

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

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF  
REPRESENTATIVES, AS AMENDED, OCTOBER 17, 2006

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, PROVIDING FOR THE OFFENSE OF VIOLENCE <—  
3 AGAINST A LAW ENFORCEMENT OFFICER; further providing for  
4 weapons or implements for escape and for contraband; and  
5 making a conforming amendment.

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

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

10 SECTION 1. TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED <—  
11 STATUTES IS AMENDED BY ADDING A SECTION TO READ:

12 § 2702.1. VIOLENCE AGAINST A LAW ENFORCEMENT OFFICER.

13 (A) OFFENSE DEFINED.--A PERSON COMMITS THE OFFENSE OF  
14 VIOLENCE AGAINST A LAW ENFORCEMENT OFFICER IF THE PERSON:

15 (1) COMMITS AN OFFENSE UNDER SECTIONS 2502 (RELATING TO  
16 MURDER), 2503 (RELATING TO VOLUNTARY MANSLAUGHTER), 2504  
17 (RELATING TO INVOLUNTARY MANSLAUGHTER), 2702 (RELATING TO  
18 AGGRAVATED ASSAULT) OR 2705 (RELATING TO RECKLESSLY

1 ENDANGERING ANOTHER PERSON) AGAINST A LAW ENFORCEMENT OFFICER  
2 WHILE THE LAW ENFORCEMENT OFFICER IS ACTING IN THE  
3 PERFORMANCE OF THE LAW ENFORCEMENT OFFICER'S DUTY.

4 (2) KNOWS THE VICTIM IS A LAW ENFORCEMENT OFFICER.

5 (B) GRADING AND PENALTY.--

6 (1) EXCEPT AS OTHERWISE PROVIDED UNDER THIS SUBSECTION,  
7 AN OFFENSE UNDER THIS SECTION SHALL BE CLASSIFIED ONE DEGREE  
8 HIGHER THAN THE CLASSIFICATION OF THE SPECIFIED OFFENSE SET  
9 FORTH UNDER SECTION 106 (RELATING TO CLASSES OF OFFENSES).

10 (2) IF THE SPECIFIED OFFENSE IS A FELONY OF THE FIRST  
11 DEGREE OR MURDER IN THE THIRD DEGREE, A PERSON CONVICTED OF  
12 AN OFFENSE UNDER THIS SECTION SHALL BE SENTENCED TO A TERM OF  
13 IMPRISONMENT FIXED BY THE COURT AT NOT MORE THAN 40 YEARS.

14 (3) IF THE SPECIFIED OFFENSE IS MURDER IN THE SECOND  
15 DEGREE, A PERSON CONVICTED OF AN OFFENSE UNDER THIS SECTION  
16 SHALL BE SENTENCED TO A TERM OF LIFE IMPRISONMENT.

17 (4) IF THE SPECIFIED OFFENSE IS MURDER IN THE FIRST  
18 DEGREE, A PERSON CONVICTED OF AN OFFENSE UNDER THIS SECTION  
19 SHALL BE SENTENCED UNDER 42 PA.C.S. § 9711 (RELATING TO  
20 SENTENCING PROCEDURE FOR MURDER OF THE FIRST DEGREE).

21 (C) CONSECUTIVE SENTENCES.--THE COURT SHALL ORDER THAT ANY  
22 SENTENCE IMPOSED FOR AN OFFENSE UNDER THIS SECTION BE SERVED  
23 CONSECUTIVELY WITH ANY OTHER SENTENCE IMPOSED FOR AN OFFENSE  
24 ARISING FROM THE SAME CRIMINAL EPISODE.

25 (D) DEFINITION.--AS USED IN THIS SECTION, THE TERM "LAW  
26 ENFORCEMENT OFFICER" MEANS ANY PERSON WHO BY VIRTUE OF THE  
27 PERSON'S OFFICE OR PUBLIC EMPLOYMENT IS VESTED BY LAW TO MAKE  
28 ARRESTS FOR OFFENSES, WHETHER THAT DUTY EXTENDS TO ALL OFFENSES  
29 OR IS LIMITED TO SPECIFIC OFFENSES.

30 SECTION 1.1. SECTIONS 5122 AND 5123 OF TITLE 18 ARE AMENDED

1 TO READ:

2 § 5122. Weapons [or implements for escape], implements of  
3 escape or dangerous material.

4 (a) Offenses defined.--

5 (1) [A person commits a misdemeanor of the first] An  
6 individual commits a felony of the second degree if he  
7 [unlawfully introduces within a detention facility,  
8 correctional institution or mental hospital, or unlawfully  
9 provides an inmate thereof with any weapon, tool, implement,  
10 or other thing] delivers to a confined person a weapon,  
11 implement of escape, dangerous material or other item which  
12 may be used for escape.

13 (2) [An inmate] A confined person commits a [misdemeanor  
14 of the first] felony of the second degree if he [unlawfully  
15 procures, makes or otherwise provides himself with, or  
16 unlawfully has in his possession or under his control, any  
17 weapon, tool, implement or other thing] possesses a weapon,  
18 implement of escape, dangerous material or other item which  
19 may be used for escape.

20 (b) [Definitions.--

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

24 (2) As used in this section, the word "weapon" means any  
25 implement readily capable of lethal use and shall include any  
26 firearm, ammunition, knife, dagger, razor, other cutting or  
27 stabbing implement or club, including any item which has been  
28 modified or adopted so that it can be used as a firearm,  
29 ammunition, knife, dagger, razor, other cutting or stabbing  
30 implement, or club. The word "firearm" includes an unloaded

firearm and the unassembled components of a firearm.]

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

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

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

"Delivers." The transfer of a weapon, implement of escape or dangerous material to a confined person in a correctional institution, mental hospital, youth development center, youth forestry camp or other facility for the detention or incarceration of individuals pursuant to court order, building appurtenant thereto or any other place. The term includes taking into or introducing a weapon, implement of escape or dangerous material into a correctional institution, mental hospital, youth development center, youth forestry camp or other facility for the detention or incarceration of individuals pursuant to court order, building appurtenant thereto, on land granted to, owned by or leased by the Commonwealth or a political subdivision that is related to the confinement of persons. The term includes putting a weapon, implement of escape or dangerous material in a place where it may be obtained by a confined person.

1 "Implement of escape." A tool, implement, device, equipment  
2 or other item that can facilitate, aid or conceal an escape or  
3 attempted escape by a confined person.

4 "Weapon." An implement readily capable of lethal use,  
5 including any firearm, knife, dagger, razor, other cutting or  
6 stabbing implement or club. The term includes any item which has  
7 been modified or adapted so that it can be used as a firearm,  
8 knife, dagger, razor, other cutting or stabbing implement or  
9 club. For purposes of this definition, the term "firearm"  
10 includes an unloaded firearm or the unassembled components of a  
11 firearm.

12 § 5123. Contraband.

13 (a) Controlled substance contraband to confined persons  
14 prohibited.--[A person] An individual commits a felony of the  
15 second degree if he [sells, gives, transmits or furnishes to any  
16 convict in a prison, or inmate in a mental hospital, or gives  
17 away in or brings into any prison, mental hospital, or any  
18 building appurtenant thereto, or on the land granted to or owned  
19 or leased by the Commonwealth or county for the use and benefit  
20 of the prisoners or inmates, or puts in any place where it may  
21 be secured by a convict of a prison, inmate of a mental  
22 hospital, or employee thereof, any] delivers to a confined  
23 person or employee of a correctional institution, mental  
24 hospital, youth development center, youth forestry camp or other  
25 facility for the detention or incarceration of individuals  
26 pursuant to court order, a controlled substance included in  
27 Schedules I through V of the act of April 14, 1972 (P.L.233,  
28 No.64), known as The Controlled Substance, Drug, Device and  
29 Cosmetic Act, (except the ordinary hospital supply of the  
30 [prison or mental hospital] correctional institution, mental

1 hospital, youth development center, youth forestry camp or other  
2 facility for the detention or incarceration of individuals  
3 pursuant to court order) without a written permit signed by the  
4 physician of such institution, specifying the quantity and  
5 quality of the substance which may be furnished to [any convict,  
6 inmate, or employee in the prison or mental hospital,] the  
7 confined person, the name of the [prisoner, inmate, or employee  
8 for whom,] confined person and the time when the same may be  
9 furnished[, which permit shall be delivered to and kept by the  
10 warden or superintendent of the prison or mental hospital].

11 (a.1) Mandatory minimum penalty.--[Any person] An individual  
12 convicted of a violation of subsection (a) shall be sentenced to  
13 a minimum sentence of at least two years of total confinement,  
14 notwithstanding any other provision of this title or any other  
15 statute to the contrary. Nothing in this subsection shall  
16 prevent the sentencing court from imposing a sentence greater  
17 than that provided in this subsection, up to the maximum penalty  
18 prescribed by this title for a felony of the second degree.

19 There shall be no authority in any court to impose on an  
20 offender to which this subsection is applicable any lesser  
21 sentence than provided for in subsection (a) or to place such  
22 offender on probation or to suspend sentence. Sentencing  
23 guidelines promulgated by the Pennsylvania Commission on  
24 Sentencing shall not supersede the mandatory sentences provided  
25 in this subsection. If a sentencing court refuses to apply this  
26 subsection where applicable, the Commonwealth shall have the  
27 right to appellate review of the action of the sentencing court.  
28 The appellate court shall vacate the sentence and remand the  
29 case to the sentencing court for imposition of a sentence in  
30 accordance with this subsection if it finds that the sentence

1 was imposed in violation of this subsection. Nothing in this  
2 subsection shall preclude prosecution for a more serious  
3 violation of The Controlled Substance, Drug, Device and Cosmetic  
4 Act.

5 (a.2) Possession of controlled substance contraband by  
6 [inmate] a confined person prohibited.--[A prisoner or inmate] A  
7 confined person commits a felony of the second degree if he  
8 unlawfully has in his possession or under his control any  
9 controlled substance in violation of section 13(a)(16) of The  
10 Controlled Substance, Drug, Device and Cosmetic Act. For  
11 purposes of this subsection, no amount shall be deemed de  
12 minimis.

13 (b) Money to inmates prohibited.--[A person] An individual  
14 commits a misdemeanor of the [third] first degree if he [gives  
15 or furnishes money to any inmate confined in a State or county]  
16 delivers money to an inmate committed to a correctional  
17 institution as defined in section 501 (relating to definitions),  
18 provided notice of this prohibition is adequately posted at the  
19 institution. [A person] An individual may, however, deposit  
20 money with the superintendent, warden, or other authorized  
21 individual in charge of a [State or county] correctional  
22 institution for the benefit and use of an inmate confined  
23 therein, which shall be credited to the inmate's account and  
24 expended in accordance with the rules and regulations of the  
25 institution. The person making the deposit shall be provided  
26 with a written receipt for the amount deposited.

27 (c) [Contraband other than controlled substance.--A person]  
28 Other contraband.--An individual commits a misdemeanor of the  
29 first degree if he [sells, gives or furnishes to any convict in  
30 a prison, or inmate in a mental hospital, or gives away in or

1 brings into any prison, mental hospital, or any building  
2 appurtenant thereto, or on the land granted to or owned or  
3 leased by the Commonwealth or county for the use and benefit of  
4 the prisoners or inmates, or puts in any place where it may be  
5 secured by a convict of a prison, inmate of a mental hospital,  
6 or employee thereof,] delivers to a confined person:

7       (1) any kind of spirituous or fermented liquor, poison  
8 or medicine [or poison] (except the ordinary hospital supply  
9 of the [prison or mental hospital] correctional institution,  
10 mental hospital, youth development center, youth forestry  
11 camp or other facility for the detention or incarceration of  
12 individuals pursuant to court order) without a written permit  
13 signed by the physician of such institution, specifying the  
14 quantity and quality of the substance which may be furnished  
15 to [any convict, inmate or employee in the prison or mental  
16 hospital, the name of the prisoner, inmate or employee for  
17 whom,] the confined person, the name of the confined person  
18 and the time when the same may be furnished[, which permit  
19 shall be delivered to and kept by the warden or  
20 superintendent of the prison or mental hospital.]; or

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

25       (c.1) Telecommunication devices to [inmates] confined  
26 persons prohibited.--A person commits a misdemeanor of the first  
27 degree if, without the written permission of superintendent,  
28 warden or otherwise authorized individual in charge of a  
29 correctional institution, prison, jail, detention facility or  
30 mental hospital, he sells, gives or furnishes to any [inmate]



1 confined person in a correctional institution, prison, jail,  
2 detention facility or mental hospital, or any building  
3 appurtenant thereto, or puts in any place where it may be  
4 obtained by [an inmate] a confined person of a correctional  
5 institution, prison, jail, detention facility or mental  
6 hospital, any telecommunication device.

7 (c.2) Possession of telecommunication devices by [inmates]  
8 confined persons prohibited.--[An inmate] A confined person in a  
9 correctional institution, prison, jail, detention facility or  
10 mental hospital, or any building appurtenant thereto, commits a  
11 misdemeanor of the first degree if he has in his possession any  
12 telecommunication device without the written permission of the  
13 superintendent, warden or otherwise authorized individual in  
14 charge of a correctional institution, prison, jail, detention  
15 facility or mental hospital.

16 (c.3) Possession of money or other contraband by a confined  
17 person.--A confined person commits a misdemeanor of the first  
18 degree if he possesses money or other contraband, the delivery  
19 of which is prohibited by this section.

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

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

27 "Confined person." An individual committed pursuant to a  
28 court order to a correctional institution, mental hospital,  
29 youth development center, youth forestry camp or other facility  
30 for the detention or incarceration of individuals pursuant to a

1 court order, regardless of whether the individual is temporarily  
2 absent due to medical treatment, transportation, court  
3 appearance or other reason for a temporary absence.

4 "Dangerous material." Any incendiary material or device,  
5 highly flammable or caustic liquid, explosive, bullet or other  
6 material readily capable of causing death or serious bodily  
7 injury.

8 "Delivers." The transfer of a weapon, implement of escape or  
9 dangerous material to a confined person in a correctional  
10 institution, mental hospital, youth development center, youth  
11 forestry camp or other facility for the detention or  
12 incarceration of individuals pursuant to court order, building  
13 appurtenant thereto or any other place. The term includes taking  
14 into or introducing a weapon, implement of escape or dangerous  
15 material into a correctional institution, mental hospital, youth  
16 development center, youth forestry camp or other facility for  
17 the detention or incarceration of individuals pursuant to court  
18 order, building appurtenant thereto, on land granted to, owned  
19 by or leased by the Commonwealth or a political subdivision that  
20 is related to the confinement of persons. The term includes  
21 putting a weapon, implement of escape or dangerous material in a  
22 place where it may be obtained by a confined person.

23 "Implement of escape." A tool, implement, device, equipment  
24 or other item that can facilitate, aid or conceal an escape or  
25 attempted escape by a confined person.

26 ["Inmate." A male or female offender who is committed to,  
27 under sentence to or confined in a penal or correctional  
28 institution.]

29 "Telecommunication device." Any type of instrument, device,  
30 machine or equipment which is capable of transmitting

1 telephonic, electronic, digital, cellular or radio  
2 communications or any part of such instrument, device, machine  
3 or equipment which is capable of facilitating the transmission  
4 of telephonic, electronic, digital, cellular or radio  
5 communications. The term shall include, but not be limited to,  
6 cellular phones, digital phones and modem equipment devices.

7 "Weapon." An implement readily capable of lethal use,  
8 including any firearm, knife, dagger, razor, other cutting or  
9 stabbing implement or club. The term includes any item which has  
10 been modified or adapted so that it can be used as a firearm,  
11 knife, dagger, razor, other cutting or stabbing implement or  
12 club. For purposes of this definition, the term "firearm"  
13 includes an unloaded firearm or the unassembled components of a  
14 firearm.

15 Section 2. Section 6105(b) of Title 18 is amended to read:  
16 § 6105. Persons not to possess, use, manufacture, control, sell  
17 or transfer firearms.

18 \* \* \*

19 (b) Enumerated offenses.--The following offenses shall apply  
20 to subsection (a):

21 Section 908 (relating to prohibited offensive weapons).

22 Section 911 (relating to corrupt organizations).

23 Section 912 (relating to possession of weapon on school  
24 property).

25 Section 2502 (relating to murder).

26 Section 2503 (relating to voluntary manslaughter).

27 Section 2504 (relating to involuntary manslaughter) if  
28 the offense is based on the reckless use of a firearm.

29 Section 2702 (relating to aggravated assault).

30 Section 2703 (relating to assault by prisoner).

1           Section 2704 (relating to assault by life prisoner).  
2           Section 2709.1 (relating to stalking).  
3           Section 2716 (relating to weapons of mass destruction).  
4           Section 2901 (relating to kidnapping).  
5           Section 2902 (relating to unlawful restraint).  
6           Section 2910 (relating to luring a child into a motor  
7 vehicle).  
8           Section 3121 (relating to rape).  
9           Section 3123 (relating to involuntary deviate sexual  
10 intercourse).  
11          Section 3125 (relating to aggravated indecent assault).  
12          Section 3301 (relating to arson and related offenses).  
13          Section 3302 (relating to causing or risking  
14 catastrophe).  
15          Section 3502 (relating to burglary).  
16          Section 3503 (relating to criminal trespass) if the  
17 offense is graded a felony of the second degree or higher.  
18          Section 3701 (relating to robbery).  
19          Section 3702 (relating to robbery of motor vehicle).  
20          Section 3921 (relating to theft by unlawful taking or  
21 disposition) upon conviction of the second felony offense.  
22          Section 3923 (relating to theft by extortion) when the  
23 offense is accompanied by threats of violence.  
24          Section 3925 (relating to receiving stolen property) upon  
25 conviction of the second felony offense.  
26          Section 4912 (relating to impersonating a public servant)  
27 if the person is impersonating a law enforcement officer.  
28          Section 4952 (relating to intimidation of witnesses or  
29 victims).  
30          Section 4953 (relating to retaliation against witness or

1 victim).

2 Section 5121 (relating to escape).

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

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

6 Section 5515 (relating to prohibiting of paramilitary  
7 training).

8 Section 5516 (relating to facsimile weapons of mass  
9 destruction).

10 Section 6110.1 (relating to possession of firearm by  
11 minor).

12 Section 6301 (relating to corruption of minors).

13 Section 6302 (relating to sale or lease of weapons and  
14 explosives).

15 Any offense equivalent to any of the above-enumerated  
16 offenses under the prior laws of this Commonwealth or any  
17 offense equivalent to any of the above-enumerated offenses  
18 under the statutes of any other state or of the United  
19 States.

20 \* \* \*

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