

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 557 Session of
2005

INTRODUCED BY GREENLEAF, COSTA, LEMMOND, O'PAKE, RAFFERTY,
BOSCOLA, PUNT, TARTAGLIONE, KITCHEN, RHOADES, WOZNIAK,
C. WILLIAMS AND FERLO, MARCH 31, 2005

REFERRED TO JUDICIARY, MARCH 31, 2005

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for weapons or
3 implements for escape and for contraband; and making a
4 conforming amendment.

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

7 Section 1. Sections 5122 and 5123 of Title 18 of the
8 Pennsylvania Consolidated Statutes are amended to read:

9 § 5122. Weapons [or implements for escape], implements of
10 escape or dangerous material.

11 (a) Offenses defined.--

12 (1) [A person commits a misdemeanor of the first] An
13 individual commits a felony of the second degree if he
14 [unlawfully introduces within a detention facility,
15 correctional institution or mental hospital, or unlawfully
16 provides an inmate thereof with any weapon, tool, implement,
17 or other thing] delivers to an inmate a weapon, implement of
18 escape, dangerous material or other item which may be used

1 for escape.

2 (2) An inmate commits a [misdemeanor of the first]
3 felony of the second degree if he [unlawfully procures, makes
4 or otherwise provides himself with, or unlawfully has in his
5 possession or under his control, any weapon, tool, implement
6 or other thing] possesses a weapon, implement of escape,
7 dangerous material or other item which may be used for
8 escape.

9 (b) [Definitions.--

10 (1) As used in this section, the word "unlawfully" means
11 surreptitiously or contrary to law, regulation or order of
12 the detaining authority.

13 (2) As used in this section, the word "weapon" means any
14 implement readily capable of lethal use and shall include any
15 firearm, ammunition, knife, dagger, razor, other cutting or
16 stabbing implement or club, including any item which has been
17 modified or adopted so that it can be used as a firearm,
18 ammunition, knife, dagger, razor, other cutting or stabbing
19 implement, or club. The word "firearm" includes an unloaded
20 firearm and the unassembled components of a firearm.]

21 Definitions.--As used in this section, the following words and
22 phrases shall have the meanings given to them in this
23 subsection:

24 "Dangerous material." Any incendiary material or device,
25 highly flammable or caustic liquid, explosive, bullet or other
26 material readily capable of causing death or serious bodily
27 injury.

28 "Delivers." The transfer of a weapon, implement of escape or
29 dangerous material to an inmate in a correctional institution,
30 mental hospital, youth development center, youth forestry camp

1 or other facility for the detention or incarceration of
2 individuals pursuant to court order, building appurtenant
3 thereto or any other place. The term includes taking into or
4 introducing a weapon, implement of escape or dangerous material
5 into a correctional institution, mental hospital, youth
6 development center, youth forestry camp or other facility for
7 the detention or incarceration of individuals pursuant to court
8 order, building appurtenant thereto, on land granted to, owned
9 by or leased by the Commonwealth or a political subdivision that
10 is related to the confinement of inmates. The term includes
11 putting a weapon, implement of escape or dangerous material in a
12 place where it may be obtained by an inmate.

13 "Implement of escape." A tool, implement, device, equipment
14 or other item that can facilitate, aid or conceal an escape or
15 attempted escape by an inmate.

16 "Inmate." An individual committed pursuant to a court order
17 to a correctional institution, mental hospital, youth
18 development center, youth forestry camp or other facility for
19 the detention or incarceration of individuals pursuant to a
20 court order, regardless of whether the individual is temporarily
21 absent due to medical treatment, transportation, court
22 appearance or other reason for a temporary absence.

23 "Weapon." An implement readily capable of lethal use,
24 including any firearm, knife, dagger, razor, other cutting or
25 stabbing implement or club. The term includes any item which has
26 been modified or adapted so that it can be used as a firearm,
27 knife, dagger, razor, other cutting or stabbing implement or
28 club. For purposes of this definition, the term "firearm"
29 includes an unloaded firearm or the unassembled components of a
30 firearm.

1 § 5123. Contraband.

2 (a) Controlled substance contraband to [confined persons]
3 inmates prohibited.--[A person] An individual commits a felony
4 of the second degree if he [sells, gives, transmits or furnishes
5 to any convict in a prison, or inmate in a mental hospital, or
6 gives away in or brings into any prison, mental hospital, or any
7 building appurtenant thereto, or on the land granted to or owned
8 or leased by the Commonwealth or county for the use and benefit
9 of the prisoners or inmates, or puts in any place where it may
10 be secured by a convict of a prison, inmate of a mental
11 hospital, or employee thereof, any] delivers to an inmate or
12 employee of a correctional institution, mental hospital, youth
13 development center, youth forestry camp or other facility for
14 the detention or incarceration of individuals pursuant to court
15 order, a controlled substance included in Schedules I through V
16 of the act of April 14, 1972 (P.L.233, No.64), known as The
17 Controlled Substance, Drug, Device and Cosmetic Act, (except the
18 ordinary hospital supply of the [prison or mental hospital]
19 correctional institution, mental hospital, youth development
20 center, youth forestry camp or other facility for the detention
21 or incarceration of individuals pursuant to court order) without
22 a written permit signed by the physician of such institution,
23 specifying the quantity and quality of the substance which may
24 be furnished to [any convict, inmate, or employee in the prison
25 or mental hospital,] the inmate, the name of the [prisoner,
26 inmate, or employee for whom,] inmate and the time when the same
27 may be furnished[, which permit shall be delivered to and kept
28 by the warden or superintendent of the prison or mental
29 hospital].

30 (a.1) Mandatory minimum penalty.--[Any person] An individual

1 convicted of a violation of subsection (a) shall be sentenced to
2 a minimum sentence of at least two years of total confinement,
3 notwithstanding any other provision of this title or any other
4 statute to the contrary. Nothing in this subsection shall
5 prevent the sentencing court from imposing a sentence greater
6 than that provided in this subsection, up to the maximum penalty
7 prescribed by this title for a felony of the second degree.
8 There shall be no authority in any court to impose on an
9 offender to which this subsection is applicable any lesser
10 sentence than provided for in subsection (a) or to place such
11 offender on probation or to suspend sentence. Sentencing
12 guidelines promulgated by the Pennsylvania Commission on
13 Sentencing shall not supersede the mandatory sentences provided
14 in this subsection. If a sentencing court refuses to apply this
15 subsection where applicable, the Commonwealth shall have the
16 right to appellate review of the action of the sentencing court.
17 The appellate court shall vacate the sentence and remand the
18 case to the sentencing court for imposition of a sentence in
19 accordance with this subsection if it finds that the sentence
20 was imposed in violation of this subsection. Nothing in this
21 subsection shall preclude prosecution for a more serious
22 violation of The Controlled Substance, Drug, Device and Cosmetic
23 Act.

24 (a.2) Possession of controlled substance contraband by an
25 inmate prohibited.--[A prisoner or] An inmate commits a felony
26 of the second degree if he unlawfully has in his possession or
27 under his control any controlled substance in violation of
28 section 13(a)(16) of The Controlled Substance, Drug, Device and
29 Cosmetic Act. For purposes of this subsection, no amount shall
30 be deemed de minimis.

1 (b) Money to inmates prohibited.--[A person] An individual
2 commits a misdemeanor of the [third] first degree if he [gives
3 or furnishes money to any inmate confined in a State or county]
4 delivers money to an inmate committed to a correctional
5 institution as defined in section 501 (relating to definitions),
6 provided notice of this prohibition is adequately posted at the
7 institution. [A person] An individual may, however, deposit
8 money with the superintendent, warden, or other authorized
9 individual in charge of a [State or county] correctional
10 institution for the benefit and use of an inmate confined
11 therein, which shall be credited to the inmate's account and
12 expended in accordance with the rules and regulations of the
13 institution. The person making the deposit shall be provided
14 with a written receipt for the amount deposited.

15 (c) [Contraband other than controlled substance.--A person]
16 Other contraband.--An individual commits a misdemeanor of the
17 first degree if he [sells, gives or furnishes to any convict in
18 a prison, or inmate in a mental hospital, or gives away in or
19 brings into any prison, mental hospital, or any building
20 appurtenant thereto, or on the land granted to or owned or
21 leased by the Commonwealth or county for the use and benefit of
22 the prisoners or inmates, or puts in any place where it may be
23 secured by a convict of a prison, inmate of a mental hospital,
24 or employee thereof,] delivers to an inmate:

25 (1) any kind of spirituous or fermented liquor, poison
26 or medicine [or poison] (except the ordinary hospital supply
27 of the [prison or mental hospital] correctional institution,
28 mental hospital, youth development center, youth forestry
29 camp or other facility for the detention or incarceration of
30 individuals pursuant to court order) without a written permit

1 signed by the physician of such institution, specifying the
2 quantity and quality of the substance which may be furnished
3 to [any convict, inmate or employee in the prison or mental
4 hospital, the name of the prisoner, inmate or employee for
5 whom,] the inmate, the name of the inmate and the time when
6 the same may be furnished[, which permit shall be delivered
7 to and kept by the warden or superintendent of the prison or
8 mental hospital.]; or

9 (2) an unauthorized item that is readily capable of
10 concealing a controlled substance contraband, weapon,
11 dangerous material, telecommunications device, implement of
12 escape or other item which may be used for escape.

13 (c.1) Telecommunication devices to inmates prohibited.--A
14 person commits a misdemeanor of the first degree if, without the
15 written permission of superintendent, warden or otherwise
16 authorized individual in charge of a correctional institution,
17 prison, jail, detention facility or mental hospital, he sells,
18 gives or furnishes to any inmate in a correctional institution,
19 prison, jail, detention facility or mental hospital, or any
20 building appurtenant thereto, or puts in any place where it may
21 be obtained by an inmate of a correctional institution, prison,
22 jail, detention facility or mental hospital, any
23 telecommunication device.

24 (c.2) Possession of telecommunication devices by inmates
25 prohibited.--An inmate in a correctional institution, prison,
26 jail, detention facility or mental hospital, or any building
27 appurtenant thereto, commits a misdemeanor of the first degree
28 if he has in his possession any telecommunication device without
29 the written permission of the superintendent, warden or
30 otherwise authorized individual in charge of a correctional

1 institution, prison, jail, detention facility or mental
2 hospital.

3 (c.3) Possession of money or other contraband by an
4 inmate.--An inmate commits a misdemeanor of the first degree if
5 he possesses money or other contraband, the delivery of which is
6 prohibited by this section.

7 (d) Drug-sniffing animals.--Any jail or prison may use dogs
8 or other animals trained to sniff controlled substances or other
9 contraband for such purposes in or on any part of the jail or
10 prison at any time.

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

14 "Dangerous material." Any incendiary material or device,
15 highly flammable or caustic liquid, explosive, bullet or other
16 material readily capable of causing death or serious bodily
17 injury.

18 "Delivers." The transfer of a weapon, implement of escape or
19 dangerous material to an inmate in a correctional institution,
20 mental hospital, youth development center, youth forestry camp
21 or other facility for the detention or incarceration of
22 individuals pursuant to court order, building appurtenant
23 thereto or any other place. The term includes taking into or
24 introducing a weapon, implement of escape or dangerous material
25 into a correctional institution, mental hospital, youth
26 development center, youth forestry camp or other facility for
27 the detention or incarceration of individuals pursuant to court
28 order, building appurtenant thereto, on land granted to, owned
29 by or leased by the Commonwealth or a political subdivision that
30 is related to the confinement of inmates. The term includes

1 putting a weapon, implement of escape or dangerous material in a
2 place where it may be obtained by an inmate.

3 "Implement of escape." A tool, implement, device, equipment
4 or other item that can facilitate, aid or conceal an escape or
5 attempted escape by an inmate.

6 "Inmate." A male or female offender who is committed to,
7 under sentence to or confined in a penal or correctional
8 institution.

9 "Telecommunication device." Any type of instrument, device,
10 machine or equipment which is capable of transmitting
11 telephonic, electronic, digital, cellular or radio
12 communications or any part of such instrument, device, machine
13 or equipment which is capable of facilitating the transmission
14 of telephonic, electronic, digital, cellular or radio
15 communications. The term shall include, but not be limited to,
16 cellular phones, digital phones and modem equipment devices.

17 "Weapon." An implement readily capable of lethal use,
18 including any firearm, knife, dagger, razor, other cutting or
19 stabbing implement or club. The term includes any item which has
20 been modified or adapted so that it can be used as a firearm,
21 knife, dagger, razor, other cutting or stabbing implement or
22 club. For purposes of this definition, the term "firearm"
23 includes an unloaded firearm or the unassembled components of a
24 firearm.

25 Section 2. Section 6105(b) of Title 18 is amended to read:

26 § 6105. Persons not to possess, use, manufacture, control, sell
27 or transfer firearms.

28 * * *

29 (b) Enumerated offenses.--The following offenses shall apply
30 to subsection (a):

1 Section 908 (relating to prohibited offensive weapons).
2 Section 911 (relating to corrupt organizations).
3 Section 912 (relating to possession of weapon on school
4 property).
5 Section 2502 (relating to murder).
6 Section 2503 (relating to voluntary manslaughter).
7 Section 2504 (relating to involuntary manslaughter) if
8 the offense is based on the reckless use of a firearm.
9 Section 2702 (relating to aggravated assault).
10 Section 2703 (relating to assault by prisoner).
11 Section 2704 (relating to assault by life prisoner).
12 Section 2709.1 (relating to stalking).
13 Section 2716 (relating to weapons of mass destruction).
14 Section 2901 (relating to kidnapping).
15 Section 2902 (relating to unlawful restraint).
16 Section 2910 (relating to luring a child into a motor
17 vehicle).
18 Section 3121 (relating to rape).
19 Section 3123 (relating to involuntary deviate sexual
20 intercourse).
21 Section 3125 (relating to aggravated indecent assault).
22 Section 3301 (relating to arson and related offenses).
23 Section 3302 (relating to causing or risking
24 catastrophe).
25 Section 3502 (relating to burglary).
26 Section 3503 (relating to criminal trespass) if the
27 offense is graded a felony of the second degree or higher.
28 Section 3701 (relating to robbery).
29 Section 3702 (relating to robbery of motor vehicle).
30 Section 3921 (relating to theft by unlawful taking or

1 disposition) upon conviction of the second felony offense.

2 Section 3923 (relating to theft by extortion) when the
3 offense is accompanied by threats of violence.

4 Section 3925 (relating to receiving stolen property) upon
5 conviction of the second felony offense.

6 Section 4912 (relating to impersonating a public servant)
7 if the person is impersonating a law enforcement officer.

8 Section 4952 (relating to intimidation of witnesses or
9 victims).

10 Section 4953 (relating to retaliation against witness or
11 victim).

12 Section 5121 (relating to escape).

13 Section 5122 (relating to weapons [or implements for
14 escape], implements of escape or dangerous material).

15 Section 5501(3) (relating to riot).

16 Section 5515 (relating to prohibiting of paramilitary
17 training).

18 Section 5516 (relating to facsimile weapons of mass
19 destruction).

20 Section 6110.1 (relating to possession of firearm by
21 minor).

22 Section 6301 (relating to corruption of minors).

23 Section 6302 (relating to sale or lease of weapons and
24 explosives).

25 Any offense equivalent to any of the above-enumerated
26 offenses under the prior laws of this Commonwealth or any
27 offense equivalent to any of the above-enumerated offenses
28 under the statutes of any other state or of the United
29 States.

30 * * *

1 Section 3. This act shall take effect in 60 days.