

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 533 Session of 2015

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

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, JUNE 21, 2016

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:

1           (i) The parolee or probationer from whom the item  
2 was seized is no longer under the jurisdiction of the  
3 court.

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

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

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

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

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

30           (3) (i) No later than the time of the first-level

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

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

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

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

1 report to the Treasury Department.

2 (ii) Within 10 business days following receipt of an  
3 itemized contraband report from a county adult probation  
4 and parole department, the Treasury Department shall  
5 provide an itemized list of all such abandoned contraband  
6 that it will not accept into its custodial care.

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

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

20 (i) Retain the contraband for official use.

21 (ii) Destroy the contraband.

22 (iii) Donate the contraband to a nonprofit  
23 organization or governmental entity.

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

26 (v) If the item is of de ~~minimus~~ MINIMIS value, as <--  
27 determined by the county adult probation and parole  
28 department, dispose of the item, without sale.

29 (7) The county treasurer of each county shall establish  
30 and administer a community correction forfeiture fund

1 consisting of all cash or proceeds obtained under this  
2 section. The county treasurer shall disburse money from this  
3 fund only at the discretion of the president judge of the  
4 court of common pleas, subject to paragraph (8).

5 (8) Cash or proceeds generated by the sale of any  
6 abandoned contraband shall first be made available to satisfy  
7 any 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.

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

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

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

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

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

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

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

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

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

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

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

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

4     \* \* \*

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