

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 523 Session of
2003

INTRODUCED BY STACK, KITCHEN, STOUT, LOGAN, MUSTO, C. WILLIAMS,
BOSCOLA, RAFFERTY, COSTA AND TARTAGLIONE, MARCH 18, 2003

REFERRED TO JUDICIARY, MARCH 18, 2003

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for drug
3 offender restraining orders.

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

6 Section 1. Chapter 83 of Title 42 of the Pennsylvania
7 Consolidated Statutes is amended by adding a subchapter to read:

8 SUBCHAPTER I

9 DRUG OFFENDER RESTRAINING ORDERS

10 Sec.

11 8395. Definitions.

12 8396. Restraining order.

13 8397. Violation of order.

14 § 8395. Definitions.

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

18 "Criminal offense." An offense that involves the

1 manufacturing, distributing, selling or possessing with intent
2 to distribute a controlled substance as defined in section 2(b)
3 of the act of April 14, 1972 (P.L.233, No.64), known as The
4 Controlled Substance, Drug, Device and Cosmetic Act.

5 "Defendant." A person charged with or convicted of a
6 criminal offense or any juvenile charged with delinquency or
7 adjudicated delinquent for an act which, if committed by an
8 adult, would be a criminal offense.

9 "Protected area." Any premises, residence, business
10 establishment, location or specified area, including all
11 buildings and all appurtenant land, in which or at which a
12 criminal offense occurred or is alleged to have occurred or is
13 affected by the criminal offense of which the defendant is
14 charged or has been convicted.

15 § 8396. Restraining order.

16 (a) Person charged with an offense.--When a person is
17 charged with a criminal offense and the person is released from
18 custody before trial on bail or personal recognizance or is
19 released to the custody of a parent, guardian, custodian or
20 public or private agency, the court, as a condition of release
21 and except as provided in subsection (c), shall issue an order
22 prohibiting the person from entering any protected area.

23 (b) Person convicted or adjudicated delinquent.--When a
24 person is convicted of or adjudicated delinquent for any
25 criminal offense, the court, in addition to any other
26 disposition authorized by law, shall, except as provided in
27 subsection (c), issue an order prohibiting the person from
28 entering any protected area.

29 (c) When order not to be issued.--

30 (1) The court shall not issue an order under this

1 section if the court determines that the defendant has
2 established by clear and convincing evidence:

3 (i) that the defendant lawfully resides at or has
4 legitimate business at or near the protected area or
5 otherwise legitimately needs to enter the protected area;

6 (ii) that the issuance of an order would cause undue
7 hardship to innocent persons and would constitute a
8 serious injustice which overrides the need to protect the
9 rights, safety and health of persons residing in or
10 having business in the protected area; or

11 (iii) that the defendant's interest in returning to
12 the protected area outweighs the need to bar the
13 defendant from the protected area in order to protect the
14 public safety and the rights, safety and health of the
15 residents and persons working in or near the protected
16 area.

17 (2) If the court decides to allow the defendant to
18 return to the protected area, the court may issue an order
19 imposing conditions upon the defendant's entry at, upon or
20 near the protected area.

21 (d) Restraining order.--A restraining order issued under
22 subsection (a) or (b) shall describe the protected area and any
23 conditions upon the person's entry into the protected area with
24 sufficient specificity to enable the defendant to guide his
25 conduct accordingly and to enable a law enforcement officer to
26 enforce the order. When appropriate, the court may append to the
27 order a map depicting the protected area. The defendant shall be
28 given a copy of the restraining order and any appended map and
29 shall acknowledge in writing receipt of the documents.

30 (e) Notice of order.--The court shall provide notice of the

1 restraining order to the local law enforcement agency where the
2 arrest occurred and to the district attorney. In addition, if
3 the order prohibits a defendant from entering at, upon or near
4 any building, business premises, school or other public, private
5 or commercial premises, the court may cause notice of the
6 restraining order to be transmitted to the owner of the property
7 and to the owner's agent, or, in the case of a school or
8 government-owned property, to the appropriate administrator and
9 to any tenant association representing the residents of the
10 protected area. Notwithstanding the provisions of section 6308
11 (relating to law enforcement records), the local law enforcement
12 agency may post a copy of an order issued under this section
13 upon one or more of the principal entrances to the protected
14 area or in any other conspicuous location. The posting shall be
15 for the purpose of informing the public, and the failure to post
16 a copy of the order shall in no way excuse any violation of the
17 order.

18 (f) Juvenile defendant.--If the defendant is a juvenile, in
19 addition to an order under subsection (b) or any other
20 disposition authorized by law, the court may order the defendant
21 and any parent, guardian or family member over whom the court
22 has jurisdiction to take such actions or enforce such restraints
23 as may be necessary to facilitate the rehabilitation of the
24 juvenile, to protect public safety or to safeguard or enforce
25 the rights of residents of the protected area.

26 (g) Term of order.--An order issued under subsection (a)
27 shall remain in effect until the case has been adjudicated or
28 dismissed or for not more than two years, whichever is less. An
29 order issued under subsection (b) shall remain in effect for
30 such period of time as shall be fixed by the court, but not

1 longer than the maximum term of imprisonment or incarceration
2 allowed by law for the underlying offense or offenses. When the
3 court issues a restraining order under subsection (b) and the
4 person is also sentenced to any form of probationary
5 supervision, the court shall make continuing compliance with the
6 order an express condition of probation. When the person has
7 been sentenced to a term of incarceration, continuing compliance
8 with the terms and conditions of the order shall be made an
9 express condition of the person's release on parole.

10 (h) Notice of application to stay or modify order.--The
11 court shall immediately notify the appropriate law enforcement
12 agency in writing whenever an application is made to stay or
13 modify an order issued under this subchapter. If the court does
14 not issue a restraining order, the sentence imposed by the court
15 for a criminal offense as defined in subsection (b) shall not
16 become final for ten days in order to permit the appeal of the
17 court's findings by the prosecution.

18 (i) Authority of court not limited.--Nothing in this section
19 shall be construed in any way to limit the authority of the
20 court to take such other actions or to issue such orders as may
21 be necessary to protect the public safety or to safeguard or
22 enforce the rights of others with respect to the protected area.

23 (j) Personal belongings and effects.--Notwithstanding any
24 other provision of this section, the court may permit the
25 defendant to return to the protected area to obtain personal
26 belongings and effects and, by court order, may restrict the
27 time and duration and provide for police supervision of such a
28 visit.

29 § 8397. Violation of order.

30 Violation of any order issued under this subchapter shall

1 subject the violator to civil contempt, criminal contempt,
2 revocation of bail, probation or parole or any combination of
3 these sanctions and any other sanctions authorized by law. A law
4 enforcement officer may arrest an adult or take into custody a
5 juvenile when an officer has probable cause to believe that the
6 adult or juvenile has violated the terms of any removal and
7 restraining order issued under section 8396 (relating to
8 restraining order).

9 Section 2. This act shall take effect in 60 days.