

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1738 Session of
1995

INTRODUCED BY ITKIN, MERRY, BELARDI, RICHARDSON, READSHAW,
SATHER, TRELLO, PISTELLA, MCGEEHAN, YOUNGBLOOD, CORRIGAN,
MELIO AND PESCI, JUNE 14, 1995

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 14, 1995

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 collection of restitution, reparation, fees, costs, fines and
4 penalties.

5 The General Assembly of the Commonwealth of Pennsylvania
6 hereby enacts as follows:

7 Section 1. Section 9728 of Title 42 of the Pennsylvania
8 Consolidated Statutes, amended May 3, 1995 (1st Sp.Sess., P.L.
9 , No.12), is amended to read:

10 § 9728. Collection of restitution, reparation, fees, costs,
11 fines and penalties.

12 (a) General rule.--All restitution, reparation, fees, costs,
13 fines and penalties shall be collectible in any manner provided
14 by law. However, such restitution, reparation, fees, costs,
15 fines and penalties are part of a criminal action or proceeding
16 and shall not be deemed debts. A sentence, pretrial disposition
17 order or order entered under section 6352 (relating to
18 disposition of delinquent child) for restitution, reparation,

1 fees, costs, fines or penalties shall, together with interest
2 and any additional costs that may accrue, be a judgment in favor
3 of the probation department upon the person or the property of
4 the person sentenced or subject to the order.

5 (b) Procedure.--The county [probation department or other
6 appropriate governmental agency] clerk of courts shall, upon
7 sentencing, pretrial disposition or other order, transmit to the
8 prothonotary of the respective county certified copies of all
9 judgments for restitution, reparation, fees, costs, fines and
10 penalties, which, in the aggregate, exceed \$1,000, and it shall
11 be the duty of each prothonotary to enter and docket the same of
12 record in his office and to index the same as judgments are
13 indexed, without requiring the payment of costs as a condition
14 precedent to the entry thereof. The clerk of courts, in
15 consultation with other appropriate governmental agencies, may
16 transmit to the prothonotary of the respective county certified
17 copies of all judgments for restitution, reparation, fees,
18 costs, fines and penalties, which in the aggregate, do not
19 exceed \$1,000, and, if so transmitted, it shall be the duty of
20 each prothonotary to enter and docket the same of record in his
21 office and to index the same as judgments are indexed, without
22 requiring the payment of costs as a condition precedent to the
23 entry thereof. The total amount for which the person is liable
24 pursuant to this section may be entered as a judgment upon the
25 person or the property of the person sentenced or ordered,
26 regardless of whether the amount has been ordered to be paid in
27 installments.

28 (c) Period of time.--Notwithstanding section 6353 (relating
29 to limitation on and change in place of commitment) or 18
30 Pa.C.S. § 1106(c)(2) (relating to restitution for injuries to

1 person or property), the period of time during which such
2 judgments shall have full effect may exceed the maximum term of
3 imprisonment to which the offender could have been sentenced for
4 the crimes of which he was convicted or the maximum term of
5 confinement to which the offender was committed.

6 (d) Priority.--Notwithstanding any other statutory
7 provisions in this or any other title, any lien obtained under
8 this section shall maintain its priority indefinitely and no
9 writ of revival need be filed.

10 (e) Preservation of assets subject to restitution.--Upon
11 application of the Commonwealth, the court may enter a
12 restraining order or injunction, require the execution of a
13 satisfactory performance bond or take any other action to
14 preserve the availability of property which may be necessary to
15 satisfy an anticipated restitution order under this section:

16 (1) upon the filing of a criminal complaint, information
17 or indictment charging a criminal violation or a petition
18 alleging delinquency for which restitution may be ordered and
19 alleging that the property with respect to which the order is
20 sought appears to be necessary to satisfy such restitution
21 order and judgment; and

22 (2) if, after notice to persons appearing to have an
23 interest in the property and an opportunity for a hearing,
24 the court determines that:

25 (i) there is a substantial probability that:

26 (A) the Commonwealth will prevail on the
27 underlying criminal charges or allegation of
28 delinquency;

29 (B) restitution will be ordered exceeding
30 \$10,000 in value;

1 (C) the property appears to be necessary to
2 satisfy such restitution order; and

3 (D) failure to enter the order will result in
4 the property being destroyed, removed from the
5 jurisdiction of the court or otherwise made
6 unavailable for payment of the anticipated
7 restitution order; and

8 (ii) the need to preserve the availability of the
9 property through the entry of the requested order
10 outweighs the hardship on any party against whom the
11 order is to be entered.

12 (f) Temporary restraining order.--A temporary restraining
13 order under subsection (e) may be entered upon application of
14 the Commonwealth without notice or opportunity for a hearing,
15 whether or not a complaint, information, indictment or petition
16 alleging delinquency has been filed with respect to the
17 property, if the Commonwealth demonstrates that there is
18 probable cause to believe that the property with respect to
19 which the order is sought appears to be necessary to satisfy an
20 anticipated restitution order under this section and that
21 provision of notice will jeopardize the availability of the
22 property to satisfy such restitution order and judgment. Such a
23 temporary order shall expire not more than ten days after the
24 date on which it is entered, unless extended for good cause
25 shown or unless the party against whom it is entered consents to
26 an extension for a longer period. A hearing requested concerning
27 an order entered under this subsection shall be held at the
28 earliest possible time and prior to the expiration of the
29 temporary order.

30 (g) Costs, etc.--Any sheriff's costs, filing fees and costs

1 of the county probation department, clerk of courts or other
2 appropriate governmental agency shall be borne by the defendant
3 and shall be collected by the county probation department or
4 other appropriate governmental agency along with the total
5 amount of the judgment and remitted to the appropriate agencies
6 at the time of or prior to satisfaction of judgment.

7 (h) Effect on contempt proceedings.--This section shall not
8 affect contempt proceedings mandated by 18 Pa.C.S. § 1106(f).

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