

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 151 Session of 2007

INTRODUCED BY GREENLEAF, COSTA, EARLL, O'PAKE, RAFFERTY,
BOSCOLA, FONTANA, PUNT, TARTAGLIONE, RHOADES, KITCHEN,
ARMSTRONG, ERICKSON, C. WILLIAMS, WASHINGTON, WOZNIAK,
TOMLINSON, GORDNER, BROWNE, BAKER AND FUMO, FEBRUARY 9, 2007

REFERRED TO JUDICIARY, FEBRUARY 9, 2007

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for weapons or
3 implements for escape and for contraband; and making a
4 conforming amendment.

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

7 Section 1. Sections 5122 and 5123 of Title 18 of the
8 Pennsylvania Consolidated Statutes are amended to read:

9 § 5122. Weapons [or implements for escape], implements of
10 escape or dangerous material.

11 (a) Offenses defined.--

12 (1) [A person commits a misdemeanor of the first] An
13 individual commits a felony of the second degree if he
14 [unlawfully introduces within a detention facility,
15 correctional institution or mental hospital, or unlawfully
16 provides an inmate thereof with any weapon, tool, implement,
17 or other thing] delivers to a confined person a weapon,
18 implement of 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 of 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 and
22 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 correctional institution, mental hospital,
26 youth development center, youth forestry camp or other facility
27 for the detention or incarceration of individuals pursuant to a
28 court order, regardless of whether the individual is temporarily
29 absent due to medical treatment, transportation, court
30 appearance or other reason for a temporary absence.

1 "Dangerous material." Any incendiary material or device,
2 highly flammable or caustic liquid, explosive, bullet or other
3 material readily capable of causing death or serious bodily
4 injury.

5 "Delivers." The transfer of a weapon, implement of escape or
6 dangerous material to a confined person in a correctional
7 institution, mental hospital, youth development center, youth
8 forestry camp or other facility for the detention or
9 incarceration of individuals pursuant to court order, building
10 appurtenant thereto or any other place. The term includes taking
11 or introducing a weapon, implement of escape or dangerous
12 material into a correctional institution, mental hospital, youth
13 development center, youth forestry camp or other facility for
14 the detention or incarceration of individuals pursuant to court
15 order, or building appurtenant thereto, on land granted to,
16 owned by or leased by the Commonwealth or a political
17 subdivision that is related to the confinement of persons. The
18 term includes putting a weapon, implement of escape or dangerous
19 material in a place where it may be obtained by a confined
20 person.

21 "Implement of escape." A tool, implement, device, equipment
22 or other item that can facilitate, aid or conceal an escape or
23 attempted escape by a confined person.

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

1 firearm.

2 § 5123. Contraband.

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

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

2 (1) An individual convicted of a violation of subsection
3 (a) shall be sentenced to a minimum sentence of at least two
4 years of total confinement, notwithstanding any other
5 provision of this title or any other statute to the contrary.
6 Nothing in this subsection shall prevent the sentencing court
7 from imposing a sentence greater than that provided in this
8 subsection, up to the maximum penalty prescribed by this
9 title for a felony of the second degree. There shall be no
10 authority in any court to impose on an offender to which this
11 subsection is applicable any lesser sentence than provided
12 for in subsection (a) or to place such offender on probation
13 or to suspend sentence. Sentencing guidelines promulgated by
14 the Pennsylvania Commission on Sentencing shall not supersede
15 the mandatory sentences provided in this subsection. If a
16 sentencing court refuses to apply this subsection where
17 applicable, the Commonwealth shall have the right to
18 appellate review of the action of the sentencing court. The
19 appellate court shall vacate the sentence and remand the case
20 to the sentencing court for imposition of a sentence in
21 accordance with this subsection if it finds that the sentence
22 was imposed in violation of this subsection.

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

26 (a.2) Possession of controlled substance contraband by
27 [inmate] a confined person prohibited.--[A prisoner or inmate] A
28 confined person commits a felony of the second degree if he
29 unlawfully has in his possession or under his control any
30 controlled substance in violation of section 13(a)(16) of The

1 Controlled Substance, Drug, Device and Cosmetic Act. For
2 purposes of this subsection, no amount shall be deemed de
3 minimis.

4 (b) Money to inmates prohibited.--[A person] An individual
5 commits a misdemeanor of the [third] first degree if he [gives
6 or furnishes money to any inmate confined in a State or county]
7 delivers money to an inmate committed to a correctional
8 institution as defined in section 501 (relating to definitions),
9 provided notice of this prohibition is adequately posted at the
10 institution. [A person] An individual may, however, deposit
11 money with the superintendent, warden, or other authorized
12 individual in charge of a [State or county] correctional
13 institution for the benefit and use of an inmate confined
14 therein, which shall be credited to the inmate's account and
15 expended in accordance with the rules and regulations of the
16 institution. The person making the deposit shall be provided
17 with a written receipt for the amount deposited.

18 (c) [Contraband other than controlled substance.--A person]
19 Other contraband.--An individual commits a misdemeanor of the
20 first degree if he [sells, gives or furnishes to any convict in
21 a prison, or inmate in a mental hospital, or gives away in or
22 brings into any prison, mental hospital, or any building
23 appurtenant thereto, or on the land granted to or owned or
24 leased by the Commonwealth or county for the use and benefit of
25 the prisoners or inmates, or puts in any place where it may be
26 secured by a convict of a prison, inmate of a mental hospital,
27 or employee thereof,] delivers to a confined person:

28 (1) any kind of spirituous or fermented liquor, poison
29 or medicine [or poison] (except the ordinary hospital supply
30 of the [prison or mental hospital] correctional institution,

1 mental hospital, youth development center, youth forestry
2 camp or other facility for the detention or incarceration of
3 individuals pursuant to court order) without a written permit
4 signed by the physician of such institution, specifying the
5 quantity and quality of the substance which may be furnished
6 to [any convict, inmate or employee in the prison or mental
7 hospital, the name of the prisoner, inmate or employee for
8 whom,] the confined person, the name of the confined person
9 and the time when the same may be furnished[, which permit
10 shall be delivered to and kept by the warden or
11 superintendent of the prison or mental hospital.]; or

12 (2) an unauthorized item that is readily capable of
13 concealing a controlled substance contraband, weapon,
14 dangerous material, telecommunications device, implement of
15 escape or other item which may be used for escape.

16 (c.1) Telecommunication devices to [inmates] confined
17 persons prohibited.--A person commits a misdemeanor of the first
18 degree if, without the written permission of superintendent,
19 warden or otherwise authorized individual in charge of a
20 correctional institution, prison, jail, detention facility or
21 mental hospital, he sells, gives or furnishes to any [inmate]
22 confined person in a correctional institution, prison, jail,
23 detention facility or mental hospital, or any building
24 appurtenant thereto, or puts in any place where it may be
25 obtained by [an inmate] a confined person of a correctional
26 institution, prison, jail, detention facility or mental
27 hospital, any telecommunication device.

28 (c.2) Possession of telecommunication devices by [inmates]
29 confined persons prohibited.--[An inmate] A confined person in a
30 correctional institution, prison, jail, detention facility or

1 mental hospital, or any building appurtenant thereto, commits a
2 misdemeanor of the first degree if he has in his possession any
3 telecommunication device without the written permission of the
4 superintendent, warden or otherwise authorized individual in
5 charge of a correctional institution, prison, jail, detention
6 facility or mental hospital.

7 (c.3) Possession of money or other contraband by a confined
8 person.--A confined person commits a misdemeanor of the first
9 degree if he possesses money or other contraband, the delivery
10 of which is prohibited by this section.

11 (d) Drug-sniffing animals.--Any jail or prison may use dogs
12 or other animals trained to sniff controlled substances or other
13 contraband for such purposes in or on any part of the jail or
14 prison at any time.

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

18 "Confined person." An individual committed pursuant to a
19 court order to a correctional institution, mental hospital,
20 youth development center, youth forestry camp or other facility
21 for the detention or incarceration of individuals pursuant to a
22 court order, regardless of whether the individual is temporarily
23 absent due to medical treatment, transportation, court
24 appearance or other reason for a temporary absence.

25 "Dangerous material." Any incendiary material or device,
26 highly flammable or caustic liquid, explosive, bullet or other
27 material readily capable of causing death or serious bodily
28 injury.

29 "Delivers." The transfer of a weapon, implement of escape or
30 dangerous material to a confined person in a correctional

1 institution, mental hospital, youth development center, youth
2 forestry camp or other facility for the detention or
3 incarceration of individuals pursuant to court order, building
4 appurtenant thereto or any other place. The term includes taking
5 or introducing a weapon, implement of escape or dangerous
6 material into a correctional institution, mental hospital, youth
7 development center, youth forestry camp or other facility for
8 the detention or incarceration of individuals pursuant to court
9 order, building appurtenant thereto, on land granted to, owned
10 by or leased by the Commonwealth or a political subdivision that
11 is related to the confinement of persons. The term includes
12 putting a weapon, implement of escape or dangerous material in a
13 place where it may be obtained by a confined person.

14 "Implement of escape." A tool, implement, device, equipment
15 or other item that can facilitate, aid or conceal an escape or
16 attempted escape by a confined person.

17 ["Inmate." A male or female offender who is committed to,
18 under sentence to or confined in a penal or correctional
19 institution.]

20 "Telecommunication device." Any type of instrument, device,
21 machine or equipment which is capable of transmitting
22 telephonic, electronic, digital, cellular or radio
23 communications or any part of such instrument, device, machine
24 or equipment which is capable of facilitating the transmission
25 of telephonic, electronic, digital, cellular or radio
26 communications. The term shall include, but not be limited to,
27 cellular phones, digital phones and modem equipment devices.

28 "Weapon." An implement readily capable of lethal use,
29 including any firearm, knife, dagger, razor, other cutting or
30 stabbing implement or club. The term includes any item which has

1 been modified or adapted so that it can be used as a firearm,
2 knife, dagger, razor, other cutting or stabbing implement or
3 club. For purposes of this definition, the term "firearm"
4 includes an unloaded firearm or the unassembled components of a
5 firearm.

6 Section 2. Section 6105(b) of Title 18 is amended to read:

7 § 6105. Persons not to possess, use, manufacture, control, sell
8 or transfer firearms.

9 * * *

10 (b) Enumerated offenses.--The following offenses shall apply
11 to subsection (a):

12 Section 908 (relating to prohibited offensive weapons).

13 Section 911 (relating to corrupt organizations).

14 Section 912 (relating to possession of weapon on school
15 property).

16 Section 2502 (relating to murder).

17 Section 2503 (relating to voluntary manslaughter).

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

20 Section 2702 (relating to aggravated assault).

21 Section 2703 (relating to assault by prisoner).

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

23 Section 2709.1 (relating to stalking).

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

25 Section 2901 (relating to kidnapping).

26 Section 2902 (relating to unlawful restraint).

27 Section 2910 (relating to luring a child into a motor
28 vehicle).

29 Section 3121 (relating to rape).

30 Section 3123 (relating to involuntary deviate sexual

1 intercourse).

2 Section 3125 (relating to aggravated indecent assault).

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

4 Section 3302 (relating to causing or risking
5 catastrophe).

6 Section 3502 (relating to burglary).

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

9 Section 3701 (relating to robbery).

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

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

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

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

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

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

21 Section 4953 (relating to retaliation against witness or
22 victim).

23 Section 5121 (relating to escape).

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

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

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

29 Section 5516 (relating to facsimile weapons of mass
30 destruction).

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

3 Section 6301 (relating to corruption of minors).

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

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

11 * * *

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