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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 310 Session of  
1989

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INTRODUCED BY ROEBUCK, CALTAGIRONE, JAMES, WILLIAMS, WAMBACH,  
MAINE, VROON, PISTELLA, VEON, COLAFELLA, FLEAGLE, MORRIS,  
FREEMAN, LUCYK, NOYE, SAURMAN, TRELLO, MARKOSEK, HERSHEY,  
ANGSTADT, PERZEL, CAWLEY, FEE, FOX, HARPER, FREIND, BUNT,  
OLIVER, KASUNIC, BATTISTO, DeLUCA, SERAFINI, MAIALE,  
MICOZZIE, CORRIGAN, CIVERA, J. L. WRIGHT, TIGUE, ROBINSON,  
CORNELL, PRESTON, HUGHES, WOZNIAK, J. TAYLOR, SCHEETZ,  
GRUPPO, REBER, SALOOM, ACOSTA, RAYMOND, GEIST, HALUSKA,  
HAYDEN, THOMAS, KOSINSKI, BISHOP, RYBAK, HOWLETT AND BROUJOS,  
FEBRUARY 7, 1989

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SENATOR TILGHMAN, APPROPRIATIONS, IN SENATE, RE-REPORTED AS  
AMENDED, NOVEMBER 19, 1990

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AN ACT

1 Amending ~~Title~~ TITLES 18 (Crimes and Offenses) AND 42 (JUDICIARY <—  
2 AND JUDICIAL PROCEDURE) of the Pennsylvania Consolidated  
3 Statutes, further providing FOR CRIMINAL MISCHIEF AND FOR <—  
4 INSTITUTIONAL VANDALISM; ~~PROVIDING FOR SALE AND DISPLAY OF~~ <—  
5 ~~AEROSOL SPRAY PAINT CANS AND BROAD TIPPED MARKERS AND~~ for  
6 mandatory sentencing for convictions for certain drug  
7 offenses; REGULATING STORAGE, CONSUMPTION AND SALE OF <—  
8 ALCOHOLIC BEVERAGES BETWEEN THE HOURS OF 2 A.M. AND 8 A.M. ON  
9 UNLICENSED PREMISES; AND PROVIDING FOR ~~JURISDICTION TO ENJOIN~~ <—  
10 ~~CERTAIN NUISANCES IN THE CITY OF PHILADELPHIA AND FOR~~  
11 SENTENCING FOR CRIMINAL MISCHIEF OR INSTITUTIONAL VANDALISM. <—

12 The General Assembly of the Commonwealth of Pennsylvania

13 hereby enacts as follows:

14 Section 1. ~~Section~~ SECTIONS 3304, 3307 AND 6314 of Title 18 <—  
15 of the Pennsylvania Consolidated Statutes ~~is~~ ARE amended to <—

16 read:

17 § 3304. CRIMINAL MISCHIEF. <—

1 (A) OFFENSE DEFINED.--A PERSON IS GUILTY OF CRIMINAL  
2 MISCHIEF IF HE:

3 (1) DAMAGES TANGIBLE PROPERTY OF ANOTHER INTENTIONALLY,  
4 RECKLESSLY, OR BY NEGLIGENCE IN THE EMPLOYMENT OF FIRE,  
5 EXPLOSIVES, OR OTHER DANGEROUS MEANS LISTED IN SECTION  
6 3302(A) OF THIS TITLE (RELATING TO CAUSING OR RISKING  
7 CATASTROPHE);

8 (2) INTENTIONALLY OR RECKLESSLY TAMPERS WITH TANGIBLE  
9 PROPERTY OF ANOTHER SO AS TO ENDANGER PERSON OR PROPERTY;

10 [OR]

11 (3) INTENTIONALLY OR RECKLESSLY CAUSES ANOTHER TO SUFFER  
12 PECUNIARY LOSS BY DECEPTION OR THREAT[.];

13 (4) INTENTIONALLY DEFACES OR OTHERWISE DAMAGES TANGIBLE  
14 PUBLIC PROPERTY OR TANGIBLE PROPERTY OF ANOTHER WITH AN  
15 AEROSOL SPRAY-PAINT CAN, BROAD-TIPPED INDELIBLE MARKER OR  
16 OTHER MARKING, SCRATCHING OR DEFACING DEVICE; OR

17 (5) CARRIES AN AEROSOL SPRAY-PAINT CAN, BROAD-TIPPED  
18 INDELIBLE MARKER OR OTHER MARKING, SCRATCHING OR DEFACING  
19 DEVICE ONTO REAL PROPERTY WITH INTENT TO DEFACE OR OTHERWISE  
20 DAMAGE TANGIBLE PUBLIC PROPERTY OR TANGIBLE PROPERTY OF  
21 ANOTHER WITH AN AEROSOL SPRAY-PAINT CAN, BROAD-TIPPED  
22 INDELIBLE MARKER OR OTHER MARKING, SCRATCHING OR DEFACING  
23 DEVICE.

24 (B) GRADING.--CRIMINAL MISCHIEF IS A FELONY OF THE THIRD  
25 DEGREE IF THE ACTOR INTENTIONALLY CAUSES PECUNIARY LOSS IN  
26 EXCESS OF \$5,000, OR A SUBSTANTIAL INTERRUPTION OR IMPAIRMENT OF  
27 PUBLIC COMMUNICATION, TRANSPORTATION, SUPPLY OF WATER, GAS OR  
28 POWER, OR OTHER PUBLIC SERVICE. IT IS A MISDEMEANOR OF THE  
29 SECOND DEGREE IF THE ACTOR INTENTIONALLY CAUSES PECUNIARY LOSS  
30 IN EXCESS OF \$1,000, OR A MISDEMEANOR OF THE THIRD DEGREE IF HE

1 INTENTIONALLY OR RECKLESSLY CAUSES PECUNIARY LOSS IN EXCESS OF  
2 \$500. OTHERWISE CRIMINAL MISCHIEF IS A SUMMARY OFFENSE.

3 § 3307. INSTITUTIONAL VANDALISM.

4 (A) OFFENSES DEFINED.--A PERSON COMMITS THE OFFENSE OF  
5 INSTITUTIONAL VANDALISM IF HE KNOWINGLY DESECRATES, AS DEFINED  
6 IN SECTION 5509 (RELATING TO DESECRATION OF VENERATED OBJECTS),  
7 VANDALIZES, DEFACES OR OTHERWISE DAMAGES:

8 (1) ANY CHURCH, SYNAGOGUE OR OTHER FACILITY OR PLACE  
9 USED FOR RELIGIOUS WORSHIP OR OTHER RELIGIOUS PURPOSES;

10 (2) ANY CEMETERY, MORTUARY OR OTHER FACILITY USED FOR  
11 THE PURPOSE OF BURIAL OR MEMORIALIZING THE DEAD;

12 (3) ANY SCHOOL, EDUCATIONAL FACILITY, COMMUNITY CENTER,  
13 MUNICIPAL BUILDING, COURTHOUSE FACILITY OR JUVENILE DETENTION  
14 CENTER;

15 (4) THE GROUNDS ADJACENT TO AND OWNED OR OCCUPIED BY ANY  
16 FACILITY SET FORTH IN PARAGRAPH (1), (2) OR (3); OR

17 (5) ANY PERSONAL PROPERTY LOCATED IN ANY FACILITY SET  
18 FORTH IN THIS SUBSECTION.

19 (A.1) ILLEGAL POSSESSION.--A PERSON COMMITS THE OFFENSE OF  
20 INSTITUTIONAL VANDALISM IF, WITH INTENT TO VIOLATE SUBSECTION  
21 (A), THE PERSON CARRIES AN AEROSOL SPRAY-PAINT CAN, BROAD-TIPPED  
22 INDELIBLE MARKER OR OTHER MARKING, SCRATCHING OR DEFACING DEVICE  
23 ONTO PROPERTY IDENTIFIED IN SUBSECTION (A).

24 (B) GRADING.--AN OFFENSE UNDER THIS SECTION IS A FELONY OF  
25 THE THIRD DEGREE IF THE ACT IS ONE OF DESECRATION AS DEFINED IN  
26 SECTION 5509 OR IF THE ACTOR CAUSES PECUNIARY LOSS IN EXCESS OF  
27 \$5,000. PECUNIARY LOSS INCLUDES THE COST OF REPAIR OR  
28 REPLACEMENT OF THE PROPERTY AFFECTED. OTHERWISE, INSTITUTIONAL  
29 VANDALISM IS A MISDEMEANOR OF THE SECOND DEGREE.

30 (C) PENALTY.--A PERSON WHO VIOLATES SUBSECTION (A.1) AND

1 WHO, IN THE OPINION OF THE COURT, WOULD BENEFIT, SHALL BE  
2 SENTENCED TO A MANDATORY TERM OF SUPERVISED COMMUNITY SERVICE OF  
3 NOT LESS THAN 20 HOURS NOR MORE THAN 99 HOURS.

4 (D) CONSEQUENCES.--SATISFACTORY COMPLETION OF THE COMMUNITY  
5 SERVICE PROGRAM SHALL RESULT IN A DISMISSAL OF CHARGES AND  
6 EXPUNGEMENT OF THE RECORD OF THE PERSON CONVICTED UNDER THIS  
7 SECTION. THE COURT SHALL FOLLOW PROCEDURES SIMILAR TO THOSE  
8 ESTABLISHED FOR THE ACCELERATED REHABILITATIVE DISPOSITION  
9 PROGRAM.

10 § 6314. Sentencing and penalties for trafficking drugs to  
11 minors and for offenses in the vicinity of schools.

12 (a) General rule.--A person [over] 18 years of age or older  
13 who is convicted in any court of this Commonwealth of a  
14 violation of section 13(a)(14) or (30) of the act of April 14,  
15 1972 (P.L.233, No.64), known as The Controlled Substance, Drug,  
16 Device and Cosmetic Act, shall, if the delivery or possession  
17 with intent to deliver of the controlled substance was to a  
18 minor, be sentenced to a minimum sentence of at least one year  
19 total confinement, notwithstanding any other provision of this  
20 title or other statute to the contrary.

21 (b) Additional penalties.--In addition to the mandatory  
22 minimum sentence set forth in subsection (a), the person shall  
23 be sentenced to an additional minimum sentence of at least two  
24 years total confinement, notwithstanding any other provision of  
25 this title or other statute to the contrary, if the person did  
26 any of the following:

27 (1) Committed the offense with the intent to promote the  
28 habitual use of the controlled substance.

29 (2) Intended to engage the minor in the trafficking,  
30 transportation, delivery, manufacturing, sale or conveyance.

1           [(3) Committed the offense within 1,000 feet of the real  
2       property on which is located a public, private or parochial  
3       school or a college or university.]

4       (b.1) Offenses in the vicinity of schools.--Any person 18  
5 years of age or older who is convicted in any court of this  
6 Commonwealth of a violation of section 13(a)(14) or (30) of The  
7 Controlled Substance, Drug, Device and Cosmetic Act shall, if  
8 the offense was committed within 1,500 feet of the real property  
9 on which is located a public, private or parochial school or a  
10 college or university; a playground, video arcade, ~~or~~ community <—  
11 recreational center OR PUBLIC PARK; or a licensed child-care <—  
12 facility, be sentenced to a minimum sentence of at least three  
13 years total confinement, notwithstanding any other provision of  
14 this title or other statute to the contrary.

15       (c) Proof at sentencing.--The provisions of this section  
16 shall not be an element of the crime. Notice of the  
17 applicability of this section to the defendant shall not be  
18 required prior to conviction, but reasonable notice of the  
19 Commonwealth's intention to proceed under this section shall be  
20 provided after conviction and before sentencing. The  
21 applicability of this section shall be determined at sentencing.  
22 The court shall consider evidence presented at trial, shall  
23 afford the Commonwealth and the defendant an opportunity to  
24 present necessary additional evidence, and shall determine, by a  
25 preponderance of the evidence, if this section is applicable.

26       (d) Authority of court in sentencing.--There shall be no  
27 authority for a court to impose on a defendant to which this  
28 section is applicable a lesser sentence than provided for in  
29 [subsection (a)] this section, to place the defendant on  
30 probation or to suspend sentence. Nothing in this section shall

1 prevent the sentencing court from imposing a sentence greater  
2 than that provided in this section. Sentencing guidelines  
3 promulgated by the Pennsylvania Commission on Sentencing shall  
4 not supersede the mandatory sentences provided in this section.  
5 Disposition under section 17 or 18 of The Controlled Substance,  
6 Drug, Device and Cosmetic Act shall not be available to a  
7 defendant to which this section applies.

8 (D.1) PLACE OF CONFINEMENT.--NOTWITHSTANDING THE PROVISIONS <—  
9 OF THIS TITLE OR ANY OTHER STATUTE TO THE CONTRARY, PERSONS  
10 SENTENCED UNDER THE PROVISIONS OF THIS SECTION SHALL BE  
11 COMMITTED TO THE DEPARTMENT OF CORRECTIONS FOR CONFINEMENT IN  
12 STATE CORRECTIONAL FACILITIES.

13 (e) Appeal by Commonwealth.--If a sentencing court refuses  
14 to apply this section where applicable, the Commonwealth shall  
15 have the right to appellate review of the action of the  
16 sentencing court. The appellate court shall vacate the sentence  
17 and remand the case to the sentencing court for imposition of a  
18 sentence in accordance with this section if it finds that the  
19 sentence was imposed in violation of this section.

20 (f) Forfeiture.--Assets against which a forfeiture petition  
21 has been filed and is pending or against which the Commonwealth  
22 has indicated an intention to file a forfeiture petition shall  
23 not be subject to a fine under this section.

24 (g) Definition.--As used in this section, the term "minor"  
25 means an individual under 18 years of age.

26 SECTION 2. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ: <—  
27 § 7326. STORAGE, CONSUMPTION AND SALE OF ALCOHOLIC BEVERAGES ON  
28 UNLICENSED BUSINESS PREMISES.

29 (A) STORAGE.--A PERSON COMMITS A SUMMARY OFFENSE IF HE  
30 STORES OR PERMITS STORAGE BY OTHERS OF LIQUOR OR MALT OR BREWED

1 BEVERAGES FOR THE PURPOSE OF CONSUMPTION BETWEEN THE HOURS OF 2  
2 A.M. AND 8 A.M. ON BUSINESS PREMISES OWNED, OPERATED, LEASED OR  
3 CONTROLLED BY THEM SUCH PERSON WHICH ARE NOT LICENSED UNDER THE <—  
4 ACT OF APRIL 12, 1951 (P.L.90, NO.21), KNOWN AS THE LIQUOR CODE.

5 (B) CONSUMPTION.--A PERSON COMMITS A SUMMARY OFFENSE IF HE  
6 ALLOWS ANOTHER TO CONSUME LIQUOR OR MALT OR BREWED BEVERAGES  
7 AFTER PAYMENT OF AN ENTRY FEE, COVER CHARGE OR MEMBERSHIP FEE  
8 BETWEEN THE HOURS OF 2 A.M. AND 8 A.M. ON BUSINESS PREMISES  
9 OWNED, OPERATED, LEASED OR CONTROLLED BY THEM SUCH PERSON WHICH <—  
10 ARE NOT LICENSED UNDER THE LIQUOR CODE.

11 (C) SALE.--A PERSON COMMITS A SUMMARY OFFENSE IF HE SELLS OR  
12 OFFERS TO SELL ANY LIQUOR OR MALT OR BREWED BEVERAGES BETWEEN  
13 THE HOURS OF 2 A.M. AND 8 A.M. ON BUSINESS PREMISES OWNED,  
14 OPERATED, LEASED OR CONTROLLED BY THEM SUCH PERSON WHICH ARE NOT <—  
15 LICENSED UNDER THE LIQUOR CODE.

16 SECTION 3. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ:  
17 § 9720. SENTENCING FOR CRIMINAL MISCHIEF.

18 (A) GENERAL RULE.--A PERSON CONVICTED OF AN OFFENSE UNDER 18  
19 PA.C.S. § 3304(A)(4) OR (5) (RELATING TO CRIMINAL MISCHIEF) OR  
20 3307 (RELATING TO INSTITUTIONAL VANDALISM), WHO IN THE OPINION  
21 OF THE COURT, WOULD BENEFIT, SHALL BE SENTENCED TO A MANDATORY  
22 TERM OF SUPERVISED COMMUNITY SERVICE, INCLUDING REPAIRING OR  
23 RESTORING DAMAGED PROPERTY, IN ACCORDANCE WITH THE FOLLOWING:

24 (1) IF THE DAMAGE TO THE PROPERTY IS LESS THAN \$200, THE  
25 TERM OF SUPERVISED COMMUNITY SERVICE SHALL NOT BE LESS THAN  
26 10 HOURS NOR MORE THAN 19 HOURS.

27 (2) IF THE DAMAGE TO THE PROPERTY IS AT LEAST \$200, BUT  
28 LESS THAN \$1,000, THE TERM OF SUPERVISED COMMUNITY SERVICE  
29 SHALL NOT BE LESS THAN 20 HOURS NOR MORE THAN 99 HOURS.

30 (3) IF THE DAMAGE TO THE PROPERTY IS \$1,000 OR MORE, THE

1     TERM OF SUPERVISED COMMUNITY SERVICE SHALL NOT BE LESS THAN  
2     100 HOURS NOR MORE THAN 500 HOURS.

3     (B) CONSEQUENCES.--SATISFACTORY COMPLETION OF THE SUPERVISED  
4     COMMUNITY SERVICE PROGRAM SHALL RESULT IN A DISMISSAL OF CHARGES  
5     AND EXPUNGEMENT OF THE RECORD OF THE PERSON CONVICTED UNDER 18  
6     PA.C.S. § 3304(A)(4) OR (5) OR 3307. THE COURT SHALL FOLLOW  
7     PROCEDURES SIMILAR TO THOSE ESTABLISHED FOR THE ACCELERATED  
8     REHABILITATIVE DISPOSITION PROGRAM.

9     Section 2 4. This act shall take effect in 60 days.

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