

No. 1990-47

AN ACT

HB 1068

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for the offense of flight to avoid apprehension, trial or punishment and for the offense of the scattering of rubbish; empowering arresting officers to seize and take possession of certain vehicles; and further providing for discrimination on account of guide dogs.

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

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

§ 5126. *Flight to avoid apprehension, trial or punishment.*

(a) *Offense defined.*—*A person who willfully conceals himself or moves or travels within or outside this Commonwealth with the intent to avoid apprehension, trial or punishment commits a felony of the third degree when the crime which he has been charged with or has been convicted of is a felony and commits a misdemeanor of the second degree when the crime which he has been charged with or has been convicted of is a misdemeanor.*

(b) *Exception.*—*Subsection (a) shall not apply to a person set at liberty by court order who fails to appear at the time or place specified in the order.*

Section 2. Sections 6501 and 7325 of Title 18 are amended to read:

§ 6501. Scattering rubbish.

(a) *Offense defined.*—A person is guilty of an offense if he:

(1) **[throws] causes** any waste paper, sweepings, ashes, household waste, glass, metal, refuse or rubbish, or any dangerous or detrimental substance *to be deposited* into or upon any road, street, highway, **[or] alley or railroad right-of-way**, or upon the land of another or into **[or upon any stream or navigable river] the waters of this Commonwealth;**

(2) interferes with, scatters, or disturbs the contents of any receptacle containing ashes, garbage, household waste, or rubbish; or

(3) is the *owner or operator, or an agent of either*, of a trash, garbage or debris collection vehicle **[or any other type of vehicle used for collecting trash, garbage or debris and deposits the vehicle's load or any part thereof upon any road, street, highway or alley or upon the land of another]**, *including private automobiles and small trucks, or any other type of vehicles used to collect or transport trash, garbage or debris, who knowingly causes to be deposited or deposits the vehicle's load or any part thereof upon any road, street, highway, alley or railroad right-of-way, or upon the land of another or into the waters of this Commonwealth.*

(b) *Penalty.*—

(1) A person who violates subsection (a)(1) or (2) is guilty of a summary offense *for the first offense* and upon conviction thereof shall be sentenced to pay a fine of not less than **[\$10] \$50** nor more than \$300 or to imprisonment for not more than 90 days, or both.

(2) A person who violates subsection (a)(3) is guilty of a misdemeanor of the third degree for the first offense, a misdemeanor of the second degree for the second offense and a misdemeanor of the first degree for the third or any subsequent offense.]

(2) A person who violates subsection (a)(1) or (2) is guilty of a misdemeanor of the third degree for the second and subsequent offense and upon conviction thereof shall be sentenced to pay a fine of not less than \$300 nor more than \$1,000. The person also may be sentenced to imprisonment or to performing a community service for a period not to exceed one year.

(3) A person who violates subsection (a)(3) is guilty of a misdemeanor of the second degree for the first offense and upon conviction thereof shall be sentenced to pay a fine of not less than \$500 nor more than \$5,000. The person also may be sentenced to imprisonment or to performing a community service for a period not to exceed two years.

(4) A person who violates subsection (a)(3) is guilty of a misdemeanor of the first degree for the second or subsequent offense and upon conviction thereof shall be sentenced to pay a fine of not less than \$1,000 nor more than \$10,000. The person also may be sentenced to imprisonment or to performing a community service for a period not to exceed five years.

(5) Any vehicle, equipment or conveyance, including any private automobile and small truck, used for the transportation or disposal of trash, garbage or debris in the commission of a second or subsequent offense under subsection (a)(3) may be deemed contraband and forfeited in accordance with the provisions set forth in this section.

(c) Arrest powers.—A police officer shall have the same right of arrest without a warrant as in a felony whenever the officer has probable cause to believe the defendant has violated subsection (a)(3), although the offense did not take place in the officer's presence. A police officer may not make a warrantless arrest pursuant to this section without first observing recent evidence of a subsection (a)(3) offense or other corroborative evidence.

(d) Forfeiture.—

(1) Property subject to forfeiture under this section may be seized by the law enforcement authority upon process issued by any court of common pleas having jurisdiction over the property.

(2) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney. When property is seized under this section, the law enforcement authority shall place the property under seal and either:

(i) remove the property to a place designated by it; or

(ii) require that the district attorney take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(3) Whenever property is forfeited under this section, the property shall be transferred to the custody of the municipal corporation. The

municipal corporation shall sell any forfeited property, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be used for the enforcement of this act.

(4) The proceedings for the forfeiture or condemnation of property, the sale of which is provided for in this section, shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant. A petition shall be filed in the court of common pleas of the judicial district where the property is located, verified by oath or affirmation of an officer or citizen, containing the following:

- (i) A description of the property seized.*
- (ii) A statement of the time and place where seized.*
- (iii) The owner, if known.*
- (iv) The person or persons in possession, if known.*
- (v) An allegation that the property is subject to forfeiture pursuant to this subsection and an averment of material facts upon which the forfeiture action is based.*
- (vi) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned and be ordered sold according to law, unless cause be shown to the contrary.*

(5) A copy of the petition required under paragraph (4) shall be served personally or by certified mail on the owner or upon the person or persons in possession at the time of the seizure. The copy shall have endorsed a notice, as follows:

To the Claimant of within Described Property:

You are required to file an answer to this petition, setting forth your title in, and right to possession of, the property within 30 days from the service hereof, and you are also notified that, if you fail to file the answer, a decree of forfeiture and condemnation will be entered against the property.

The notice shall be signed by the district attorney, deputy district attorney or assistant district attorney.

(6) If the owner of the property is unknown or there was no person in possession of the property when seized or if the owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property shall have been seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding. The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication. If no claims are filed within 30 days of publication, the property shall summarily forfeit to the Commonwealth.

(7) For purposes of this section, the owner or other such person cannot be found in the jurisdiction of the court if:

(i) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;

(ii) personal service is attempted once but cannot be made at the last known address; and

(iii) a copy of the petition is left at the last known address.

(8) The notice provisions of this section are automatically waived when the owner, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges. Forty-five days after such a failure to appear, if good cause has not been demonstrated, the property shall summarily forfeit to the Commonwealth.

(9) Upon the filing of a claim for the property setting forth a right of possession, the case shall be deemed at issue and a time shall be fixed for the hearing.

(10) At the time of the hearing, if the Commonwealth produces evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under this section, the burden shall be upon the claimant to show:

(i) That the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale thereon.

(ii) That the claimant lawfully acquired the property.

(iii) That it was not unlawfully used or possessed by him. In the event that it shall appear that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

(11) If a person claiming the ownership of or right of possession to or claiming to be the holder of a chattel mortgage or contract of conditional sale upon the property, the disposition of which is provided for in this section, prior to the sale presents a petition to the court alleging over the property lawful ownership, right of possession, a lien or reservation of title and if, upon public hearing, due notice of which having been given to the district attorney, the claimant shall prove by competent evidence to the satisfaction of the court that the property was lawfully acquired, possessed and used by him or, it appearing that the property was unlawfully used by a person other than the claimant, that the unlawful use was without the claimant's knowledge or consent, then the court may order the property returned or delivered to the claimant. Such absence of knowledge or consent must be reasonable under the circumstances presented. Otherwise, it shall be retained for official use or sold in accordance with paragraph (4).

(e) Responsibility for costs.—The operator, owner or agent of any vehicle, equipment or conveyance, including private automobiles and small trucks, forfeited under this section shall be responsible for any costs incurred in properly disposing of waste in the vehicle, equipment or conveyance.

[(d)] (f) Exception.—Subsection (a)(3) does not apply to the lawful depositing of waste at any site regulated by the Department of Environmental Resources.

(g) Other available rights and remedies.—*The proceedings specified in this section shall not, in any way, limit the right of the Commonwealth to exercise any rights or remedies otherwise provided by law.*

§ 7325. Discrimination on account of guide dog.

A person is guilty of a summary offense if he, being the proprietor, manager or employee of a theatre, hotel, restaurant or other place of public *accommodation*, entertainment or amusement, refuses, withholds or denies any person, who is using a guide, *signal or service* dog, because of the *physical disability*, blindness or deafness of the user, the use of or access to any accommodation, advantage, facility or privilege of such theatre, hotel, restaurant or other place of public entertainment or amusement.

Section 3. The amendment to section 6501 shall apply to all offenses committed on or after the effective date of this act.

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

APPROVED—The 31st day of May, A. D. 1990.

ROBERT P. CASEY