

No. 2016-96

AN ACT

SB 533

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in other criminal provisions, further providing for supervisory relationship to offenders.

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

Section 1. Section 9912 of Title 42 of the Pennsylvania Consolidated Statutes is amended by adding a subsection to read:

§ 9912. Supervisory relationship to offenders.

* * *

(e.1) Status of seized items.—

(1) Notwithstanding the provisions of Article XIII.1 of the act of April 9, 1929 (P.L.343, No.176), known as The Fiscal Code, to the contrary, all contraband that is seized from an offender shall be considered abandoned and unclaimed, and no property right may exist in it, except as otherwise provided in this section, if the following criteria have been met:

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

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

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

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

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

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

(3) (i) No later than the time of the first-level hearing to determine whether probable cause exists to believe that a violation of

probation, parole or intermediate punishment has been committed, the county adult probation and parole department shall provide notice to the offender that abandonment will be sought if the offender does not claim the seized contraband within two years after sentence completion.

(ii) If the hearing is waived or there is a new criminal charge arising from the incident that included the seizure of the contraband, then notice under this paragraph shall be given at least five days before an abandonment hearing is held and the hearing shall be scheduled by the county adult probation and parole department within a reasonable time.

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

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

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

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

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

(i) Retain the contraband for official use.

(ii) Destroy the contraband.

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

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

(v) If the item is of de minimis value, as determined by the county adult probation and parole department, dispose of the item, without sale.

(7) The county treasurer of each county shall establish and administer a community correction forfeiture fund consisting of all cash or proceeds obtained under this section. The county treasurer shall disburse money from this fund only at the discretion of the president judge of the court of common pleas, subject to paragraph (8).

(8) Cash or proceeds generated by the sale of any abandoned contraband shall first be made available to satisfy any restitution owed by the offender to crime victims who are known at the time of the seizure by the Pennsylvania Commission on Crime and Delinquency's Office of Victim Services or by the courts of the Commonwealth where the offender was sentenced.

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

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

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

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

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

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

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

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

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

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

(14) The county adult probation and parole department shall annually post a report specifying the abandoned property or proceeds of the abandoned property obtained under this section on the county's publicly accessible Internet website and make the report available as a public document. The report shall give an accounting of all proceeds derived from the sale of abandoned property and the use made of unsold abandoned property.

* * *

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

APPROVED—The 20th day of July, A.D. 2016

TOM WOLF