SENATE AMENDED
PRIOR PRINTER'S NOS. 214, 1074, 1754 PRINTER'S NO. 3064

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 227 Session of 2001

INTRODUCED BY HERMAN, BELARDI, CLARK, COLAFELLA, DONATUCCI, GEIST, HENNESSEY, HERSHEY, HORSEY, JOSEPHS, MICHLOVIC, S. MILLER, PHILLIPS, PISTELLA, PRESTON, READSHAW, SHANER, SOLOBAY, STABACK, SURRA, E. Z. TAYLOR, J. TAYLOR, TRELLO, WANSACZ, WOJNAROSKI AND SAYLOR, JANUARY 25, 2001

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED, DECEMBER 11, 2001

AN ACT

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for the definition of "offensive weapons," for use or possession of electric or electronic incapacitation devices, for penalties, for aggravated assault and for use of tear or noxious gas in labor disputes; imposing a penalty; and making an editorial change.

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

Section 1. Section 908(c) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 908. Prohibited offensive weapons.

* * *

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

"Firearm." Any weapon which is designed to or may readily be converted to expel any projectile by the action of an explosive

or the frame or receiver of any such weapon.

"Offensive weapons." Any bomb, grenade, machine gun, sawed-off shotgun with a barrel less than 18 inches, firearm specially made or specially adapted for concealment or silent discharge, any blackjack, sandbag, metal knuckles, dagger, knife, razor or cutting instrument, the blade of which is exposed in an automatic way by switch, push-button, spring mechanism, or otherwise, any stun gun, stun baton, taser or other electronic or electric weapon, or other implement for the infliction of serious bodily injury which serves no common lawful purpose.

* * *

Section 2. Title 18 is amended by adding a section to read:

§ 908.1. Use or possession of electric or electronic incapacitation device.

(a) Offense defined.--Except as set forth in subsection (b), a person commits an offense if the person does any of the following:

(1) Uses an electric or electronic incapacitation device or weapon on another person FOR AN UNLAWFUL PURPOSE. <——

(2) Possesses, with intent to violate paragraph (1), an electric or electronic incapacitation device.

(b) Self defense.--A person may possess and use an electric or electronic incapacitation device in the exercise of reasonable force in defense of the person or the person's property, PURSUANT TO CHAPTER 5 (RELATING TO GENERAL PRINCIPLES OF JUSTIFICATION), if the electric or electronic incapacitation device is labeled with or accompanied by clearly written instructions as to its use and the damages involved in its use. <——

(c) Prohibited possession.--No person prohibited from possessing a firearm pursuant to section 6105 (relating to

persons not to possess, use, manufacture, control, sell or transfer firearms) may possess or use an electric or electronic incapacitation device.

(d) Grading.--An offense under subsection (a) shall constitute a felony of the second degree if the actor acted with the intent to commit a felony. Otherwise any offense under this section is graded as a misdemeanor of the first degree.

(e) Exceptions.--Nothing in this section shall prohibit the possession or use by, or the sale or furnishing of any electric or electronic incapacitation device to, a law enforcement agency, peace officer, employee of a correctional institution, county jail or prison, or detention center, the National Guard or reserves or a member of the National Guard or reserves for use in their official duties.

(f) Definition.--As used in this section, the term "electric or electronic incapacitation device" means a portable device which is designed or intended by the manufacturer to be used, offensively or defensively, to temporarily immobilize or incapacitate persons by means of electric pulse or current, including devices operating by means of carbon dioxide propellant. The term does not include cattle prods, electric fences or other electric devices when used in agricultural, animal husbandry or food production activities.

Section 3. Sections 2702 and 2708 of Title 18 are amended to read:

§ 2702. Aggravated assault.

(a) Offense defined.--A person is guilty of aggravated assault if he:

(1) attempts to cause serious bodily injury to another, or causes such injury intentionally, knowingly or recklessly

under circumstances manifesting extreme indifference to the value of human life;

(2) attempts to cause or intentionally, knowingly or recklessly causes serious bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c) or to an employee of an agency, company or other entity engaged in public transportation, while in the performance of duty;

(3) attempts to cause or intentionally or knowingly causes bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c), in the performance of duty;

(4) attempts to cause or intentionally or knowingly causes bodily injury to another with a deadly weapon;

(5) attempts to cause or intentionally or knowingly causes bodily injury to a teaching staff member, school board member or other employee, including a student employee, of any elementary or secondary publicly-funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school while acting in the scope of his or her employment or because of his or her employment relationship to the school; [or]

(6) attempts by physical menace to put any of the officers, agents, employees or other persons enumerated in subsection (c), while in the performance of duty, in fear of imminent serious bodily injury[.]; or

(7) uses tear or noxious gas as defined in section 2708(b) (relating to use of tear or noxious gas in labor disputes) or uses an electric or electronic incapacitation

device against any officer, employee or other person enumerated in subsection (c) while acting in the scope of his employment.

(b) Grading.--Aggravated assault under subsection (a)(1) and (2) is a felony of the first degree. Aggravated assault under subsection (a)(3), (4), (5) [and], (6) and (7) is a felony of the second degree.

(c) Officers, employees, etc., enumerated.--The officers, agents, employees and other persons referred to in subsection (a) shall be as follows:

(1) Police officer.

(2) Firefighter.

(3) County adult probation or parole officer.

(4) County juvenile probation or parole officer.

(5) An agent of the Pennsylvania Board of Probation and Parole.

(6) Sheriff.

(7) Deputy sheriff.

(8) Liquor control enforcement agent.

(9) Officer or employee of a correctional institution, county jail or prison, juvenile detention center or any other facility to which the person has been ordered by the court pursuant to a petition alleging delinquency under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).

(10) Judge of any court in the unified judicial system.

(11) The Attorney General.

(12) A deputy attorney general.

(13) A district attorney.

(14) An assistant district attorney.

(15) A public defender.

(16) An assistant public defender.

(17) A Federal law enforcement official.

(18) A State law enforcement official.

(19) A local law enforcement official.

(20) Any person employed to assist or who assists any Federal, State or local law enforcement official.

(21) Emergency medical services personnel.

(22) Parking enforcement officer.

(23) A district justice.

(24) A constable.

(25) A deputy constable.

(26) A psychiatric aide.

(27) A teaching staff member, a school board member or other employee, including a student employee, of any elementary or secondary publicly funded educational institution, any elementary or secondary private school licensed by the Department of Education or any elementary or secondary parochial school while acting in the scope of his or her employment or because of his or her employment relationship to the school.

(28) Governor.

(29) Lieutenant Governor.

(30) Auditor General.

(31) State Treasurer.

(32) Member of the General Assembly.

(33) An employee of the Department of Environmental Protection.

(34) An individual engaged in the private detective business, as defined in section 2(a) and (b) of the act of August 21, 1953 (P.L.1273, No.361), known as The Private

Detective Act of 1953.

(d) [Definition.--As used in this section, the term "emergency] Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Electric or electronic incapacitation device." A portable device which is designed or intended by the manufacturer to be used to temporarily immobilize or incapacitate persons by means of electric pulse or current, including devices operated by means of carbon dioxide propellant.

"Emergency medical services [personnel"] personnel." The term includes, but is not limited to, doctors, residents, interns, registered nurses, licensed practical nurses, nurse aides, ambulance attendants and operators, paramedics, emergency medical technicians and members of a hospital security force while working within the scope of their employment.

§ 2708. Use of tear or noxious gas in labor disputes.

(a) Offense defined.--A person other than a duly constituted officer of the law is guilty of a misdemeanor of the first degree if he uses or directs the use of tear or noxious gas against any person involved in a labor dispute.

(b) Definition.--As used in this section, the term "tear or noxious gas" means any liquid or gaseous substance that, when dispersed in the atmosphere, blinds the eyes with tears or irritates or injures other organs and tissues of the human body or causes nausea, including, but not limited to, red pepper spray.

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