

No. 1988-158

AN ACT

SB 245

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for grading of simple assault and for endangering welfare of children; further providing for the definition of contraband given to confined persons and for license to carry a firearm; providing for a sportsman's firearm permit; further prohibiting sexual abuse of children; and further prohibiting the possession of depictions of prohibited sexual acts.

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

Section 1. Sections 2701(b), 4304, 5123(a), 6102, 6106(b)(4) and (c), 6109, 6116, 6120 of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 2701. Simple assault.

* * *

(b) Grading.—Simple assault is a misdemeanor of the second degree unless committed:

(1) in a fight or scuffle entered into by mutual consent, in which case it is a misdemeanor of the third degree; or

(2) *against a child under 12 years of age by an adult 21 years of age or older, in which case it is a misdemeanor of the first degree.*

§ 4304. Endangering welfare of children.

A parent, guardian, or other person supervising the welfare of a child under 18 years of age commits a misdemeanor of the [second] first degree if he knowingly endangers the welfare of the child by violating a duty of care, protection or support.

§ 5123. Contraband.

(a) Contraband to confined persons prohibited.—A person commits a misdemeanor of the first degree if he sells, gives, or furnishes to any convict in a prison, or inmate in a mental hospital, or gives away in, or brings into any prison, mental hospital, or any building appurtenant thereto, or on the land granted to or owned or leased by the Commonwealth or county for the use and benefit of the prisoners or inmates, or puts in any place where it may be secured by a convict of a prison, inmate of a mental hospital, or employee thereof, any kind of spirituous or fermented liquor, drug, medicine[,] or poison[, opium, morphine, or other kind of narcotics,] or any controlled substance included in Schedules I through V of the act of April 14, 1972 (P.L.233, No.64), known as *The Controlled Substance, Drug, Device and Cosmetic Act*, (except the ordinary hospital supply of the prison or mental hospital) without a written permit signed by the physician of such institution, specifying the quantity and quality of the liquor or [narcotic] substance which may be furnished to any convict, inmate, or employee in the prison or mental hospital, the name of the prisoner, inmate, or employee for whom,

and the time when the same may be furnished, which permit shall be delivered to and kept by the warden or superintendent of the prison or mental hospital.

* * *

§ 6102. Definitions.

Subject to additional definitions contained in subsequent provisions of this subchapter which are applicable to specific provisions of this subchapter, the following words and phrases, when used in this subchapter shall have, unless the context clearly indicates otherwise, the meanings given to them in this section:

“Firearm.” Any pistol or revolver with a barrel less than 12 inches, any shotgun with a barrel less than 24 inches, or any rifle with a barrel less than 15 inches.]

“Commissioner.” *The Commissioner of the Pennsylvania State Police.*

“Conviction.” *A conviction as determined by the law of the jurisdiction in which the prosecution was held. The term does not include a conviction which has been expunged or overturned or for which an individual has been pardoned unless the pardon expressly provides that the individual may not possess or transport firearms.*

“County treasurer.” *The county treasurer or, in home rule or optional plan counties, the person whose duties encompass those of a county treasurer.*

“Crime of violence.” Any of the following crimes, or an attempt, a solicitation or a conspiracy to commit any of the same, namely: murder, voluntary manslaughter, rape, aggravated assault, robbery, burglary, [entering a building with intent to commit a crime therein,] involuntary-deviate sexual intercourse, arson, extortion accompanied by threats of violence, assault by prisoner, assault by life prisoner and kidnapping.

“Crime punishable by imprisonment exceeding one year.” *Does not include any of the following:*

(1) *Federal or State offenses pertaining to antitrust, unfair trade practices, restraints of trade or regulation of business.*

(2) *State offenses classified as misdemeanors and punishable by a term of imprisonment not to exceed two years.*

“Firearm.” *Any pistol or revolver with a barrel less than 15 inches, any shotgun with a barrel less than 18 inches or any rifle with a barrel less than 16 inches, or any pistol, revolver, rifle or shotgun with an overall length of less than 26 inches. The barrel length of a firearm shall be determined by measuring from the muzzle of the barrel to the face of the closed action, bolt or cylinder, whichever is applicable.*

“Sheriff.”

(1) *Except as provided in paragraph (2), the sheriff of the county.*

(2) *In a city of the first class, the chief or head of the police department.*

§ 6106. Firearms not to be carried without a license.

* * *

(b) Exceptions.—The provisions of subsection (a) shall not apply to:

* * *

(4) [The members of any organization incorporated under the laws of this Commonwealth,] *Any persons engaged in target shooting with rifle, pistol, or revolver, if such [members] persons are at or are going to or from their places of assembly or target practice and if, while going to or from their places of assembly or target practice, the cartridges or shells are carried in a separate container and the rifle, pistol or revolver is unloaded.*

* * *

(c) [Registration required in connection with field or stream exemptions.—Before any exemption shall be granted under subsection (b)(9) or (b)(10) to any person licensed to hunt, take furbearers or fish or who desires to train dogs, such person shall at the time of securing his hunting, furtaking or fishing license or any time after any such license has issued, register with the county treasurer the make of the firearm he desires to carry, and the caliber and number thereof, on a blank to be furnished by the Pennsylvania State Police. The original registration shall be delivered to the person registering such firearm, and a copy thereof shall be forwarded by the county treasurer to the Commissioner of the Pennsylvania State Police. As of January 1, 1972, the county treasurer shall be entitled to collect a fee of 50 cents for each such registration of a firearm which fee shall be paid to the county. The registration of a firearm, as provided in this subsection, shall be good only for the year for which the hunting, furtaking or fishing license in connection with which it is granted, is issued.] *Sportsman's firearm permit.—*

(1) Before any exception shall be granted under paragraph (b)(9) or (10) of this section to any person 18 years of age or older licensed to hunt, trap or fish or who has been issued a permit relating to hunting dogs, such person shall, at the time of securing his hunting, furtaking or fishing license or any time after such license has been issued, secure a sportsman's firearm permit from the county treasurer. The sportsman's firearm permit shall be issued immediately and be valid throughout this Commonwealth for a period of five years from the date of issue for any legal firearm, when carried in conjunction with a valid hunting, furtaking or fishing license or permit relating to hunting dogs. The sportsman's firearm permit shall be in triplicate on a form to be furnished by the Pennsylvania State Police. The original permit shall be delivered to the person, and the first copy thereof, within seven days, shall be forwarded to the Commissioner of the Pennsylvania State Police by the county treasurer. The second copy shall be retained by the county treasurer for a period of two years from the date of expiration. The county treasurer shall be entitled to collect a fee of not more than \$6 for each such permit issued, which shall include the cost of any official form. The Pennsylvania State Police may recover from the county treasurer the cost of any such form, but may not charge more than \$1 for each official permit form furnished to the county treasurer.

(2) Any person who sells or attempts to sell a sportsman's firearm permit for a fee in excess of that amount fixed under this subsection commits a summary offense.

* * *

§ 6109. Licenses.

[(a) Issue of license.—The chief or head of any police force or police department of a city, and, elsewhere, the sheriff of a county, may, upon the application of any person, issue a license to such person to carry a firearm in a vehicle or concealed on or about his person within this Commonwealth for not more than five years from date of issue, if it appears that the applicant has good reason to fear an injury to his person or property, or has any other proper reason for carrying a firearm, and that he is a suitable person to be so licensed.

(b) Form of license.—The license shall be in triplicate, in form to be prescribed by the Pennsylvania State Police, and shall bear the name, address, description, and signature of the licensee and the reason given for desiring a license. The original thereof shall be delivered to the licensee, the duplicate shall, within seven days, be sent by registered or certified mail to the Commissioner of the Pennsylvania State Police, and the triplicate shall be preserved for six years by the authority issuing said license.

(c) Fee.—The fee for issuing such license shall be \$2.50, which fee shall be paid into the county treasury.

(d) Revocation.—Any such license to carry firearms may be revoked by the person issuing the same. Notice of revocation shall be in writing and shall state the reason therefor. Said notice shall be sent by certified mail, and, at that time, a copy shall be forwarded to the Commissioner of the Pennsylvania State Police.]

(a) Purpose of license.—A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle within this Commonwealth.

(b) Place of application.—An individual who is 21 years of age or older may apply to a sheriff for a license to carry a firearm concealed on or about his person or in a vehicle within this Commonwealth. If the applicant is a resident of this Commonwealth, he shall make application with the sheriff of the county in which he resides or, if a resident of a city of the first class, with the chief of police of that city.

(c) Form of application and content.—The application for a license to carry a firearm shall be uniform throughout this Commonwealth and shall be on a form prescribed by the Pennsylvania State Police. The form may contain provisions, not exceeding one page, to assure compliance with subsection (e)(2). Issuing authorities shall use only the application form prescribed by the Pennsylvania State Police. One of the following reasons for obtaining a firearm license shall be set forth in the application: self-defense, employment, hunting and fishing, target shooting, gun collecting or another proper reason. The application form shall be dated and signed by the applicant and shall contain the following statement:

I have never been convicted of a crime of violence in the Commonwealth of Pennsylvania or elsewhere. I am of sound mind and have never been committed to a mental institution. I hereby certify that the statements contained herein are true and correct to the best of my

knowledge and belief. I understand that, if I knowingly make any false statements herein, I am subject to penalties prescribed by law. I authorize the sheriff, or his designee, or, in the case of first class cities, the chief or head of the police department, or his designee, to inspect only those records or documents relevant to information required for this application.

(d) Sheriff to conduct investigation.—The sheriff to whom the application is made shall investigate the applicant's record of criminal convictions, shall investigate whether or not the applicant is under indictment for or has ever been convicted of a crime punishable by imprisonment exceeding one year, shall investigate whether the applicant's character and reputation are such that the applicant will not be likely to act in a manner dangerous to public safety and shall investigate whether the applicant would be precluded from receiving a license under subsection (e)(1).

(e) Issuance of license.—

(1) A license to carry a firearm shall be for the purpose of carrying a firearm concealed on or about one's person or in a vehicle and shall be issued if, after an investigation not to exceed 45 days, it appears that the applicant is an individual concerning whom no good cause exists to deny the license. A license shall not be issued to any of the following:

(i) An individual whose character and reputation is such that the individual would be likely to act in a manner dangerous to public safety.

(ii) An individual who has been convicted of an offense under the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(iii) An individual convicted of a crime of violence.

(iv) An individual who, within the past ten years, has been adjudicated delinquent for a crime of violence or for an offense under The Controlled Substance, Drug, Device and Cosmetic Act.

(v) An individual who is not of sound mind or who has ever been committed to a mental institution.

(vi) An individual who is addicted to, or is an unlawful user of, marijuana or a stimulant, depressant or narcotic drug.

(vii) An individual who is a habitual drunkard.

(viii) An individual who is charged with or has been convicted of a crime punishable by imprisonment for a term exceeding one year except as provided for in section 6123 (relating to waiver of disability or pardons).

(ix) A resident of another state who does not possess a current license or permit or similar document to carry a firearm issued by that state if a license is provided for by the laws of that state, as published annually in the Federal Register by the Bureau of Alcohol, Tobacco and Firearms of the Department of the Treasury under 18 U.S.C. § 921(a)(19) (relating to definitions).

(x) An alien who is illegally in the United States.

(xi) An individual who has been discharged from the armed forces of the United States under dishonorable conditions.

(xii) *An individual who is a fugitive from justice.*

(2) *In a city of the first class, a license shall be issued only if it additionally appears that the applicant has good reason to fear an injury to the applicant's person or property or has any other proper reason for carrying a firearm and that the applicant is a suitable individual to be licensed.*

(3) *The license shall bear the name, address, date of birth, race, sex, citizenship, Social Security number, height, weight, color of hair, color of eyes and signature of the licensee; the signature of the sheriff issuing the license; the reason for issuance; and the period of validation. The sheriff may also require a photograph of the licensee on the license. The original license shall be issued to the applicant. The first copy of the license shall be forwarded to the commissioner within seven days of the date of issue, and a second copy shall be retained by the issuing authority for a period of six years.*

(f) *Term of license.*—*A license to carry a firearm issued under subsection (e) shall be valid throughout this Commonwealth for a period of five years unless sooner revoked.*

(g) *Grant or denial of license.*—*Upon the receipt of an application for a license to carry a firearm, the sheriff shall, within 45 days, issue or refuse to issue a license on the basis of the investigation under subsection (d) and the accuracy of the information contained in the application. If the sheriff refuses to issue a license, the sheriff shall notify the applicant in writing of the refusal and the reasons. The notice shall be sent by certified mail to the applicant at the address set forth in the application.*

(h) *Fee.*—*The fee for a license to carry a firearm is \$12.50. This includes an administrative fee of \$5 under section 14(2) of the act of July 6, 1984 (P.L.614, No.127), known as the Sheriff Fee Act. The fee is payable to the sheriff to whom the application is submitted and is payable at the time of application for the license. Except for the administrative fee of \$5 under section 14(2) of the Sheriff Fee Act, all other fees shall be refunded if the application is denied but shall not be refunded if a license is issued and subsequently revoked. A person who sells or attempts to sell a license to carry a firearm for a fee in excess of the amounts fixed under this subsection commits a summary offense.*

(i) *Revocation.*—*A license to carry firearms may be revoked by the issuing authority for good cause. Notice of revocation shall be in writing and shall state the reason for revocation. Notice shall be sent by certified mail, and, at that time, a copy shall be forwarded to the commissioner. An individual whose license is revoked shall surrender the license to the issuing authority within five days of receipt of the notice. An individual who violates this section commits a summary offense.*

(j) *Immunity.*—*A sheriff who complies in good faith with this section shall be immune from liability resulting or arising from the action or misconduct with a firearm committed by any individual to whom a license to carry a firearm has been issued.*

§ 6116. False evidence of identity.

No person shall, in purchasing or otherwise securing delivery of a firearm or in applying for a license to carry the same, give false information or offer false evidence of his identity. *The furnishing of false information or offering false evidence of identity is a violation of section 4904 (relating to unsworn falsification to authorities).*

§ 6120. Limitation on municipal regulation of firearms *and ammunition*.

(a) General rule.—No county, municipality or township may in any manner regulate the lawful ownership, possession, *transfer* or transportation of firearms, *ammunition or ammunition components* when carried or transported for purposes not prohibited by the laws of this Commonwealth.

(b) Definition.—For the purposes of this section, the term “firearms” shall not include “air rifles” as defined in section 6304 (relating to sale and use of air rifles).

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

§ 6122. *Proof of license and exception.*

(a) *General rule.*—*When carrying a firearm concealed on or about one’s person or in a vehicle, an individual licensed to carry a firearm shall, upon lawful demand of a law enforcement officer, produce the license for inspection.*

(b) *Exception.*—*An individual carrying a firearm on or about his person or in a vehicle and claiming an exception under section 6106(b) (relating to firearms not to be carried without a license) shall, upon lawful demand of a law enforcement officer, produce satisfactory evidence of qualification for exception.*

§ 6123. *Waiver of disability or pardons.*

A waiver of disability from Federal authorities as provided for in 18 U.S.C. § 925 (relating to exceptions; relief from disabilities), a full pardon from the Governor or an overturning of a conviction shall remove any corresponding disability under this subchapter except the disability under section 6105 (relating to former convict not to own a firearm, etc.).

§ 6124. *Administrative regulations.*

The commissioner may establish form specifications and regulations, consistent with section 6109(c) (relating to licenses), with respect to uniform forms control, including the following:

- (1) *License to carry firearms.*
- (2) *Firearm registration.*
- (3) *Dealer’s license.*
- (4) *Application for purchase of a firearm.*
- (5) *Record of sale of firearms.*

Section 3. Section 6312 of Title 18 is amended to read:

§ 6312. Sexual abuse of children.

(a) Definition.—As used in this section, “prohibited sexual act” means sexual intercourse, anal intercourse, masturbation, bestiality, sadism, masochism, fellatio, cunnilingus [and any other sexual activity including], *lewd exhibition of the genitals* or nudity if such [sexual activity] *nudity* is depicted for the purpose of sexual stimulation or gratification of any person who might view such depiction.

(b) Photographing or filming sexual acts.—Any person who causes or knowingly permits a child under the age of [16] 17 years to engage in a prohibited sexual act or in the simulation of such act is guilty of a felony of the second degree if such person knows, has reason to know or intends that such act may be photographed or filmed. Any person who *knowingly* photographs or films a child under the age of [16] 17 years engaging in a prohibited sexual act or in the simulation of such an act is guilty of a felony of the second degree.

(c) Dissemination of photographs and films.—Any person who *knowingly* sells, *distributes, delivers, disseminates, transfers,* displays [for sale or transfer] or *exhibits to others,* or who possesses for the purpose of sale, *distribution, delivery, dissemination, transfer,* display [for sale or transfer] or *exhibition to others,* any book, magazine, pamphlet, slide, photograph [or], film, *videotape or other material* depicting a child under the age of [16] 17 years engaging in a prohibited sexual act or in the simulation of such act is guilty of a felony of the third degree.

(d) *Possession of child pornography.*—*Any person who knowingly possesses or controls any book, magazine, pamphlet, slide, photograph, film, videotape or other material depicting a child under the age of 17 years engaging in a prohibited sexual act or in the simulation of such act is guilty of a felony of the third degree.*

[(d)] (e) Evidence of age.—In the event a person involved in a prohibited sexual act is alleged to be a child under the age of [16] 17 years, competent expert testimony shall be sufficient to establish the age of said person.

[(e)] (f) Exceptions.—This section [shall not be deemed to apply to the selling, lending, distributing, exhibiting, giving away, showing, possessing or making of films, photographs or other materials involving only nudity, if such materials are made for and have a serious literary, artistic, educational or scientific value] *does not apply to any material that is possessed, controlled, brought or caused to be brought into this Commonwealth, or presented for a bona fide educational, scientific, governmental or judicial purpose.*

Section 4. This act shall take effect as follows:

(1) The amendments affecting sections 2701, 4304, 5123 and 6312 shall take effect in 60 days.

(2) The remainder of this act shall take effect in 180 days.

APPROVED—The 19th day of December, A. D. 1988.

ROBERT P. CASEY