

COMMITTEE BILL ANALYSIS

Bill: Senate Bill 305

Printer's No.: 214

Sponsor: Senator Eichelberger

Prepared by: Gregg Warner

Synopsis: This bill amends the Judicial Code, Title 42, and the Prisons and Parole Code, Title 61 of the Pennsylvania Consolidated Statutes, to provide for a uniform procedure for the disposition of contraband seized from a probationer or parolee and left in the possession of a probation or parole agency.

Summary:

Judicial Code: County adult probation and parole departments

Section 9912 of the Judicial Code authorizes county probation or parole officers to search the person or property of offenders and seize contraband with certain restrictions. As a general rule, all contraband that is seized from an offender shall be considered abandoned and unclaimed, and no property right exists in it. The following criteria must have been met:

- The parolee or probationer from whom the item was seized is no longer under the jurisdiction of the court.
- Two years have elapsed from the date the parolee or probationer was no longer under the jurisdiction of the court.
- Notice that the item will be declared abandoned was mailed to the last known address of the parolee or probationer.
- No other claimant of the item has notified the county adult probation and parole department of his claim.
- The item has not been accepted by the Department of Treasury under the provisions of law relating to the disposition of abandoned and unclaimed property.
- The item has not been forfeited under any forfeiture statute.

The county adult probation and parole department shall tag and secure the contraband at a place designated by it for such time as necessary to secure its use as evidence in a violation, revocation or criminal proceeding. 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.

If it has been determined that the 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. Whenever contraband is declared abandoned, title to the contraband shall be transferred to the county department. After expiration of the necessary time period, the county department may do any of the following:

- Retain the contraband for official use.
- Destroy the contraband.
- Donate the contraband to a nonprofit organization or governmental entity.
- Sell any contraband that is not required to be destroyed by law.
- If the item is of *de minimus* value as determined by the county department, dispose of the item without sale.

The county treasurer shall establish and administer a community correction forfeiture fund consisting of all cash or proceeds obtained under this legislation. The money shall be disbursed at the discretion of the president judge.

Cash or proceeds generated by the sale of any abandoned contraband shall first be made available to satisfy any restitution owed by the offender.

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

The Pennsylvania Board of Probation and Parole may enact regulations that are necessary to implement this legislation on a uniform basis throughout Pennsylvania.

An appeal of an abandonment determination may be made by filing an appeal with the court of common pleas.

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 legislation.

Prisons and Parole Code: Pennsylvania Board of probation and Parole

Section 6153 of the Prisons and Parole Code authorizes State parole agents to search the person and property of offenders and seize contraband with certain restrictions. As a general rule, all contraband that is seized from an offender shall be considered abandoned and unclaimed, and no property right exists in it. The following criteria must have been met:

- The parolee or probationer from whom the item was seized is no longer under the jurisdiction of the court or the board.
- Two years have elapsed from the date the parolee or probationer was no longer under the jurisdiction of the court or the board.
- Notice that the item will be declared abandoned was mailed to the last known address of the parolee or probationer.
- No other claimant of the item has notified the board of his claim.
- The item has not been accepted by the Department of Treasury under the provisions of law relating to the disposition of abandoned and unclaimed property.
- The item has not been forfeited under any forfeiture statute.

The board shall tag and secure the contraband at a place designated by it for such time as necessary to secure its use as evidence in a violation, revocation or criminal proceeding. No later than the time of the first-level hearing to determine whether probable cause exists to believe that a violation of probation or parole has been committed, the board 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.

If it has been determined that the property is contraband that shall be declared abandoned, the contraband shall be retained by the board until all appeal periods are exhausted. Whenever contraband is declared abandoned, title to the contraband shall be transferred to the board. After expiration of the necessary time period, the board may do any of the following:

- Retain the contraband for official use.
- Destroy the contraband.
- Donate the contraband to a nonprofit organization or governmental entity.
- Sell any contraband that is not required to be destroyed by law.
- If the item is of *de minimus* value as determined by the board, dispose of the item without sale.

The board shall establish and administer a contraband forfeiture account consisting of all cash or proceeds obtained under this legislation and the funds shall be used for the board's operation.

Cash or proceeds generated by the sale of any abandoned contraband shall first be made available to satisfy any restitution owed by the offender.

The board and its employees shall be immune from liability for good faith conduct under this legislation.

The board may enact regulations that are necessary to implement this legislation for its agents and for use by county probation and parole departments on a uniform basis throughout Pennsylvania.

An appeal of an abandonment determination may be made by filing an appeal with the board's central office.

The board shall annually post a report specifying the abandoned property or proceeds of the abandoned property obtained under this legislation.

Applicability

The procedures established in section 9912 of the Judicial Code and 6153 of the Prisons and Parole Code shall apply to all contraband seized after the effective date of this legislation. For contraband seized prior to the effective date the sections provide for notice and a hearing at which abandonment shall be determined. The notice and hearing is based on the same procedure established by this legislation.

Effective date

This act takes effect in 60 days.

Background: During the 2011-2012 session, legislation relating to the disposition of contraband was introduced as Senate Bill 211. The Senate Judiciary Committee did not report the bill from committee but a series of meetings took place. Senate Bill 211 was structured as a forfeiture statute. The meetings resulted in a new draft making the legislation an abandonment statute. Senate Bill 305 reflects the results of those discussions.

Definitions

Section 9911 of the Judicial Code defines "contraband" as "Any item that an offender is not permitted to possess under the conditions of supervision, including any item whose possession is forbidden by any Federal, State or local law."

Section 6151 of the Prisons and Parole Code defines "contraband" as "Any item that the offender is not permitted to possess under the conditions of supervision, including any item whose possession is forbidden by any Federal, State or local law."