

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 442 Session of 2013

INTRODUCED BY D. COSTA, YOUNGBLOOD, MILLARD, TALLMAN, KULA, FABRIZIO, GODSHALL, KORTZ, SWANGER, DAVIDSON, READSHAW, C. HARRIS, DELUCA, CLYMER, MATZIE, MILLER, GOODMAN, MURT AND DEASY, JANUARY 30, 2013

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 30, 2013

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
 2 Consolidated Statutes, further providing for fines, for
 3 weapons or implements for escape and for contraband; and
 4 making a conforming amendment.

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

7 Section 1. Sections 1101, 5122, 5123 and 6105(b) of Title 18
 8 of the Pennsylvania Consolidated Statutes are amended to read:

9 § 1101. Fines.

10 A person who has been convicted of an offense may be
 11 sentenced to pay a fine not exceeding:

12 (1) [\$50,000] \$100,000, when the conviction is of murder
 13 or attempted murder.

14 (2) [\$25,000] \$50,000, when the conviction is of a
 15 felony of the first or second degree.

16 (3) [\$15,000] \$30,000, when the conviction is of a
 17 felony of the third degree.

18 (4) [\$10,000] \$20,000, when the conviction is of a

1 misdemeanor of the first degree.

2 (5) [\$5,000] \$10,000, when the conviction is of a
3 misdemeanor of the second degree.

4 (6) [\$2,500] \$5,000, when the conviction is of a
5 misdemeanor of the third degree.

6 (7) [\$300] \$600, when the conviction is of a summary
7 offense for which no higher fine is established.

8 (8) Any higher amount equal to double the pecuniary gain
9 derived from the offense by the offender.

10 (9) Any higher or lower amount specifically authorized
11 by statute.

12 § 5122. Weapons [or implements for escape], implements of
13 escape or dangerous material.

14 (a) Offenses defined.--

15 (1) [A person commits a misdemeanor of the first] An
16 individual commits a felony of the second degree if he
17 [unlawfully introduces within a detention facility,
18 correctional institution or mental hospital, or unlawfully
19 provides an inmate thereof with any weapon, tool, implement,
20 or other thing] delivers to a confined person a weapon,
21 implement of escape, dangerous material or other item which
22 may be used for escape.

23 (2) [An inmate] A confined person commits a [misdemeanor
24 of the first] felony of the second degree if he [unlawfully
25 procures, makes or otherwise provides himself with, or
26 unlawfully has in his possession or under his control, any
27 weapon, tool, implement or other thing] possesses a weapon,
28 implement of escape, dangerous material or other item which
29 may be used for escape.

30 (b) [Definitions.--

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

4 (2) As used in this section, the word "weapon" means any
5 implement readily capable of lethal use and shall include any
6 firearm, ammunition, knife, dagger, razor, other cutting or
7 stabbing implement or club, including any item which has been
8 modified or adopted so that it can be used as a firearm,
9 ammunition, knife, dagger, razor, other cutting or stabbing
10 implement, or club. The word "firearm" includes an unloaded
11 firearm and the unassembled components of a firearm.]

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

15 "Confined person." An individual committed under a court
16 order to a facility, regardless of whether the individual is
17 temporarily absent from the facility due to medical treatment,
18 transportation, court appearance or other reason for a temporary
19 absence.

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

24 "Delivers." The transfer of a weapon, implement of escape or
25 dangerous material to a confined person in a facility. The term
26 includes taking or introducing a weapon, implement of escape or
27 dangerous material into a facility, on land granted to, owned by
28 or leased by the Commonwealth or a political subdivision, that
29 is related to the confinement of persons. The term also includes
30 putting a weapon, implement of escape or dangerous material in a

1 place where it may be obtained by a confined person.

2 "Facility." Correctional institution, mental hospital, youth
3 development center, youth forestry camp or other facility for
4 the detention or incarceration of individuals under court order,
5 building appurtenant thereto or any other place where a confined
6 person is located.

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

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

18 § 5123. Contraband.

19 (a) [Controlled] Delivery of controlled substance contraband
20 to confined persons prohibited.--[A person] An individual
21 commits a felony of the second degree if he [sells, gives,
22 transmits or furnishes to any convict in a prison, or inmate in
23 a mental hospital, or gives away in or brings into any prison,
24 mental hospital, or any building appurtenant thereto, or on the
25 land granted to or owned or leased by the Commonwealth or county
26 for the use and benefit of the prisoners or inmates, or puts in
27 any place where it may be secured by a convict of a prison,
28 inmate of a mental hospital, or employee thereof, any] delivers
29 a controlled substance included in Schedules I through V of the
30 act of April 14, 1972 (P.L.233, No.64), known as The Controlled

1 Substance, Drug, Device and Cosmetic Act, to a confined person
2 or employee of a facility (except the ordinary hospital supply
3 of the [prison or mental hospital] facility) without a written
4 permit signed by the physician of [such institution] the
5 facility, specifying the quantity and quality of the substance
6 which may be furnished to [any convict, inmate, or employee in
7 the prison or mental hospital,] the confined person, the name of
8 the [prisoner, inmate, or employee for whom,] confined person
9 and the time when the same may be furnished[, which permit shall
10 be delivered to and kept by the warden or superintendent of the
11 prison or mental hospital].

12 (a.1) Mandatory minimum penalty.--[Any person]

13 (1) An individual convicted of a violation of subsection
14 (a) shall be sentenced to a minimum sentence of at least two
15 years of total confinement, notwithstanding any other
16 provision of this title or any other statute to the contrary.
17 Nothing in this subsection shall prevent the sentencing court
18 from imposing a sentence greater than that provided in this
19 subsection, up to the maximum penalty prescribed by this
20 title for a felony of the second degree. There shall be no
21 authority in any court to impose on an offender to which this
22 subsection is applicable any lesser sentence than provided
23 for in subsection (a) or to place such offender on probation
24 or to suspend sentence. Sentencing guidelines promulgated by
25 the Pennsylvania Commission on Sentencing shall not supersede
26 the mandatory sentences provided in this subsection. If a
27 sentencing court refuses to apply this subsection where
28 applicable, the Commonwealth shall have the right to
29 appellate review of the action of the sentencing court. The
30 appellate court shall vacate the sentence and remand the case

1 to the sentencing court for imposition of a sentence in
2 accordance with this subsection if it finds that the sentence
3 was imposed in violation of this subsection.

4 (2) Nothing in this subsection shall be construed to
5 preclude prosecution for a more serious violation of The
6 Controlled Substance, Drug, Device and Cosmetic Act.

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

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

30 (c) [Contraband other than controlled substance.--A person]

1 Delivery of other contraband to confined persons prohibited.--An
2 individual commits a misdemeanor of the first degree if he
3 [sells, gives or furnishes to any convict in a prison, or inmate
4 in a mental hospital, or gives away in or brings into any
5 prison, mental hospital, or any building appurtenant thereto, or
6 on the land granted to or owned or leased by the Commonwealth or
7 county for the use and benefit of the prisoners or inmates, or
8 puts in any place where it may be secured by a convict of a
9 prison, inmate of a mental hospital, or employee thereof,]
10 delivers to a confined person:

11 (1) any kind of spirituous or fermented liquor, poison
12 or medicine [or poison] (except the ordinary hospital supply
13 of the [prison or mental hospital] facility) without a
14 written permit signed by the physician of [such institution]
15 the facility, specifying the quantity and quality of the
16 substance which may be furnished to [any convict, inmate or
17 employee in the prison or mental hospital, the name of the
18 prisoner, inmate or employee for whom,] the confined person,
19 the name of the confined person and the time when the same
20 may be furnished[, which permit shall be delivered to and
21 kept by the warden or superintendent of the prison or mental
22 hospital.];

23 (2) an unauthorized item that is readily capable of
24 concealing an item prohibited under section 5122 (relating to
25 weapons, implements of escape or dangerous material) or this
26 section; or

27 (3) any item designated as a prohibited item by the
28 Secretary of Corrections or the superintendent, warden or
29 otherwise authorized individual in charge of a correctional
30 institution, prison, jail, detention facility or mental

1 hospital.

2 (c.1) [Telecommunication] Delivery of telecommunications
3 devices to [inmates] confined persons prohibited.--A person
4 commits a misdemeanor of the first degree if, without the
5 written permission of superintendent, warden or otherwise
6 authorized individual in charge of a [correctional institution,
7 prison, jail, detention facility or mental hospital, he sells,
8 gives or furnishes] facility, he delivers to any [inmate]
9 confined person in a [correctional institution, prison, jail,
10 detention facility or mental hospital, or any building
11 appurtenant thereto] facility, or puts in any place where it may
12 be obtained by [an inmate] a confined person [of a correctional
13 institution, prison, jail, detention facility or mental
14 hospital], any telecommunication device.

15 (c.2) Possession of telecommunication devices by [inmates]
16 confined persons prohibited.--[An inmate] A confined person in a
17 [correctional institution, prison, jail, detention facility or
18 mental hospital, or any building appurtenant thereto,] facility
19 commits a misdemeanor of the first degree if he has in his
20 possession any telecommunication device without the written
21 permission of the superintendent, warden or otherwise authorized
22 individual in charge of [a correctional institution, prison,
23 jail, detention facility or mental hospital] the facility.

24 (c.3) Possession of money or other contraband by a confined
25 person.--A confined person commits a misdemeanor of the first
26 degree if he possesses anything the delivery of which is
27 prohibited under subsection (b) or (c).

28 (c.4) Applicability.--The provisions of subsections (c.1)
29 and (c.2) shall not apply to civil units of mental hospitals.

30 (d) Drug-sniffing animals.--Any jail or prison may use dogs

1 or other animals trained to sniff [controlled substances or
2 other contraband] anything the delivery of which is prohibited
3 under this section for such purposes in or on any part of the
4 jail or prison at any time.

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

8 "Confined person." An individual committed under a court
9 order to a facility, regardless of whether the individual is
10 temporarily absent due to medical treatment, transportation,
11 court appearance or other reason for a temporary absence.

12 "Delivers." Sells, gives, transmits, furnishes or otherwise
13 transfers anything prohibited under this section to a confined
14 person in a facility.

15 "Facility." Correctional institution, mental hospital, youth
16 development center, youth forestry camp or other facility for
17 the detention or incarceration of individuals under court order,
18 building appurtenant thereto or any other place where a confined
19 person is located.

20 ["Inmate." A male or female offender who is committed to,
21 under sentence to or confined in a penal or correctional
22 institution.]

23 "Telecommunication device." Any type of instrument, device,
24 machine or equipment which is capable of transmitting
25 telephonic, electronic, digital, cellular or radio
26 communications or any part of such instrument, device, machine
27 or equipment which is capable of facilitating the transmission
28 of telephonic, electronic, digital, cellular or radio
29 communications. The term shall include, but not be limited to,
30 cellular phones, digital phones and modem equipment devices.

1 § 6105. Persons not to possess, use, manufacture, control, sell
2 or transfer firearms.

3 * * *

4 (b) Enumerated offenses.--The following offenses shall apply
5 to subsection (a):

6 Section 908 (relating to prohibited offensive weapons).

7 Section 911 (relating to corrupt organizations).

8 Section 912 (relating to possession of weapon on school
9 property).

10 Section 2502 (relating to murder).

11 Section 2503 (relating to voluntary manslaughter).

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

14 Section 2702 (relating to aggravated assault).

15 Section 2703 (relating to assault by prisoner).

16 Section 2704 (relating to assault by life prisoner).

17 Section 2709.1 (relating to stalking).

18 Section 2716 (relating to weapons of mass destruction).

19 Section 2901 (relating to kidnapping).

20 Section 2902 (relating to unlawful restraint).

21 Section 2910 (relating to luring a child into a motor
22 vehicle or structure).

23 Section 3121 (relating to rape).

24 Section 3123 (relating to involuntary deviate sexual
25 intercourse).

26 Section 3125 (relating to aggravated indecent assault).

27 Section 3301 (relating to arson and related offenses).

28 Section 3302 (relating to causing or risking
29 catastrophe).

30 Section 3502 (relating to burglary).

1 Section 3503 (relating to criminal trespass) if the
2 offense is graded a felony of the second degree or higher.

3 Section 3701 (relating to robbery).

4 Section 3702 (relating to robbery of motor vehicle).

5 Section 3921 (relating to theft by unlawful taking or
6 disposition) upon conviction of the second felony offense.

7 Section 3923 (relating to theft by extortion) when the
8 offense is accompanied by threats of violence.

9 Section 3925 (relating to receiving stolen property) upon
10 conviction of the second felony offense.

11 Section 4906 (relating to false reports to law
12 enforcement authorities) if the fictitious report involved
13 the theft of a firearm as provided in section 4906(c)(2).

14 Section 4912 (relating to impersonating a public servant)
15 if the person is impersonating a law enforcement officer.

16 Section 4952 (relating to intimidation of witnesses or
17 victims).

18 Section 4953 (relating to retaliation against witness
19 [or] victim or party).

20 Section 5121 (relating to escape).

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

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

24 Section 5515 (relating to prohibiting of paramilitary
25 training).

26 Section 5516 (relating to facsimile weapons of mass
27 destruction).

28 Section 6110.1 (relating to possession of firearm by
29 minor).

30 Section 6301 (relating to corruption of minors).

1 Section 6302 (relating to sale or lease of weapons and
2 explosives).

3 Any offense equivalent to any of the above-enumerated
4 offenses under the prior laws of this Commonwealth or any
5 offense equivalent to any of the above-enumerated offenses
6 under the statutes of any other state or of the United
7 States.

8 * * *

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