

No. 2006-139

## AN ACT

HB 1112

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the offense of corrupt organizations; providing for the offense of trafficking in persons; further providing for order authorizing interception of wire, electronic or oral communications; and providing for sentencing for trafficking of persons and for criminal forfeiture.

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

Section 1. Section 911(h)(1) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 911. Corrupt organizations.

\* \* \*

(h) Definitions.—As used in this section:

(1) “Racketeering activity” means:

(i) any act which is indictable under any of the following provisions of this title:

Chapter 25 (relating to criminal homicide)

Section 2706 (relating to terroristic threats)

Chapter 29 (relating to kidnapping)

**Chapter 30 (relating to trafficking of persons)**

Chapter 33 (relating to arson, etc.)

Chapter 37 (relating to robbery)

Chapter 39 (relating to theft and related offenses)

Section 4108 (relating to commercial bribery and breach of duty to act disinterestedly)

Section 4109 (relating to rigging publicly exhibited contest)

Section 4117 (relating to insurance fraud)

Chapter 47 (relating to bribery and corrupt influence)

Chapter 49 (relating to falsification and intimidation)

Section 5111 (relating to dealing in proceeds of unlawful activities)

Section 5512 through 5514 (relating to gambling)

Chapter 59 (relating to public indecency)

(ii) any offense indictable under section 13 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act (relating to the sale and dispensing of narcotic drugs);

(iii) any conspiracy to commit any of the offenses set forth in subparagraphs (i) and (ii) of this paragraph; or

(iv) the collection of any money or other property in full or partial satisfaction of a debt which arose as the result of the lending of money or other property at a rate of interest exceeding 25% per annum or the equivalent rate for a longer or shorter period, where not otherwise authorized by law.

Any act which otherwise would be considered racketeering activity by reason of the application of this paragraph, shall not be excluded from its application solely because the operative acts took place outside the jurisdiction of this Commonwealth, if such acts would have been in violation of the law of the jurisdiction in which they occurred.

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Section 2. Title 18 is amended by adding a chapter to read:

CHAPTER 30  
TRAFFICKING OF PERSONS

Sec.

3001. Definitions.

3002. Trafficking of persons.

3003. Restitution for offenses.

3004. Forfeiture.

§ 3001. Definitions.

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

“Criminal coercion.” The term includes conduct defined as criminal coercion by section 2906 (relating to criminal coercion).

“Forced labor or services.” Labor or services that are performed or provided by another person which are obtained or maintained when a person:

- (1) attempts to cause, causes or by threat of physical menace puts another person in fear of bodily injury;
- (2) physically restrains or threatens to physically restrain another person unlawfully;
- (3) abuses or threatens to abuse the law or legal process;
- (4) possesses except as required by Federal immigration law or regulation, destroys, conceals, removes or confiscates any actual or purported passport or other immigration document of another person, or any other actual or purported government identification document of another person; or
- (5) engages in criminal coercion of another person.

“Traffics.” Recruits, entices, harbors, transports or provides or obtains by any means.

§ 3002. Trafficking of persons.

(a) Offense defined.—A person commits an offense if the person knowingly traffics or knowingly attempts to traffic another person, knowing that the other person will be subjected to forced labor or services.

(b) Grading.—An offense under subsection (a) shall be graded a felony of the second degree unless the other person suffers bodily injury or the other person is an individual under 18 years of age, in which case it shall be graded as a felony of the first degree.

§ 3003. Restitution for offenses.

(a) General rule.—A person convicted of an offense under this chapter shall, in addition to any other remedy deemed appropriate by the court, be sentenced to pay the victim restitution, including the greater of:

(1) the gross income or value to the person to whom the labor or services were performed by the victim; or

(2) the value of the victim's labor based on the minimum wage of this Commonwealth.

(b) Private remedies.—Nothing in this section shall be construed to preclude any other remedy at law or in equity.

§ 3004. Forfeiture.

(a) General rule.—The following shall be subject to forfeitures to the Commonwealth, and no property right shall exist in them:

(1) All assets, foreign or domestic:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act in this Commonwealth which violates section 3002 (relating to trafficking of persons) and all assets, foreign or domestic, affording a person a source of influence over such individual, entity or organization.

(ii) Acquired or maintained by a person with the intent and for the purpose of supporting, planning, conducting or concealing an act in this Commonwealth which violates section 3002.

(iii) Derived from, involved in or used or intended to be used to commit an act in this Commonwealth which violates section 3002.

(2) All assets within this Commonwealth:

(i) Of an individual, entity or organization engaged in planning or perpetrating an act which violates section 3002.

(ii) Acquired or maintained with the intent and for the purpose of supporting, planning, conducting or concealing an act which violates section 3002.

(iii) Derived from, involved in or used or intended to be used to commit an act which violates section 3002.

(b) Process and seizures.—Property subject to forfeiture under this section may be seized by the law enforcement authority upon process issued by any court of common pleas having jurisdiction over the property.

(c) Custody of property.—

(1) Property taken or detained under this section shall not be subject to replevin but is deemed to be in the custody of the law enforcement authority subject only to the orders and decrees of the court of common pleas having jurisdiction over the forfeiture proceedings and of the district attorney.

(2) When property is seized under this section, the law enforcement authority shall place the property under seal and either:

(i) remove the property to a place designated by it; or

(ii) require that the district attorney take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(d) Transfer of property.—Whenever property is forfeited under this section, the property shall be transferred to the custody of the district attorney. The district attorney, where appropriate, may retain the property for official use or sell the property, but the proceeds from any such sale shall be used to pay all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance of the proceeds shall be used for the enforcement of the criminal laws of Pennsylvania.

(e) Proceedings and petition.—The proceedings for the forfeiture or condemnation of property, the retention or sale of which is provided for in this section, shall be in rem, in which the Commonwealth shall be the plaintiff and the property the defendant. A petition shall be filed in the court of common pleas of the judicial district where the property is located, verified by oath or affirmation of an officer or citizen, containing the following:

(1) A description of the property seized.

(2) A statement of the time and place where seized.

(3) The owner, if known.

(4) The person or persons in possession, if known.

(5) An allegation that the property is subject to forfeiture pursuant to this section and an averment of material facts upon which forfeiture action is based.

(6) A prayer for an order of forfeiture that the property be adjudged forfeited to the Commonwealth and condemned unless cause be shown to the contrary.

(f) Service.—A copy of the petition required under subsection (e) shall be served personally or by certified mail on the owner or the person or persons in possession at the time of the seizure. The copy shall have endorsed a notice as follows:

To the claimant of within described property:

You are required to file an answer to this petition, setting forth your title in and right to possession of the property within 30 days from the service of this notice. You are also notified that, if you fail to file the answer, a decree of forfeiture and condemnation will be entered against the property.

The notice shall be signed by the district attorney, deputy district attorney or assistant district attorney.

(g) Notice.—

(1) If the owner of the property is unknown or there was no person in possession of the property when seized or if the owner or such person or persons in possession at the time of the seizure cannot be personally served or located within the jurisdiction of the court, notice of the petition shall be given by the Commonwealth through an advertisement in only one newspaper of general circulation published in the county where the property shall have been seized, once a week for two successive weeks. No other advertisement of any sort shall be necessary, any other law to the contrary notwithstanding.

(2) The notice shall contain a statement of the seizure of the property with a description of the property and the place and date of seizure and shall direct any claimants to the property to file a claim on or before a date given in the notice, which date shall not be less than 30 days from the date of the first publication.

(3) If no claims are filed within 30 days of publication, the property shall summarily forfeit to the Commonwealth.

(h) Unknown owner.—For purposes of this section, the owner or other such person cannot be found in the jurisdiction of the court if:

(1) a copy of the petition is mailed to the last known address by certified mail and is returned without delivery;

(2) personal service is attempted once but cannot be made at the last known address; and

(3) a copy of the petition is left at the last known address.

(i) Waiver of notice.—The notice provisions of this section are automatically waived if the owner, without good cause, fails to appear in court in response to a subpoena on the underlying criminal charges. Forty-five days after such a failure to appear, if good cause has not been demonstrated, the property shall summarily forfeit to the Commonwealth.

(j) Hearing date.—Upon the filing of a claim for the property setting forth a right of possession, the case shall be deemed at issue, and a date and time shall be fixed for the hearing.

(k) Burden of proof.—At the hearing, if the Commonwealth produces evidence that the property in question was unlawfully used, possessed or otherwise subject to forfeiture under this section, the burden shall be upon the claimant to show by a preponderance of the evidence:

(1) That the claimant is the owner of the property or the holder of a chattel mortgage or contract of conditional sale thereon.

(2) That the claimant lawfully acquired the property.

(3) That the property was not unlawfully used or possessed by the claimant. If it appears that the property was unlawfully used or possessed by a person other than the claimant, then the claimant shall show that the unlawful use or possession was without his knowledge or consent. Such absence of knowledge or consent must be reasonable under the circumstances presented.

(l) Claims of ownership.—If a person claiming the ownership of or right of possession to or claiming to be the holder of a chattel mortgage or contract of conditional sale upon the property, the disposition of which is provided for in this section, prior to the sale presents a petition to the court alleging lawful ownership, right of possession, a lien or reservation of title to the property and if, on public hearing, due notice of which having been given to the district attorney, the claimant shall prove by a preponderance of the evidence that the property was lawfully acquired, possessed and used by him or, it appearing that the property was unlawfully used by a person other than the claimant, that the unlawful use was without the claimant's knowledge or consent, then the court may order the property returned or delivered to the claimant. Such absence of knowledge or consent must be reasonable under the circumstances presented. Otherwise, it shall be retained for official use or sold in accordance with this section.

Section 3. Section 5708(1) of Title 18 is amended to read:

§ 5708. Order authorizing interception of wire, electronic or oral communications.

The Attorney General, or, during the absence or incapacity of the Attorney General, a deputy attorney general designated in writing by the Attorney General, or the district attorney or, during the absence or incapacity of the district attorney, an assistant district attorney designated in writing by the district attorney of the county wherein the suspected criminal activity has been, is or is about to occur, may make written application to any Superior Court judge for an order authorizing the interception of a wire, electronic or oral communication by the investigative or law enforcement officers or agency having responsibility for an investigation involving suspected criminal activities when such interception may provide evidence of the commission of any of the following offenses, or may provide evidence aiding in the apprehension of the perpetrator or perpetrators of any of the following offenses:

(1) Under this title:

- Section 911 (relating to corrupt organizations)
- Section 2501 (relating to criminal homicide)
- Section 2502 (relating to murder)
- Section 2503 (relating to voluntary manslaughter)
- Section 2702 (relating to aggravated assault)
- Section 2706 (relating to terroristic threats)
- Section 2709.1 (relating to stalking)
- Section 2716 (relating to weapons of mass destruction)
- Section 2901 (relating to kidnapping)
- Section 3002 (relating to trafficking of persons)**
- Section 3121 (relating to rape)
- Section 3123 (relating to involuntary deviate sexual intercourse)
- Section 3124.1 (relating to sexual assault)
- Section 3125 (relating to aggravated indecent assault)

- Section 3301 (relating to arson and related offenses)
- Section 3302 (relating to causing or risking catastrophe)
- Section 3502 (relating to burglary)
- Section 3701 (relating to robbery)
- Section 3921 (relating to theft by unlawful taking or disposition)
- Section 3922 (relating to theft by deception)
- Section 3923 (relating to theft by extortion)
- Section 4701 (relating to bribery in official and political matters)
- Section 4702 (relating to threats and other improper influence in official and political matters)
- Section 5512 (relating to lotteries, etc.)
- Section 5513 (relating to gambling devices, gambling, etc.)
- Section 5514 (relating to pool selling and bookmaking)
- Section 5516 (relating to facsimile weapons of mass destruction)
- Section 6318 (relating to unlawful contact with minor)

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Section 4. Title 42 is amended by adding a section to read:

**§ 9720.2. Sentencing for trafficking of persons.**

***Notwithstanding any other provision of law, a person who commits a violation of 18 Pa.C.S. § 3002 (relating to trafficking of persons) while violating:***

***(1) 18 Pa.C.S. § 2901 (relating to kidnapping);***

***(2) 18 Pa.C.S. § 3121 (relating to rape); or***

***(3) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);***

***shall be sentenced up to a maximum term of life imprisonment.***

Section 5. This act shall take effect in 60 days.

APPROVED—The 9th day of November, A.D. 2006.

EDWARD G. RENDELL