

No. 2002-82

AN ACT

SB 1109

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for double jeopardy, for terroristic threats and for bomb threats; providing for weapons of mass destruction; and further providing for false alarms to agencies of public safety, for false reports to law enforcement authorities, for dealing in proceeds of unlawful activities, for facsimile bombs, for interception of communications and for possessing or dealing in firearms.

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

Section 1. Sections 110(1)(ii), 2706(b), (c) and (d) and 2715 of Title 18 of the Pennsylvania Consolidated Statutes are amended to read:

§ 110. When prosecution barred by former prosecution for different offense.

Although a prosecution is for a violation of a different provision of the statutes than a former prosecution or is based on different facts, it is barred by such former prosecution under the following circumstances:

(1) The former prosecution resulted in an acquittal or in a conviction as defined in section 109 of this title (relating to when prosecution barred by former prosecution for the same offense) and the subsequent prosecution is for:

* * *

(ii) any offense based on the same conduct or arising from the same criminal episode, if such offense was known to the appropriate prosecuting officer at the time of the commencement of the first trial and [was] *occurred* within the [jurisdiction of a single court] *same judicial district as the former prosecution* unless the court ordered a separate trial of the charge of such offense; or

* * *

§ 2706. Terroristic threats.

* * *

(b) Restitution.—[If the building, place of assembly or facility of public transportation is owned or occupied by a school district, the] A person convicted of violating this section shall, in addition to any other sentence imposed *or restitution ordered under 42 Pa.C.S. § 9721(c) (relating to sentencing generally)*, be sentenced to pay [the school district] restitution in an amount equal to the cost of the evacuation, including, but not limited to [the], *fire and police response; emergency medical service or emergency preparedness response; and* transportation of [students and staff] *an individual* from the building, place of assembly or facility.

(c) Preservation of private remedies.—No judgment or order of restitution shall debar [the school district] *a person*, by appropriate action,

to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.

(d) Grading.—An offense under subsection (a) constitutes a misdemeanor of the first degree[.] *unless the threat causes the occupants of the building, place of assembly or facility of public transportation to be diverted from their normal or customary operations, in which case the offense constitutes a felony of the third degree.*

* * *

§ 2715. [Bomb threats] *Threat to use weapons of mass destruction.*

(a) Offense defined.—A person who intentionally:

- (1) places or sets a bomb;
- (2) causes the placement or setting of a bomb;]
- (3) reports without factual basis of knowledge the existence or potential existence of a [bomb] *weapon of mass destruction*; or
- (4) threatens by any means the placement or setting of a [bomb] *weapon of mass destruction*;

commits an offense under this section. A separate offense shall occur for each [placement or setting of a bomb or each] *report or threat to place or set a [bomb] weapon of mass destruction.*

(b) Penalty.—An offense under this section shall be graded as follows:

(1) *Except as set forth in paragraph (2), a misdemeanor of the first degree [for a first offense; or].*

(2) *If the report or threat causes the occupants of a building, place of assembly or facility of public transportation to be diverted from their normal or customary operations, a felony of the third degree [for a second or subsequent offense].*

(3) *A felony of the second degree if the offense occurs during a declared state of emergency and the report or threat causes disruption to the operations of any person, business entity or governmental agency where the weapon of mass destruction is reported to exist or threatened to be placed or set.*

(c) Emergency response costs.—[In] *A person convicted of violating this section shall, in addition to any [fines, fees, costs] other sentence imposed or restitution [provided for by law, the court may order a person convicted] ordered under [this section to reimburse the State, county or municipal corporation for the costs incurred incident to a bomb threat for emergency response resources reasonably necessary to protect life and property.] 42 Pa.C.S. § 9721(c) (relating to sentencing generally), be sentenced to pay restitution in an amount equal to the cost of the evacuation, including, but not limited to, fire and police response; emergency medical service or emergency preparedness response; and transportation of an individual from the building, place of assembly or facility.*

(c.1) Preservation of private remedies.—No judgment or order of restitution shall debar a person, by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.

(c.2) Application of section.—This section shall not apply to lawful conduct by a party to a labor dispute as defined in the act of June 2, 1937 (P.L.1198, No.308), known as the Labor Anti-Injunction Act, or to any constitutionally protected activity.

(d) [Definition] Definitions.—As used in this section, the [term “bomb” means an] following words and phrases shall have the meanings given to them in this subsection:

“Biological agent.” A natural or genetically engineered pathogen, toxin, virus, bacteria, prion, fungus or microorganism which causes infections, disease or bodily harm.

“Bomb.” An explosive device used for unlawful purposes.

“Chemical agent.” Any of the following:

(1) A nerve agent, including tabun (GA), sarin (GB), soman (GD), GF and VX.

(2) A choking agent, including phosgene (CG) and diphosgene (DP).

(3) A blood agent, including hydrogen cyanide (AC), cyanogen chloride (CK) and arsine (SA).

(4) A blister agent. This paragraph includes:

(i) Mustard (H).

(ii) Sulfur mustard (HD).

(iii) HN-1.

(iv) HN-2.

(v) Sulfur mustard (HN-3).

(vi) An arsenical, such as lewisite (L).

(vii) An urticant, such as CX.

(viii) An incapacitating agent, such as B2.

(5) Any other chemical element or compound which causes death or bodily harm.

“Nuclear agent.” A radioactive material.

“Weapon of mass destruction.” A bomb, biological agent, chemical agent or nuclear agent.

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

§ 2716. Weapons of mass destruction.

(a) Unlawful possession or manufacture.—A person commits an offense if the person, without lawful authority to do so, intentionally, knowingly or recklessly possesses or manufactures a weapon of mass destruction.

(b) Use.—A person commits an offense if the person, without lawful authority to do so, intentionally, knowingly or recklessly sells, purchases, transports or causes another to transport, delivers or causes to be

delivered or uses a weapon of mass destruction and if such action causes any of the following:

(1) Illness or injury to another individual.

(2) Damage to or disruption of a water or food supply or public natural resources, including waterways, State forests and parks, surface water, groundwater and wildlife.

(3) Evacuation of a building, place of assembly or facility of public transportation.

(c) Grading.—

(1) A first offense under subsection (a) constitutes a felony of the second degree. A subsequent offense under subsection (a) constitutes a felony of the first degree.

(2) An offense under subsection (b)(1) constitutes a felony of the first degree. If the offense results in the death of an individual, the defendant shall be sentenced to life imprisonment.

(3) An offense under subsection (b)(2) or (3) constitutes a felony of the first degree.

(d) Restitution.—A person convicted of violating this section shall, in addition to any other sentence imposed or restitution ordered under 42 Pa.C.S. § 9721(c) (relating to sentencing generally), be sentenced to pay restitution in an amount equal to the cost of the evacuation, including, but not limited to, fire and police response; emergency medical service or emergency preparedness response; and transportation of an individual from the building, place of assembly or facility.

(e) Preservation of private remedies.—No judgment or order of restitution shall debar a person, by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.

(f) Possession.—For purposes of this section, an individual shall not be deemed to be in possession of an agent if the individual is naturally exposed to or innocently infected or contaminated with the agent.

(g) Enforcement.—

(1) In addition to the authority conferred upon the Attorney General under sections 205 and 206 of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General has the authority to investigate and to institute criminal proceedings for a violation of this section committed:

(i) anywhere in this Commonwealth;

(ii) in different counties; or

(iii) in this Commonwealth and another jurisdiction.

(2) Each district attorney has the authority to investigate and to institute criminal proceedings for a violation of this section.

(h) Jurisdiction.—No person charged with a violation of this section shall have standing to challenge the authority of the Attorney General under subsection (g)(1). If a challenge is made in violation of this

subsection, the challenge shall be dismissed, and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(i) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Biological agent.” A natural or genetically engineered pathogen, toxin, virus, bacteria, prion, fungus or microorganism which causes infections, disease or bodily harm.

“Bomb.” An explosive device used for unlawful purposes.

“Chemical agent.” Any of the following:

(1) A nerve agent, including tabun (GA), sarin (GB), soman (GD), GF and VX.

(2) A choking agent, including phosgene (CG) and diphosgene (DP).

(3) A blood agent, including hydrogen cyanide (AC), cyanogen chloride (CK) and arsine (SA).

(4) A blister agent. This paragraph includes:

(i) Mustard (H).

(ii) Sulfur mustard (HD).

(iii) HN-1.

(iv) HN-2.

(v) Nitrogen mustard (HN-3).

(vi) An arsenical, such as lewisite (L).

(vii) An urticant, such as CX.

(viii) An incapacitating agent, such as B2.

(5) Any other chemical element or compound which causes death or bodily harm.

“Nuclear agent.” A radioactive material.

“Weapon of mass destruction.” A biological agent, bomb, chemical agent or nuclear agent.

Section 3. Sections 4905 and 4906 of Title 18 are amended to read:

§ 4905. False alarms to agencies of public safety.

[A person who] (a) Offense defined.—A person commits an offense if he knowingly causes a false alarm of fire or other emergency to be transmitted to or within any organization, official or volunteer, for dealing with emergencies involving danger to life or property [commits a misdemeanor of the first degree].

(b) Grading.—An offense under this section is a misdemeanor of the first degree unless the transmission of the false alarm of fire or other emergency occurs during a declared state of emergency and the false alarm causes the resources of the organization to be diverted from dealing with the declared state of emergency, in which case the offense is a felony of the third degree.

§ 4906. False reports to law enforcement authorities.

(a) Falsely incriminating another.—[A] *Except as provided in subsection (c), a person who knowingly gives false information to any law enforcement officer with intent to implicate another commits a misdemeanor of the second degree.*

(b) Fictitious reports.—[A] *Except as provided in subsection (c), a person commits a misdemeanor of the third degree if he:*

(1) reports to law enforcement authorities an offense or other incident within their concern knowing that it did not occur; or

(2) pretends to furnish such authorities with information relating to an offense or incident when he knows he has no information relating to such offense or incident.

(c) *Grading.—If the violation of subsection (a) or (b) occurs during a declared state of emergency and the false report causes the resources of the law enforcement authority to be diverted from dealing with the declared state of emergency, the offense shall be graded one step greater than that set forth in the applicable subsection.*

Section 4. Section 5111(a) of Title 18 is amended and the section is amended by adding a subsection to read:

§ 5111. Dealing in proceeds of unlawful activities.

(a) Offense defined.—A person commits a felony of the first degree if the person[, knowing that the property involved in a financial transaction represents the proceeds of unlawful activity,] conducts a financial transaction [which involves the proceeds of unlawful activity] under any of the following circumstances:

(1) *With knowledge that the property involved represents the proceeds of unlawful activity, the person acts with the intent to promote the carrying on of the unlawful activity.*

(2) [Knowing] *With knowledge that the property involved represents the proceeds of unlawful activity and that the transaction is designed in whole or in part:*

(i) to conceal or disguise *the* nature, location, source, ownership or control of the proceeds of unlawful activity[; or

(ii) to avoid].

(3) *To avoid* a transaction reporting requirement under State or Federal law.

* * *

(e.1) *Venue.—An offense under subsection (a) may be deemed to have been committed where any element of unlawful activity or of the offense under subsection (a) occurs.*

* * *

Section 5. Sections 5516, 5708(1) and 6105(b) of Title 18 are amended to read:

§ 5516. Facsimile [bombs] *weapons of mass destruction.*

(a) Offense defined.—A person commits an offense if the person *intentionally, knowingly or recklessly* manufactures, sells, purchases,

transports or causes another to transport, *delivers or causes another to deliver*, possesses or uses a facsimile [bomb with the intent to do] *weapon of mass destruction and by such action causes* any of the following:

(1) [Terrify, intimidate, threaten] *Terrifying, intimidating, threatening* or [harass] *harassing* an individual.

(2) [Cause alarm] *Alarm* or reaction on the part of any of the following:

(i) A public or volunteer organization that deals with emergencies involving danger to life or property.

(ii) A law enforcement organization.

(3) *Serious public inconvenience not limited to the evacuation of a building, place of assembly or facility of public transportation.*

(b) Grading.—An offense under this section is a [misdemeanor] *felony* of the [second] *third* degree.

(b.1) *Restitution.*—A person convicted of violating this section shall, in addition to any other sentence imposed or restitution ordered under 42 Pa.C.S. § 9721(c) (relating to sentencing generally), be sentenced to pay restitution in an amount equal to the cost of the evacuation, including, but not limited to, fire and police response; emergency medical service or emergency preparedness response; and transportation of an individual from the building, place of assembly or facility.

(b.2) *Preservation of private remedies.*—No judgment or order of restitution shall debar a person, by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.

(b.3) *Enforcement.*—

(1) In addition to the authority conferred upon the Attorney General under sections 205 and 206 of the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, the Attorney General has the authority to investigate and to institute criminal proceedings for a violation of this section committed:

(i) anywhere in this Commonwealth;

(ii) in different counties; or

(iii) in this Commonwealth and another jurisdiction.

(2) Each district attorney has the authority to investigate and to institute criminal proceedings for a violation of this section.

(b.4) *Jurisdiction.*—No person charged with a violation of this section shall have standing to challenge the authority of the Attorney General under subsection (g)(1). If a challenge is made in violation of this subsection, the challenge shall be dismissed, and no relief shall be available in the courts of this Commonwealth to the person making the challenge.

(c) [Definition] *Definitions.*—As used in this section, the [term “facsimile bomb” means a] following words and phrases shall have the meanings given to them in this subsection:

“Facsimile biological agent.” A material or substance which:

(1) resembles in appearance and external qualities a natural or genetically engineered pathogen, toxin, virus, bacteria, prion, fungus or microorganism which causes infections, disease or bodily harm; but

(2) does not have the capacity to cause infectious disease or bodily harm.

“Facsimile bomb.” A device which:

(1) resembles in appearance and external qualities an explosive or incendiary device; but

(2) does not have the capability to cause an explosion or fire.

“Facsimile chemical agent.” A material or substance which does not have the capacity to cause death or bodily harm but which resembles in appearance and external qualities any of the following:

(1) A nerve agent, including tabun (GA), sarin (GB), soman (GD), GF and VX.

(2) A choking agent, including phosgene (CG) and diphosgene (DP).

(3) A blood agent, including hydrogen cyanide (AC), cyanogen chloride (CK) and arsine (SA).

(4) A blister agent. This paragraph includes:

(i) Mustard (H).

(ii) Sulfur mustard (HD).

(iii) HN-1.

(iv) HN-2.

(v) Nitrogen mustard (HN-3).

(vi) An arsenical, such as lewisite (L).

(vii) An urticant, such as CX.

(viii) An incapacitating agent, such as B2.

(5) Any other chemical element or compound which causes death or bodily harm.

“Facsimile nuclear agent.” A device, material or substance which:

(1) resembles in appearance and external qualities a radioactive material; but

(2) is not radioactive.

“Facsimile weapon of mass destruction.” A facsimile biological agent, facsimile bomb, facsimile chemical agent or facsimile nuclear agent.

§ 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 interception is to be made, 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(b) (relating to harassment and stalking)
- Section 2716 (relating to weapons of mass destruction)**
- Section 2901 (relating to kidnapping)
- 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 or communication with minor)

* * *

§ 6105. Persons not to possess, use, manufacture, control, sell or transfer firearms.

* * *

(b) Enumerated offenses.—The following offenses shall apply to subsection (a):

- Section 908 (relating to prohibited offensive weapons).
- Section 911 (relating to corrupt organizations).
- Section 912 (relating to possession of weapon on school property).

Section 2502 (relating to murder).

Section 2503 (relating to voluntary manslaughter).

Section 2504 (relating to involuntary manslaughter) if the offense is based on the reckless use of a firearm.

Section 2702 (relating to aggravated assault).

Section 2703 (relating to assault by prisoner).

Section 2704 (relating to assault by life prisoner).

Section 2709 (relating to harassment and stalking) if the offense relates to stalking.

Section 2716 (relating to weapons of mass destruction).

Section 2901 (relating to kidnapping).

Section 2902 (relating to unlawful restraint).

Section 2910 (relating to luring a child into a motor vehicle).

Section 3121 (relating to rape).

Section 3123 (relating to involuntary deviate sexual intercourse).

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 3503 (relating to criminal trespass) if the offense is graded a felony of the second degree or higher.

Section 3701 (relating to robbery).

Section 3702 (relating to robbery of motor vehicle).

Section 3921 (relating to theft by unlawful taking or disposition) upon conviction of the second felony offense.

Section 3923 (relating to theft by extortion) when the offense is accompanied by threats of violence.

Section 3925 (relating to receiving stolen property) upon conviction of the second felony offense.

Section 4912 (relating to impersonating a public servant) if the person is impersonating a law enforcement officer.

Section 4952 (relating to intimidation of witnesses or victims).

Section 4953 (relating to retaliation against witness or victim).

Section 5121 (relating to escape).

Section 5122 (relating to weapons or implements for escape).

Section 5501(3) (relating to riot).

Section 5515 (relating to prohibiting of paramilitary training).

Section 5516 (relating to facsimile weapons of mass destruction).

Section 6110.1 (relating to possession of firearm by minor).

Section 6301 (relating to corruption of minors).

Section 6302 (relating to sale or lease of weapons and explosives).

Any offense equivalent to any of the above-enumerated offenses under the prior laws of this Commonwealth or any offense equivalent to any of the above-enumerated offenses under the statutes of any other state or of the United States.

Section 6. This act shall take effect in 60 days.

APPROVED—The 28th day of June, A.D. 2002.

MARK S. SCHWEIKER