



The Judiciary Review

Report from the Senate Judiciary Committee (D)

JAY COSTA JR., DEMOCRATIC CHAIRMAN

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SENATE JUDICIARY COMMITTEE BEGINS REVIEW OF SENTENCING GUIDELINE REVISIONS

The Senate Judiciary Committee is currently reviewing proposed changes to Pennsylvania Sentencing Guidelines. The proposed revisions were adopted by the Sentencing Commission on August 11, 2004 and published for comment on October 23, 2004. The commission modified the proposed guidelines and published them for comment on January 8, 2005. The Commission adopted the revised guidelines on February 9, 2005 and published them on March 5, 2005. The General Assembly has 90 days from the date of the last publication to review the proposed changes. Unless the proposed changes are rejected by a concurrent resolution adopted on or before June 3, 2005, the changes will be effective.

Legislation Recently Reported From Committee

■ **Senate Bill 74** **Printer's No. 64**

This legislation rewrites Chapter 53 of the Domestic Relations Code, Title 23 of the Pennsylvania Consolidated Statutes, relating to child custody. The legislation provides the court with a variety of options: sole legal custody, shared legal custody, sole physical custody, shared physical custody, primary physical custody, partial physical custody, visitation and supervised visitation. The legislation makes clear that there should not be any presumption that a child's custody should be awarded to a particular parent.

In order to determine custody and visitation issues, the legislation includes a list of factors to be considered by the court in determining "the best interests of the child." The list includes, for example, the parental duties performed by each party on behalf of the child; the need for stability and continuity in the child's education, family life and community life; the availability of extended family; and the child's sibling relationships. The bill also expands the list of crimes for which a conviction is taken into consideration by the court in determining custody.

The list is a comprehensive list of violent crimes and sexual offenses.

The bill codifies longstanding case law that grants standing for custody or visitation to any person who stands "in loco parentis" to the child. The legislation allows parties living separate and apart in the same residence to seek custody or visitation, which would become effective when one party vacates the residence.

The legislation contains a provision under which the court may require the parties to submit parenting plans for the care and custody of the child. The plan may include the schedule for care and control of the child, education and religious involvement, health care, child-care and transportation arrangements. The court may order counseling.

The bill provides for the appointment of a guardian ad litem for a child and for the appointment of a counsel or attorney for a child. A guardian ad litem would investigate and report to the court information relevant to the custody or visitation proceeding. Counsel would be appointed to assist in resolving legal issues in the custody or visitation proceeding. A court may order a party to pay all or part of the costs of the guardian ad litem or counsel for the child.

The bill provides a statutory framework for relocation cases, which is defined as a change in a residence of the child that significantly impairs the ability of a non-relocating parent to exercise custodial rights. Under the relocation provisions, the court must consider whether the relocation will enhance the general quality of life for the child and not just benefit the parent who would like to relocate.

Current status: Senate Calendar

■ **Senate Bill 178** **Printer's No. 408**

The legislation amends the Crimes Victims Act to include identity theft within the definition of "personal injury crime" so that the victim has the right to certain victim services and notices. The membership of the Victims' Services Advisory Committee is expanded from nine to eleven members to include at least two members representing the interests of victims of identity theft. In addition, identity theft victim support and research are added to the advisory committee's powers and duties. The advisory committee serves the Pennsylvania Commission on Crime and Delinquency and, specifically, the Office of Victims' Services. The legislation makes a

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Report from the Senate Judiciary Committee

Senator Jay Costa Jr., Democratic Chairman

Uniform Trust Act

On Monday, April 4, 2005, the Joint State Government Commission Task Force on Decedents Estates Law will present its report and recommended changes to the Uniform Trust Act and other legislation concerning Title 20 of the Pennsylvania Consolidated Statutes. Senator Jay Costa serves as a legislative member of the Task Force on Decedents Estates Law.

The report proposes the Uniform Trust Act that is taken, in part from the Uniform Trust Code as adopted by the National Conference of Commissioners on Uniform State Laws. This report was previously presented in November 2003 and introduced as Senate Bill 978 in the 2003-2004 legislative session. However, after several concerns were expressed regarding certain provisions, the Task Force re-examined the report for resubmission at this time. A copy of the report is available at the Joint State Government Commission website at <http://jsg.legis.state.pa.us>.

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\$500,000 appropriation for the administration of the office. The act takes effect in 60 days.

Current status: Senate Calendar

Senate Bill 196 Printer's No. 409

The legislation proposes a free-standing act that provides physicians licensed to practice in the commonwealth and health care facilities that operate in the commonwealth with limited immunity from administrative and civil prosecution when reporting illicit use of a controlled substance by a patient to any federal, state or local law enforcement agency. In making such a report, the physician or health care facility must have a good faith belief that the patient is using the controlled substance for a purpose other than that for which the physician prescribed the controlled substance. However, the legislation does not establish a duty to report if the physician does not believe that sufficient evidence exists that the controlled substance was used for an illicit purpose.

Current status: Senate Calendar

Senate Bill 248 Printer's No. 240

The legislation amends Act 69 of 1967 by extending the application of the act from 1997 to 2005. The original act, which is reauthorized periodically, validates conveyances and other instruments that have acknowledgements containing technical errors. When a technical error exists in an acknowledgement, it makes subsequent transfers of property difficult unless the error is corrected by the act. This legislation will validate such acknowledgements for deeds and mortgages that are dated after 1996 but prior to 2005.

Current status: Senate Calendar

Senate Bill 256 Printer's No. 260

The legislation amends Pennsylvania's "Son of Sam Law" which prohibits a person from profiting from the commission of a crime. The legislation provides that a person who institutes legal action to recover money damages from a person who has profited from the commission of a crime or their legal representative may be awarded reasonable attorney's fees.

Current status: Senate Calendar



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