the
16 law enforcement authority seizing the property has local or
17 county jurisdiction, or of the Attorney General if the law
18 enforcement authority seizing the property has Statewide
19 jurisdiction. The district attorney or the Attorney General,
20 where appropriate, may:

21 (i) Retain the property for official use.

22 (ii) Sell any forfeited property which is not
23 required to be destroyed by law and which is not harmful
24 to the public, the proceeds from any such sale to be used
25 to pay all proper expenses of the proceedings for
26 forfeiture and sale, including expenses of seizure,
27 maintenance of custody, advertising and court costs. The
28 balance of the proceeds shall be dealt with under
29 paragraphs (5) and (6).

30 (5) Cash or proceeds of forfeited property transferred

1 to the custody of the district attorney under paragraph (4)
2 shall be placed in the operating fund of the county in which
3 the district attorney is elected. The appropriate county
4 authority shall immediately release from the operating fund,
5 without restriction, a like amount for the use of the
6 district attorney in enforcing the criminal laws of the
7 Commonwealth of Pennsylvania. The entity having budgetary
8 control shall not anticipate future forfeitures or proceeds
9 therefrom in adoption and approval of the budget for the
10 district attorney.

11 (6) If both municipal and State law enforcement
12 authorities were substantially involved in effecting the
13 seizure, the court having jurisdiction over the forfeiture
14 proceedings shall equitably distribute the property between
15 the district attorney and the Attorney General.

16 (7) The district attorney and the Attorney General shall
17 utilize forfeited property or proceeds thereof for the
18 purpose of enforcing the provisions of this act. In
19 appropriate cases, the district attorney and the Attorney
20 General may designate proceeds from forfeited property to be
21 utilized for antiterrorism public safety programs and for
22 relocation and protection of witnesses in criminal cases.

23 (8) It shall be the responsibility of every county in
24 this Commonwealth to provide, through the controller, board
25 of auditors or other appropriate auditor and the district
26 attorney, an annual audit of all forfeited property and
27 proceeds obtained under this section. The audit shall not be
28 made public but shall be submitted to the Office of Attorney
29 General. The county shall report all forfeited property and
30 proceeds obtained under this section and the disposition

1 thereof to the Attorney General by September 30 of each year.

2 (9) The Attorney General shall annually submit a report
3 to the Appropriations Committee and Judiciary Committee of
4 the Senate and the Appropriations Committee and Judiciary
5 Committee of the House of Representatives specifying the
6 forfeited property or proceeds thereof obtained under this
7 section. The report shall give an accounting of all proceeds
8 derived from the sale of forfeited property and the use made
9 of unsold forfeited property. The Attorney General shall
10 adopt procedures and guidelines governing the release of
11 information by the district attorney to protect the
12 confidentiality of forfeited property or proceeds used in
13 ongoing antiterrorist activities.

14 (10) The proceeds or future proceeds from property
15 forfeited under this chapter shall be in addition to any
16 appropriation made to the Office of Attorney General.

17 (e) Procedure with respect to seized property subject to
18 liens and rights of lienholders.--

19 (1) Proceedings for forfeiture or condemnation of
20 property, the sale of which is provided for in this chapter,
21 shall be in rem, in which the Commonwealth shall be the
22 plaintiff and the property the defendant. A petition shall be
23 filed in the court of common pleas of the judicial district
24 where the property is located, verified by oath or
25 affirmation of an officer or citizen, containing the
26 following:

27 (i) A description of the property seized.

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

29 (iii) The owner, if known.

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

1 (v) An allegation that the property is subject to
2 forfeiture under subsection (d) and an averment of
3 material facts upon which the forfeiture action is based.

4 (vi) A prayer for an order that the property be
5 adjudged forfeited to the Commonwealth, condemned and
6 sold according to law, unless cause be shown to the
7 contrary.

8 (2) A copy of the petition required under subsection (a)
9 shall be served personally or by certified mail on the owner
10 or upon the person or persons in possession at the time of
11 the seizure. The copy shall have endorsed a notice, as
12 follows:

13 To the Claimant of Within Described Property:

14 You are required to file an answer to this petition,
15 setting forth your title in and right to possession of
16 the property within 30 days from the service of this
17 notice, and you are further notified that, if you fail to
18 file an answer, a decree of forfeiture and condemnation
19 will be entered against the property.

20 The notice shall be signed by the Attorney General, Deputy
21 Attorney General, district attorney, deputy district attorney
22 or assistant district attorney.

23 (3) If the owner of the property is unknown, there was
24 no person in possession of the property when seized or if the
25 owner or person or persons in possession at the time of the
26 seizure cannot be personally served or located within the
27 jurisdiction of the court, notice of the petition shall be
28 given by the Commonwealth through an advertisement in one
29 newspaper of general circulation published in the county
30 where the property was seized, once a week for two successive

weeks. No other advertisement shall be necessary, any law to the contrary notwithstanding. The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication. If no claims are filed within 30 days of publication, the property shall summarily forfeit to the Commonwealth.

(4) For purposes of this section, the owner or person in possession cannot be found in the jurisdiction of the court if all of the following steps are taken:

(i) A copy of the petition is mailed to the last known address by certified mail and is returned without delivery.

(ii) Personal service is attempted once, but cannot be made at the last known address.

(iii) A copy of the petition is left at the last known address.

(5) The notice provisions of this section are automatically waived when the owner or person in possession, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges. Unless good cause is demonstrated, the property shall summarily forfeit to the Commonwealth 45 days after such a failure to appear.

(6) (i) Upon application of the Commonwealth, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of property described in subsection (d) for forfeiture under this

1 section:

2 (A) upon the filing of an information or an
3 indictment charging a violation of this section for
4 which criminal forfeiture may be ordered under this
5 subsection and alleging that the property with
6 respect to which the order is sought would be subject
7 to forfeiture; or

8 (B) prior to the filing of an indictment or
9 information, if, after notice to persons appearing to
10 have an interest in the property and an opportunity
11 for a hearing, the court determines that:

12 (I) there is a substantial probability that
13 the Commonwealth will prevail on the issue of
14 forfeiture and that failure to enter the order
15 will result in the property being destroyed,
16 removed from the jurisdiction of the court or
17 otherwise made unavailable for forfeiture; and

18 (II) the need to preserve the availability
19 of the property through the entry of the
20 requested order outweighs the hardship on any
21 party against whom the order is to be entered.

22 (ii) An order entered under this paragraph shall be
23 effective for not more than 90 days unless extended by
24 the court for good cause shown or an indictment or
25 information described in clause (A) has been filed.

26 (7) (i) A temporary restraining order under paragraph
27 (6) may be entered upon application of the Commonwealth
28 without notice or opportunity for a hearing if an
29 information or indictment has not yet been filed with
30 respect to the property and if the Commonwealth

1 demonstrates that there is probable cause to believe that
2 the property with respect to which the order is sought
3 would be subject to forfeiture under this chapter and
4 that provision of notice will jeopardize the availability
5 of the property for forfeiture.

6 (ii) A temporary order under subparagraph (i) shall
7 expire not more than ten days after the date on which it
8 is entered, unless extended for good cause shown or
9 unless the party against whom it is entered consents to
10 an extension for a longer period. A hearing requested
11 concerning an order entered under this paragraph shall be
12 held at the earliest possible time and prior to the
13 expiration of the temporary order.

14 (8) The court may receive and consider, at a hearing
15 held under paragraph (6) or (7), evidence and information
16 that would be inadmissible under the rules of evidence.

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

20 (10) At the time of the hearing, if the Commonwealth
21 produces evidence that the property in question was
22 unlawfully used, possessed or otherwise subject to forfeiture
23 under subsection (d), the burden shall be upon the claimant
24 to show:

25 (i) That the claimant is the owner of the property
26 or the holder of a chattel mortgage or contract of
27 conditional sale thereon.

28 (ii) That the claimant lawfully acquired the
29 property.

30 (iii) That the property was not unlawfully used or

1 possessed by the claimant. In the event that it appears
2 that the property was unlawfully used or possessed by a
3 person other than the claimant, the claimant must show
4 that the unlawful use or possession was without his
5 knowledge or consent. The absence of knowledge or consent
6 must be reasonable under the circumstances.

7 (11) If, prior to the sale of property the disposition
8 of which is provided for in this section, a person claiming
9 the ownership of or right of possession to or claiming to be
10 the holder of a chattel mortgage or contract of conditional
11 sale upon the property presents a petition to the court
12 alleging lawful ownership or right of possession of a lien
13 against or reservation of title to the property and if, upon
14 public hearing, due notice of which having been given to the
15 Attorney General or the district attorney, the claimant
16 proves by competent evidence to the satisfaction of the court
17 that the property was lawfully acquired, possessed and used
18 by the claimant and that the property was unlawfully used by
19 a person other than the claimant and the unlawful use was
20 without the claimant's knowledge or consent, the court may
21 order the property returned or delivered to the claimant.
22 Absence of knowledge or consent must be reasonable under the
23 circumstances.

24 Section 4. This act shall take effect as follows:

25 (1) The addition of 18 Pa.C.S. §§ 2717 and 2718 and 42
26 Pa.C.S. § 9720.2 shall take effect in 60 days.

27 (2) The addition of 42 Pa.C.S. § 8317 shall take effect
28 immediately.

29 (3) Section 1 of this act and this section shall take
30 effect immediately.