

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 305 Session of 2013

INTRODUCED BY EICHELBERGER, GREENLEAF, VULAKOVICH, STACK,  
ALLOWAY, FOLMER, RAFFERTY, BAKER, PILEGGI AND BREWSTER,  
JANUARY 25, 2013

REFERRED TO JUDICIARY, JANUARY 25, 2013

AN ACT

1 Amending Titles 42 (Judiciary and Judicial Procedure) and 61  
2 (Prisons and Parole) of the Pennsylvania Consolidated  
3 Statutes, in other criminal provisions, further providing for  
4 supervisory relationship to offenders; and, in Pennsylvania  
5 Board of Probation and Parole, further providing for  
6 supervisory relationship to offenders.

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

9 Section 1. Section 9912 of Title 42 of the Pennsylvania  
10 Consolidated Statutes is amended by adding a subsection to read:  
11 § 9912. Supervisory relationship to offenders.

12 \* \* \*

13 (e.1) Status of seized items.--

14 (1) To protect the public from its illicit introduction,  
15 use or movement, all contraband that is seized from an  
16 offender shall be considered abandoned and unclaimed, and no  
17 property right may exist in it, except as otherwise provided  
18 in this section, if the following criteria have been met:

19 (i) The parolee or probationer from whom the item

1 was seized is no longer under the jurisdiction of the  
2 court.

3 (ii) Two years have elapsed from the date the  
4 parolee or probationer was no longer under the  
5 jurisdiction of the court under subparagraph (i).

6 (iii) Notice that the item will be declared  
7 abandoned was mailed to the last known address of the  
8 parolee or probationer from whom the item was seized at  
9 least 60 days prior to the date the item is to be  
10 declared abandoned.

11 (iv) No other claimant of the item has notified the  
12 county adult probation and parole department of his claim  
13 or is known to the county adult probation and parole  
14 department.

15 (v) The item has not been accepted by the Department  
16 of Treasury under Article XIII.1 of the act of April 9,  
17 1929 (P.L.343, No.176), known as The Fiscal Code.

18 (vi) The item has not been forfeited in accordance  
19 with any forfeiture statute, including, but not limited  
20 to, Chapter 68 (relating to forfeitures) and as permitted  
21 by Pennsylvania common law.

22 (2) Contraband seized under this section may not be  
23 subject to replevin, but shall be deemed to be in the custody  
24 of the county adult probation and parole department. The  
25 county adult probation and parole department shall tag and  
26 secure the contraband at a place designated by it for such  
27 time as is necessary to secure its use as evidence in a  
28 violation, revocation or criminal proceeding. In no event may  
29 the county adult probation and parole department retain the  
30 property for a period of less than 180 days after the hearing

1 conducted under paragraph (3).

2 (3) (i) No later than the time of the first-level  
3 hearing to determine whether probable cause exists to  
4 believe that a violation of probation, parole or  
5 intermediate punishment has been committed, the county  
6 adult probation and parole department shall provide  
7 notice to the offender that abandonment will be sought if  
8 the offender does not claim the seized contraband within  
9 two years after sentence completion.

10 (ii) If the hearing is waived or there is a new  
11 criminal charge arising from the incident that included  
12 the seizure of the contraband, then notice under this  
13 paragraph shall be given at least five days before an  
14 abandonment hearing is held and the hearing shall be  
15 scheduled by the court within a reasonable time.

16 (4) If it has been determined that property is  
17 contraband that shall be declared abandoned, the contraband  
18 shall be retained by the county adult probation and parole  
19 department until all appeal periods are exhausted to provide  
20 an opportunity for any additional parties to assert a claim  
21 of ownership or lienhold interest in the contraband. If the  
22 county adult probation and parole department receives notice  
23 of such a claim, the claimant or claimants shall be provided  
24 a hearing pursuant to paragraph (3).

25 (5) Whenever contraband is declared abandoned under this  
26 subchapter, title to the contraband shall be transferred to  
27 the county adult probation and parole department. After the  
28 expiration of the necessary time period, the county adult  
29 probation and parole department shall be entitled to any or  
30 all of the following:

1           (i) Retain the contraband for official use.

2           (ii) Destroy the contraband.

3           (iii) Donate the contraband to a nonprofit  
4           organization or governmental entity.

5           (iv) Sell any contraband that is not required to be  
6           destroyed by law.

7           (v) If the item is of de minimus value, as  
8           determined by the county adult probation and parole  
9           department, dispose of the item, without sale.

10          (6) The county treasurer of each county shall establish  
11          and administer a community correction forfeiture fund  
12          consisting of all cash or proceeds obtained under this  
13          section. The county treasurer shall disburse money from this  
14          fund only at the discretion of the president judge of the  
15          court of common pleas, subject to paragraph (7).

16          (7) Cash or proceeds generated by the sale of any  
17          abandoned contraband shall first be made available to satisfy  
18          any restitution owed by the offender to crime victims who are  
19          known at the time of the seizure by the Pennsylvania  
20          Commission on Crime and Delinquency's Office of Victim  
21          Services or by the courts of the Commonwealth where the  
22          offender was sentenced.

23          (8) The county adult probation and parole department and  
24          its employees shall be immune from liability for good faith  
25          conduct under this section.

26          (9) The Pennsylvania Board of Probation and Parole may  
27          enact regulations that are necessary to implement this  
28          subsection on a uniform basis throughout this Commonwealth.  
29          If regulations are promulgated, a county adult probation and  
30          parole department must comply with the regulations.

1       (10) The provisions set forth in this subsection shall  
2 apply to all contraband seized after the effective date of  
3 this subsection.

4       (11) Contraband seized prior to the effective date of  
5 this subsection may be disposed of in the manner set forth in  
6 paragraph (5) after notice is given to the offender from whom  
7 it was seized and any claimant known to the county adult  
8 probation and parole department. The county adult probation  
9 and parole department shall provide the notice within a  
10 reasonable time prior to holding a hearing at which  
11 abandonment shall be determined.

12       (12) (i) An appeal of an abandonment determination may  
13 be made by filing an appeal with the court of common  
14 pleas. The appeal must be received by the court of common  
15 pleas within 30 days of the mailing date of the county  
16 adult probation and parole department's order.

17       (ii) When a timely appeal of an abandonment  
18 determination has been filed, the abandonment may not be  
19 deemed final for purpose of appeal to a court until the  
20 court has mailed its decision on the appeal.

21       (iii) The scope of review of an appeal shall be  
22 limited to whether the decision is supported by  
23 substantial evidence, an error of law has been committed  
24 or there has been a violation of constitutional law.

25       (iv) The failure of an appeal to present with  
26 accuracy, brevity, clearness and specificity whatever is  
27 essential to a ready and adequate understanding of the  
28 factual and legal points requiring consideration shall be  
29 a sufficient reason for denying the appeal.

30       (v) A second or subsequent appeal and an appeal that

1 is untimely filed under this paragraph shall not be  
2 received.

3 (vi) The procedure for appeal contained in this  
4 subsection may not be construed to alter or replace any  
5 procedures provided by law for the timely filing of  
6 appeals to appellate courts.

7 (13) The county adult probation and parole department  
8 shall annually post a report specifying the abandoned  
9 property or proceeds of the abandoned property obtained under  
10 this section on the county's publicly accessible Internet  
11 website and make the report available as a public document.  
12 The report shall give an accounting of all proceeds derived  
13 from the sale of abandoned property and the use made of  
14 unsold abandoned property.

15 \* \* \*

16 Section 2. Section 6153 of Title 61 is amended by adding a  
17 subsection to read:

18 § 6153. Supervisory relationship to offenders.

19 \* \* \*

20 (g) Status of seized items.--

21 (1) To protect the public from its illicit introduction,  
22 use or movement, all contraband that is seized from an  
23 offender shall be considered abandoned and unclaimed, and no  
24 property right shall exist in it, except as otherwise  
25 provided in this section, if the following criteria have been  
26 met:

27 (i) The parolee or probationer from whom the item  
28 was seized is no longer under the jurisdiction of the  
29 court or the board.

30 (ii) Two years have elapsed from the date the

1 parolee or probationer was no longer under the  
2 jurisdiction of the court or the board under subparagraph  
3 (i).

4 (iii) Notice that the item will be declared  
5 abandoned was mailed to the last known address of the  
6 parolee or probationer from whom the item was seized at  
7 least 60 days prior to the date the item is to be  
8 declared abandoned and unclaimed.

9 (iv) No other claimant of the item has notified the  
10 board of his claim or is known to the board.

11 (v) The item has not been accepted by the Department  
12 of Treasury under Article XIII.1 of the act of April 9,  
13 1929 (P.L.343, No.176), known as The Fiscal Code.

14 (vi) The item has not been forfeited in accordance  
15 with any forfeiture statute, including, but not limited  
16 to, 42 Pa.C.S. Ch. 68 (relating to forfeitures) and as  
17 permitted by Pennsylvania common law.

18 (2) Contraband seized under this section may not be  
19 subject to replevin, but shall be deemed to be in the custody  
20 of the board. The board shall tag and secure the contraband  
21 at a place designated by it for such time as is necessary to  
22 secure its use as evidence in a violation, revocation or  
23 criminal proceeding. In no event may the board retain the  
24 property for a period of less than 180 days after the hearing  
25 conducted under paragraph (3).

26 (3) (i) No later than the time of the first-level  
27 hearing to determine whether probable cause exists to  
28 believe that a violation of probation or parole has been  
29 committed, the board shall provide notice to the offender  
30 that abandonment will be sought if the offender does not

1 claim the seized contraband within two years after  
2 sentence completion.

3 (ii) If the hearing is waived or there is a new  
4 criminal charge arising from the incident that included  
5 the seizure of the contraband, then notice under this  
6 paragraph shall be given at least five days before an  
7 abandonment hearing is held and the hearing shall be  
8 scheduled by the board within a reasonable time.

9 (4) If it has been determined that property is  
10 contraband that shall be declared abandoned, the contraband  
11 shall be retained by the board until all appeal periods are  
12 exhausted to provide an opportunity for any additional  
13 parties to assert a claim of ownership or lienhold interest  
14 in the contraband. If the board receives notice of such a  
15 claim, the claimant or claimants shall be provided a hearing  
16 pursuant to paragraph (3).

17 (5) Whenever contraband is declared abandoned under this  
18 subchapter, title to the contraband shall be transferred to  
19 the board. After the expiration of the necessary time period,  
20 the board shall be entitled to do any or all of the  
21 following:

22 (i) Retain the contraband for official use.

23 (ii) Destroy the contraband.

24 (iii) Donate the contraband to a nonprofit  
25 organization or governmental entity.

26 (iv) Sell any contraband which is not required to be  
27 destroyed by law.

28 (v) If the item is of de minimus value, as  
29 determined by the board, dispose of, without sale.

30 (6) The board shall establish and administer a



1 contraband forfeiture account consisting of all cash or  
2 proceeds obtained under this section, subject to paragraph  
3 (7).

4 (7) Cash or proceeds generated by the sale of any  
5 abandoned contraband and placed in the account established in  
6 paragraph (6) shall first be made available to satisfy any  
7 restitution owed by the offender to crime victims who are  
8 known at the time of the seizure by the Pennsylvania  
9 Commission on Crime and Delinquency's Office of Victim  
10 Services or by the courts of the Commonwealth where the  
11 offender was sentenced. Any funds not used to satisfy crime  
12 victim restitution obligations shall be made available to the  
13 board pursuant to this section as a budget augmentation of  
14 the operating funds of the board.

15 (8) The board and its employees shall be immune from  
16 liability for good faith conduct under this section.

17 (9) The board may enact regulations that are necessary  
18 to implement this subsection for its agents and for use by  
19 county adult probation and parole departments on a uniform  
20 basis throughout this Commonwealth.

21 (10) The provisions set forth in this subsection shall  
22 apply to all contraband seized after the effective date of  
23 this subsection.

24 (11) Contraband seized prior to the effective date of  
25 this subsection may be disposed of in the manner set forth in  
26 paragraph (5) after notice is given to the offender from whom  
27 it was seized and any claimant known to the board. The board  
28 shall provide the notice within a reasonable time prior to  
29 holding a hearing at which abandonment shall be determined.

30 (12) (i) An appeal of an abandonment determination may

1 be made by filing an appeal with the board's central  
2 office. The appeal must be received by the board's  
3 central office within 30 days of the mailing date of the  
4 board's order.

5 (ii) When a timely appeal of an abandonment  
6 determination has been filed, the abandonment may not be  
7 deemed final for purpose of appeal to a court until the  
8 board has mailed its decision on the appeal. This  
9 subparagraph supersedes 1 Pa. Code § 35.226 (relating to  
10 final orders).

11 (iii) The scope of review of an appeal shall be  
12 limited to whether the decision is supported by  
13 substantial evidence, an error of law has been committed  
14 or there has been a violation of constitutional law.

15 (iv) The failure of an appeal to present with  
16 accuracy, brevity, clearness and specificity whatever is  
17 essential to a ready and adequate understanding of the  
18 factual and legal points requiring consideration shall be  
19 a sufficient reason for denying the appeal.

20 (v) A second or subsequent appeal and appeal that is  
21 not timely filed under this paragraph shall not be  
22 received.

23 (vi) The procedure for reconsideration contained in  
24 this subsection does not alter or replace any procedures  
25 provided by law for the timely filing of appeals to  
26 appellate courts.

27 (13) The board shall annually post a report specifying  
28 the abandoned property or proceeds of the abandoned property  
29 obtained under this section on the board's publicly  
30 accessible Internet website and make the report available as

1 a public document. The report shall give an accounting of  
2 all proceeds derived from the sale of abandoned property and  
3 the use made of unsold abandoned property.

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