

No. 2004-176

AN ACT

SB 109

Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for identification of incorrect debtor, for summary offenses involving vehicles, for law enforcement records, for duration of commitment and review and for assessments.

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

Section 1. Sections 2737.1, 5553(a), (b) and (c), 6308(b)(1) and 6404(c)(3) of Title 42 of the Pennsylvania Consolidated Statutes are¹ amended to read:

§ 2737.1. Incorrect debtor identified.

[At the time a] (a) Procedure.—A creditor *that* files for a judgment by confession under section 2737(3) (relating to powers and duties of the office of the prothonotary)[, the creditor filing the judgment shall provide the debtor with written instructions regarding the procedure to follow to strike the judgment.] *shall comply with the Pennsylvania Rules of Civil Procedure regarding confession of judgment, including any notice provisions.* A debtor who has been incorrectly identified and had a confession or judgment entered against him [shall be entitled to] *may petition the court for costs and reasonable attorney fees as determined by the court. [The instructions provided to the debtor shall explain to the debtor that under this section he is entitled to costs and reasonable attorney fees as determined by the court if he was incorrectly identified.]*

(b) Effect on judgment.—*A judgment shall not be stricken or opened because of a creditor's failure to provide a correctly identified debtor with instructions pursuant to this section regarding procedures to follow to strike a judgment or regarding any rights available to an incorrectly identified debtor.*

§ 5553. Summary offenses involving vehicles.

(a) General rule.—Except as provided in subsection (b) or (c), proceedings for *a* summary [offenses] *offense* under Title 75 (relating to vehicles) must be commenced within 30 days after the commission of the alleged offense or within 30 days after the discovery of the commission of the offense or the identity of the offender, whichever is later, and not thereafter.

[(b) Minor offenses.—Except as provided in subsection (c), proceedings for summary offenses under the following provisions of Title 75 must be commenced within 30 days after the commission of the

¹Statutes, amended January 1, 2004, P.L. , No.2003-68), are" in enrolled bill.

alleged offense or within 30 days after the discovery of the commission of the offense or the identity of the offender, whichever is later, and not thereafter:

Chapter 31 (relating to general provisions).

Chapter 33 (relating to rules of the road in general).

Chapter 35 (relating to special vehicles and pedestrians).

Subchapters A (relating to offenses in general) and C (relating to accidents and accident reports) of Chapter 37.

(c) Exception.—Where]

(c) *Exceptions.*—

(1) *Where* proceedings are timely commenced against a person reasonably believed to have committed the [offense] *summary offense or offenses* charged and it subsequently appears that a person other than the person charged is the offender, proceedings may be commenced against the other person within 30 days after the identity of the person is discovered and not thereafter.

(2) *Where a police officer reasonably believes that there are multiple summary offenses arising out of the same conduct or the same criminal episode and that an offense under 75 Pa.C.S. § 1543 (relating to driving while operating privilege is suspended or revoked) has occurred, proceedings on all summary offenses arising from the conduct or episode may be commenced at the same time and must be commenced within 30 days after the commission of the alleged offenses or within 30 days after the discovery of the commission of the offenses or the identity of the offender or within 30 days after the police officer receives verification of the basis for the suspension from the Department of Transportation as required under 75 Pa.C.S. § 1543(d), whichever is later, and not thereafter.*

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§ 6308. Law enforcement records.

* * *

(b) Public availability.—

(1) The contents of law enforcement records and files concerning a child shall not be disclosed to the public [except if the child is 14 or more years of age at the time of the alleged conduct and if any of] *unless any of* the following apply:

(i) The child has been adjudicated delinquent by a court as a result of an act or acts [which include the elements of rape, kidnapping, murder, robbery, arson, burglary, violation of section 13(a)(30) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, or other act involving the use of or threat of serious bodily harm.] *committed:*

(A) *when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult;* or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1) (relating to arson and related offenses).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.

(ii) A petition alleging delinquency has been filed by a law enforcement agency alleging that the child has committed an act or acts [which include the elements of rape, kidnapping, murder, robbery, arson, burglary, violation of section 13(a)(30) of The Controlled Substance, Drug, Device and Cosmetic Act, or other act involving the use of or threat of serious bodily harm] *subject to a hearing pursuant to section 6336(e) (relating to conduct of hearings)* and the child previously has been adjudicated delinquent by a court as a result of an act or acts [which included the elements of one of such crimes.] *committed:*

(A) when the child was 14 years of age or older and the conduct would be considered a felony if committed by an adult; or

(B) when the child was 12 or 13 years of age and the conduct would have constituted one or more of the following offenses if committed by an adult:

(I) Murder.

(II) Voluntary manslaughter.

(III) Aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2).

(IV) Arson as defined in 18 Pa.C.S. § 3301(a)(1).

(V) Involuntary deviate sexual intercourse.

(VI) Kidnapping.

(VII) Rape.

(VIII) Robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii).

(IX) Robbery of motor vehicle.

(X) Attempt or conspiracy to commit any of the offenses in this subparagraph.

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§ 6404. Duration of commitment and review.

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(c) Discharge.—

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(3) Within 15 days after **[the petition has been filed,]** *the receipt of the assessment from the board*, the court shall hold a hearing pursuant to section 6403(c). If the court determines **[the person no longer has serious difficulty controlling sexually violent behavior, the court shall order the discharge of the person. If the court denies the petition, the person shall be subject to the remainder of the period of commitment.]** *by clear and convincing evidence that the person continues to have serious difficulty controlling sexually violent behavior due to a mental abnormality or personality disorder that makes the person likely to engage in an act of sexual violence, the court shall order that the person be subject to the remainder of the period of commitment. Otherwise, the court shall order the discharge of the person.*

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Section 2. Section 9795.4(h) of Title 42 is amended to read:

§ 9795.4. Assessments.

* * *

(h) Delinquent children.—Except where section 6358(b.1) (relating to assessment of delinquent children by the State Sexual Offenders Assessment Board) is applicable, the probation officer shall notify the board 90 days prior to the 20th birthday of the child of the status of the delinquent child who is committed to an institution or other facility pursuant to section 6352 (relating to disposition of delinquent child) after having been found delinquent for an act of sexual violence which if committed by an adult would be a violation of 18 Pa.C.S. § 3121 (relating to rape), 3123 (relating to involuntary deviate sexual intercourse), 3124.1 (relating to sexual assault), 3125 (relating to aggravated indecent assault), 3126 (relating to indecent assault) or 4302 (relating to incest), together with the location of the facility where the child is committed. The board shall conduct an assessment of the child, which shall include the board's determination of whether or not the child is in need of commitment due to a mental abnormality as defined in section 6402 (relating to definitions) or a personality disorder, either of which results in serious difficulty in controlling sexually violent behavior, and provide a report to the court **[no later than 90 days after the child's 20th birthday]** *within the time frames set forth in section 6358(c)*. The probation officer shall assist the board in obtaining access to the child and any records or information as requested by the board in connection with the assessment. The assessment shall be conducted pursuant to subsection (b).

Section 3. The addition of 42 Pa.C.S. § 2737.1(b) is intended to clarify and confirm the original intent of the General Assembly in adding 42 Pa.C.S.

§ 2737.1 in the act of December 20, 2000 (P.L.742, No.105), entitled "An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for the number of judges of the courts of common pleas in certain judicial districts; providing for reimbursement for common pleas court costs and for judgment by confession filed against incorrectly identified debtors; further providing for county judicial center or courthouse, for composition of investigating grand jury and for confidential communications with sexual assault counselors; providing for confidential communications to crime stopper or similar anticrime program; and further providing for exemption from attachment of retirement funds and accounts." To the extent necessary to clarify the meaning and interpretation of 42 Pa.C.S. § 2737.1, the addition of 42 Pa.C.S. § 2737.1(b) shall apply retroactively to causes of action which arose on or before the effective date of this section.

Section 4. All acts and parts of acts are repealed insofar as they are inconsistent with this act.

Section 5. This act shall take effect immediately.

APPROVED—The 29th day of November, A.D. 2004.

EDWARD G. RENDELL