

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1436 Session of 2011

INTRODUCED BY TURZAI, TOOHIL, BOBACK, AUMENT, BLOOM, BOYD, CUTLER, HICKERNELL, KAUFFMAN, METZGAR, SAYLOR, SCAVELLO, STEPHENS, REED, WATSON, ROCK, HENNESSEY, GROVE, METCALFE, MURT AND SWANGER, MAY 3, 2011

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, MAY 24, 2011

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, providing for restitution for official oppression;
4 further providing for the offense of official oppression; and
5 providing for sentencing for official oppression.

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

8 Section 1. Title 18 of the Pennsylvania Consolidated
9 Statutes is amended by adding a section to read:

10 § 1107.2. Restitution for official oppression.

11 (a) Restitution.--The court ~~may~~ SHALL, in addition to any ←
12 other restitution sentence or order authorized by law, sentence
13 a person convicted of a violation of section 5301 (relating to
14 official oppression) WHERE THERE IS A COURSE OF CONDUCT OF ←
15 OFFICIAL OPPRESSION to make restitution for all reasonable
16 expenses incurred by the victim or ON the victim's behalf: ←

17 (1) to investigate the circumstances surrounding the
18 defendant's violation of section 5301;

1 (2) to bring or defend civil or criminal actions related
2 to the defendant's violation of section 5301; or

3 (3) to take other corrective or remedial efforts in
4 connection with the defendant's violation of section 5301.

5 (b) Types of expenses.--The types of expenses that may be
6 recoverable under this section include, but are not limited to:

7 (1) Attorney fees.

8 (2) Court costs and filing fees.

9 (3) Any other expense the court deems proper.

10 Section 2. Section 5301 of Title 18 is amended to read:

11 § 5301. Official oppression.

12 (A) OFFENSE DEFINED.--A person acting or purporting to act ←
13 in an official capacity or taking advantage of such actual or
14 purported capacity commits [a ~~misdemeanor of the second degree~~ ←
15 if, knowing that his conduct is illegal, he] ~~felony of the third~~ ←
16 ~~degree~~ AN OFFENSE if he knowingly or recklessly engages in any ←
17 of the following conduct:

- 18 (1) unlawfully subjects another to arrest, detention,
19 search, seizure, mistreatment, dispossession, assessment,
20 lien or other infringement of personal or property rights; or
21 (2) unlawfully denies or impedes another in the exercise
22 or enjoyment of any right, privilege, power or immunity.

23 (B) GRADING.--AN OFFENSE UNDER THIS SECTION CONSTITUTES A ←
24 MISDEMEANOR OF THE SECOND DEGREE, EXCEPT THAT WHERE THERE IS A
25 COURSE OF CONDUCT OF OFFICIAL OPPRESSION, THE OFFENSE
26 CONSTITUTES A FELONY OF THE THIRD DEGREE.

27 (C) DEFINITIONS.--THE FOLLOWING WORDS AND PHRASES WHEN USED
28 IN THIS SECTION SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
29 SUBSECTION UNLESS THE CONTEXT CLEARLY INDICATES OTHERWISE:

30 "COURSE OF CONDUCT." A PATTERN OF ACTIONS COMPOSED OF MORE

1 THAN ONE ACT OVER A PERIOD OF TIME, HOWEVER SHORT, COMMITTED
2 AGAINST ONE OR MORE VICTIMS, EVIDENCING A CONTINUITY OF CONDUCT.
3 ACTS INDICATING A COURSE OF CONDUCT WHICH OCCUR IN MORE THAN ONE
4 JURISDICTION MAY BE USED BY ANY OTHER JURISDICTION IN WHICH AN
5 ACT OCCURRED AS EVIDENCE OF A CONTINUING PATTERN OF CONDUCT OR A
6 COURSE OF CONDUCT.

7 Section 3. Title 42 is amended by adding a section to read:
8 § 9720.3. Sentencing for official oppression.

9 (a) Mandatory sentence.--A person who is convicted in any
10 court of this Commonwealth of A VIOLATION OF 18 Pa.C.S. § 5301 ←
11 (relating to official oppression) WHERE THERE IS A COURSE OF ←
12 CONDUCT OF OFFICIAL OPPRESSION shall be sentenced to a mandatory
13 minimum sentence of two years, notwithstanding any other
14 provision of this title or other statute to the contrary.

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

26 (c) Authority of court in sentencing.--There shall be no
27 authority in any court to impose on an offender to which this
28 section is applicable any lesser sentence than provided for in
29 subsection (a) or to place such offender on probation or to
30 suspend sentence. Nothing in this section shall prevent the

1 sentencing court from imposing a sentence greater than that
2 provided in this section. Sentencing guidelines promulgated by
3 the Pennsylvania Commission on Sentencing shall not supersede
4 the mandatory sentences provided in this section.

5 (d) Appeal by Commonwealth.--If a sentencing court refuses
6 to apply this section where applicable, the Commonwealth shall
7 have the right to appellate review of the action of the
8 sentencing court. The appellate court shall vacate the sentence
9 and remand the case to the sentencing court for imposition of a
10 sentence in accordance with this section if it finds that the
11 sentence was imposed in violation of this section.

12 Section 4. This act shall take effect in 60 days.