

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 533 Session of 2015

INTRODUCED BY EICHELBERGER, GREENLEAF, FOLMER, VULAKOVICH AND RAFFERTY, FEBRUARY 20, 2015

REFERRED TO JUDICIARY, FEBRUARY 20, 2015

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
 2 Pennsylvania Consolidated Statutes, in other criminal
 3 provisions, further providing for supervisory relationship to
 4 offenders.

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

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

10 * * *

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

12 (1) Notwithstanding the provisions of Article XIII.1 of
 13 the act of April 9, 1929 (P.L.343, No.176), known as The
 14 Fiscal Code, to the contrary, all contraband that is seized
 15 from an offender shall be considered abandoned and unclaimed,
 16 and no property right may exist in it, except as otherwise
 17 provided in this section, if the following criteria have been
 18 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 forfeited in accordance
16 with any forfeiture statute, including, but not limited
17 to, Chapter 68 (relating to forfeitures) and as permitted
18 by Pennsylvania common law.

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

29 (3) (i) No later than the time of the first-level
30 hearing to determine whether probable cause exists to

1 believe that a violation of probation, parole or
2 intermediate punishment has been committed, the county
3 adult probation and parole department shall provide
4 notice to the offender that abandonment will be sought if
5 the offender does not claim the seized contraband within
6 two years after sentence completion.

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

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

22 (5) (i) Whenever contraband is declared abandoned under
23 this subchapter, the contraband shall be transferred to
24 the custodial care of the county adult probation and
25 parole department. After the expiration of the necessary
26 time period specified in this section, the county adult
27 probation and parole department shall itemize all such
28 abandoned contraband within its custodial care in a
29 report to the Treasury Department.

30 (ii) Within 10 business days following receipt of an

1 itemized contraband report from a county adult probation
2 and parole department, the Treasury Department shall
3 provide an itemized list of all such abandoned contraband
4 that it will not accept into its custodial care.

5 (iii) All abandoned contraband not accepted by the
6 Treasury Department pursuant to this section shall remain
7 under the custodial control of the county adult probation
8 and parole department. Abandoned contraband not otherwise
9 refused by the Treasury Department shall be transferred
10 to the custodial control of the Treasury Department as
11 directed by the Treasury Department.

12 (6) All abandoned contraband refused by the Treasury
13 Department and remaining under the custodial control of the
14 county adult probation and parole department shall be deemed
15 property of the county department and title to the property
16 shall transfer. Thereafter, the county probation and parole
17 department shall be entitled to any or all of the following:

18 (i) Retain the contraband for official use.

19 (ii) Destroy the contraband.

20 (iii) Donate the contraband to a nonprofit
21 organization or governmental entity.

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

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

27 (7) The county treasurer of each county shall establish
28 and administer a community correction forfeiture fund
29 consisting of all cash or proceeds obtained under this
30 section. The county treasurer shall disburse money from this

1 fund only at the discretion of the president judge of the
2 court of common pleas, subject to paragraph (8).

3 (8) Cash or proceeds generated by the sale of any
4 abandoned contraband shall first be made available to satisfy
5 any restitution owed by the offender to crime victims who are
6 known at the time of the seizure by the Pennsylvania
7 Commission on Crime and Delinquency's Office of Victim
8 Services or by the courts of the Commonwealth where the
9 offender was sentenced.

10 (9) The county adult probation and parole department and
11 its employees shall be immune from liability for good faith
12 conduct under this section.

13 (10) The Pennsylvania Board of Probation and Parole may
14 enact regulations that are necessary to implement this
15 subsection on a uniform basis throughout this Commonwealth.
16 If regulations are promulgated, a county adult probation and
17 parole department must comply with the regulations.

18 (11) The provisions set forth in this subsection shall
19 apply to all contraband seized after the effective date of
20 this subsection.

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

29 (13) (i) An appeal of an abandonment determination may
30 be made by filing an appeal with the court of common

1 pleas. The appeal must be received by the court of common
2 pleas within 30 days of the mailing date of the county
3 adult probation and parole department's order.

4 (ii) When a timely appeal of an abandonment
5 determination has been filed, the abandonment may not be
6 deemed final for purpose of appeal to a court until the
7 court has mailed its decision on the appeal.

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

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

17 (v) A second or subsequent appeal and an appeal that
18 is untimely filed under this paragraph shall not be
19 received.

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

24 (14) The county adult probation and parole department
25 shall annually post a report specifying the abandoned
26 property or proceeds of the abandoned property obtained under
27 this section on the county's publicly accessible Internet
28 website and make the report available as a public document.
29 The report shall give an accounting of all proceeds derived
30 from the sale of abandoned property and the use made of

1 unsold abandoned property.

2 * * *

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