

No. 1996-3

## AN ACT

SB 619

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, providing for confidential mediation communications and documents; and further providing for collection of restitution, reparation, fees, costs, fines and penalties.

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

Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a section to read:

**§ 5949. Confidential mediation communications and documents.**

*(a) General rule.—Except as provided in subsection (b), all mediation communications and mediation documents are privileged. Disclosure of mediation communications and mediation documents may not be required or compelled through discovery or any other process. Mediation communications and mediation documents shall not be admissible as evidence in any action or proceeding, including, but not limited to, a judicial, administrative or arbitration action or proceeding.*

*(b) Exceptions.—*

*(1) A settlement document may be introduced in an action or proceeding to enforce the settlement agreement expressed in the document, unless the settlement document by its terms states that it is unenforceable or not intended to be legally binding.*

*(2) To the extent that the communication or conduct is relevant evidence in a criminal matter, the privilege and limitation set forth in subsection (a) does not apply to:*

*(i) a communication of a threat that bodily injury may be inflicted on a person;*

*(ii) a communication of a threat that damage may be inflicted on real or personal property under circumstances constituting a felony;*  
*or*

*(iii) conduct during a mediation session causing direct bodily injury to a person.*

*(3) The privilege and limitation set forth under subsection (a) does not apply to a fraudulent communication during mediation that is relevant evidence in an action to enforce or set aside a mediated agreement reached as a result of that fraudulent communication.*

*(4) Any document which otherwise exists, or existed independent of the mediation and is not otherwise covered by this section, is not subject to this privilege.*

(c) *Definitions.*—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

*“Mediation.”* The deliberate and knowing use of a third person by disputing parties to help them reach a resolution of their dispute. For purposes of this section, mediation commences at the time of initial contact with a mediator or mediation program.

*“Mediation communication.”* A communication, verbal or nonverbal, oral or written, made by, between or among a party, mediator, mediation program or any other person present to further the mediation process when the communication occurs during a mediation session or outside a session when made to or by the mediator or mediation program.

*“Mediation document.”* Written material, including copies, prepared for the purpose of, in the course of or pursuant to mediation. The term includes, but is not limited to, memoranda, notes, files, records and work product of a mediator, mediation program or party.

*“Mediation program.”* A plan or organization through which mediators or mediation may be provided.

*“Mediator.”* A person who performs mediation.

*“Settlement document.”* A written agreement signed by the parties to the agreement.

Section 2. Section 9728 of Title 42 is amended to read:

§ 9728. Collection of restitution, reparation, fees, costs, fines and penalties.

(a) *General rule.*—All restitution, reparation, fees, costs, fines and penalties shall be collectible in any manner provided by law. However, such restitution, reparation, fees, costs, fines and penalties are part of a criminal action or proceeding and shall not be deemed debts. A sentence, pretrial disposition order or order entered under section 6352 (relating to disposition of delinquent child) for restitution, reparation, fees, costs, fines or penalties shall, together with interest and any additional costs that may accrue, be a judgment in favor of the probation department upon the person or the property of the person sentenced or subject to the order.

(b) *Procedure.*—The county [probation department or other appropriate governmental agency] clerk of courts shall, upon sentencing, pretrial disposition or other order, transmit to the prothonotary of the respective county certified copies of all judgments for restitution, reparation, fees, costs, fines and penalties which, in the aggregate, exceed \$1,000, and it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are indexed, without requiring the payment of costs as a condition precedent to the entry thereof. *The clerk of courts, in consultation with other appropriate governmental agencies, may transmit to the prothonotary of the respective county certified copies of all judgments for restitution, reparation, fees, costs, fines and penalties which, in the aggregate, do not exceed \$1,000, and, if so transmitted, it shall be the duty of each prothonotary to enter and docket the same of record in his office and to index the same as judgments are*

*indexed, without requiring the payment of costs as a condition precedent to the entry thereof.* The total amount for which the person is liable pursuant to this section may be entered as a judgment upon the person or the property of the person sentenced or ordered, regardless of whether the amount has been ordered to be paid in installments.

(c) Period of time.—Notwithstanding section 6353 (relating to limitation on and change in place of commitment) or 18 Pa.C.S. § 1106(c)(2) (relating to restitution for injuries to person or property), the period of time during which such judgments shall have full effect may exceed the maximum term of imprisonment to which the offender could have been sentenced for the crimes of which he was convicted or the maximum term of confinement to which the offender was committed.

(d) Priority.—Notwithstanding any other statutory provisions in this or any other title, any lien obtained under this section shall maintain its priority indefinitely and no writ of revival need be filed.

(e) Preservation of assets subject to restitution.—Upon application of the Commonwealth, the court may enter a restraining order or injunction, require the execution of a satisfactory performance bond or take any other action to preserve the availability of property which may be necessary to satisfy an anticipated restitution order under this section:

(1) upon the filing of a criminal complaint, information or indictment charging a criminal violation or a petition alleging delinquency for which restitution may be ordered and alleging that the property with respect to which the order is sought appears to be necessary to satisfy such restitution order and judgment; and

(2) if, after notice to persons appearing to have an interest in the property and an opportunity for a hearing, the court determines that:

(i) there is a substantial probability that:

(A) the Commonwealth will prevail on the underlying criminal charges or allegation of delinquency;

(B) restitution will be ordered exceeding \$10,000 in value;

(C) the property appears to be necessary to satisfy such restitution order; and

(D) failure to enter the order will result in the property being destroyed, removed from the jurisdiction of the court or otherwise made unavailable for payment of the anticipated restitution order; and

(ii) the need to preserve the availability of the property through the entry of the requested order outweighs the hardship on any party against whom the order is to be entered.

(f) Temporary restraining order.—A temporary restraining order under subsection (e) may be entered upon application of the Commonwealth without notice or opportunity for a hearing, whether or not a complaint, information, indictment or petition alleging delinquency has been filed with respect to the property, if the Commonwealth demonstrates that there is probable cause to

believe that the property with respect to which the order is sought appears to be necessary to satisfy an anticipated restitution order under this section and that provision of notice will jeopardize the availability of the property to satisfy such restitution order and judgment. Such a temporary order shall expire not more than ten days after the date on which it is entered, unless extended for good cause shown or unless the party against whom it is entered consents to an extension for a longer period. A hearing requested concerning an order entered under this subsection shall be held at the earliest possible time and prior to the expiration of the temporary order.

(g) Costs, etc.—Any sheriff's costs, filing fees and costs of the county probation department, *clerk of courts* or other appropriate governmental agency shall be borne by the defendant and shall be collected by the county probation department or other appropriate governmental agency along with the total amount of the judgment and remitted to the appropriate agencies at the time of or prior to satisfaction of judgment.

(h) Effect on contempt proceedings.—This section shall not affect contempt proceedings mandated by 18 Pa.C.S. § 1106(f).

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

APPROVED—The 7th day of February, A.D. 1996.

THOMAS J. RIDGE