

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 305 Session of 2013

INTRODUCED BY EICHELBERGER, GREENLEAF, VULAKOVICH, STACK, ALLOWAY, FOLMER, RAFFERTY, BAKER, PILEGGI, BREWSTER AND BROWNE, JANUARY 25, 2013

SENATOR CORMAN, APPROPRIATIONS, RE-REPORTED AS AMENDED, JUNE 10, 2013

AN ACT

1 Amending Titles 42 (Judiciary and Judicial Procedure) and 61
2 (Prisons and Parole) of the Pennsylvania Consolidated
3 Statutes, in other criminal provisions, further providing for
4 supervisory relationship to offenders; and, in Pennsylvania
5 Board of Probation and Parole, further providing for
6 supervisory relationship to offenders.

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

9 Section 1. Section 9912 of Title 42 of the Pennsylvania
10 Consolidated Statutes is amended by adding a subsection to read:
11 § 9912. Supervisory relationship to offenders.

12 \* \* \*

13 (e.1) Status of seized items.--

14 (1) ~~To protect the public from its illicit introduction, <--~~
15 ~~use or movement~~ NOTWITHSTANDING THE PROVISIONS OF ARTICLE <--
16 XIII.1 OF THE ACT OF APRIL 9, 1929 (P.L.343, NO.176), KNOWN
17 AS THE FISCAL CODE, TO THE CONTRARY, all contraband that is
18 seized from an offender shall be considered abandoned and
19 unclaimed, and no property right may exist in it, except as

1 otherwise provided in this section, if the following criteria  
2 have been met:

3 (i) The parolee or probationer from whom the item  
4 was seized is no longer under the jurisdiction of the  
5 court.

6 (ii) Two years have elapsed from the date the  
7 parolee or probationer was no longer under the  
8 jurisdiction of the court under subparagraph (i).

9 (iii) Notice that the item will be declared  
10 abandoned was mailed to the last known address of the  
11 parolee or probationer from whom the item was seized at  
12 least 60 days prior to the date the item is to be  
13 declared abandoned.

14 (iv) No other claimant of the item has notified the  
15 county adult probation and parole department of his claim  
16 or is known to the county adult probation and parole  
17 department.

18 ~~(v) The item has not been accepted by the Department <--~~  
19 ~~of Treasury under Article XIII.1 of the act of April 9,~~  
20 ~~1929 (P.L.343, No.176), known as The Fiscal Code.~~

21 ~~(vi) (V) The item has not been forfeited in <--~~  
22 ~~accordance with any forfeiture statute, including, but~~  
23 ~~not limited to, Chapter 68 (relating to forfeitures) and~~  
24 ~~as permitted by Pennsylvania common law.~~

25 (2) Contraband seized under this section may not be  
26 subject to replevin, but shall be deemed to be in the custody  
27 of the county adult probation and parole department. The  
28 county adult probation and parole department shall tag and  
29 secure the contraband at a place designated by it for such  
30 time as is necessary to secure its use as evidence in a

1 violation, revocation or criminal proceeding. In no event may  
2 the county adult probation and parole department retain the  
3 property for a period of less than 180 days after the hearing  
4 conducted under paragraph (3).

5 (3) (i) No later than the time of the first-level  
6 hearing to determine whether probable cause exists to  
7 believe that a violation of probation, parole or  
8 intermediate punishment has been committed, the county  
9 adult probation and parole department shall provide  
10 notice to the offender that abandonment will be sought if  
11 the offender does not claim the seized contraband within  
12 two years after sentence completion.

13 (ii) If the hearing is waived or there is a new  
14 criminal charge arising from the incident that included  
15 the seizure of the contraband, then notice under this  
16 paragraph shall be given at least five days before an  
17 abandonment hearing is held and the hearing shall be  
18 scheduled by the court within a reasonable time.

19 (4) If it has been determined that property is  
20 contraband that shall be declared abandoned, the contraband  
21 shall be retained by the county adult probation and parole  
22 department until all appeal periods are exhausted to provide  
23 an opportunity for any additional parties to assert a claim  
24 of ownership or lienhold interest in the contraband. If the  
25 county adult probation and parole department receives notice  
26 of such a claim, the claimant or claimants shall be provided  
27 a hearing pursuant to paragraph (3).

28 ~~(5) Whenever contraband is declared abandoned under this~~ <--  
29 ~~subchapter, title to the contraband shall be transferred to~~  
30 ~~the county adult probation and parole department. After the~~

~~1 expiration of the necessary time period, the county adult  
2 probation and parole department shall be entitled to any or  
3 all of the following:~~

4 (5) (I) WHENEVER CONTRABAND IS DECLARED ABANDONED UNDER <--  
5 THIS SUBCHAPTER, THE CONTRABAND SHALL BE TRANSFERRED TO  
6 THE CUSTODIAL CARE OF THE COUNTY ADULT PROBATION AND  
7 PAROLE DEPARTMENT. AFTER THE EXPIRATION OF THE NECESSARY  
8 TIME PERIOD SPECIFIED IN THIS SECTION, THE COUNTY ADULT  
9 PROBATION AND PAROLE DEPARTMENT SHALL ITEMIZE ALL SUCH  
10 ABANDONED CONTRABAND WITHIN ITS CUSTODIAL CARE IN A  
11 REPORT TO THE TREASURY DEPARTMENT.

12 (II) WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT OF  
13 AN ITEMIZED CONTRABAND REPORT FROM A COUNTY ADULT  
14 PROBATION AND PAROLE DEPARTMENT, THE TREASURY DEPARTMENT  
15 SHALL PROVIDE AN ITEMIZED LIST OF ALL SUCH ABANDONED  
16 CONTRABAND THAT IT WILL NOT ACCEPT INTO ITS CUSTODIAL  
17 CARE.

18 (III) ALL ABANDONED CONTRABAND NOT ACCEPTED BY THE  
19 TREASURY DEPARTMENT PURSUANT TO THIS SECTION SHALL REMAIN  
20 UNDER THE CUSTODIAL CONTROL OF THE COUNTY ADULT PROBATION  
21 AND PAROLE DEPARTMENT. ABANDONED CONTRABAND NOT OTHERWISE  
22 REFUSED BY THE TREASURY DEPARTMENT SHALL BE TRANSFERRED  
23 TO THE CUSTODIAL CONTROL OF THE TREASURY DEPARTMENT AS  
24 DIRECTED BY THE TREASURY DEPARTMENT.

25 (6) ALL ABANDONED CONTRABAND REFUSED BY THE TREASURY  
26 DEPARTMENT AND REMAINING UNDER THE CUSTODIAL CONTROL OF THE  
27 COUNTY ADULT PROBATION AND PAROLE DEPARTMENT SHALL BE DEEMED  
28 PROPERTY OF THE COUNTY DEPARTMENT AND TITLE TO THE PROPERTY  
29 SHALL TRANSFER. THEREAFTER, THE COUNTY PROBATION AND PAROLE  
30 DEPARTMENT SHALL BE ENTITLED TO ANY OR ALL OF THE FOLLOWING:

1           (i) Retain the contraband for official use.

2           (ii) Destroy the contraband.

3           (iii) Donate the contraband to a nonprofit  
4           organization or governmental entity.

5           (iv) Sell any contraband that is not required to be  
6           destroyed by law.

7           (v) If the item is of de minimus value, as  
8           determined by the county adult probation and parole  
9           department, dispose of the item, without sale.

10          ~~(6)~~ (7) The county treasurer of each county shall       <--  
11          establish and administer a community correction forfeiture  
12          fund consisting of all cash or proceeds obtained under this  
13          section. The county treasurer shall disburse money from this  
14          fund only at the discretion of the president judge of the  
15          court of common pleas, subject to paragraph ~~(7)~~ (8).       <--

16          ~~(7)~~ (8) Cash or proceeds generated by the sale of any       <--  
17          abandoned contraband shall first be made available to satisfy  
18          any restitution owed by the offender to crime victims who are  
19          known at the time of the seizure by the Pennsylvania  
20          Commission on Crime and Delinquency's Office of Victim  
21          Services or by the courts of the Commonwealth where the  
22          offender was sentenced.

23          ~~(8)~~ (9) The county adult probation and parole department <--  
24          and its employees shall be immune from liability for good  
25          faith conduct under this section.

26          ~~(9)~~ (10) The Pennsylvania Board of Probation and Parole <--  
27          may enact regulations that are necessary to implement this  
28          subsection on a uniform basis throughout this Commonwealth.  
29          If regulations are promulgated, a county adult probation and  
30          parole department must comply with the regulations.

1        ~~(10)~~ (11) The provisions set forth in this subsection <--  
2 shall apply to all contraband seized after the effective date  
3 of this subsection.

4        ~~(11)~~ (12) Contraband seized prior to the effective date <--  
5 of this subsection may be disposed of in the manner set forth  
6 in paragraph (5) after notice is given to the offender from  
7 whom it was seized and any claimant known to the county adult  
8 probation and parole department. The county adult probation  
9 and parole department shall provide the notice within a  
10 reasonable time prior to holding a hearing at which  
11 abandonment shall be determined.

12        ~~(12)~~ (13) (i) An appeal of an abandonment determination <--  
13 may be made by filing an appeal with the court of common  
14 pleas. The appeal must be received by the court of common  
15 pleas within 30 days of the mailing date of the county  
16 adult probation and parole department's order.

17        (ii) When a timely appeal of an abandonment  
18 determination has been filed, the abandonment may not be  
19 deemed final for purpose of appeal to a court until the  
20 court has mailed its decision on the appeal.

21        (iii) The scope of review of an appeal shall be  
22 limited to whether the decision is supported by  
23 substantial evidence, an error of law has been committed  
24 or there has been a violation of constitutional law.

25        (iv) The failure of an appeal to present with  
26 accuracy, brevity, clearness and specificity whatever is  
27 essential to a ready and adequate understanding of the  
28 factual and legal points requiring consideration shall be  
29 a sufficient reason for denying the appeal.

30        (v) A second or subsequent appeal and an appeal that

1 is untimely filed under this paragraph shall not be  
2 received.

3 (vi) The procedure for appeal contained in this  
4 subsection may not be construed to alter or replace any  
5 procedures provided by law for the timely filing of  
6 appeals to appellate courts.

7 ~~(13)~~ (14) The county adult probation and parole <--  
8 department shall annually post a report specifying the  
9 abandoned property or proceeds of the abandoned property  
10 obtained under this section on the county's publicly  
11 accessible Internet website and make the report available as  
12 a public document. The report shall give an accounting of all  
13 proceeds derived from the sale of abandoned property and the  
14 use made of unsold abandoned property.

15 \* \* \*

16 Section 2. Section 6153 of Title 61 is amended by adding a  
17 subsection to read:

18 § 6153. Supervisory relationship to offenders.

19 \* \* \*

20 (g) Status of seized items.--

21 (1) ~~To protect the public from its illicit introduction,~~ <--  
22 use or movement NOTWITHSTANDING THE PROVISIONS OF ARTICLE <--  
23 XIII.1 OF THE ACT OF APRIL 9, 1929 (P.L.343, NO.176), KNOWN  
24 AS THE FISCAL CODE, TO THE CONTRARY, all contraband that is  
25 seized from an offender shall be considered abandoned and  
26 unclaimed, and no property right shall exist in it, except as  
27 otherwise provided in this section, if the following criteria  
28 have been met:

29 (i) The parolee or probationer from whom the item  
30 was seized is no longer under the jurisdiction of the

1 court or the board.

2 (ii) Two years have elapsed from the date the  
3 parolee or probationer was no longer under the  
4 jurisdiction of the court or the board under subparagraph  
5 (i).

6 (iii) Notice that the item will be declared  
7 abandoned was mailed to the last known address of the  
8 parolee or probationer from whom the item was seized at  
9 least 60 days prior to the date the item is to be  
10 declared abandoned and unclaimed.

11 (iv) No other claimant of the item has notified the  
12 board of his claim or is known to the board.

13 ~~(v) The item has not been accepted by the Department~~ <--  
14 ~~of Treasury under Article XIII.1 of the act of April 9,~~  
15 ~~1929 (P.L.343, No.176), known as The Fiscal Code.~~

16 ~~(vi) (V) The item has not been forfeited in~~ <--  
17 ~~accordance with any forfeiture statute, including, but~~  
18 ~~not limited to, 42 Pa.C.S. Ch. 68 (relating to~~  
19 ~~forfeitures) and as permitted by Pennsylvania common law.~~

20 (2) Contraband seized under this section may not be  
21 subject to replevin, but shall be deemed to be in the custody  
22 of the board. The board shall tag and secure the contraband  
23 at a place designated by it for such time as is necessary to  
24 secure its use as evidence in a violation, revocation or  
25 criminal proceeding. In no event may the board retain the  
26 property for a period of less than 180 days after the hearing  
27 conducted under paragraph (3).

28 (3) (i) No later than the time of the first-level  
29 hearing to determine whether probable cause exists to  
30 believe that a violation of probation or parole has been

1 committed, the board shall provide notice to the offender  
2 that abandonment will be sought if the offender does not  
3 claim the seized contraband within two years after  
4 sentence completion.

5 (ii) If the hearing is waived or there is a new  
6 criminal charge arising from the incident that included  
7 the seizure of the contraband, then notice under this  
8 paragraph shall be given at least five days before an  
9 abandonment hearing is held and the hearing shall be  
10 scheduled by the board within a reasonable time.

11 (4) If it has been determined that property is  
12 contraband that shall be declared abandoned, the contraband  
13 shall be retained by the board until all appeal periods are  
14 exhausted to provide an opportunity for any additional  
15 parties to assert a claim of ownership or lienhold interest  
16 in the contraband. If the board receives notice of such a  
17 claim, the claimant or claimants shall be provided a hearing  
18 pursuant to paragraph (3).

19 ~~(5) Whenever contraband is declared abandoned under this <--~~  
20 ~~subchapter, title to the contraband shall be transferred to~~  
21 ~~the board. After the expiration of the necessary time period,~~  
22 ~~the board shall be entitled to do any or all of the~~  
23 ~~following:~~

24 (5) (I) WHENEVER CONTRABAND IS DECLARED ABANDONED UNDER <--  
25 THIS SUBCHAPTER, THE CONTRABAND SHALL BE TRANSFERRED TO  
26 THE CUSTODIAL CARE OF THE BOARD. AFTER THE EXPIRATION OF  
27 THE NECESSARY TIME PERIOD SPECIFIED IN THIS SECTION, THE  
28 BOARD SHALL ITEMIZE ALL SUCH ABANDONED CONTRABAND WITHIN  
29 ITS CUSTODIAL CARE IN A REPORT TO THE TREASURY  
30 DEPARTMENT.



1 abandoned contraband and placed in the account established in  
2 paragraph ~~(6)~~ (7) shall first be made available to satisfy <--  
3 any restitution owed by the offender to crime victims who are  
4 known at the time of the seizure by the Pennsylvania  
5 Commission on Crime and Delinquency's Office of Victim  
6 Services or by the courts of the Commonwealth where the  
7 offender was sentenced. Any funds not used to satisfy crime  
8 victim restitution obligations shall be made available to the  
9 board pursuant to this section as a budget augmentation of  
10 the operating funds of the board.

11 ~~(8)~~ (9) The board and its employees shall be immune from <--  
12 liability for good faith conduct under this section.

13 ~~(9)~~ (10) The board may enact regulations that are <--  
14 necessary to implement this subsection for its agents and for  
15 use by county adult probation and parole departments on a  
16 uniform basis throughout this Commonwealth.

17 ~~(10)~~ (11) The provisions set forth in this subsection <--  
18 shall apply to all contraband seized after the effective date  
19 of this subsection.

20 ~~(11)~~ (12) Contraband seized prior to the effective date <--  
21 of this subsection may be disposed of in the manner set forth  
22 in paragraph (5) after notice is given to the offender from  
23 whom it was seized and any claimant known to the board. The  
24 board shall provide the notice within a reasonable time prior  
25 to holding a hearing at which abandonment shall be  
26 determined.

27 ~~(12)~~ (13) (i) An appeal of an abandonment determination <--  
28 may be made by filing an appeal with the board's central  
29 office. The appeal must be received by the board's  
30 central office within 30 days of the mailing date of the

1 board's order.

2 (ii) When a timely appeal of an abandonment  
3 determination has been filed, the abandonment may not be  
4 deemed final for purpose of appeal to a court until the  
5 board has mailed its decision on the appeal. This  
6 subparagraph supersedes 1 Pa. Code § 35.226 (relating to  
7 final orders).

8 (iii) The scope of review of an appeal shall be  
9 limited to whether the decision is supported by  
10 substantial evidence, an error of law has been committed  
11 or there has been a violation of constitutional law.

12 (iv) The failure of an appeal to present with  
13 accuracy, brevity, clearness and specificity whatever is  
14 essential to a ready and adequate understanding of the  
15 factual and legal points requiring consideration shall be  
16 a sufficient reason for denying the appeal.

17 (v) A second or subsequent appeal and appeal that is  
18 not timely filed under this paragraph shall not be  
19 received.

20 (vi) The procedure for reconsideration contained in  
21 this subsection does not alter or replace any procedures  
22 provided by law for the timely filing of appeals to  
23 appellate courts.

24 ~~(13)~~ (14) The board shall annually post a report <--  
25 specifying the abandoned property or proceeds of the  
26 abandoned property obtained under this section on the board's  
27 publicly accessible Internet website and make the report  
28 available as a public document. The report shall give an  
29 accounting of all proceeds derived from the sale of abandoned  
30 property and the use made of unsold abandoned property.

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