

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 456 Session of
2005

INTRODUCED BY GOOD, BAKER, BARRAR, BASTIAN, BEBKO-JONES,
BELFANTI, BOYD, BROWNE, BUNT, CALTAGIRONE, CAPPELLI, CLYMER,
DALEY, J. EVANS, FABRIZIO, FRANKEL, FREEMAN, GINGRICH,
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PHILLIPS, READSHAW, REICHLEY, ROSS, SCHRODER, SEMMEL,
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YOUNGBLOOD, YUDICHAK, ZUG, PICKETT AND GEIST,
FEBRUARY 14, 2005

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 14, 2005

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for sentencing
3 for terrorism and for penalties.

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

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

8 § 9720.2. Sentence enhancement for terrorism.

9 (a) General rule.--In addition to any penalty provided by
10 law, a person may be sentenced to an additional term not to
11 exceed ten years' confinement and an additional fine not to
12 exceed \$100,000 for an offense if, at trial, the prosecution
13 proves beyond a reasonable doubt that the person committed the
14 offense with the intent to do any of the following:

15 (1) Intimidate or coerce a civilian population by

1 violence or threat of violence.

2 (2) Influence the policy of a unit of government by
3 intimidation or coercion by violence or threat of violence.

4 (3) Affect the conduct of a unit of government by mass
5 destruction, assassination or kidnapping.

6 (b) Inchoate crimes.--Subsection (a) applies to any attempt,
7 conspiracy or solicitation to commit an offense.

8 (c) Procedure.--The prosecution must indicate intent to
9 proceed under this section in the indictment or information
10 which commences the prosecution.

11 (d) Forfeiture.--

12 (1) The following property may be deemed contraband and
13 forfeited under this section:

14 (i) All assets, foreign or domestic:

15 (A) Of an individual, entity or organization
16 engaged in planning or perpetrating an act in this
17 Commonwealth to which subsection (a) is applicable
18 and all assets, foreign or domestic, affording a
19 person a source of influence over such an entity or
20 organization.

21 (B) Acquired or maintained in this Commonwealth
22 by a person with the intent and for the purpose of
23 supporting, planning, conducting or concealing an act
24 to which subsection (a) is applicable.

25 (C) Derived from, involved in or used or
26 intended to be used to commit an act in this
27 Commonwealth to which subsection (a) is applicable.

28 (ii) All assets within this Commonwealth:

29 (A) Of an individual, entity or organization
30 engaged in planning or perpetrating an unlawful act,

1 either foreign or domestic, with the intent to do any
2 of the following:

3 (I) Intimidate or coerce a civilian
4 population, either foreign or domestic, by
5 violence or threat of violence.

6 (II) Influence the policy of a unit of
7 government by intimidation or coercion, either
8 foreign or domestic, by violence or threat of
9 violence.

10 (III) Affect the conduct of a unit of
11 government, either foreign or domestic, by mass
12 destruction, assassination or kidnapping.

13 (B) Acquired or maintained with the intent and
14 for the purpose of supporting, planning, conducting
15 or concealing an unlawful act under clause (A); or

16 (C) Derived from, involved in or used or
17 intended to be used to commit an unlawful act under
18 clause (A).

19 (2) (i) Property subject to forfeiture under this
20 section may be seized by the law enforcement authority
21 upon process issued by a court of common pleas having
22 jurisdiction over the property.

23 (ii) Seizure without process may be made if any of
24 the following apply:

25 (A) The seizure is incident to an arrest, a
26 search under a search warrant or an inspection under
27 an administrative inspection warrant.

28 (B) The property subject to seizure has been the
29 subject of a prior judgment in favor of the
30 Commonwealth in a criminal injunction or forfeiture

1 proceeding under this chapter.

2 (C) There is probable cause to believe that the
3 property is dangerous to health or safety.

4 (D) There is probable cause to believe that the
5 property has been or is intended to be used in the
6 commission of an action to which subsection (a) is
7 applicable.

8 (iii) In the event seizure is made without process,
9 proceedings for the issuance of process shall be
10 instituted forthwith.

11 (3) Property taken or detained under this section shall
12 not be subject to replevin, but is deemed to be in the
13 custody of the law enforcement authority, subject only to the
14 orders and decrees of the court of common pleas having
15 jurisdiction over the forfeiture proceedings and of the
16 district attorney or the Attorney General. When property is
17 seized under this subsection, the law enforcement authority
18 shall place the property under seal and either:

19 (i) remove the property to a place determined by the
20 law enforcement authority; or

21 (ii) request that the district attorney or Attorney
22 General take custody of the property and remove it to an
23 appropriate location for disposition in accordance with
24 law.

25 (4) Property forfeited under this chapter shall be
26 transferred to the custody of the district attorney if the
27 law enforcement authority seizing the property has local or
28 county jurisdiction, or of the Attorney General if the law
29 enforcement authority seizing the property has Statewide
30 jurisdiction. The district attorney or the Attorney General,

1 where appropriate, may:

2 (i) Retain the property for official use.

3 (ii) Sell any forfeited property which is not
4 required to be destroyed by law and which is not harmful
5 to the public, the proceeds from any such sale to be used
6 to pay all proper expenses of the proceedings for
7 forfeiture and sale, including expenses of seizure,
8 maintenance of custody, advertising and court costs. The
9 balance of the proceeds shall be dealt with under
10 paragraphs (5) and (6).

11 (5) Cash or proceeds of forfeited property transferred
12 to the custody of the district attorney under paragraph (4)
13 shall be placed in the operating fund of the county in which
14 the district attorney is elected. The appropriate county
15 authority shall immediately release from the operating fund,
16 without restriction, a like amount for the use of the
17 district attorney in enforcing the criminal laws of the
18 Commonwealth of Pennsylvania. The entity having budgetary
19 control shall not anticipate future forfeitures or proceeds
20 therefrom in adoption and approval of the budget for the
21 district attorney.

22 (6) If both municipal and State law enforcement
23 authorities were substantially involved in effecting the
24 seizure, the court having jurisdiction over the forfeiture
25 proceedings shall equitably distribute the property between
26 the district attorney and the Attorney General.

27 (7) The district attorney and the Attorney General shall
28 utilize forfeited property or proceeds thereof for the
29 purpose of enforcing the provisions of this act. In
30 appropriate cases, the district attorney and the Attorney

1 General may designate proceeds from forfeited property to be
2 utilized for antiterrorism public safety programs and for
3 relocation and protection of witnesses in criminal cases.

4 (8) It shall be the responsibility of every county in
5 this Commonwealth to provide, through the controller, board
6 of auditors or other appropriate auditor and the district
7 attorney, an annual audit of all forfeited property and
8 proceeds obtained under this section. The audit shall not be
9 made public but shall be submitted to the Office of Attorney
10 General. The county shall report all forfeited property and
11 proceeds obtained under this section and the disposition
12 thereof to the Attorney General by September 30 of each year.

13 (9) The Attorney General shall annually submit a report
14 to the Appropriations Committee and Judiciary Committee of
15 the Senate and the Appropriations Committee and Judiciary
16 Committee of the House of Representatives specifying the
17 forfeited property or proceeds thereof obtained under this
18 section. The report shall give an accounting of all proceeds
19 derived from the sale of forfeited property and the use made
20 of unsold forfeited property. The Attorney General shall
21 adopt procedures and guidelines governing the release of
22 information by the district attorney to protect the
23 confidentiality of forfeited property or proceeds used in
24 ongoing antiterrorist activities.

25 (10) The proceeds or future proceeds from property
26 forfeited under this chapter shall be in addition to any
27 appropriation made to the Office of Attorney General.

28 (e) Procedure with respect to seized property subject to
29 liens and rights of lienholders.--

30 (1) Proceedings for forfeiture or condemnation of

1 property, the sale of which is provided for in this chapter,
2 shall be in rem, in which the Commonwealth shall be the
3 plaintiff and the property the defendant. A petition shall be
4 filed in the court of common pleas of the judicial district
5 where the property is located, verified by oath or
6 affirmation of an officer or citizen, containing the
7 following:

8 (i) A description of the property seized.

9 (ii) A statement of the time and place seized.

10 (iii) The owner, if known.

11 (iv) The person or persons in possession, if known.

12 (v) An allegation that the property is subject to
13 forfeiture under subsection (d) and an averment of
14 material facts upon which the forfeiture action is based.

15 (vi) A prayer for an order that the property be
16 adjudged forfeited to the Commonwealth, condemned and
17 sold according to law, unless cause be shown to the
18 contrary.

19 (2) A copy of the petition required under subsection (a)
20 shall be served personally or by certified mail on the owner
21 or upon the person or persons in possession at the time of
22 the seizure. The copy shall have endorsed a notice, as
23 follows:

24 To the Claimant of Within Described Property:

25 You are required to file an answer to this petition,
26 setting forth your title in and right to possession of
27 the property within 30 days from the service of this
28 notice, and you are further notified that, if you fail to
29 file an answer, a decree of forfeiture and condemnation
30 will be entered against the property.

1 The notice shall be signed by the Attorney General, Deputy
2 Attorney General, district attorney, deputy district attorney
3 or assistant district attorney.

4 (3) If the owner of the property is unknown, there was
5 no person in possession of the property when seized or if the
6 owner or person or persons in possession at the time of the
7 seizure cannot be personally served or located within the
8 jurisdiction of the court, notice of the petition shall be
9 given by the Commonwealth through an advertisement in one
10 newspaper of general circulation published in the county
11 where the property was seized, once a week for two successive
12 weeks. No other advertisement shall be necessary, any law to
13 the contrary notwithstanding. The notice shall contain a
14 statement of the seizure of the property with a description
15 of the property and the place and date of seizure and shall
16 direct any claimants to the property to file a claim on or
17 before a date given in the notice, which date shall not be
18 less than 30 days from the date of the first publication. If
19 no claims are filed within 30 days of publication, the
20 property shall summarily forfeit to the Commonwealth.

21 (4) For purposes of this section, the owner or person in
22 possession cannot be found in the jurisdiction of the court
23 if all of the following steps are taken:

24 (i) A copy of the petition is mailed to the last
25 known address by certified mail and is returned without
26 delivery.

27 (ii) Personal service is attempted once, but cannot
28 be made at the last known address.

29 (iii) A copy of the petition is left at the last
30 known address.

1 (5) The notice provisions of this section are
2 automatically waived when the owner or person in possession,
3 without good cause, fails to appear in court in response to a
4 subpoena on the underlying criminal charges. Unless good
5 cause is demonstrated, the property shall summarily forfeit
6 to the Commonwealth 45 days after such a failure to appear.

7 (6) (i) Upon application of the Commonwealth, the court
8 may enter a restraining order or injunction, require the
9 execution of a satisfactory performance bond or take any
10 other action to preserve the availability of property
11 described in subsection (d) for forfeiture under this
12 section:

13 (A) upon the filing of an information or an
14 indictment charging a violation of this section for
15 which criminal forfeiture may be ordered under this
16 subsection and alleging that the property with
17 respect to which the order is sought would be subject
18 to forfeiture; or

19 (B) prior to the filing of an indictment or
20 information, if, after notice to persons appearing to
21 have an interest in the property and an opportunity
22 for a hearing, the court determines that:

23 (I) there is a substantial probability that
24 the Commonwealth will prevail on the issue of
25 forfeiture and that failure to enter the order
26 will result in the property being destroyed,
27 removed from the jurisdiction of the court or
28 otherwise made unavailable for forfeiture; and

29 (II) the need to preserve the availability
30 of the property through the entry of the

1 requested order outweighs the hardship on any
2 party against whom the order is to be entered.

3 (ii) An order entered under this paragraph shall be
4 effective for not more than 90 days unless extended by
5 the court for good cause shown or an indictment or
6 information described in clause (A) has been filed.

7 (7) (i) A temporary restraining order under paragraph
8 (6) may be entered upon application of the Commonwealth
9 without notice or opportunity for a hearing if an
10 information or indictment has not yet been filed with
11 respect to the property and if the Commonwealth
12 demonstrates that there is probable cause to believe that
13 the property with respect to which the order is sought
14 would be subject to forfeiture under this chapter and
15 that provision of notice will jeopardize the availability
16 of the property for forfeiture.

17 (ii) A temporary order under subparagraph (i) shall
18 expire not more than ten days after the date on which it
19 is entered, unless extended for good cause shown or
20 unless the party against whom it is entered consents to
21 an extension for a longer period. A hearing requested
22 concerning an order entered under this paragraph shall be
23 held at the earliest possible time and prior to the
24 expiration of the temporary order.

25 (8) The court may receive and consider, at a hearing
26 held under paragraph (6) or (7), evidence and information
27 that would be inadmissible under the rules of evidence.

28 (9) Upon the filing of a claim for the property setting
29 forth a right of possession, the case shall be deemed at
30 issue and a time shall be fixed for the hearing.

1 (10) At the time of the hearing, if the Commonwealth
2 produces evidence that the property in question was
3 unlawfully used, possessed or otherwise subject to forfeiture
4 under subsection (d), the burden shall be upon the claimant
5 to show:

6 (i) That the claimant is the owner of the property
7 or the holder of a chattel mortgage or contract of
8 conditional sale thereon.

9 (ii) That the claimant lawfully acquired the
10 property.

11 (iii) That the property was not unlawfully used or
12 possessed by the claimant. In the event that it appears
13 that the property was unlawfully used or possessed by a
14 person other than the claimant, the claimant must show
15 that the unlawful use or possession was without his
16 knowledge or consent. The absence of knowledge or consent
17 must be reasonable under the circumstances.

18 (11) If, prior to the sale of property the disposition
19 of which is provided for in this section, a person claiming
20 the ownership of or right of possession to or claiming to be
21 the holder of a chattel mortgage or contract of conditional
22 sale upon the property presents a petition to the court
23 alleging lawful ownership or right of possession of a lien
24 against or reservation of title to the property and if, upon
25 public hearing, due notice of which having been given to the
26 Attorney General or the district attorney, the claimant
27 proves by competent evidence to the satisfaction of the court
28 that the property was lawfully acquired, possessed and used
29 by the claimant and that the property was unlawfully used by
30 a person other than the claimant and the unlawful use was

1 without the claimant's knowledge or consent, the court may
2 order the property returned or delivered to the claimant.
3 Absence of knowledge or consent must be reasonable under the
4 circumstances.

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