

No. 1995-23 (SS1)

AN ACT

SB 103

Providing for expedited eviction of drug traffickers; providing remedies; conferring powers and duties upon the Department of Health; and making an appropriation.

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

Section 1. Short title.

This act shall be known and may be cited as the *Model Expedited Eviction of Drug Traffickers Act*.

Section 2. Legislative findings.

The General Assembly finds and declares as follows:

(1) All citizens, regardless of their income or economic status, have the right to be safe and secure in their residences. All citizens further have the right to live and raise their children in apartment complexes, neighborhoods and communities which are free from the destructive influence of drug dealers and drug-related crime and violence.

(2) Persons who commit drug distribution offenses on or in the immediate vicinity of leased residential premises or who permit or tolerate such offenses to be committed violate the rights and jeopardize the health and safety of the other tenants, residents and onsite employees of the premises.

(3) It is the policy of the Commonwealth to ensure the swift eviction and removal of persons who engage in certain drug-related criminal activity on or in the immediate vicinity of leased residential premises or who permit members of their households or guests to engage in this criminal activity on or in the vicinity of the premises.

(4) Tenants have an obligation to take actions reasonable and necessary under the circumstances to prevent the commission of drug-related criminal activity within their individual rental units and to prevent members of their household and guests from committing such criminal activity on or in the immediate vicinity of any portion of the leased residential premises.

(5) It is the policy of the Commonwealth to encourage landlords to protect the rights, safety and health of their tenants and residents by promptly commencing and fully prosecuting civil eviction and removal proceedings against those tenants and other persons who engage in drug-related criminal activity on or in the immediate vicinity of their properties.

(6) The civil causes of action and remedies authorized by this act are remedial rather than punitive in nature and are designed first and foremost to protect the rights, safety and health of law-abiding tenants, residents and onsite employees while affording due process of law to persons alleged to have allowed such criminal activity to occur on or in the immediate vicinity of leased residential premises.

(7) Except as may otherwise be expressly provided, it is the general policy of the Commonwealth to afford the same rights and privileges under this act to the tenants and residents of publicly owned, publicly assisted and privately owned premises and housing facilities.

(8) Tenants should be empowered to take legal action to protect and enforce their own rights to live in a peaceful community. Tenant organizations should have access to the courts and should, therefore, be

afforded legal standing to initiate eviction for drug-related criminal activity on or in the immediate vicinity of the leased residential premises.

(9) It is the policy of the Commonwealth to ensure that the causes of action and remedies authorized by this act are heard by the courts on an expedited and priority basis so as to evict and remove as soon as practicable all persons who engage in drug-related criminal activity on or in the immediate vicinity of leased residential premises or who allow such criminal activity to occur.

(10) In addition to ensuring the swift disposition of all civil actions brought under this act, it is necessary and appropriate to ensure certain and uniform enforcement by the courts of the rights and remedies provided by this act. Such certainty, predictability and uniformity is essential to discourage persons from committing or tolerating the commission of drug-related criminal activity and thereby to protect the rights, safety and health of law-abiding tenants and residents.

(11) This act is intended to provide a legal process to ensure prompt eviction of persons who engage in specified drug-related criminal activity on or near leased residential premises or who permit others to engage in such criminal activity. This act is further intended to authorize courts to order persons other than tenants who engage in certain drug-related criminal activity to stay away from the location where the criminal activity occurred.

Section 3. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

“Complete eviction.” The eviction and removal of a tenant and all members of the tenant’s household.

“Controlled substance.” As defined in section 2 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

“Department.” The Department of Health of the Commonwealth.

“Distribute.” As defined in section 2 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

“Drug-dependent person.” A person who is a chemically dependent person as defined by the Department of Health.

“Drug-related criminal activity.” The unlawful manufacture, sale, distribution or possession with intent to sell or distribute, of a controlled substance in violation of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or an unlawful attempt or conspiracy to commit such an act.

“Guest.” An individual who has been given express or implied permission by a tenant, a member of the tenant’s household or another guest of the

tenant to enter an individual rental unit or any portion of the leased residential premises.

“Individual rental unit.” An apartment or individual dwelling or accommodation which is leased to a particular tenant, whether or not it is used or occupied or intended to be used or occupied by a single family or household.

“Landlord.” A person, entity, corporation or governmental authority or agency who or which owns, operates or manages leased residential premises.

“Leased residential premises.” A house, building, mobile home or apartment, whether publicly or privately owned, which is leased for residential purposes. The term includes the entire building or complex of buildings or mobile home park, all real property of any nature appurtenant thereto and used in connection therewith, all individual rental units and common areas. The term does not include a hotel, motel or other guest house or part thereof rented to a transient guest.

“Manufacture.” As defined in section 2 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

“Partial eviction.” The eviction and removal of specified persons other than the tenant from leased residential premises.

“Resident.” An individual who lawfully resides in a leased residential premises who is not a signatory to a lease and who has no contractual relationship to a landlord. The term includes a member of the household of a tenant.

“Tenant.” Any natural person or entity who is a named party or signatory to a lease or rental agreement and who occupies, resides at or has a legal right to possess and use an individual rental unit.

“Tenant organization.” An organization or association, whether or not incorporated, which is representative of the tenants or residents of a leased residential premises the membership of which consists of tenants of the leased residential premises which the organization or association represents. The term includes a community-based organization with members who are tenants of the leased residential premises.

Section 4. Nature of actions and jurisdiction.

The causes of action established in this act are civil actions to evict or remove tenants or other persons from leased residential premises.

Section 5. Standing.

A civil action under this act may be brought by any of the following:

- (1) A landlord.
- (2) A tenant organization.
- (3) A district attorney.
- (4) The Attorney General, if requested by a district attorney.

Section 6. Remedies and judicial orders.

(a) Grounds for complete eviction.—Subject to the provisions of sections 7 and 25, the court shall order the immediate eviction, as set forth in sections 12(b) and 14, of a tenant if it finds any of the following:

(1) Drug-related criminal activity has occurred on or within the individual rental unit leased to the tenant.

(2) The individual rental unit leased to the tenant was used in any way in furtherance of or to promote drug-related criminal activity.

(3) The tenant, any member of the tenant's household or any guest has engaged in drug-related criminal activity on or in the immediate vicinity of the leased residential premises.

(4) The tenant, with knowledge that a person has been removed and barred from the leased residential premises under this act, has given permission to or invited a person to return or reenter any portion of the leased residential premises.

(5) The tenant has failed to notify law enforcement or public housing authorities immediately upon learning that a person who has been removed and barred from the tenant's individual rental unit under this act has returned to or reentered the tenant's individual rental unit.

(b) Grounds for partial eviction and issuance of removal orders.—The court shall, subject to the provisions of sections 7(b) and 25, order the immediate removal from the leased residential premises of any person other than the tenant, including, but not limited to, an adult or minor member of the tenant's household, if the court finds that the person has engaged in drug-related criminal activity on or in the immediate vicinity of the leased residential premises. Persons removed under this section shall be barred from returning to or reentering any portion of the leased residential premises.

(c) Removal orders directed against the tenant.—If the court finds that a tenant, resident or guest has engaged in drug-related criminal activity on or in the immediate vicinity of the leased residential premises and if the person has not been named as a defendant, has not appeared in the action and has not been subjected to the jurisdiction of the court, a removal order issued under subsection (b) shall be directed against the tenant and shall provide that as an express condition of the tenancy, the tenant shall not give permission to or invite the barred person to return to or reenter any portion of the leased residential premises. The tenant shall acknowledge in writing that the tenant understands the terms of the court's order and that the tenant understands that the failure to comply with the court's order will result in the mandatory termination of the tenancy under section 12.

Section 7. Affirmative defense or exemption to a complete eviction.

(a) Affirmative defense.—The court may refrain from ordering the complete eviction of a tenant under section 6(a), if the tenant has established that the tenant was not involved in the drug-related criminal activity and that the tenant:

(1) did not know or have reason to know that drug-related criminal activity was occurring on or within the individual rental unit, that the individual rental unit was used in any way in furtherance of or to promote drug-related criminal activity or that any member of the tenant's household or any guest has engaged in drug-related criminal activity on or in the immediate vicinity of any portion of the leased residential premises;

(2) had done everything that could reasonably be expected in the circumstances to prevent the commission of the drug-related criminal activity; or

(3) had promptly reported the drug-related criminal activity to appropriate law enforcement authorities.

(b) Exemption.—If the grounds for a complete eviction have been established, the court shall order the eviction of the tenant unless, having regard to the circumstances of the criminal activity and the condition of the tenant, the court is clearly convinced that immediate eviction or removal would effect a serious injustice the prevention of which overrides the need to protect the rights, safety and health of the other tenants and residents of the leased residential premises.

(c) Burden of proof.—The burden of proof for the affirmative defense set forth in subsection (a) shall be by a preponderance of the evidence. The burden of proof for the exemption set forth in subsection (b) shall be by clear and convincing evidence.

Section 8. Mandatory partial eviction where affirmative defense or exemption to complete eviction is established.

(a) General rule.—If the plaintiff has established grounds for a complete eviction but the court finds that the tenant has satisfactorily established the basis for an affirmative defense or exemption under section 7 and if the court elects not to order the complete eviction of the tenant, the court, except as otherwise provided in section 25, shall order the immediate removal from the leased residential premises of any person other than the tenant, including adult or minor members of the tenant's household, who have engaged in drug-related criminal activity on any portion of the leased residential premises. Persons removed under this section shall be permanently barred from returning to or reentering any portion of the leased residential premises. The court shall further order as an express condition of the tenancy that the tenant shall not give permission to or invite any person who has been removed under this act to return to or reenter any portion of the leased residential premises.

(b) Acknowledgment of conditional tenancy.—The tenant upon whom a partial eviction is imposed must acknowledge in writing that the tenant understands the terms of the court's order issued under subsection (a) and understands that the failure to comply with the court's order will result in the mandatory termination of the tenancy under section 6. Refusal by the tenant to acknowledge such terms as required by this subsection shall vitiate any

prior finding by the court that an exemption to a complete eviction exists or that the tenant has satisfactorily established an affirmative defense.

Section 9. Substitution of plaintiff.

If the court determines in its discretion that the plaintiff bringing an action under this act has failed to prosecute the matter with reasonable diligence, the court may substitute as plaintiff any person that consents and that would have been authorized under this act to initiate the action.

Section 10. Execution of removal or eviction order.

Any removal or eviction order issued by a court under this act shall be enforced by the person or entity bringing the action. The appropriate law enforcement agency shall upon the request of the person bringing the action assume responsibility for the actual execution of the removal or eviction.

Section 11. Obstructing the execution or enforcement of a removal or eviction order.

Any person who knowingly violates any order issued under this act or who knowingly interferes with, obstructs, impairs or prevents any law enforcement officer from enforcing or executing any order issued under this act shall be subject to criminal contempt. Nothing in this section shall be construed in any way to preclude or preempt a criminal prosecution for any other criminal offense.

Section 12. Motion to enforce removal order and mandatory evictions.

(a) General rule.—Any person authorized to bring an action under this act may move to enforce a removal order issued under this act.

(b) Expedited hearings.—A motion to enforce a removal order shall be heard on an expedited basis and within 15 days of the filing of the motion.

(c) Mandatory eviction.—The court shall order the immediate eviction of the tenant if it finds any of the following:

(1) The tenant has given permission to or invited any person removed or barred from the leased residential premises under this act to return to or reenter the leased residential premises.

(2) The tenant has failed to notify appropriate law enforcement or public housing authorities immediately upon learning that any person who had been removed and barred under this act has returned to or reentered the tenant's individual rental unit.

(3) The tenant has otherwise knowingly violated an express term or condition of any order issued by the court under this act.

Section 13. Impermissible defense.

It shall not be a defense to an action brought under this act that the drug-related criminal activity was an isolated incident or otherwise has not recurred or that the person who actually engaged in the drug-related criminal activity no longer resides in the tenant's individual rental unit.

Section 14. Expedited proceedings.

(a) Expedited hearing.—If a complaint is filed initiating an action under this act, the court shall set the matter for a hearing which shall be held on an expedited basis and within 15 days following the filing of the complaint.

(b) Standards for continuances.—The court shall not grant a continuance nor shall it stay the civil proceedings pending the disposition of any related criminal proceedings except for compelling and extraordinary reasons or on application for good cause shown.

Section 15. Notice to interested parties.

Notwithstanding any other provision of law concerning the procedures otherwise used in eviction proceedings, it shall not be necessary to provide notice to the tenant to vacate the premises prior to filing the complaint initiating a civil action under this act.

Section 16. Inapplicability of exclusionary rule.

No relevant testimony or evidence shall be excluded from any civil action brought under this act on account of the manner by which it was obtained by a law enforcement officer or agency, notwithstanding that the civil action may have been brought by a district attorney or the Attorney General.

Section 17. Relation to criminal proceedings.

(a) Criminal proceedings, conviction or adjudications not required.—The fact that a criminal prosecution involving the drug-related criminal activity is not commenced or, if commenced, has not yet been concluded or has terminated without a conviction or adjudication of delinquency shall not preclude a civil action or the issuance of an order under this act.

(b) Collateral estoppel.—If a criminal prosecution involving the drug-related criminal activity results in a final criminal conviction or adjudication of delinquency, such adjudication or conviction shall estop the convicted defendant or adjudicated juvenile from denying the essential allegations of the criminal offense in any subsequent civil proceeding brought under this act.

(c) Admissibility of criminal trial recordings or transcripts.—Evidence admitted in the criminal proceeding, including recordings or transcripts of the adult or juvenile criminal proceedings may be admitted in the civil action initiated under this act.

Section 18. Discovery.

The parties to an action brought under this act shall not be entitled to conduct discovery otherwise available in a civil action except by leave of court where required to ensure the fair disposition of the civil action. The plaintiff in a civil action brought under this act must provide to the tenant and all other named defendants a reasonable opportunity prior to the hearing to examine any relevant documents or records within the plaintiff's possession which directly relate to the action.

Section 19. Protection of threatened witnesses or affiants.

If proof necessary to establish the grounds for eviction depends, in whole or in part, upon the affidavits or testimony of witnesses who are not peace officers, the court may upon a showing of prior threats of violence or acts of violence by any defendant or any other person issue orders to protect those witnesses, including, but not limited to, the nondisclosure of the name, address or any other information which may identify those witnesses.

Section 20. Ongoing collection of rent.

A landlord shall be entitled to collect rent due and owing from the tenant during the pendency of a civil action brought under this act.

Section 21. Recovery of costs by prevailing plaintiff.

A tenant organization or district attorney or the Attorney General bringing a successful action under this act, including where the action is ultimately discharged under section 25(k), shall be entitled to recover the cost of the suit, including reasonable attorney fees from the landlord, if the landlord had refused to initiate an action within ten days after having been requested to do so in writing, delivered personally or by certified mail, return receipt requested. If the court determines under section 9 that a landlord failed to prosecute an initiated action with reasonable diligence, the landlord shall be responsible for the payment of all reasonable costs of the suit expended by a prevailing substitute plaintiff designated under section 9.

Section 22. Preliminary or emergency relief.

The court may issue a temporary restraining order, grant preliminary relief or take such other action necessary to enjoin or prevent the commission of drug-related criminal activity on or in the immediate vicinity of leased residential premises or otherwise to protect the rights and interests of all tenants and residents.

Section 23. Cumulative remedies.

The remedies authorized by this act shall be cumulative with each other and shall be in addition to, not in lieu of, any other remedies available at law or in equity.

Section 24. Civil immunity.

A person who in good faith institutes, participates in or encourages a person to institute or participate in a civil action brought under this act or who in good faith provides information relied upon by any person in instituting or participating in a civil action under this act shall have immunity from civil liability that might otherwise be incurred or imposed.

Section 25. Probationary tenancy.**(a) Temporary suspension of eviction or removal.—**

(1) The court on the application of a person subject to removal may suspend the execution of an order of complete or partial eviction for a period of not more than ten days in order to refer the person to a licensed substance abuse treatment program or facility for an alcohol and other drug addiction assessment and treatment recommendation in order to determine whether the person is a suitable candidate for a stay of execution of eviction or removal under subsection (b) if all of the following apply:

(i) The person asserts that the person:

(A) is drug dependent within the meaning of this act;

(B) is willing to participate in a licensed treatment and monitoring program recommended by the program or facility and approved by the court; and

(C) meets the requirements set forth in subsection (b)(4), (5) and (6).

(ii) The court is clearly convinced that the temporary suspension of execution of the order of the eviction or removal will not endanger the safety of the community or otherwise unduly jeopardize the rights or interests of other tenants and residents of the leased residential premises.

(2) Pending the filing of an application for a stay of execution under subsection (b), a temporary suspension issued under this subsection shall automatically expire on the date fixed by the court or ten days after the suspension is granted, whichever is earlier. At such time, the order of eviction or removal shall be immediately enforced unless a stay is granted in accordance with the provisions of subsection (b).

(b) Application to stay execution of eviction or removal order.—On application of a person subject to removal, the court may stay execution of an order of complete or partial eviction for a period of time as provided in subsection (f) and during which the person is participating in a court-approved and licensed alcohol and other drug treatment program if the person establishes by clear and convincing evidence all of the following:

(1) The person is drug dependent and the drug-related criminal activity that was the basis for the order of eviction or removal was committed in order to support the person's drug dependency.

(2) No evidence is presently proffered or has been presented that the person is an adult and in the commission of such drug-related criminal activity distributed a controlled substance to a person under 15 years of age.

(3) No evidence is presently proffered or has been presented that the person unlawfully used or possessed a firearm on the leased residential premises or that the person used or threatened to use violence in committing any of the acts which are the basis for the order of eviction or removal.

(4) The person has not previously undergone court-approved treatment under this section.

(5) The person has agreed to participate in the course of alcohol and other drug treatment recommended by the treatment facility conducting the court-ordered addiction assessment.

(6) The stay of execution of the order of complete or partial eviction will not endanger the safety of the community or otherwise unduly jeopardize the rights or interests of other tenants and residents of the leased residential premises.

(7) Admission to the recommended course of treatment will serve to benefit the person by addressing drug dependency and will thereby remove the incentive for the person to engage in drug-related criminal activity.

(c) Right of interested person to be heard.—The plaintiff in the civil action and the tenant organization for the premises, whether or not such

organization joined in the civil action, shall be provided an opportunity to be heard with respect to an order under this section.

(d) Participation in recommended course of treatment.—If the court is satisfied that the grounds for a stay set forth in subsection (b) have been clearly and convincingly established, the court as a condition of the stay of execution of the eviction or removal order shall order the person to participate in the recommended course of treatment. The program must include periodic drug testing. The course of treatment must take place in a program licensed by the department to provide substance abuse treatment. The court shall impose reasonable terms and conditions of the person's participation in the court-approved treatment program. The terms and conditions shall include a requirement that the person comply with all rules established by the treatment program. The terms and conditions imposed by the court may include establishing a curfew or imposing restrictions on the person's associations and places of travel. The court may modify or impose additional terms or conditions if the court, prior to its removal of a significant term or condition, provides notice to all persons or entities entitled under subsection (c) to participate in the proceedings. The person placed on probationary tenancy must consent to the original or amended terms and conditions as a condition of the stay of execution of the eviction or removal order and must acknowledge in writing that the person understands and accepts all such terms and conditions. If the person refuses to accept or comply with original or amended terms and conditions, the stay of execution shall be automatically rescinded; and the order of eviction or removal shall be immediately enforced in accordance with this act.

(e) Period of probationary tenancy.—If the person maintains compliance with the terms and conditions of the court and with the requirements of the course of treatment and monitoring, the stay of execution of an order of eviction or removal shall remain in force for a period of six months. The court upon recommendation by the treatment program may extend the initial period of probationary tenancy for an additional six months.

(f) Prompt initiation of treatment.—A stay of execution of an order of eviction or removal under this section shall be contingent upon the person commencing participation in the recommended course of treatment or being placed on a certified waiting list until a position for the recommended course of treatment becomes available, within ten days of the entry of the court's order granting the stay of execution of eviction or removal. If the person is placed on a certified list, the person must submit to regular drug testing as ordered by the court and must also attend, with verification, no fewer than five 12-step recovery meetings per week until the course of treatment can begin. If the person fails to comply with the conditions of this subsection within the time period, the stay of execution shall be automatically rescinded unless the court determines that there are extraordinary and compelling reasons to reinstate the stay pending the person's participation in the recommended course of treatment by a date certain to be fixed by the court.

(g) Reporting of progress in course of treatment.—The treatment program must as a condition of the stay of execution of the eviction or removal order agree in writing to report periodically to the court as to the person's progress and compliance with court-imposed terms and conditions. The treatment program must agree to promptly report any significant failure to comply with the requirements of the course of treatment. The treatment program must agree immediately to advise the court if the person terminates participation in the course of treatment. The person and, if necessary, the person's parent or guardian must as a condition of the stay of execution sign consent forms necessary to release information to the court under this section with respect to participation in the course of treatment.

(h) Supervisory jurisdiction of probation department.—The court may assign the department the responsibility to assist in monitoring and supervising the person's participation in the recommended course of treatment and compliance with all court-imposed terms and conditions of the probationary tenancy. The court may also assign the department the responsibility to administer the periodic drug testing. The department shall immediately report a significant violation of the court-imposed terms and conditions, in accordance with subsection (g).

(i) Effect of violation.—Upon a first significant violation of any court-ordered term or condition of the probationary tenancy, the court may and upon recommendation of the treatment program or upon subsequent violation shall, in the absence of extraordinary and compelling reasons, rescind the stay of execution of the order of eviction or removal, and the order shall be immediately enforced. In making its determination whether to rescind the stay after a first significant violation, the court shall consider the nature and seriousness of the infraction in relation to the person's progress in the course of treatment and shall consider the recommendations of the treatment program. If the treatment program determines to discontinue the person's course of treatment, the court shall revoke the probationary tenancy and rescind the stay of execution of the order of eviction or removal unless the treatment program recommends that another treatment program be engaged to provide the course of treatment. If the court finds reasonable grounds to believe that the person during the term of the probationary tenancy has been involved in drug-related criminal activity, whether or not the activity occurred on the leased residential premises, the court shall immediately rescind the stay of execution of the order of eviction or removal, and the order shall be immediately enforced.

(j) Action upon violation.—An action for a violation of a term or condition of the probationary tenancy may be brought by the plaintiff in the eviction action, any person that could have initiated the eviction action under this act, the treatment program or the department. The action shall be summary in nature and shall be heard and decided within five days of the notice to the court of the violation.

(k) Discharge of order of eviction or removal.—If after the expiration of the term of probationary tenancy the court determines that the person has satisfactorily complied with the terms and conditions of the recommended course of treatment and that the person no longer poses a risk to the other residents and tenants, the court shall discharge the order of eviction or removal and shall dismiss the action.

Section 26. Notification and provision of treatment resources.

(a) Notification to person removed.—The court prior to the removal of any person under this act shall provide to that person outreach information and referral materials on how to obtain alcohol and other drug treatment.

(b) Notification to social services agencies.—The court no less than ten days prior to the removal of any person under this act shall notify the department and the Department of Public Welfare, if applicable, and other appropriate social service agencies of the removal.

(c) Preparation and dissemination of treatment resource information.—The department shall prepare the outreach information and referral materials and shall disseminate the information and materials to the Administrative Office of Pennsylvania courts.

Section 27. Relocation assistance.

A landlord shall not bear responsibility for relocating a person who has been evicted, removed or barred under this act.

Section 28. Liberal construction.

The provisions of this act shall be liberally construed to effectuate the remedial purposes, objectives and policies set forth in section 2.

Section 29. Effective date.

This act shall take effect in 60 days.

APPROVED—The 11th day of October, A.D. 1995.

THOMAS J. RIDGE