

CRIMES CODE (18 PA.C.S.) AND JUDICIAL CODE (42 PA.C.S) - AMEND
Act of May. 3, 1995, Special Session 1, P.L. 999, No. 12 Cl. 18
Special Session No. 1 of 1995
No. 1995-12

HB 18

AN ACT

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for restitution for injuries to person or property, for disposition of profits received from commission of crime, for sentencing generally and for collection of restitution, reparation, fees, costs, fines and penalties; and making a repeal.

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

Section 1. Subsection (c) and the introductory paragraph and definition of "victim" in subsection (h) of section 1106 of Title 18 of the Pennsylvania Consolidated Statutes are amended to read: § 1106. Restitution for injuries to person or property.

* * *

[(c) Authority of sentencing court.--In determining whether to order restitution as a part of the sentence or as a condition of probation or parole, the court:

(1) Shall consider the extent of injury suffered by the victim and such other matters as it deems appropriate.

(2) May order restitution in a lump sum, by monthly installments or according to such other schedule as it deems just, provided that the period of time during which the offender is ordered to make restitution shall not exceed the maximum term of imprisonment to which the offender could have been sentenced for the crime of which he was convicted.

(3) May at any time alter or amend any order of restitution made pursuant to this section providing, however, that the court state its reasons and conclusions as a matter of record for any change or amendment to any previous order.]

(c) Mandatory restitution.--

(1) The court shall order full restitution:

(i) Regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss. The court shall not reduce a restitution award by any amount that the victim has received from the Crime Victim's Compensation Board or other governmental agency but shall order the defendant to pay any restitution ordered for loss previously compensated by the board to the Crime Victim's Compensation Fund or other designated account when the claim involves a government agency in addition to or in place of the board. The court shall not reduce a restitution award by any amount that the victim has received from an insurance company but shall order the defendant to pay any restitution ordered for loss previously compensated by an insurance company to the insurance company.

(ii) If restitution to more than one person is set at the same time, the court shall set priorities of payment. However, when establishing priorities, the court shall order payment in the following order:

- (A) The victim.
- (B) The Crime Victim's Compensation Board.
- (C) Any other government agency which has provided reimbursement to the victim as a result of the defendant's criminal conduct.
- (D) Any insurance company which has provided reimbursement to the victim as a result of the defendant's criminal conduct.

(2) In determining the amount and method of restitution, the court:

(i) Shall consider the extent of injury suffered by the victim and such other matters as it deems appropriate.

(ii) May order restitution in a lump sum, by monthly installments or according to such other schedule as it deems just, provided that the period of time during which the offender is ordered to make restitution shall not exceed the maximum term of imprisonment to which the offender could have been sentenced for the crime of which he was convicted.

(iii) May at any time alter or amend any order of restitution made pursuant to this section providing, however, that the court state its reasons and conclusions as a matter of record for any change or amendment to any previous order.

(iv) Shall not order incarceration of a defendant for failure to pay restitution if the failure results from the offender's inability to pay.

(v) Shall consider any other preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title.

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

* * *

"Victim." [Any person, except an offender, who suffered injuries to his person or property as a direct result of the crime.] As defined in section 479.1 of the act of April 9, 1929 (P.L.177, No.175) , known as The Administrative Code of 1929. The term includes the Crime Victim's Compensation Fund if compensation has been paid by the Crime Victim's Compensation Fund to the victim and any insurance company that has compensated the victim for loss under an insurance contract.

Section 2. Title 42 is amended by adding a section to read: § 8312. Profits received as a result of commission of crime.

(a) General rule.--If a person has been convicted of a crime, every person who knowingly contracts for, pays or agrees to pay any profit from a crime to that person shall give written notice to the board of the payment or obligation to pay as soon as practicable after discovering that the payment or intended payment is a profit from a crime. The board, upon receipt of notice of a contract, an agreement to pay or payment of profits from a crime, shall notify all known eligible persons at their last known address of the existence of the profits.

(b) Right of action.--Notwithstanding any inconsistent provision of law or rules of civil procedure with respect to the timely bringing of an action, any eligible person shall have the right to bring a civil action in a court of competent jurisdiction to recover money damages from a person convicted of a crime or the legal representative of that convicted person within three years of the discovery of any profits from a crime. Any damages awarded in this action shall be recoverable only up to the value of the profits from the crime. If an action is filed under this subsection after

the expiration of all other applicable statutes of limitation, any other eligible person must file any action for damages as a result of the crime within three years of the actual discovery of profits from the crime or of actual notice received from or notice published by the board of the discovery, whichever is later. If any profits from a crime remain after the payment of claims made under this section, the board shall have the right to bring a civil action within two years in a court of competent jurisdiction to recover any payments made by the board pursuant to Article IV of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, and any expenses incurred by the board pursuant to Article IV of The Administrative Code of 1929 or this section with regard to such crime or the person convicted of such crime.

(c) Notice.--Upon filing an action under subsection (b), the eligible person shall give notice to the board of the filing by delivering a copy of the complaint to the board. The eligible person may also give notice to the board prior to filing the action so as to allow the board to apply for any appropriate remedies which are otherwise authorized to be invoked prior to the commencement of an action.

(d) Responsibilities of board.--Upon receipt of a copy of a complaint, the board shall immediately take action as necessary to:

(1) Notify all other known eligible persons of the alleged existence of profits from a crime by certified mail, return receipt requested, where the eligible persons' names and addresses are known by the board.

(2) Publish, at least once a year for three years from the date it is initially notified by an eligible person under subsection (c), a legal notice in newspapers of general circulation in the county wherein the crime was committed and in counties contiguous to that county advising any eligible persons of the existence of profits from a crime. The board may in its discretion provide for additional notice as it deems necessary.

(3) Avoid the wasting of the assets identified in the complaint as the newly discovered profits from a crime in any manner consistent with subsection (e).

(e) Other remedies.--The board, acting on behalf of all eligible persons, shall have the right to apply for any and all remedies that are also otherwise available to an eligible person bringing an action under subsection (b). The remedies of attachment, injunction, receivership and notice of pendency available under law to an eligible person bringing an action under subsection (b) shall also be available to the board in all actions under this subsection. On a motion for a remedy, the moving party shall state whether any other remedy has previously been sought in the same action against the same defendant. The court may require the moving party to elect between those remedies to which it would otherwise be entitled.

(f) Evasive action null and void.--Any action taken by any person convicted of a crime, whether by way of execution of a power of attorney, creation of corporate entities or otherwise, to defeat the purpose of this section shall be null and void as against the public policy of this Commonwealth.

(g) Penalties.--

(1) Any person who willfully fails to do any of the following is subject to a civil penalty of not less than \$10,000 for each offense and not more than an amount equal to three times the contract amount:

(i) submit to the board a copy of the contract described in subsection (a); or

(ii) pay over to the board any moneys or other consideration as required by this section.

(2) If two or more persons are subject to the penalties provided in this section, the persons shall be jointly and severally liable for the payment of the penalty imposed.

(3) After notice and opportunity to be heard is provided, the board may by order assess the penalties described in this section.

(4) If the penalties are not paid within 30 days from the date of the order, any penalty assessed under this section shall bear interest at the rate of 1% per month, compounded monthly.

(5) An action to recover a civil penalty assessed under this section may be brought by the board in a court of competent jurisdiction within six years after the cause of action accrues.

(6) Any moneys recovered under this subsection shall be paid into the Crime Victim's Compensation Fund.

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

"Board." The Crime Victim's Compensation Board as defined in section 477 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

"Convicted." Includes conviction by entry of a plea of guilty or nolo contendere, conviction after trial and a finding of not guilty due to insanity or of guilty but mentally ill.

"Eligible person." Includes any of the following persons:

(1) A victim of the particular crime in question, as "victim" is defined in section 479.1 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.

(2) An intervenor in such crime.

(3) A surviving spouse, parent or child of a deceased victim of or intervenor in such crime.

(4) Any other person dependent for his principal support upon a deceased victim of or intervenor in such crime.

No person who is criminally responsible for the crime in question or was an accomplice of the person who is criminally responsible shall be an eligible person.

"Profit from a crime." Includes any of the following:

(1) Any property obtained through or income generated from the commission of a crime of which the defendant was convicted.

(2) Any property obtained by or income generated from the sale, conversion or exchange of proceeds of a crime of which the defendant was convicted, including any gain realized by such sale, conversion or exchange.

(3) Any property which the defendant obtained or income generated as a result of having committed the crime of which the defendant was convicted, including any assets obtained through the use of unique knowledge obtained during the commission of or in preparation for the commission of the crime, as well as any property obtained by or income generated from the sale, conversion or exchange of such property and any gain realized by such sale, conversion or exchange.

Section 3. Sections 9721(c) and 9728 of Title 42 are amended to read:

§ 9721. Sentencing generally.

* * *

(c) [Restitution] **Mandatory restitution.**--In addition to the alternatives set forth in subsection (a) of this section the court [may] **shall** order the defendant to compensate the victim of his

criminal conduct for the damage or injury that he sustained. **For purposes of this subsection, the term "victim" shall be as defined in section 479.1 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929.**

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§ 9728. Collection of restitution, reparation, fees, costs, fines and penalties.

(a) General rule.--All restitution, reparation, fees, costs, fines and penalties shall be collectible in any manner provided by law. However, such restitution, reparation, fees, costs, fines and penalties are part of a criminal action or proceeding and shall not be deemed debts. A sentence [or], pretrial disposition order **or order entered under section 6352 (relating to disposition of delinquent child)** for restitution, reparation, fees, costs, fines or penalties shall, together with interest and any additional costs that may accrue, be a judgment in favor of the probation department upon the person or the property of the person sentenced or subject to the [pretrial disposition] order.

(b) Procedure.--The county probation department or other appropriate governmental agency shall, upon sentencing [or], pretrial disposition **or other order**, transmit to the prothonotary of the respective county certified copies of all judgments for restitution, reparation, fees, costs, fines and penalties, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof. The total amount for which the person is liable pursuant to this section may be entered as a judgment upon the person or the property of the person sentenced **or ordered**, regardless of whether the amount has been ordered to be paid in installments.

(c) Period of time.--Notwithstanding **section 6353 (relating to limitation on and change in place of commitment)** or 18 Pa.C.S. § 1106(c)(2) (relating to restitution for injuries to person or property), the period of time during which such judgments shall have full effect may exceed the maximum term of imprisonment to which the offender could have been sentenced for the crimes of which he was convicted **or the maximum term of confinement to which the offender was committed.**

(d) Priority.--Notwithstanding any other statutory provisions in this or any other title, any lien obtained under this section shall maintain its priority indefinitely and no writ of revival need be filed.

(e) Preservation of assets subject to restitution.--Upon application of the Commonwealth, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of property which may be necessary to satisfy an anticipated restitution order under this section:

(1) upon the filing of a criminal complaint, information or indictment charging a criminal violation **or a petition alleging delinquency** for which restitution may be ordered and alleging that the property with respect to which the order is sought appears to be necessary to satisfy such restitution order and judgment; and

(2) if, after notice to persons appearing to have an interest in the property and an opportunity for a hearing, the court determines that:

(i) there is a substantial probability that:

(A) the Commonwealth will prevail on the underlying criminal charges **or allegation of delinquency;**

(B) restitution will be ordered exceeding \$10,000 in value;

(C) the property appears to be necessary to satisfy such restitution order; and

(D) failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court or otherwise made unavailable for payment of the anticipated restitution order; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(f) Temporary restraining order.--A temporary restraining order under subsection (e) may be entered upon application of the Commonwealth without notice or opportunity for a hearing, whether or not a complaint, information [or], indictment **or petition alleging delinquency** has been filed with respect to the property, if the Commonwealth demonstrates that there is probable cause to believe that the property with respect to which the order is sought appears to be necessary to satisfy an anticipated restitution order under this section and that provision of notice will jeopardize the availability of the property to satisfy such restitution order and judgment. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this subsection shall be held at the earliest possible time and prior to the expiration of the temporary order.

(g) Costs, etc.--Any sheriff's costs, filing fees and costs of the county probation department or other appropriate governmental agency shall be borne by the defendant and shall be collected by the county probation department or other appropriate governmental agency along with the total amount of the judgment and remitted to the appropriate agencies at the time of or prior to satisfaction of judgment.

(h) Effect on contempt proceedings.--This section shall not affect contempt proceedings mandated by 18 Pa.C.S. § 1106(f).

Section 4. Section 477.18 of the act of April 9, 1929 (P.L.177, No.175), known as The Administrative Code of 1929, is repealed.

Section 5. This act shall take effect as follows:

(1) The addition of 42 Pa.C.S. § 8312 shall take effect immediately.

(2) Section 4 and this section shall take effect immediately.

(3) The remainder of this act shall take effect in 60 days.

APPROVED--The 3rd day of May, A. D. 1995.

THOMAS J. RIDGE