

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

AS AMENDED ON THIRD CONSIDERATION, MARCH 26, 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~~ FACILITY, regardless of whether the individual is <—
29 temporarily absent FROM THE FACILITY due to medical treatment, <—
30 transportation, court appearance or other reason for a temporary

1 absence.

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

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

22 "FACILITY." CORRECTIONAL INSTITUTION, MENTAL HOSPITAL, YOUTH <—
23 DEVELOPMENT CENTER, YOUTH FORESTRY CAMP OR OTHER FACILITY FOR
24 THE DETENTION OR INCARCERATION OF INDIVIDUALS PURSUANT TO COURT
25 ORDER, BUILDING APPURTENANT THERETO OR ANY OTHER PLACE WHERE A
26 CONFINED PERSON IS LOCATED.

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

30 "Weapon." An implement readily capable of lethal use,

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

8 § 5123. Contraband.

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

1 FACILITY, specifying the quantity and quality of the substance
2 which may be furnished to [any convict, inmate, or employee in
3 the prison or mental hospital,] the confined person, the name of
4 the [prisoner, inmate, or employee for whom,] confined person
5 and the time when the same may be furnished[, which permit shall
6 be delivered to and kept by the warden or superintendent of the
7 prison or mental hospital].

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

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

30 (2) Nothing in this subsection shall be construed to

1 preclude prosecution for a more serious violation of The
2 Controlled Substance, Drug, Device and Cosmetic Act.

3 (a.2) Possession of controlled substance contraband by

4 [inmate] ~~a confined person~~ CONFINED PERSONS prohibited.--[A <—
5 prisoner or inmate] A confined person commits a felony of the
6 second degree if he unlawfully has in his possession or under
7 his control any controlled substance in violation of section
8 13(a)(16) of The Controlled Substance, Drug, Device and Cosmetic
9 Act. For purposes of this subsection, no amount shall be deemed
10 de minimis.

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

26 (c) [Contraband other than controlled substance.--A person]

27 ~~Other contraband~~ DELIVERY OF OTHER CONTRABAND TO CONFINED <—
28 PERSONS PROHIBITED.--An individual commits a misdemeanor of the
29 first degree if he [sells, gives or furnishes to any convict in
30 a prison, or inmate in a mental hospital, or gives away in or

1 brings into any prison, mental hospital, or any building
2 appurtenant thereto, or on the land granted to or owned or
3 leased by the Commonwealth or county for the use and benefit of
4 the prisoners or inmates, or puts in any place where it may be
5 secured by a convict of a prison, inmate of a mental hospital,
6 or employee thereof,] delivers to a confined person:

7 (1) any kind of spirituous or fermented liquor, poison
8 or medicine [or poison] (except the ordinary hospital supply
9 of the [prison or mental hospital] ~~correctional institution,~~ <—
10 mental hospital, youth development center, youth forestry
11 camp or other facility for the detention or incarceration of
12 individuals pursuant to court order FACILITY) without a <—
13 written permit signed by the physician of [such institution] <—
14 THE FACILITY, specifying the quantity and quality of the <—
15 substance which may be furnished to [any convict, inmate or
16 employee in the prison or mental hospital, the name of the
17 prisoner, inmate or employee for whom,] the confined person,
18 the name of the confined person and the time when the same
19 may be furnished[, which permit shall be delivered to and
20 kept by the warden or superintendent of the prison or mental
21 hospital.]; or

22 (2) an unauthorized item that is readily capable of
23 concealing a controlled substance contraband, weapon, <—
24 dangerous material, telecommunications device, implement of
25 escape or other item which may be used for escape. CONCEALING <—
26 AN ITEM PROHIBITED UNDER SECTION 5122 (RELATING TO WEAPONS,
27 IMPLEMENTS OF ESCAPE OR DANGEROUS MATERIAL) OR THIS SECTION.

28 (c.1) **【Telecommunication】** DELIVERY OF TELECOMMUNICATIONS <—
29 devices to [inmates] confined persons prohibited.--A person
30 commits a misdemeanor of the first degree if, without the

1 written permission of superintendent, warden or otherwise
2 authorized individual in charge of a [correctional institution, <—
3 prison, jail, detention facility or mental hospital, he sells,
4 gives or furnishes] FACILITY, HE DELIVERS to any [inmate] <—
5 confined person in a [correctional institution, prison, jail, <—
6 detention facility or mental hospital, or any building
7 appurtenant thereto] FACILITY, or puts in any place where it may <—
8 be obtained by [an inmate] a confined person [of a correctional <—
9 institution, prison, jail, detention facility or mental
10 hospital], any telecommunication device. <—

11 (c.2) Possession of telecommunication devices by [inmates]
12 confined persons prohibited.--[An inmate] A confined person in a
13 [correctional institution, prison, jail, detention facility or <—
14 mental hospital, or any building appurtenant thereto,] FACILITY, <—
15 commits a misdemeanor of the first degree if he has in his
16 possession any telecommunication device without the written
17 permission of the superintendent, warden or otherwise authorized
18 individual in charge of [a correctional institution, prison, <—
19 jail, detention facility or mental hospital] THE FACILITY. <—

20 (c.3) Possession of money or other contraband by a confined
21 person.--A confined person commits a misdemeanor of the first
22 degree if he possesses [money or other contraband,] ANYTHING the <—
23 delivery of which is prohibited [by this section] UNDER <—
24 SUBSECTION (B) OR (C).

25 (d) Drug-sniffing animals.--Any jail or prison may use dogs
26 or other animals trained to sniff [controlled substances or <—
27 other contraband] ANYTHING THE DELIVERY OF WHICH IS PROHIBITED <—
28 UNDER THIS SECTION for such purposes in or on any part of the
29 jail or prison at any time.

30 (e) Definitions.--As used in this section, the following

1 words and phrases shall have the meanings given to them in this
2 subsection:

3 "Confined person." An individual committed pursuant to a
4 court order to a correctional institution, mental hospital, <—
5 youth development center, youth forestry camp or other facility
6 for the detention or incarceration of individuals pursuant to a
7 court order FACILITY, regardless of whether the individual is <—
8 temporarily absent due to medical treatment, transportation,
9 court appearance or other reason for a temporary absence.

10 "Dangerous material." Any incendiary material or device, <—
11 highly flammable or caustic liquid, explosive, bullet or other
12 material readily capable of causing death or serious bodily
13 injury.

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

29 "Implement of escape." A tool, implement, device, equipment
30 or other item that can facilitate, aid or conceal an escape or

1 ~~attempted escape by a confined person.~~

2 "DELIVERS." SELLS, GIVES, TRANSMITS, FURNISHES OR OTHERWISE <—
3 TRANSFERS ANYTHING PROHIBITED UNDER THIS SECTION TO A CONFINED
4 PERSON IN A FACILITY.

5 "FACILITY." CORRECTIONAL INSTITUTION, MENTAL HOSPITAL, YOUTH
6 DEVELOPMENT CENTER, YOUTH FORESTRY CAMP OR OTHER FACILITY FOR
7 THE DETENTION OR INCARCERATION OF INDIVIDUALS PURSUANT TO COURT
8 ORDER, BUILDING APPURTENANT THERETO OR ANY OTHER PLACE WHERE A
9 CONFINED PERSON IS LOCATED.

10 ["Inmate." A male or female offender who is committed to,
11 under sentence to or confined in a penal or correctional
12 institution.]

13 "Telecommunication device." Any type of instrument, device,
14 machine or equipment which is capable of transmitting
15 telephonic, electronic, digital, cellular or radio
16 communications or any part of such instrument, device, machine
17 or equipment which is capable of facilitating the transmission
18 of telephonic, electronic, digital, cellular or radio
19 communications. The term shall include, but not be limited to,
20 cellular phones, digital phones and modem equipment devices.

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

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

30 § 6105. Persons not to possess, use, manufacture, control, sell

1 or transfer firearms.

2 * * *

3 (b) Enumerated offenses.--The following offenses shall apply
4 to subsection (a):

5 Section 908 (relating to prohibited offensive weapons).

6 Section 911 (relating to corrupt organizations).

7 Section 912 (relating to possession of weapon on school
8 property).

9 Section 2502 (relating to murder).

10 Section 2503 (relating to voluntary manslaughter).

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

13 Section 2702 (relating to aggravated assault).

14 Section 2703 (relating to assault by prisoner).

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

16 Section 2709.1 (relating to stalking).

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

18 Section 2901 (relating to kidnapping).

19 Section 2902 (relating to unlawful restraint).

20 Section 2910 (relating to luring a child into a motor
21 vehicle).

22 Section 3121 (relating to rape).

23 Section 3123 (relating to involuntary deviate sexual
24 intercourse).

25 Section 3125 (relating to aggravated indecent assault).

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

27 Section 3302 (relating to causing or risking
28 catastrophe).

29 Section 3502 (relating to burglary).

30 Section 3503 (relating to criminal trespass) if the

1 offense is graded a felony of the second degree or higher.

2 Section 3701 (relating to robbery).

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

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

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

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

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

12 Section 4952 (relating to intimidation of witnesses or
13 victims).

14 Section 4953 (relating to retaliation against witness or
15 victim).

16 Section 5121 (relating to escape).

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

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

20 Section 5515 (relating to prohibiting of paramilitary
21 training).

22 Section 5516 (relating to facsimile weapons of mass
23 destruction).

24 Section 6110.1 (relating to possession of firearm by
25 minor).

26 Section 6301 (relating to corruption of minors).

27 Section 6302 (relating to sale or lease of weapons and
28 explosives).

29 Any offense equivalent to any of the above-enumerated
30 offenses under the prior laws of this Commonwealth or any

1 offense equivalent to any of the above-enumerated offenses
2 under the statutes of any other state or of the United
3 States.

4 * * *

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