

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 29 Session of 2011

INTRODUCED BY GREENLEAF, TARTAGLIONE, BROWNE, ERICKSON, ORIE,  
FOLMER, RAFFERTY, BOSCOLA, GORDNER, WAUGH AND MENSCH,  
JANUARY 12, 2011

REFERRED TO JUDICIARY, JANUARY 12, 2011

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in obstructing governmental  
3 operations, further providing for the offenses 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, 5123 and 6105(b) of Title 18 of  
9 the 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,  
19 implement for escape, dangerous material or other item which

1 may be used for escape.

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

9 (b) [Definitions.--

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

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

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

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

29 "Dangerous material." Any incendiary material or device,  
30 highly flammable or caustic liquid, explosive, bullet or other

1 material readily capable of causing death or serious bodily  
2 injury.

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

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

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

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

28 § 5123. Contraband.

29 (a) [Controlled] Delivery of controlled substance contraband  
30 to confined persons prohibited.--[A person] An individual

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

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

23 (1) An individual convicted of a violation of subsection  
24 (a) shall be sentenced to a minimum sentence of at least two  
25 years of total confinement, notwithstanding any other  
26 provision of this title or any other statute to the contrary.  
27 Nothing in this subsection shall prevent the sentencing court  
28 from imposing a sentence greater than that provided in this  
29 subsection, up to the maximum penalty prescribed by this  
30 title for a felony of the second degree. There shall be no

1 authority in any court to impose on an offender to which this  
2 subsection is applicable any lesser sentence than provided  
3 for in subsection (a) or to place such offender on probation  
4 or to suspend sentence. Sentencing guidelines promulgated by  
5 the Pennsylvania Commission on Sentencing shall not supersede  
6 the mandatory sentences provided in this subsection. If a  
7 sentencing court refuses to apply this subsection where  
8 applicable, the Commonwealth shall have the right to  
9 appellate review of the action of the sentencing court. The  
10 appellate court shall vacate the sentence and remand the case  
11 to the sentencing court for imposition of a sentence in  
12 accordance with this subsection if it finds that the sentence  
13 was imposed in violation of this subsection.

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

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

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

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

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

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

1 kept by the warden or superintendent of the prison or mental  
2 hospital.]; or

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

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

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

30 (c.3) Possession of money or other contraband by a confined

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

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

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

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

16 "Delivers." Sells, gives, transmits, furnishes or otherwise  
17 transfers anything prohibited under this section to a confined  
18 person in a facility.

19 "Facility." Correctional institution, forensic unit of a  
20 State mental hospital, youth development center, youth forestry  
21 camp or other facility for the detention or incarceration of  
22 individuals pursuant to court order, building appurtenant  
23 thereto or any other place where a confined person is located.

24 ["Inmate." A male or female offender who is committed to,  
25 under sentence to or confined in a penal or correctional  
26 institution.]

27 "Telecommunication device." Any type of instrument, device,  
28 machine or equipment which is capable of transmitting  
29 telephonic, electronic, digital, cellular or radio  
30 communications or any part of such instrument, device, machine

1 or equipment which is capable of facilitating the transmission  
2 of telephonic, electronic, digital, cellular or radio  
3 communications. The term shall include, but not be limited to,  
4 cellular phones, digital phones and modem equipment devices.

5 § 6105. Persons not to possess, use, manufacture, control, sell  
6 or transfer firearms.

7 \* \* \*

8 (b) Enumerated offenses.--The following offenses shall apply  
9 to subsection (a):

10 Section 908 (relating to prohibited offensive weapons).

11 Section 911 (relating to corrupt organizations).

12 Section 912 (relating to possession of weapon on school  
13 property).

14 Section 2502 (relating to murder).

15 Section 2503 (relating to voluntary manslaughter).

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

18 Section 2702 (relating to aggravated assault).

19 Section 2703 (relating to assault by prisoner).

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

21 Section 2709.1 (relating to stalking).

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

23 Section 2901 (relating to kidnapping).

24 Section 2902 (relating to unlawful restraint).

25 Section 2910 (relating to luring a child into a motor  
26 vehicle or structure).

27 Section 3121 (relating to rape).

28 Section 3123 (relating to involuntary deviate sexual  
29 intercourse).

30 Section 3125 (relating to aggravated indecent assault).

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

2           Section 3302 (relating to causing or risking  
3 catastrophe).

4           Section 3502 (relating to burglary).

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

7           Section 3701 (relating to robbery).

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

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

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

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

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

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

20          Section 4952 (relating to intimidation of witnesses or  
21 victims).

22          Section 4953 (relating to retaliation against witness,  
23 victim or party).

24          Section 5121 (relating to escape).

25          Section 5122 (relating to weapons [or], implements for  
26 escape or dangerous material).

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

28          Section 5515 (relating to prohibiting of paramilitary  
29 training).

30          Section 5516 (relating to facsimile weapons of mass

1       destruction).

2           Section 6110.1 (relating to possession of firearm by  
3       minor).

4           Section 6301 (relating to corruption of minors).

5           Section 6302 (relating to sale or lease of weapons and  
6       explosives).

7       Any offense equivalent to any of the above-enumerated  
8       offenses under the prior laws of this Commonwealth or any  
9       offense equivalent to any of the above-enumerated offenses under  
10      the statutes of any other state or of the United States.

11       \* \* \*

12      Section 2.   This act shall take effect in 60 days.