

No. 1998-121

AN ACT

HB 413

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for restitution for personal or property injuries, for arson and related offenses, for agricultural trespass, for control of firearms, for sale or transfer of firearms and for firearms functions of the Pennsylvania State Police.

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

Section 1. Section 1106(a), (c), (e) and (f) of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 1106. Restitution for injuries to person or property.

(a) General rule.—Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the offender [**may**] **shall** be sentenced to make restitution in addition to the punishment prescribed therefor.

* * *

(c) Mandatory restitution.—

(1) The court shall order full restitution:

(i) Regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss. The court shall not reduce a restitution award by any amount that the victim has received from the Crime Victim's Compensation Board or other governmental agency but shall order the defendant to pay any restitution ordered for loss previously compensated by the board to the Crime Victim's Compensation Fund or other designated account when the claim involves a government agency in addition to or in place of the board. The court shall not reduce a restitution award by any amount that the victim has received from an insurance company but shall order the defendant to pay any restitution ordered for loss previously compensated by an insurance company to the insurance company.

(ii) If restitution to more than one person is set at the same time, the court shall set priorities of payment. However, when establishing priorities, the court shall order payment in the following order:

(A) The victim.

(B) The Crime Victim's Compensation Board.

(C) Any other government agency which has provided reimbursement to the victim as a result of the defendant's criminal conduct.

(D) Any insurance company which has provided reimbursement to the victim as a result of the defendant's criminal conduct.

(2) *At the time of sentencing the court shall specify the amount and method of restitution.* In determining the amount and method of restitution, the court:

(i) Shall consider the extent of injury suffered by the victim, *the victim's request for restitution as presented to the district attorney in accordance with paragraph (4)* and such other matters as it deems appropriate.

(ii) May order restitution in a lump sum, by monthly installments or according to such other schedule as it deems just[, **provided that the period of time during which the offender is ordered to make restitution shall not exceed the maximum term of imprisonment to which the offender could have been sentenced for the crime of which he was convicted**].

[(iii) May at any time alter or amend any order of restitution made pursuant to this section providing, however, that the court state its reasons and conclusions as a matter of record for any change or amendment to any previous order.]

[(iv)] (iii) Shall not order incarceration of a defendant for failure to pay restitution if the failure results from the offender's inability to pay.

[(v)] (iv) Shall consider any other preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title.

(3) *The court may, at any time or upon the recommendation of the district attorney that is based on information received from the victim and the probation section of the county or other agent designated by the county commissioners of the county with the approval of the president judge to collect restitution, alter or amend any order of restitution made pursuant to paragraph (2), provided, however, that the court states its reasons and conclusions as a matter of record for any change or amendment to any previous order.*

(4) (i) *It shall be the responsibility of the district attorneys of the respective counties to make a recommendation to the court at or prior to the time of sentencing as to the amount of restitution to be ordered. This recommendation shall be based upon information solicited by the district attorney and received from the victim.*

(ii) *Where the district attorney has solicited information from the victims as provided in subparagraph (i) and has received no response, the district attorney shall, based on other available information, make a recommendation to the court for restitution.*

(iii) *The district attorney may, as appropriate, recommend to the court that the restitution order be altered or amended as provided in paragraph (3).*

(e) Restitution payments and records.—Restitution, when ordered by a judge, shall be made by the offender to the probation section of the county in which he was convicted *or to another agent designated by the county commissioners with the approval of the president judge of the county to collect restitution* according to the order of the court or, when ordered by a district justice, shall be made to the district justice. The probation section *or other agent designated by the county commissioners of the county with the approval of the president judge to collect restitution* and the district justice shall maintain records of the restitution order and its satisfaction and shall forward to the victim the property or payments made pursuant to the restitution order.

(f) Noncompliance with restitution order.—Whenever the offender shall fail to make restitution as provided in the order of a judge, the probation section *or other agent designated by the county commissioners of the county with the approval of the president judge to collect restitution* shall notify the court within 20 days of such failure. Whenever the offender shall fail to make restitution within 20 days to a district justice, as ordered, the district justice shall declare the offender in contempt and forward the case to the court of common pleas. Upon such notice of failure to make restitution, or upon receipt of the contempt decision from a district justice, the court shall order a hearing to determine if the offender is in contempt of court or has violated his probation or parole.

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Section 2. Section 3301(d), (h) and (i) of Title 18 are amended and the section is amended by adding a subsection to read:

§ 3301. Arson and related offenses.

* * *

(d) Reckless burning or exploding.—A person commits a felony of the third degree if he intentionally starts a fire or causes an explosion, or if he aids, counsels, pays or agrees to pay another to cause a fire or explosion, whether on his own property or on that of another, and thereby recklessly:

(1) places an uninhabited building or unoccupied structure of another in danger of damage or destruction; or

(2) **[places any personal property of another having a value of \$5,000 or more]** *places any personal property of another having a value that exceeds \$5,000 or if the property is an automobile, airplane, motorcycle, motorboat or other motor-propelled vehicle* in danger of damage or destruction.

(d.1) Dangerous burning.—A person commits a summary offense if he intentionally or recklessly starts a fire to endanger any person or property of another whether or not any damage to person or property actually occurs.

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(h) Limitations on liability.—The provisions of subsections (a), (b), (c), (d), *(d.1)* and (e) shall not be construed to establish criminal liability upon

any volunteer or paid firefighter or volunteer or paid firefighting company or association if said company or association endangers a participating firefighter or real or personal property in the course of an approved, controlled fire training program or fire evolution, provided that said company or association has complied with the following:

(1) a sworn statement from the owner of any real or personal property involved in such program or evolution that there is no fire insurance policy or no lien or encumbrance exists which applies to such real or personal property;

(2) approval or permits from the appropriate local government or State officials, if necessary, to conduct such program or exercise have been received;

(3) precautions have been taken so that the program or evolution does not affect any other persons or real or personal property; and

(4) participation of firefighters in the program or exercise if voluntary.

(i) Defenses.—It is a defense to prosecution under subsections (c) [**and (d)**], **(d) and (d.1)** where a person is charged with destroying a vehicle, lawful title to which is vested in him, if the vehicle is free of any encumbrances, there is no insurance covering loss by fire or explosion or both on the vehicle and the person delivers to the nearest State Police station at least 48 hours in advance of the planned destruction a written sworn statement certifying that the person is the lawful titleholder, that the vehicle is free of any encumbrances and that there is no insurance covering loss by fire or explosion or both on the vehicle.

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Section 3. Section 3503 of Title 18 is amended by adding a subsection to read:

§ 3503. Criminal trespass.

* * *

(b.2) Agricultural trespasser.—

(1) A person commits an offense if knowing that he is not licensed or privileged to do so he:

(i) enters or remains on any agricultural or other open lands when such lands are posted in a manner prescribed by law or reasonably likely to come to the person's attention or are fenced or enclosed in a manner manifestly designed to exclude trespassers or to confine domestic animals; or

(ii) enters or remains on any agricultural or other open lands and defies an order not to enter or to leave that has been personally communicated to him by the owner of the lands or other authorized person.

(2) An offense under this subsection shall be graded as follows:

(i) An offense under paragraph (1)(i) constitutes a misdemeanor of the third degree and is punishable by imprisonment for a term of not more than one year and a fine of not less than \$250.

(ii) *An offense under paragraph (1)(i) constitutes a misdemeanor of the second degree and is punishable by imprisonment for a term of not more than two years and a fine of not less than \$500 nor more than \$5,000.*

(3) *For the purposes of this subsection, the phrase "agricultural or other open lands" shall mean any land on which agricultural activity or farming as defined in section 3309 (relating to agricultural vandalism) is conducted or any land populated by forest trees of any size and capable of producing timber or other wood products or any other land in an agricultural security area as defined in the act of June 30, 1981 (P.L.128, No.43), known as the Agricultural Area Security Law, or any area zoned for agricultural use.*

* * *

Section 4. Sections 6105(c)(1), 6111(b)(1.4) and 6111.1(b)(3) of Title 18 are amended to read:

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

* * *

(c) Other persons.—In addition to any person who has been convicted of any offense listed under subsection (b), the following persons shall be subject to the prohibition of subsection (a):

(1) A person who is a fugitive from justice. *This paragraph does not apply to an individual whose fugitive status is based upon a nonmoving or moving summary offense under Title 75 (relating to vehicles).*

* * *

§ 6111. Sale or transfer of firearms.

* * *

(b) Duty of seller.—No licensed importer, licensed manufacturer or licensed dealer shall sell or deliver any firearm to another person, other than a licensed importer, licensed manufacturer, licensed dealer or licensed collector, until the conditions of subsection (a) have been satisfied and until he has:

* * *

(1.4) [Prior to January 1, 1997, and following] *Following implementation of the instantaneous records check by the Pennsylvania State Police on or before [October 11, 1999] December 1, 1998, no application/record of sale shall be completed for the purchase or transfer of a firearm which exceeds the barrel lengths set forth in section 6102. A statement shall be submitted by the dealer to the Pennsylvania State Police, postmarked via first class mail, within 14 days of the sale, containing the number of firearms sold which exceed the barrel and related lengths set forth in section 6102, the amount of surcharge and other fees remitted and a list of the unique approval numbers given pursuant to paragraph (4), together with a statement that the background checks have been performed on the firearms contained in the statement. The form of*

the statement relating to performance of background checks shall be promulgated by the Pennsylvania State Police.

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§ 6111.1. Pennsylvania State Police.

* * *

(b) Duty of Pennsylvania State Police.—

* * *

(3) The Pennsylvania State Police shall fully comply, execute and enforce the directives of this section [within four years of the enactment of this subsection.] *as follows:*

(i) The instantaneous background check for firearms as defined in section 6102 (relating to definitions) shall begin on July 1, 1998.

(ii) The instantaneous background check for firearms that exceed the barrel lengths set forth in section 6102 shall begin on the later of:

(A) the date of publication of the notice under section 6111(a)(2); or

(B) December 31, 1998.

* * *

Section 5. This act shall take effect as follows:

(1) The amendment or addition of 18 Pa.C.S. § 3301(d), (d.1), (h) and (i) shall take effect in 60 days.

(2) The remainder of this act shall take effect immediately.

APPROVED—The 3rd day of December, A.D. 1998.

THOMAS J. RIDGE