

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 729 Session of 2011

INTRODUCED BY D. COSTA, BAKER, CLYMER, CREIGHTON, DEASY, DeLUCA, FABRIZIO, FRANKEL, GEIST, GOODMAN, HESS, HORNAMAN, HUTCHINSON, KULA, MANN, MATZIE, MILLARD, MILLER, MULLERY, MURPHY, MURT, O'NEILL, READSHAW, SANTARSIERO, SCAVELLO, SWANGER AND YOUNGBLOOD, FEBRUARY 16, 2011

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 16, 2011

AN ACT

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

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

7 Section 1. Sections 1101, 5122 and 5123 of Title 18 of the  
8 Pennsylvania Consolidated Statutes are amended to read:

9 § 1101. Fines.

10 A person who has been convicted of an offense may be  
11 sentenced to pay a fine not exceeding:

12 (1) [\$50,000] \$100,000, when the conviction is of murder  
13 or attempted murder.

14 (2) [\$25,000] \$50,000, when the conviction is of a  
15 felony of the first or second degree.

16 (3) [\$15,000] \$30,000, when the conviction is of a  
17 felony of the third degree.

(4) [\$10,000] \$20,000, when the conviction is of a misdemeanor of the first degree.

(5) [\$5,000] \$10,000, when the conviction is of a misdemeanor of the second degree.

(6) [\$2,500] \$5,000, when the conviction is of a misdemeanor of the third degree.

(7) [\$300] \$600, when the conviction is of a summary offense for which no higher fine is established.

(8) Any higher amount equal to double the pecuniary gain derived from the offense by the offender.

(9) Any higher or lower amount specifically authorized by statute.

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

(a) Offenses defined.--

(1) [A person commits a misdemeanor of the first] An individual commits a felony of the second degree if he [unlawfully introduces within a detention facility, correctional institution or mental hospital, or unlawfully provides an inmate thereof with any weapon, tool, implement, or other thing] delivers to a confined person a weapon, implement of escape, dangerous material or other item which may be used for escape.

(2) [An inmate] A confined person commits a [misdemeanor of the first] felony of the second degree if he [unlawfully procures, makes or otherwise provides himself with, or unlawfully has in his possession or under his control, any weapon, tool, implement or other thing] possesses a weapon, implement of escape, dangerous material or other item which may be used for escape.

(b) [Definitions.--

(1) As used in this section, the word "unlawfully" means surreptitiously or contrary to law, regulation or order of the detaining authority.

(2) As used in this section, the word "weapon" means any implement readily capable of lethal use and shall include any firearm, ammunition, knife, dagger, razor, other cutting or stabbing implement or club, including any item which has been modified or adopted so that it can be used as a firearm, ammunition, knife, dagger, razor, other cutting or stabbing implement, or club. The word "firearm" includes an unloaded firearm and the unassembled components of a firearm.]

Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Confined person." An individual committed under a court order to a facility, regardless of whether the individual is temporarily absent from the facility due to medical treatment, transportation, court appearance or other reason for a temporary absence.

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

"Delivers." The transfer of a weapon, implement of escape or dangerous material to a confined person in a facility. The term includes taking or introducing a weapon, implement of escape or dangerous material into a facility, on land granted to, owned by or leased by the Commonwealth or a political subdivision, that is related to the confinement of persons. The term also includes

1 putting a weapon, implement of escape or dangerous material in a  
2 place where it may be obtained by a confined person.

3 "Facility." Correctional institution, mental hospital, youth  
4 development center, youth forestry camp or other facility for  
5 the detention or incarceration of individuals under court order,  
6 building appurtenant thereto or any other place where a confined  
7 person is located.

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

11 "Weapon." An implement readily capable of lethal use,  
12 including any firearm, knife, dagger, razor, other cutting or  
13 stabbing implement or club. The term includes any item which has  
14 been modified or adapted so that it can be used as a firearm,  
15 knife, dagger, razor, other cutting or stabbing implement or  
16 club. For purposes of this definition, the term "firearm"  
17 includes an unloaded firearm or the unassembled components of a  
18 firearm.

19 § 5123. Contraband.

20 (a) [Controlled] Delivery of controlled substance contraband  
21 to confined persons prohibited.--[A person] An individual  
22 commits a felony of the second degree if he [sells, gives,  
23 transmits or furnishes to any convict in a prison, or inmate in  
24 a mental hospital, or gives away in or brings into any prison,  
25 mental hospital, or any building appurtenant thereto, or on the  
26 land granted to or owned or leased by the Commonwealth or county  
27 for the use and benefit of the prisoners or inmates, or puts in  
28 any place where it may be secured by a convict of a prison,  
29 inmate of a mental hospital, or employee thereof, any] delivers  
30 a controlled substance included in Schedules I through V of the

1 act of April 14, 1972 (P.L.233, No.64), known as The Controlled  
2 Substance, Drug, Device and Cosmetic Act, to a confined person  
3 or employee of a facility (except the ordinary hospital supply  
4 of the [prison or mental hospital] facility) without a written  
5 permit signed by the physician of [such institution] the  
6 facility, specifying the quantity and quality of the substance  
7 which may be furnished to [any convict, inmate, or employee in  
8 the prison or mental hospital,] the confined person, the name of  
9 the [prisoner, inmate, or employee for whom,] confined person  
10 and the time when the same may be furnished[, which permit shall  
11 be delivered to and kept by the warden or superintendent of the  
12 prison or mental hospital].

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

14 (1) An individual convicted of a violation of subsection

15 (a) shall be sentenced to a minimum sentence of at least two  
16 years of total confinement, notwithstanding any other  
17 provision of this title or any other statute to the contrary.

18 Nothing in this subsection shall prevent the sentencing court  
19 from imposing a sentence greater than that provided in this  
20 subsection, up to the maximum penalty prescribed by this

21 title for a felony of the second degree. There shall be no  
22 authority in any court to impose on an offender to which this  
23 subsection is applicable any lesser sentence than provided

24 for in subsection (a) or to place such offender on probation  
25 or to suspend sentence. Sentencing guidelines promulgated by  
26 the Pennsylvania Commission on Sentencing shall not supersede

27 the mandatory sentences provided in this subsection. If a  
28 sentencing court refuses to apply this subsection where  
29 applicable, the Commonwealth shall have the right to

30 appellate review of the action of the sentencing court. The

1        appellate court shall vacate the sentence and remand the case  
2        to the sentencing court for imposition of a sentence in  
3        accordance with this subsection if it finds that the sentence  
4        was imposed in violation of this subsection.

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

8        (a.2) Possession of controlled substance contraband by  
9        [inmate] confined persons prohibited.--[A prisoner or inmate] A  
10       confined person commits a felony of the second degree if he  
11       unlawfully has in his possession or under his control any  
12       controlled substance in violation of section 13(a)(16) of The  
13       Controlled Substance, Drug, Device and Cosmetic Act. For  
14       purposes of this subsection, no amount shall be deemed de  
15       minimis.

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

1 (c) [Contraband other than controlled substance.--A person]  
2 Delivery of other contraband to confined persons prohibited.--An  
3 individual commits a misdemeanor of the first degree if he  
4 [sells, gives or furnishes to any convict in a prison, or inmate  
5 in a mental hospital, or gives away in or brings into any  
6 prison, mental hospital, or any building appurtenant thereto, or  
7 on the land granted to or owned or leased by the Commonwealth or  
8 county for the use and benefit of the prisoners or inmates, or  
9 puts in any place where it may be secured by a convict of a  
10 prison, inmate of a mental hospital, or employee thereof,]  
11 delivers to a confined person:

12 (1) any kind of spirituous or fermented liquor, poison  
13 or medicine [or poison] (except the ordinary hospital supply  
14 of the [prison or mental hospital] facility) without a  
15 written permit signed by the physician of [such institution]  
16 the facility, specifying the quantity and quality of the  
17 substance which may be furnished to [any convict, inmate or  
18 employee in the prison or mental hospital, the name of the  
19 prisoner, inmate or employee for whom,] the confined person,  
20 the name of the confined person and the time when the same  
21 may be furnished[, which permit shall be delivered to and  
22 kept by the warden or superintendent of the prison or mental  
23 hospital.];

24 (2) an unauthorized item that is readily capable of  
25 concealing an item prohibited under section 5122 (relating to  
26 weapons, implements of escape or dangerous material) or this  
27 section; or

28 (3) any item designated as a prohibited item by the  
29 Secretary of Corrections or the superintendent, warden or  
30 otherwise authorized individual in charge of a correctional

institution, prison, jail, detention facility or mental hospital.

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

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

(c.3) Possession of money or other contraband by a confined person.--A confined person commits a misdemeanor of the first degree if he possesses anything the delivery of which is prohibited under subsection (b) or (c).

(c.4) Applicability.--The provisions of subsections (c.1) and (c.2) shall not apply to civil units of mental hospitals.

1 (d) Drug-sniffing animals.--Any jail or prison may use dogs  
2 or other animals trained to sniff [controlled substances or  
3 other contraband] anything the delivery of which is prohibited  
4 under this section for such purposes in or on any part of the  
5 jail or prison at any time.

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

9 "Confined person." An individual committed under to a court  
10 order to a facility, regardless of whether the individual is  
11 temporarily absent due to medical treatment, transportation,  
12 court appearance or other reason for a temporary absence.

13 "Delivers." Sells, gives, transmits, furnishes or otherwise  
14 transfers anything prohibited under this section to a confined  
15 person in a facility.

16 "Facility." Correctional institution, mental hospital, youth  
17 development center, youth forestry camp or other facility for  
18 the detention or incarceration of individuals under court order,  
19 building appurtenant thereto or any other place where a confined  
20 person is located.

21 ["Inmate." A male or female offender who is committed to,  
22 under sentence to or confined in a penal or correctional  
23 institution.]

24 "Telecommunication device." Any type of instrument, device,  
25 machine or equipment which is capable of transmitting  
26 telephonic, electronic, digital, cellular or radio  
27 communications or any part of such instrument, device, machine  
28 or equipment which is capable of facilitating the transmission  
29 of telephonic, electronic, digital, cellular or radio  
30 communications. The term shall include, but not be limited to,

1 cellular phones, digital phones and modem equipment devices.

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

3 § 6105. Persons not to possess, use, manufacture, control, sell  
4 or transfer firearms.

5 \* \* \*

6 (b) Enumerated offenses.--The following offenses shall apply  
7 to subsection (a):

8 Section 908 (relating to prohibited offensive weapons).

9 Section 911 (relating to corrupt organizations).

10 Section 912 (relating to possession of weapon on school  
11 property).

12 Section 2502 (relating to murder).

13 Section 2503 (relating to voluntary manslaughter).

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

16 Section 2702 (relating to aggravated assault).

17 Section 2703 (relating to assault by prisoner).

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

19 Section 2709.1 (relating to stalking).

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

21 Section 2901 (relating to kidnapping).

22 Section 2902 (relating to unlawful restraint).

23 Section 2910 (relating to luring a child into a motor  
24 vehicle or structure).

25 Section 3121 (relating to rape).

26 Section 3123 (relating to involuntary deviate sexual  
27 intercourse).

28 Section 3125 (relating to aggravated indecent assault).

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

30 Section 3302 (relating to causing or risking

1 catastrophe).

2 Section 3502 (relating to burglary).

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

5 Section 3701 (relating to robbery).

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

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

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

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

13 Section 4906 (relating to false reports to law  
14 enforcement authorities) if the fictitious report involved  
15 the theft of a firearm as provided in section 4906(c)(2).

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

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

20 Section 4953 (relating to retaliation against witness  
21 [or] victim or party).

22 Section 5121 (relating to escape).

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

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

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

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

30 Section 6110.1 (relating to possession of firearm by

1 minor).

2 Section 6301 (relating to corruption of minors).

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

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

10 \* \* \*

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