

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1436 Session of 2011

INTRODUCED BY TOOHL, BOBACK, AUMENT, BLOOM, BOYD, CUTLER,  
HICKERNELL, KAUFFMAN, METZGAR, SAYLOR, SCAVELLO, STEPHENS,  
REED AND WATSON, MAY 3, 2011

REFERRED TO COMMITTEE ON JUDICIARY, MAY 3, 2011

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and  
2 Judicial Procedure) of the Pennsylvania Consolidated  
3 Statutes, providing for restitution for official oppression;  
4 further providing for the offense of official oppression; and  
5 providing for sentencing for official oppression.

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

8 Section 1. Title 18 of the Pennsylvania Consolidated  
9 Statutes is amended by adding a section to read:

10 § 1107.2. Restitution for official oppression.

11 (a) Restitution.--The court may, in addition to any other  
12 restitution sentence or order authorized by law, sentence a  
13 person convicted of a violation of section 5301 (relating to  
14 official oppression) to make restitution for all reasonable  
15 expenses incurred by the victim or the victim's behalf:

16 (1) to investigate the circumstances surrounding the  
17 defendant's violation of section 5301;

18 (2) to bring or defend civil or criminal actions related  
19 to the defendant's violation of section 5301; or

1       (3) to take other corrective or remedial efforts in  
2       connection with the defendant's violation of section 5301.

3       (b) Types of expenses.--The types of expenses that may be  
4       recoverable under this section include, but are not limited to:

5           (1) Attorney fees.

6           (2) Court costs and filing fees.

7           (3) Any other expense the court deems proper.

8       Section 2. Section 5301 of Title 18 is amended to read:

9       § 5301. Official oppression.

10       A person acting or purporting to act in an official capacity  
11       or taking advantage of such actual or purported capacity commits  
12       a [misdemeanor of the second degree if, knowing that his conduct  
13       is illegal, he] felony of the third degree if he knowingly or  
14       recklessly engages in any of the following conduct:

15           (1) unlawfully subjects another to arrest, detention,  
16       search, seizure, mistreatment, dispossession, assessment,  
17       lien or other infringement of personal or property rights; or

18           (2) unlawfully denies or impedes another in the exercise  
19       or enjoyment of any right, privilege, power or immunity.

20       Section 3. Title 42 is amended by adding a section to read:

21       § 9720.3. Sentencing for official oppression.

22       (a) Mandatory sentence.--A person who is convicted in any  
23       court of this Commonwealth of 18 Pa.C.S. § 5301 (relating to  
24       official oppression) shall be sentenced to a mandatory minimum  
25       sentence of two years, notwithstanding any other provision of  
26       this title or other statute to the contrary.

27       (b) Proof at sentencing.--Provisions of this section shall  
28       not be an element of the crime and notice thereof to the  
29       defendant and shall not be required prior to conviction, but  
30       reasonable notice of the Commonwealth's intention to proceed

1 under this section shall be provided after conviction and before  
2 sentencing. The applicability of this section shall be  
3 determined at sentencing. The court shall consider any evidence  
4 presented at trial and shall afford the Commonwealth and the  
5 defendant an opportunity to present any necessary additional  
6 evidence and shall determine, by a preponderance of the  
7 evidence, if this section is applicable.

8 (c) Authority of court in sentencing.--There shall be no  
9 authority in any court to impose on an offender to which this  
10 section is applicable any lesser sentence than provided for in  
11 subsection (a) or to place such offender on probation or to  
12 suspend sentence. Nothing in this section shall prevent the  
13 sentencing court from imposing a sentence greater than that  
14 provided in this section. Sentencing guidelines promulgated by  
15 the Pennsylvania Commission on Sentencing shall not supersede  
16 the mandatory sentences provided in this section.

17 (d) Appeal by Commonwealth.--If a sentencing court refuses  
18 to apply this section where applicable, the Commonwealth shall  
19 have the right to appellate review of the action of the  
20 sentencing court. The appellate court shall vacate the sentence  
21 and remand the case to the sentencing court for imposition of a  
22 sentence in accordance with this section if it finds that the  
23 sentence was imposed in violation of this section.

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