

JUDICIAL CODE (42 PA.C.S.) - OMNIBUS AMENDMENTS

Act of Dec. 9, 2002, P.L. 1705, No. 215

Cl. 42

Session of 2002

No. 2002-215

SB 1452

AN ACT

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the number of judges of the courts of common pleas; further defining "health care provider"; further providing for limitations of appeals, for the powers and duties of probation officers concerning juveniles, for inspection of court files and records, for taking child into custody, for informal hearings, for notice and hearing, for adjudication and for disposition of dependent child and for exemption from attachment; providing for immunity of State parole officers and county probation officers; conferring powers and duties on the Juvenile Court Judges' Commission; providing for liability for violations of general and specific criminal statutes and for merger of sentences; and providing a technical correction to, confirmation of the scope of and clarification of existing law regarding the Rental-Purchase Agreement Act.

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

Section 1. Section 911(a) of Title 42 of the Pennsylvania Consolidated Statutes is amended to read:

§ 911. Courts of common pleas.

(a) General rule.--There shall be one court of common pleas for each judicial district of this Commonwealth consisting of the following number of judges:

Judicial District	Number of Judges
First	93
Second	13
Third	[7] 8
Fourth	1
Fifth	41
Sixth	9
Seventh	[11] 13
Eighth	3
Ninth	5
Tenth	11
Eleventh	9
Twelfth	8
Thirteenth	2
Fourteenth	5
Fifteenth	13
Sixteenth	3
Seventeenth	2
Eighteenth	1
Nineteenth	12
Twentieth	1
Twenty-first	6
Twenty-second	1
Twenty-third	12

Twenty-fourth	4	
Twenty-fifth	2	
Twenty-sixth	2	
Twenty-seventh	5	
Twenty-eighth	2	
Twenty-ninth	5	
Thirtieth	3	
Thirty-first	10	
Thirty-second	[18]	19
Thirty-third	2	
Thirty-fourth	1	
Thirty-fifth	[3]	4
Thirty-sixth	6	
Thirty-seventh	2	
Thirty-eighth	[20]	21
Thirty-ninth	4	
Fortieth	[2]	3
Forty-first	2	
Forty-second	2	
Forty-third	[5]	6
Forty-fourth	1	
Forty-fifth	7	
Forty-sixth	2	
Forty-seventh	5	
Forty-eighth	[1]	2
Forty-ninth	[3]	4
Fiftieth	5	
Fifty-first	3	
Fifty-second	4	
Fifty-third	4	
Fifty-fourth	1	
Fifty-fifth	1	
Fifty-sixth	2	
Fifty-seventh	2	
Fifty-eighth	1	
Fifty-ninth	1	
Sixtieth	1	

* * *

Section 2. The definition of "health care provider" in section 5101.1(c) of Title 42, added October 17, 2002 (P.L.880, No.127), is amended to read:

§ 5101.1. Venue in medical professional liability actions.

* * *

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

* * *

"Health care provider." [A primary health care center or a person, including a corporation, university or other educational institution licensed or approved by the Commonwealth to provide health care or professional medical services as a physician, a certified nurse midwife, a podiatrist, hospital, nursing home, birth center and, except as to section 711(a) of the act of March 20, 2002 (P.L.154, No.13), known as the Medical Care Availability and Reduction of Error (Mcare) Act, an officer, employee or agent of any of them acting in the course and scope of employment.] **A primary health care center, a personal care home licensed by the Department of Public Welfare pursuant to the act of June 13, 1967 (P.L.31, No.21), known as the Public Welfare Code, or a person, including a corporation, university or other educational institution licensed or approved by the**

Commonwealth to provide health care or professional medical services as a physician, a certified nurse midwife, a podiatrist, hospital, nursing home, birth center, and an officer, employee or agent of any of them acting in the course and scope of employment.

* * *

Section 3. Sections 5571(c)(5), 6304, 6307, 6324, 6332, 6336.1, 6341(b) and 6351 of Title 42 are amended to read:
§ 5571. Appeals generally.

* * *

(c) Exceptions.--

* * *

(5) Ordinances, resolutions, maps, etc.--[Questions] **Notwithstanding section 909.1(a)(2) of the act of July 31, 1968 (P.L.805, No.247) , known as the Pennsylvania Municipalities Planning Code, questions** relating to an alleged defect in the process of enactment or adoption of any ordinance, resolution, map or similar action of a political subdivision, **including appeals and challenges to the validity of land use ordinances adopted pursuant to the Pennsylvania Municipalities Planning Code,** shall be raised by appeal or challenge commenced within 30 days after the **intended** effective date of the ordinance, resolution, map or similar action. **As used in this paragraph, the term "intended effective date" means the effective date specified in the ordinance, resolution, map or similar action or, if no effective date is specified, the date 60 days after the date the ordinance, resolution, map or similar action was finally adopted but for the alleged defect in the process of enactment or adoption.**

* * *

§ 6304. Powers and duties of probation officers.

(a) General rule.--For the purpose of carrying out the objectives and purposes of this chapter, and subject to the limitations of this chapter or imposed by the court, a probation officer shall:

(1) Make investigations, reports, and recommendations to the court.

(2) Receive and examine complaints and charges of delinquency or dependency of a child for the purpose of considering the commencement of proceedings under this chapter.

(3) Supervise and assist a child placed on probation or in his protective supervision or care by order of the court or other authority of law.

(4) Make appropriate referrals to other private or public agencies of the community if their assistance appears to be needed or desirable.

(5) Take into custody and detain a child who is under his supervision or care as a delinquent or dependent child if the probation officer has reasonable cause to believe that the health or safety of the child is in imminent danger, or that he may abscond or be removed from the jurisdiction of the court, or when ordered by the court pursuant to this chapter or that he violated the conditions of his probation.

(6) Perform all other functions designated by this chapter or by order of the court pursuant thereto.

(a.1) **Authority to search.--**

(1) **Probation officers may search the person and property of children:**

(i) under their supervision as delinquent children or pursuant to a consent decree in accordance with this section;

(ii) taken into custody pursuant to subsection (a) and section 6324 (relating to taking into custody); and

(iii) detained pursuant to subsection (a) and section 6325 (relating to detention of child) or during the intake process pursuant to subsection (a) and section 6331 (relating to release from detention or commencement of proceedings) and in accordance with this section.

(2) Nothing in this section shall be construed to permit searches or seizures in violation of the Constitution of the United States or section 8 of Article I of the Constitution of Pennsylvania.

(3) No violation of this section shall constitute an independent ground for suppression of evidence in any proceeding.

(4) (i) A personal search of a child may be conducted by any probation officer:

(A) If there is a reasonable suspicion to believe that the child possesses contraband or other evidence of violations of the conditions of supervision.

(B) When a child is transported or taken into custody.

(C) When a child enters or leaves a detention center, institution or other facility for alleged or adjudicated delinquent children.

(ii) A property search may be conducted by any probation officer if there is reasonable suspicion to believe that the real or other property in the possession of or under the control of the child contains contraband or other evidence of violations of the conditions of supervision.

(iii) Prior approval of a supervisor shall be obtained for a property search absent exigent circumstances or unless the search is being conducted by a supervisor. No prior approval shall be required for a personal search.

(iv) A written report of every property search conducted without prior approval shall be prepared by the probation officer who conducted the search and filed in the child's case record. The exigent circumstances shall be stated in the report.

(v) The child may be detained if he is present during a property search. If the child is not present during a property search, the probation officer in charge of the search shall make a reasonable effort to provide the child with notice of the search, including a list of the items seized, after the search is completed.

(vi) The existence of reasonable suspicion to search shall be determined in accordance with constitutional search and seizure provisions as applied by judicial decision. In accordance with that case law, the following factors, where applicable, may be taken into account:

(A) The observations of officers.

(B) Information provided by others.

(C) The activities of the child.

(D) Information provided by the child.

(E) The experience of the probation officer with the child.

(F) The experience of probation officers in similar circumstances.

(G) The prior delinquent and supervisory history of the offender.

(H) The need to verify compliance with the conditions of supervision.

(b) Foreign jurisdictions.--Any of the functions specified in subsection (a) may be performed in another jurisdiction if authorized by the court of this Commonwealth and permitted by the laws of the other jurisdiction.

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

"Conditions of supervision." A term or condition of a child's supervision, whether imposed by the court or a probation officer, including compliance with all requirements of Federal, State and local law.

"Contraband." An item that a child is not permitted to possess under the conditions of supervision, including an item whose possession is forbidden by any Federal, State or local law.

"Court." The court of common pleas or a judge thereof.

"Exigent circumstances." The term includes, but is not limited to, reasonable suspicion that contraband or other evidence of violations of the conditions of supervision might be destroyed or suspicion that a weapon might be used.

"Personal search." A warrantless search of a child's person, including, but not limited to, the child's clothing and any personal property which is in the possession, within the reach or under the control of the child.

"Probation officer." A probation officer appointed or employed by a court or by a county probation department.

"Property search." A warrantless search of real property, vehicle or personal property which is in the possession or under the control of a child.

"Supervisor." An individual acting in a supervisory or administrative capacity.

§ 6307. Inspection of court files and records.

All files and records of the court in a proceeding under this chapter are open to inspection only by:

(1) The judges, officers and professional staff of the court.

(2) The parties to the proceeding and their counsel and representatives, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court.

(3) A public or private agency or institution providing supervision or having custody of the child under order of the court.

(4) A court and its probation and other officials or professional staff and the attorney for the defendant for use in preparing a presentence report in a criminal case in which the defendant is convicted and who prior thereto had been a party to a proceeding under this chapter.

(5) A judge or issuing authority for use in determining bail, provided that such inspection is limited to orders of delinquency adjudications and dispositions and petitions relating thereto, orders resulting from disposition review hearings and histories of bench warrants and escapes.

(6) The Administrative Office of Pennsylvania Courts.

(6.1) The judges, officers and professional staff of courts of other jurisdictions when necessary for the discharge of their official duties.

(6.2) **Officials of the Department of Corrections or a State Correctional Institution or other penal institution to which an individual who was previously adjudicated delinquent in a proceeding under this chapter has been committed, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court.**

(6.3) A parole board, court or county probation official in considering an individual's parole or in exercising supervision over any individual who was previously adjudicated delinquent in a proceeding under this chapter, but the persons in this category shall not be permitted to see reports revealing the names of confidential sources of information contained in social reports, except at the discretion of the court.

(7) With leave of court, any other person or agency or institution having a legitimate interest in the proceedings or in the work of the unified judicial system.

§ 6324. Taking into custody.

A child may be taken into custody:

(1) Pursuant to an order of the court under this chapter. **Prior to entering a protective custody order removing a child from the home of the parent, guardian or custodian, the court must determine that to allow the child to remain in the home is contrary to the welfare of the child.**

(2) Pursuant to the laws of arrest.

(3) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child is suffering from illness or injury or is in imminent danger from his surroundings, and that his removal is necessary.

(4) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has run away from his parents, guardian, or other custodian.

(5) By a law enforcement officer or duly authorized officer of the court if there are reasonable grounds to believe that the child has violated conditions of his probation.

§ 6332. Informal hearing.

(a) General rule.--An informal hearing shall be held promptly by the court or master and not later than 72 hours after the child is placed in detention or shelter care to determine whether his detention or shelter care is required under section 6325 (relating to detention of child), **whether to allow the child to remain in the home would be contrary to the welfare of the child** and, if the child is alleged to be delinquent, [that] **whether** probable cause exists that the child has committed a delinquent act. Reasonable notice thereof, either oral or written, stating the time, place, and purpose of the hearing shall be given to the child and if they can be found, to his parents, guardian, or other custodian. Prior to the commencement of the hearing the court or master shall inform the parties of their right to counsel and to appointed counsel if they are needy persons, and of the right of the child to remain silent with respect to any allegations of delinquency. If the child is alleged to be a dependent child, the court or

master shall also determine whether reasonable efforts were made to prevent such placement or, in the case of an emergency placement where services were not offered and could not have prevented the necessity of placement, whether [such lack of efforts was reasonable.] **this level of effort was reasonable due to the emergency nature of the situation, safety considerations and circumstances of the family.**

(b) Rehearing.--If the child is not so released and a parent, guardian or other custodian has not been notified of the hearing, did not appear or waive appearance at the hearing, and files his affidavit showing these facts, the court or master shall rehear the matter without unnecessary delay and order release of the child, unless it appears from the hearing that his detention or shelter care is required under section 6325. § 6336.1. Notice and hearing.

The court shall direct the county agency or juvenile probation department to provide the child's foster parent, preadoptive parent or relative providing care for the child with timely notice of the hearing. The court shall provide the child's foster parent, preadoptive parent or relative providing care for the child the opportunity to be heard at any hearing under this chapter. [Nothing] **Unless a foster parent, preadoptive parent or relative providing care for a child has been awarded legal custody pursuant to section 6357 (relating to rights and duties of legal custodian), nothing in this section shall give the foster parent, preadoptive parent or relative providing care for the child legal standing in the matter being heard by the court.** § 6341. Adjudication.

* * *

(b) Finding of delinquency.--If the court finds on proof beyond a reasonable doubt that the child committed the acts by reason of which he is alleged to be delinquent it shall enter such finding on the record and [it] shall **specify the particular offenses, including the grading and counts thereof which the child is found to have committed.** The court shall then proceed immediately or at a postponed hearing, which shall occur not later than 20 days after [adjudication] **such finding** if the child is in detention or not more than 60 days after [adjudication] **such finding** if the child is not in detention, to hear evidence as to whether the child is in need of treatment, supervision or rehabilitation and to make and file its findings thereon. This time limitation may only be extended pursuant to the agreement of the child and the attorney for the Commonwealth. The court's failure to comply with the time limitations stated in this section shall not be grounds for discharging the child or dismissing the proceeding. In the absence of evidence to the contrary, evidence of the commission of acts which constitute a felony shall be sufficient to sustain a finding that the child is in need of treatment, supervision or rehabilitation. If the court finds that the child is not in need of treatment, supervision or rehabilitation it shall dismiss the proceeding and discharge the child from any detention or other restriction theretofore ordered.

* * *

§ 6351. Disposition of dependent child.

(a) General rule.--If the child is found to be a dependent child the court may make any of the following orders of disposition best suited to the **safety**, protection and physical, mental, and moral welfare of the child:

(1) Permit the child to remain with his parents, guardian, or other custodian, subject to conditions and

limitations as the court prescribes, including supervision as directed by the court for the protection of the child.

(2) Subject to conditions and limitations as the court prescribes transfer temporary legal custody to any of the following:

(i) Any individual resident within or without this Commonwealth, including any relative, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child.

(ii) An agency or other private organization licensed or otherwise authorized by law to receive and provide care for the child.

(iii) A public agency authorized by law to receive and provide care for the child.

(2.1) Subject to conditions and limitations as the court prescribes, transfer permanent legal custody to an individual resident in or outside this Commonwealth, including any relative, who, after study by the probation officer or other person or agency designated by the court, is found by the court to be qualified to receive and care for the child. A court order under this paragraph may set forth the temporary visitation rights of the parents. The court shall refer issues related to support and continuing visitation by the parent to the section of the court of common pleas that regularly determines support and visitation.

(3) Without making any of the foregoing orders transfer custody of the child to the juvenile court of another state if authorized by and in accordance with section 6363 (relating to ordering foreign supervision).

(b) Required preplacement findings.--Prior to entering any order of disposition under subsection (a) that would remove a dependent child from his home, the court shall enter findings on the record or in the order of court as follows:

(1) that continuation of the child in his home would be contrary to the welfare, safety or health of the child; and

(2) whether reasonable efforts were made prior to the placement of the child to prevent or eliminate the need for removal of the child from his home, if the child has remained in his home pending such disposition; or

(3) if preventive services were not offered due to the necessity for an emergency placement, whether such lack of services was reasonable under the circumstances; or

(4) if the court has previously determined pursuant to section 6332 (relating to informal hearing) that reasonable efforts were not made to prevent the initial removal of the child from his home, whether reasonable efforts are under way to make it possible for the child to return home.

The court shall not enter findings under paragraph (2), (3) or (4) if the court previously determined that aggravated circumstances exist and no new or additional reasonable efforts to prevent or eliminate the need for removing the child from the home or to preserve and reunify the family are required.

(c) Limitation on confinement.--Unless a child found to be dependent is found also to be delinquent he shall not be committed to or confined in an institution or other facility designed or operated for the benefit of delinquent children.

(d) County programs.--Every county of this Commonwealth shall develop programs for children under paragraph (5) or (6)

of the definition of "dependent child" in section 6302 (relating to definitions).

(e) Permanency hearings.--

(1) The court shall conduct a permanency hearing for the purpose of determining or reviewing the permanency plan of the child, the date by which the goal of permanency for the child might be achieved and whether placement continues to be best suited to the safety, protection and physical, mental and moral welfare of the child.

(2) If the county agency or the child's attorney alleges the existence of aggravated circumstances and the court determines that the child has been adjudicated dependent, the court shall then determine if aggravated circumstances exist. If the court finds from clear and convincing evidence that aggravated circumstances exist, the court shall determine whether or not reasonable efforts to prevent or eliminate the need for removing the child from the [home] **child's parent, guardian or custodian** or to preserve and reunify the family shall be made or continue to be made and schedule a hearing as provided in paragraph (3).

(3) The court shall conduct permanency hearings as follows:

(i) Within six months of:

(A) the [removal of a child] **date of the child's removal** from [the home of] the **child's parent, guardian or custodian** for placement **under section 6324 (relating to taking into custody) or 6332** or pursuant to a transfer of temporary legal custody or other disposition under subsection (a) (2), **whichever is the earliest;** or

(B) each previous permanency hearing until the child is returned [home] **to the child's parent, guardian or custodian** or removed from the jurisdiction of the court.

(ii) Within 30 days of:

(A) an adjudication of dependency at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the [home] **child's parent, guardian or custodian** or to preserve and reunify the family need not be made or continue to be made;

(B) a permanency hearing at which the court determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the [home] **child's parent, guardian or custodian** or to preserve and reunify the family need not be made or continue to be made and the permanency plan for the child is incomplete or inconsistent with the court's determination;

(C) an allegation that aggravated circumstances exist regarding a child who has been adjudicated dependent, filed under section 6334(b) (relating to petition); or

(D) a petition alleging that the hearing is necessary to protect the **safety or** physical, mental or moral welfare of a dependent child.

(f) Matters to be determined at permanency hearing.--[At each hearing, the court shall:] **At each permanency hearing, a court shall determine all of the following:**

(1) [determine the] **The** continuing necessity for and appropriateness of the placement[;].

(2) [determine the] **The** appropriateness, feasibility and extent of compliance with the permanency plan developed for the child[;].

(3) [determine the] **The** extent of progress made toward alleviating the circumstances which necessitated the original placement[;].

(4) [determine the] **The** appropriateness and feasibility of the current placement goal for the child[;].

(5) [project a] **The** likely date by which the **placement** goal for the child might be achieved[;].

(5.1) Whether reasonable efforts were made to finalize the permanency plan in effect.

(6) [determine whether] **Whether** the child is safe[;].

(7) [determine, if] **If** the child has been placed outside the Commonwealth, whether the placement continues to be best suited to the **safety**, protection and physical, mental and moral welfare of the child[;].

(8) [determine the] **The** services needed to assist a child who is 16 years of age or older to make the transition to independent living[; and].

(9) [if] **If** the child has been in placement for at least 15 of the last 22 months or the court has determined that aggravated circumstances exist and that reasonable efforts to prevent or eliminate the need to remove the child from the [home] **child's parent, guardian or custodian** or to preserve and reunify the family need not be made or continue to be made, [determine] whether the county agency has filed or sought to join a petition to terminate parental rights and to identify, recruit, process and approve a qualified family to adopt the child unless:

(i) the child is being cared for by a relative best suited to the **physical, mental and moral** welfare of the child;

(ii) the county agency has documented a compelling reason for determining that filing a petition to terminate parental rights would not serve the needs and welfare of the child; or

(iii) the child's family has not been provided with necessary services to achieve the safe return to the child's [home] **parent, guardian or custodian** within the time frames set forth in the permanency plan.

For children placed in foster care on or before November 19, 1997, the county agency shall file or join a petition for termination of parental rights under this subsection in accordance with section 103(c)(2) of the Adoption and Safe Families Act of 1997 (Public Law 105-89, 111 Stat. 2119).

(f.1) Additional determination.--Based upon the determinations made under subsection (f) and all relevant evidence presented at the hearing, the court shall determine one of the following:

(1) **If and when the child will be returned to the child's parent, guardian or custodian in cases where the return of the child is best suited to the safety, protection and physical, mental and moral welfare of the child.**

(2) **If and when the child will be placed for adoption, and the county agency will file for termination of parental rights in cases where return to the child's parent, guardian or custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child.**

(3) If and when the child will be placed with a legal custodian in cases where the return to the child's parent, guardian or custodian or being placed for adoption is not best suited to the safety, protection and physical, mental and moral welfare of the child.

(4) If and when the child will be placed with a fit and willing relative in cases where return to the child's parent, guardian or custodian, being placed for adoption or being placed with a legal custodian is not best suited to the safety, protection and physical, mental and moral welfare of the child.

(5) If and when the child will be placed in another living arrangement intended to be permanent in nature which is approved by the court in cases where the county agency has documented a compelling reason that it would not be best suited to the safety, protection and physical, mental and moral welfare of the child to be returned to the child's parent, guardian or custodian, to be placed for adoption, to be placed with a legal custodian or to be placed with a fit and willing relative.

[(f.1)] **(f.2)** Evidence.--Evidence of conduct by the parent that places the health, safety or welfare of the child at risk, including evidence of the use of alcohol or a controlled substance that places the health, safety or welfare of the child at risk, shall be presented to the court by the county agency or any other party at any disposition or permanency hearing whether or not the conduct was the basis for the determination of dependency.

(g) Court order.--On the basis of the [determinations] **determination** made under subsection [(f) and all relevant evidence, the court, in addition, shall:

(1) determine if and when the child:

(i) should be returned to the parents, guardian or other custodian;

(ii) will be placed for adoption and the county agency will file for termination of parental rights; or

(iii) will be placed with a legal custodian or in another living arrangement intended to be permanent in nature approved by the court if the county agency has documented a compelling reason that it would not serve the child's physical, mental or emotional health, safety or morals to return home, to be referred for termination of parental rights or to be placed for adoption; and

(2) order] **(f.1), the court shall order the** continuation, modification or termination of placement or other disposition **which is** best suited to the **safety,** protection and physical, mental and moral welfare of the child.

[(h) Certain hearings discretionary.--At the discretion of the court, permanency hearings need not be conducted:

(1) for a child who has been placed in a living arrangement that is intended to be permanent in nature and that is approved by the court;

(2) for a child who has been placed in an adoptive home pending finalization of adoption pursuant to 23 Pa.C.S. Part III (relating to adoption); or

(3) for a child who has been placed with a permanent legal custodian appointed by the court pursuant to subsection (a) and section 6357 (relating to rights and duties of legal custodian).]

(i) Assignment to orphans' court.--A judge who adjudicated the child dependent or who has conducted permanency hearings

or other dependency proceedings involving the child may be assigned to the orphans' court division for the purpose of hearing proceedings relating to any of the following:

(1) Involuntary termination of parental rights of a parent of the dependent child under 23 Pa.C.S. Ch. 25 Subch. B (relating to involuntary termination).

(2) A petition to adopt the dependent child.

Section 4. The definition of "rental-purchase agreement" in section 6902 of Title 42 is amended to read:

§ 6902. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

* * *

"Rental-purchase agreement." An agreement for the use of personal property by an individual primarily for personal, family or household purposes for an initial period of four months or less that is automatically renewable with each rental payment after the initial period and that permits the lessee to acquire ownership of the property. [It does not include] **The term shall not be construed to be**, nor is it subject to laws governing, any of the following:

(1) A lease for agricultural, business or commercial purposes.

(2) A lease made to an organization.

(3) A lease of money or intangible personal property.

(4) A lease of a motor vehicle, motor home, mobile home or manufactured housing.

(5) A home solicitation sale under section 7 of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

(6) A retail installment sale, retail installment contract or retail installment account as defined in the act of October 28, 1966 (1st Sp.Sess., P.L.55, No.7), known as the Goods and Services Installment Sales Act.

(7) A security interest as defined in 13 Pa.C.S. § 1201 (relating to general definitions).

Section 4.1. Section 8127(a)(3.1) and (3.2), (c), (f) and (h) of Title 42 are amended to read:

§ 8127. Personal earnings exempt from process.

(a) General rule and exceptions.--The wages, salaries and commissions of individuals shall while in the hands of the employer be exempt from any attachment, execution or other process except upon an action or proceeding:

* * *

(3.1) For [damages] **amounts** awarded to a judgment creditor-landlord arising out of a residential lease upon which the court has rendered judgment which is final. However, the amount subject to attachment shall have deducted from it any security deposit held by the judgment creditor-landlord and forfeited by the judgment debtor-tenant under section 511.1 of the act of April 6, 1951 (P.L.69, No.20), known as The Landlord and Tenant Act of 1951, unless the security deposit has been applied to payment of rent due on the same premises for which the judgment for attachment has been entered. The judgment creditor-landlord shall have the burden of proving that such security deposit has been applied to payment of rent due on the premises herein described. The sum attached shall be no more than 10% of the net wages per pay period of the judgment debtor-tenant or a sum not to place the debtor's net income below the poverty income guidelines as provided annually by the Federal Office of Management and Budget, whichever is less. For

the purposes of this paragraph, "net wages" shall mean all wages paid less only the following items:

- (i) Federal, State and local income taxes.
- (ii) F.I.C.A. payments and nonvoluntary retirement payments.
- (iii) Union dues.
- (iv) Health insurance premiums.

(3.2) In the case of wage attachment [for damages] arising out of a residential lease, to implement the wage attachment, the judgment creditor-landlord shall comply with the Pennsylvania Rules of Civil Procedure and any applicable local rules. The judgment of the district justice, magistrate or any other court having jurisdiction over landlord and tenant matters or a judgment before the court of common pleas shall reflect that portion of the judgment which is for **physical** damages arising out of a residential lease.

* * *

(c) Duty of employer.--

(1) For any wage attachment [for damages] arising out of a residential lease, the employer shall send the attached wages to the prothonotary of the court of common pleas within 15 days from the close of the last pay period in each month. The employer shall be entitled to deduct from the moneys collected from each employee the costs incurred from the extra bookkeeping necessary to record such transactions, not exceeding \$5 of the amount of money so collected. If an employer is served with more than one attachment [for damages] arising out of a residential lease against the same judgment debtor, then the attachments shall be satisfied in the order in which they were served. Each prior attachment shall be satisfied before any effect is given to a subsequent attachment, subject to subsection (a)(3.2). Upon receipt of the wages, the prothonotary of the court of common pleas shall record and send said wages to the judgment creditor-landlord.

(2) For any wage attachment [other than for damages] **not** arising out of a residential lease, the employer shall send the attached withheld wages to the prothonotary of the court of common pleas to be recorded, and upon receipt, the wages shall be sent to the creditor.

* * *

(f) Victim of abuse.--This section shall not apply and no wage attachment shall be issued against an abused person or victim, as defined in 23 Pa.C.S. § 6102 (relating to definitions), for **physical** damages related to residential leases when said person has obtained a civil protection order pursuant to 23 Pa.C.S. § 6101 et seq. (relating to protection from abuse), or has obtained a protective order pursuant to 18 Pa.C.S. § 4954 (relating to protective orders), or is a victim-witness as defined by 18 Pa.C.S. § 4951 (relating to definitions), in a criminal proceeding against a family or household member, as defined in 23 Pa.C.S. § 6102, and it is determined by the court that the **physical** damages were caused by the family or household member.

* * *

(h) Definition.--For purposes of this section, "**physical** damages" shall mean the abuse of the physical makeup of the leasehold premises. [Damages] **The term** shall include, but not be limited to, the abuse of walls, floors, ceilings or any other physical makeup of the leasehold premises.

Section 5. Title 42 is amended by adding sections to read:

§ 8332.7. Immunity of State parole officers.

(a) Assistance of law enforcement personnel.--In addition to the provisions of section 27 of the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law, or any other law, any parole officer appointed by the Pennsylvania Board of Probation and Parole who, after obtaining permission in advance from a person authorized by the Pennsylvania Board of Probation and Parole, assists State or local police or county probation officers in the lawful performance of their duties shall be considered to be acting within the scope of his official duty for all purposes of law and shall enjoy any benefit or immunity conferred upon an employee of the Commonwealth.

(b) Assistance of criminal victims.--In addition to any other immunity provided by law, any parole officer appointed by the Pennsylvania Board of Probation and Parole who is entitled to immunity under section 8331.3 (relating to criminal victim aid good Samaritan civil immunity) as a result of providing assistance to a victim of a crime shall be considered to be acting within the scope of his official duty while providing assistance to the victim for all purposes of law and shall enjoy any benefit or immunity conferred upon an employee of the Commonwealth.

§ 8332.8. Immunity of county probation officers.

(a) Assistance of law enforcement personnel.--In addition to the provisions of section 1 of the act of August 6, 1963 (P.L.521, No.277), entitled "An act providing that probation officers shall have the power of peace officers in the performance of their duties," or any other law, any probation officer appointed by any court of record of this Commonwealth who, after obtaining permission in advance from a person authorized by the appointing court, assists State or local police or county probation officers in the lawful performance of their duties shall be considered to be acting within the scope of his official duty for all purposes of law and shall enjoy any benefit or immunity conferred upon an employee of that county.

(b) Assistance of criminal victims.--In addition to any other immunity provided by law, any probation officer appointed by any court of record of this Commonwealth who is entitled to immunity under section 8331.3 (relating to criminal victim aid good Samaritan civil immunity) as a result of providing assistance to a victim of a crime shall be considered to be acting within the scope of his official duty while providing assistance to the victim for all purposes of law and shall enjoy any benefit or immunity conferred upon an employee of that county.

§ 9303. Liability for violations of general and specific criminal statutes.

Notwithstanding the provisions of 1 Pa.C.S. § 1933 (relating to particular controls general) or any other statute to the contrary, where the same conduct of a defendant violates more than one criminal statute, the defendant may be prosecuted under all available statutory criminal provisions without regard to the generality or specificity of the statutes.

§ 9765. Merger of sentences.

No crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense. Where crimes merge for sentencing

purposes, the court may sentence the defendant only on the higher graded offense.

Section 6. The amendment of 42 Pa.C.S. § 5571(c)(5) shall apply to an appeal or challenge relating to an alleged defect in the process of the enactment or adoption of any ordinance, resolution, map or similar action commenced after December 31, 2000.

Section 7. The provisions of 42 Pa.C.S. § 3135 shall not be applicable to the selection of judges for the judgeships created in the amendment of 42 Pa.C.S. § 911(a). The new judgeships for the 3rd and 49th districts added by the amendment of 42 Pa.C.S. § 911(a) shall be created on January 2, 2006, and shall be initially filled at the 2005 election. The new judgeships for the 7th, 32nd, 35th, 38th, 40th, 43rd and 48th districts added by the amendment of 42 Pa.C.S. § 911(a) shall be created on January 5, 2004, and shall be initially filled at the 2003 municipal election.

Section 8. The Juvenile Court Judges' Commission shall develop best practice standards regarding searches of the person and property of children in order to implement the addition of 42 Pa.C.S. § 6304(a.1).

Section 9. This act shall take effect as follows:

(1) The following provisions shall take effect immediately:

(i) The amendment of 42 Pa.C.S. §§ 911(a) and 5571(c)(5).

(ii) The amendment of 42 Pa.C.S. § 8127(a)(3.1) and (3.2), (c), (f) and (h).

(iii) Section 7 of this act.

(iv) This section.

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

APPROVED--The 9th day of December, A. D. 2002.

MARK S. SCHWEIKER