Message from the Chair

The Criminal Justice Section met in conjunction with the PBA Committee/Section Day on Nov. 17, 2016, and nearly all council members attended. The Section was pleased to have presentations by Bar Foundation Past President George Gvozdich regarding the Bar Foundation and Joel Seelye regarding the PBA’s strategic plan. In addition, the Section recognized Chuck DeTulleo for his significant efforts in helping to launch the PBA’s public education campaign on expungements and limited access to criminal records.

Section members will be pleased to know that the council approved funding to sponsor the reception at the annual Criminal Law Symposium to be held on June 8, 2017, at the Hilton Hotel in Harrisburg. This effort ties into the association’s strategic plan to increase membership in both the association and the Criminal Justice Section. The council is also endeavoring to increase participation of our current membership in the stewardship of the Section. If you are interested in a leadership position, please contact a council member.

The next scheduled Section meetings are March 23, 2017, at the Red Lion Hotel in Harrisburg, followed by the Section day meeting at the David Lawrence Convention Center in Pittsburgh on May 11, 2017. All members are invited to attend.

Thanks again to Tim Clawges for the appellate case review and to the PBA legislative staff for their timely contributions to this newsletter.

Com. v. Scott Bradley Kingston, __ Pa. ___, 147 A.3d 917 (Aug. 15, 2016) — Opinion by Wecht holding that Section 906 of the Crimes Code, 18 Pa.C.S. 906, bars convictions only for multiple distinct inchoate crimes, not for two or more counts of the same inchoate crime.

Kingston was convicted of three counts each of soliciting perjury and soliciting hindering apprehension. He asserted counsel was ineffective for failing to object to imposition of consecutive sentences for each solicitation conviction. He argued his conviction should have merged into one count of soliciting perjury and one count of soliciting to hinder apprehension. The Superior Court found the ineffectiveness claim had arguable merit.

The Supreme Court disagreed. It said 18 Pa.C.S. 906 bars conviction only for multiple distinct inchoate crimes.

Saylor filed a dissenting opinion.

SEXUAL OFFENDERS — DURATION OF REGISTRATION REQUIREMENT — TWO OR MORE CONVICTIONS — RECIDIVIST PHILOSOPHY — ACT REQUIRED AFTER CONVICTION FOR FIRST ACT — TWO OFFENSES COMMITTED AT SAME TIME — TWO REASONABLE INTERPRETATIONS OF STATUTE — MEGAN’S LAW II
A.S. v. P.S.P., No. 24 MAP 2014 (Aug. 15, 2016) — Opinion by Dougherty concluding that the triggering language of two or more convictions in Megan’s Law II, formerly at 42 Pa.C.S. 9795.1, for lifetime registration as a sexual offender requires an act, conviction and subsequent act and not convictions where two offenses occurred before conviction and sentence on one.

A.S. was convicted of sexual abuse of children and unlawful conduct with a minor arising out of a relationship he had with a teenager. He entered pleas on the offenses at the same time and was sentenced to a term of imprisonment. All parties, as well as the court, assumed he would be subject to a 10-year registration period, not lifetime registration. At the end of the 10 years, he requested that the Pennsylvania State Police (PSP) remove him from the sexual offender list. The PSP refused. He sought mandamus relief, which was granted. The Supreme Court affirmed.

The court said the lifetime registration requirement for two or more convictions is triggered only when there is an act, conviction and subsequent act, and noted the statute embodies recidivist philosophy.

Dougherty filed a concurring opinion.
Todd filed a dissenting opinion.
Wecht filed a dissenting opinion.

CASTLE DOCTRINE — SECTION 505(B)(2.1) — CRIMES CODE — 18 PA.C.S. 505(B)(2.1) — SELF-DEFENSE — ACT 10 — ENACTMENT AFTER INCIDENT BUT BEFORE TRIAL — PROCEDURAL RULE — JURY INSTRUCTIONS — DE NOVO STANDARD OF REVIEW — PLENARY SCOPE OF REVIEW — EVIDENTIARY PRESUMPTION — ORDER VACATING JUDGMENT OF SENTENCE AFFIRMED

Com v. William Childs, No. 19 EAP 2015 (July 19, 2016) — Opinion by Donahue concluding that the Castle Doctrine, 18 Pa.C.S. 505(b)(2.1), creates an evidentiary presumption relevant to the evaluation of an offense inside one’s home and is therefore a procedural statute applicable to litigation pending when enacted as well as litigation commenced after his enactment.

PBA Kicks Off Statewide Public-Education Campaign on Expungement and Limited Access to Criminal Records

The PBA held a press conference in the state Capitol rotunda on Oct. 4 to kick off the public education campaign “Understanding Expungement and Limited Access to Criminal Records.” The PBA was joined by 34 county bar associations in the statewide informational effort. Pictured at the press conference are (from left) Charles T. DeTulleo, a past chair of the PBA Criminal Justice Section; PBA President Sara A. Austin; Michael B. Lee, co-chair of the PBA Legal Services to the Public Committee; Lars Anderson, chair of the PBA Community and Public Relations Committee; and Michelle Christian, vice chair of the PBA Community and Public Relations Committee.
Childs fatally stabbed a man who had entered his house. He unsuccessfully claimed self-defense. After the incident, but before trial, the legislature passed Act 10, known as the Castle Doctrine, that creates a presumption a person had a reasonable belief that force was immediately necessary when the person against whom the force was used was in the process of unlawfully and forcefully entering or had unlocked and forcibly entered and was present within the dwelling.

The Superior Court vacated judgment of sentence. The Supreme Court affirmed. It said Section 505(b)(2.1) of the Crimes Code does not affect a person’s right to use deadly force in his or her home but creates an evidentiary presumption relevant to evaluating a claim of self-defense and is therefore procedural. Since it is procedural, it applies to all cases pending at the time it was passed as well as to litigation commenced after its enactment. Therefore, Childs was entitled to the jury instruction, and the court affirmed the order vacating judgment of sentence.

**PCRA — RETROACTIVITY — ALLEYNE — CASES ON COLLATERAL REVIEW — MANDATORY MINIMUM SENTENCE — 42 PA.C.S. 9712 — CRIME OF VIOLENCE — POSSESSION OF FIREARM — LEGALITY SENTENCE — NOT WATERSHED DECISION — NOT APPLICABLE RETROACTIVELY TO CASES ON COLLATERAL REVIEW — ORDER DISMISSING APPEAL AFFIRMED**

*Com. v. Terrance Washington*, No. 37 EAP 2015 (July 19, 2016) — Opinion by Saylor concluding that *Alleyne* does not apply retroactively to attacks on mandatory minimum sentences that are advanced on collateral review.

Washington was convicted of several crimes for which a mandatory minimum sentence under 42 Pa.C.S. 9712 (use of firearm during a crime of violence) was imposed. His judgment of sentence became final in 2006. He filed a PCRA petition, but did not raise a Sixth Amendment challenge to sentence. The Superior Court dismissed the petition. The court agreed, finding *Alleyne* does not apply retroactively to cases pending on collateral review.

*Com. v. Ryan D. Safka*, ___ Pa. ___, 141 A.3d 1239 (July 19, 2016) – Opinion by Baer affirming an order affirming judgment of sentence and concluding, after the evidence was closed in a nonjury vehicular manslaughter trial, the trial judge had discretion to reopen the record sua sponte to receive additional testimony to avoid a miscarriage of justice.

Safka was charged with various offenses arising from a fatal automobile crash. In a nonjury trial, there was no evidence concerning event data recorder (EDR) data, which records factors such as speed. There had been no challenge to admissibility under *Frye*, but counsel focused on the lack of certification or calibration.

After the evidence was closed, the trial court permitted both parties to present additional evidence concerning appropriate weight to give the EDR data. It reopened the record and continued the trial for two weeks to allow both parties to present expert testimony regarding accuracy and reliability of such information.

The Superior Court found that was not an abuse of discretion. The Supreme Court agreed. It noted the trial court was left with insufficient information or time to resolve the question of law. It said parties are often permitted to move to supplement the record as long as the opposing party is not prejudiced, and it analogized those situations to a nonjury trial. Therefore, it affirmed the order affirming judgment of sentence.

**PBA Seeks Award Nominations**

The PBA is seeking nominations for several annual awards.

**Sir Francis Bacon Award**

This award is given for excellence in alternative dispute resolution. The ADR Committee plans to present the award at the PBA Annual Meeting in May 2017. Each nominee must be an individual who excels in the area of alternative dispute resolution in Pennsylvania and has had a significant professional impact in the area of alternative dispute resolution. For nomination materials visit the ADR Committee area of the PBA website at www.pabar.org. Nomination materials must be received by Jan. 20, 2017.

**Child Advocate of the Year Award**

The award recognizes the accomplishments of lawyers who are advocates for children. The recipient must have the highest degree of professional excellence and have advanced the rights of children at law. For more information and to download the nomination form visit the Children’s Rights Committee area of the PBA website, www.pabar.org. Nomination materials must be received by Jan. 20, 2017.

**Pro Bono Awards**

Nominations for the PBA Legal Services to the Public Committee Pro Bono Awards are due Dec. 23, 2016. Award winners will be acknowledged at various pro bono events throughout 2017. The nomination form is available at www.pabar.org/public/probono/probonohome.asp.
Superior Court


Com. v. Kevin Green, 2016 PA Super 214 (Sept. 16, 2016) — Panel opinion by Stevens affirming judgment sentence for kidnapping and other offenses, finding evidence sufficient for kidnapping, 18 Pa.C.S. 2901, when defendant bound hands of victims in their home after taking phone, though residence near other homes and door unlocked, concluding sentence on false imprisonment is not barred by merger since it was not part of the same criminal act as kidnapping. Finding no error in denial of request to represent himself when defendant refused to participate in a court-ordered competency examination and exhibited disruptive and disrespectful behavior constituted waiver of right to represent self.

Green entered the residence of a person who owned rental properties and held a family inside at gunpoint while he and his conspirator searched for cash. The hands of the victims were bound. The Superior Court rejected the claim that evidence was insufficient to establish that the victims had been confined for a substantial period in a place of isolation. It then rejected the claim that merger applied on the false imprisonment sentence by concluding the defense did not arise from the same criminal act.

Finally, it rejected the claim the court denied defendant his Sixth Amendment right to represent himself. It said his refusal to participate in a court-ordered evaluation and his disobedient and disruptive behavior resulted in waiver of that right. Therefore, it affirmed the judgment of sentence.

SEARCH AND SEIZURE — GUNSHOT-RESIDUE TESTS — PERFORMED ON HANDS OF DEFENDANT — POST ARREST — FOURTH AMENDMENT — ARTICLE I, SECTION 8 — NO SIGNIFICANT PHYSICAL INTRUSION — VITAL GOVERNMENTAL INTEREST — SEARCH INCIDENT TO ARREST — AGGRAVATED ASSAULT — GUNSHOTS — JUDGMENT OF SENTENCE AFFIRMED

Com. v. Ronald Simonson, 2016 PA Super 207 (Sept. 12, 2016) — Panel opinion by Olson affirming judgment of sentence concluding warrantless gunshot-residue test, which involved swab test on the hands of defendant after he had been arrested, is permissible as a search incident to arrest.

Simonson was arrested for an incident in which shots had been fired. After his arrest, police performed a warrantless gunshot-residue test on his hands. The Superior Court said that procedure is admissible as a search incident to arrest, noting negligible physical intrusion and the important governmental interest that was involved.

PROTECTION FROM ABUSE (PFA) — CONTEMPT — INTENT — 23 PA.C.S. 6102 — PLAINTIFF NOT SPECIFICALLY MENTIONED — FACEBOOK TEXTS — REFERENCE TO FORMER PARAMOUR — PROHIBITION AGAINST REFERRING PLAINITFF ON SOCIAL MEDIA — SCOPE AND STANDARD OF REVIEW — CONTENT NEUTRAL GOVERNMENTAL RESTRICTIONS ON SPEECH — NO FIRST AMENDMENT VIOLATION — JUDGMENT THAT SENTENCE AFFIRMED

Com. v. Jack T. Lambert, 2016 PA Super 200 (Sept. 7, 2016) — Panel opinion by Stevens affirming judgment of sentence for contempt, finding defendant violated a PFA order that prohibited references to plaintiff on social media when he authored a series of posts on Facebook alluding to nameless former paramour and referenced emotions of the experience because of unfair treatment he received from her and the justice system.

Lambert was convicted of indirect criminal contempt after he posted references to his former paramour, without giving her name, on Facebook. He indicated the emotions he was experiencing and his disapproval of how she ended the relationship. The PFA order prohibited referencing plaintiff on social media. The trial court found he violated the order and that he had intent to do so. The Superior Court agreed. It also found that PFA order did not violate his rights to free speech under the First Amendment or Article I, Section 7 of the Pennsylvania Constitution. It noted the restriction was content neutral and narrowly tailored to advance important governmental interests, i.e., cessation of abuse.

INTERACTION WITH POLICE — DEFENDANT IN PARKING LOT — HIGH NUMBER OF REPORTS OF DRUG AND GUN CRIMES — PATROL CAR — PATH OF DEFENDANT NOT BLOCKED — REQUEST FOR IDENTIFICATION — TRAFFIC RELATED WARRANTS — STANDARD OF REVIEW — DRUGS FOUND — JUDGMENT OF SENTENCE AFFIRMED
Com. v. Anthony Baldwin, 2016 PA Super 199 (Sept. 1, 2016) — Panel opinion by Lazarus affirming judgment of sentence or drug offenses, concluding a person is not seized when police approach him in a parking lot and ask for identification but their vehicle does not block his path.

In an area that had a high number of reports of drug and gun crimes, police saw Baldwin pass behind a van in a parking lot. They believed he may have discarded something. Police approached him but did not block his path. They asked him to provide his identification, which he did. He had open traffic-related warrants for his arrest and was taken into custody. Following a search incident to arrest, police found drugs.

The lower court denied a motion to suppress. The Superior Court agreed. It cited numerous cases indicating that interaction such as the one in this case does not constitute a detention.

Consciousness of guilt — weight of evidence — judgment of sentence affirmed

Com. v. Darian Smith, 2016 PA Super 187 (Aug. 25, 2016) — Panel opinion by Stevens finding sufficient evidence for a conviction for possession of a firearm with altered manufacturer’s number, 18 Pa.C.S. 6110.2, when the serial number of the firearm had been ground off. Defendant fled when police arrived. Police later observed the firearm and three ID cards bearing defendant’s name on dresser top in the only non-storage room in the basement.

When police arrived to serve a material witness warrant for defendant, defendant ran and hid under stairs. On a dresser in the basement, police observed a gun magazine and firearm. In the room where the dresser was located, they also noticed the bed, television, shoes and boxes of speakers. Mail and information cards on the dresser included three identification cards in the name of defendant.

The court rejected the claim that the evidence was not sufficient for the conviction, finding evidence sufficient to show he had constructive possession of a firearm.


A.S. v. Kane, 2016 Pa. Super 189 (Aug. 26, 2016) — Panel opinion by Shogan reversing an order that had reversed denial of a private criminal complaint, concluding that despite
several changes in the statute of limitations and application of the public employee exception to the statute, a complaint asserting sexual offenses by a public employee committed in 1988 was time barred.

It was filed asserting sexual assault by Gerald A. Sandusky, who was then a public employee, committed in 1988. The victim was a minor at the time. The attorney general rejected the complaint and said the statute of limitations barred the complaint. The trial court reversed the order.

The Superior Court reversed that order. It noted despite several changes in the applicable statute of limitations, including extensions to the victim’s 50th birthday, a cause of action had expired before the latest extension of the statute of limitations. Therefore, the court agreed the complaint was time-barred and reversed the order.

PCRA — TIMELINESS — JURISDICTION — NEGOTIATE A GUILTY PLEA — SEXUAL OFFENSES — NEWLY DISCOVERED EVIDENCE EXCEPTION NOT APPLICABLE — 42 PA.C.S. 9545(B)(1)(II) — ALLEYNE — HOPKINS — NOT RETROACTIVELY APPLIED — LACK OF HOLDING HOPKINS APPLIES RETROACTIVELY TO POST-CONVICTION PETITIONERS — ORDER DISMISSING PETITION AFFIRMED

Com. v. Travis Justin Whitehawk, 2016 PA Super 185 (Aug. 24, 2016) — Panel opinion by Stevens affirming an order dismissing a PCRA petition as untimely since neither Alleyne nor Hopkins provides basis to apply newly discovered evidence exception to timeliness requirements since neither decision retroactively applies to post-conviction petitions.

In 2011, Whitehawk entered a negotiated plea of guilty to sexual offenses involving a child. His judgment of sentence became final in 2011. In 2015, he filed a PCRA petition. He asserted the newly discovered evidence exception to the PCRA time bar applied based on the recent decisions of Alleyne and Hopkins. Both the PCRA court and the Superior Court disagreed. The Superior Court said neither decision has been held to apply retroactively to post-conviction matters.

BURGLARY — SUFFICIENCY OF EVIDENCE — DNA MATERIAL OF DEFENDANT ON CIGARETTE NEAR SCENE — VIDEO SURVEILLANCE IMAGES RESEMBLING DEFENDANT — PROSECUTOR COMMENTS DURING CLOSING ARGUMENT — REFERENCE TO LACK OF ALIBI WITNESSES — ARGUMENT NOT IMPROPER — INSTRUCTION REGARDING BURDEN OF PROOF BY COURT — JUDGMENT OF SENTENCE AFFIRMED

Com. v. Jason David Scott, 2016 PA Super 182 (Aug. 19, 2016) — Panel opinion by Stevens affirming judgment of sentence for burglary, finding evidence sufficient to sustain the verdict and when video surveillance images showed an intruder resembling defendant and officers discovered a cigarette butt that contains DNA evidence from the defendant in the area, and finding prosecutor argument that defense witnesses did not present alibis was not improper.

Scott was convicted of burglary of a school. Video surveillance evidence showed recorded images of an intruder who resembled Scott. It depicted the intruder smoking a cigarette, and officers discovered a cigarette butt under an exterior window of the school. Subsequent testing revealed the cigarette butt contained traces of Scott’s DNA. The Superior Court rejected the claim that the evidence was insufficient to sustain the verdict.

The court also said the prosecutor did not improperly imply it was the duty of defendant to provide alibi eyewitnesses by arguing that defense witnesses did not present alibis.
TRAFFIC STOP — REASONABLE SUSPICION — NERVOUSNESS — SHAKING HANDS — UNBLEMISHED PACKAGES DESPITE CLAIM OF AIRLINE TRAVEL — INCONSISTENT STATEMENTS REGARDING TRAVEL PLANS AND FUEL — CONSENT TO SEARCH — CANINE SNiff — JUDGMENT OF SENTENCE AFFIRMED

Com. v. Randy Jesus Valdivia, 2016 PA Super 181 (Aug. 19, 2016) — Panel opinion by Jenkins affirming judgment of sentence for drug offenses finding troopers had reasonable suspicion to detain a motorist when he was nervous, his hands were shaking, he provided inconsistent stories regarding his travel plans and fueling, and had unblemished packages in the rear of vehicle although he claimed to have traveled by plane on an earlier portion of trip.

Valdivia was operating a vehicle on Interstate 80 and was stopped for a lane change violation. Police noticed his hands were shaking and he seemed nervous. He stated he needed to pull over and get gas, which police found strange because gas had been available at two exits he had just passed. When they inquired regarding his travel plans, they found he had been flying but noticed there were packages in the cargo area that were unblemished, though they had been part of his belongings during the flight. Police learned he had previously been charged with possession with intent to deliver. During questioning, he changed his story. He consented to a search of the vehicle, and a canine sniff was conducted after the items were removed from the vehicle.

Under the circumstances, the Superior Court said police had reasonable suspicion for the search and found consent to the search was valid. The court said consent to search included consent to the canine search of the packages after they were removed from the vehicle. Therefore, it affirmed the judgment of sentence.

PCRA — LACK OF FACE-TO-FACE MEETING WITH CLIENT BEFORE TRIAL — FIRST-DEGREE MURDER — PRIVATELY RETAINED COUNSEL — INABILITY TO PROCEED ON TRIAL DATE DUE TO PERSONAL ISSUES — COURT APPOINTED COUNSEL ORDERED TO REPRESENT PETITIONER — PREJUDICE — PA.R.CRIM.P. 907 — DENIAL OF PETITION REVERSED

Com. v. Richard Brown, 2016 PA Super 176 (Aug. 12, 2016) — Panel opinion by Lazarus reversing an order denying PCRA relief, finding constitutionally ineffective representation when trial counsel failed to have any face-to-face meeting with client before capital trial.

Brown was charged with capital murder. Four months before trial, he retained counsel. However, counsel was unable to proceed to trial on the trial day due to issues beyond his control. Therefore, the court ordered other counsel to present Brown at trial. He was tried while represented by that attorney, convicted and sentenced to life imprisonment.

He claimed counsel was ineffective because he had not had even one face-to-face meeting with Brown before trial. The Superior Court agreed, citing Com. v. Brooks, 839 A.2d 245 (Pa. 2003). The court recognized the attorney was present for the preliminary hearing and conducted pretrial discovery. However, there was no recollection of any face-to-face meeting or even any conversation over the telephone before trial. The court said rather than allowing Brown to be represented by someone he had developed rapport with, forcing counsel who had not met Brown even once before trial was an abuse of discretion and forced appointed counsel to be ineffective by court fiat.


Com. v. Ryan O. Langley, 2016 PA Super 179 (Aug. 12, 2016) — Panel opinion by Stevens affirming judgment of sentence for DUI, finding an allegation defendant was involved in an accident that caused bodily injury or property damage as part of DUI charge proper since such facts, if proven, would increase the prescribed penalty.

Langley was charged with DUI, incapability of safe driving and DUI, BAC greater than .08% but less than .10%. The criminal information indicated he was subject to enhanced penalty for the DUI, incapability of safe driving, because it caused bodily injury or property damage.

Langley asserted it was improper to include those facts in the criminal information. The Superior Court disagreed, since under Alleyne and Hopkins, the commonwealth was required to include the facts in the information which, if proven, would increase the prescribed penalty under 75 Pa.C.S. 3804.

The court also rejected Langley’s claim that he was entitled to a jury trial, since the right to a jury trial only applies when the maximum penalty is more than six months, and six months was the maximum on charges against Langley.
AGGRAVATED ASSAULT — ENDANGERING WELFARE OF CHILD — INJURY TO CHILD AT DAY CARE — EVIDENCE OF DIVORCE OF DEFENDANT TWO YEARS AFTER INCIDENT — TESTIMONY OF POLICE REGARDING CREDIBILITY OF DEFENDANT — EVIDENCE OF VICTIM DIAGNOSIS OF ESTROPIA TWO YEARS AFTER INCIDENT — RELEVANCY — JUDGMENT OF SENTENCE VACATED

Com. v. Jalene R. McClure, 2016 PA Super 171 (Aug. 8, 2016) — Panel opinion by Stable vacating judgment of sentence for aggravated assault and other charges arising out of injuries to an infant person at the child care center run by defendant, since the court erred in permitting evidence related to the divorce of defendant, which occurred two years after the incident.

This case involves challenges to several pieces of evidence that were admitted at trial. The Superior Court vacated judgment of sentence because the court improperly allowed evidence relating to a divorce of defendant, which occurred two years after the incident, to be admitted. The court also found error in the method of redaction of a statement and permitting police to testify as to their opinion re credibility of defendant.

VEHICULAR OFFENSES — FATAL AUTOMOBILE CRASH — EVIDENCE OF PRIOR VEHICULAR CRIMINAL OFFENSE — PRIOR BAD ACT — PA.R.E. 404(B)(2) — HOMICIDE BY VEHICLE — SECTION 3732 — VEHICLE CODE — 75 PA.C.S. 3732 — RECKLESSNESS — EVIDENCE OF ALCOHOL CONSUMPTION — NO TESTIMONY OR OBSERVATIONS RE INTOXICATION — EVIDENCE NOT ADMISSIBLE — ANTICIPATED GUILTY PLEA TO OFFENSES ARISING FROM SAME INCIDENT — CRIMEN FALSI — ISSUE NOT RIPE — ADVISORY OPINION NOT RENDERED — INTERLOCUTORY APPEAL — EN BANC COURT — BEING EVIDENCE OF PRIOR CONVICTION REVERSED — ORDER PRECLUDING EVIDENCE OF ALCOHOL CONSUMPTION AFFIRMED

Com. v. Robert N. Sitler, ___ Pa. Super. ____, 144 A.3d 156 (July 26, 2016) — En banc opinion by Ott, concluding evidence of a prior vehicular criminal offense is admissible in a prosecution for offenses arising from a fatal traffic accident, but finding evidence of alcohol consumption inadmissible when there is no evidence or suggestion defendant was intoxicated at time of the incident.

Sitler was charged with numerous offenses arising out of a fatal automobile crash. While driving a truck, he struck and killed a teenager who was standing in the roadway. Evidence indicated he was traveling approximately 50 mph when the speed limit was 35 mph. There was some question as to whom was driving the vehicle. Sitler’s girlfriend initially said she was driving. Sitler was charged with crimen falsi offenses arising from the incident due to false reporting.

The trial court had ruled that evidence of a 2006 conviction for vehicular homicide in Alabama was not admissible. The Superior Court disagreed. It said the offense is admissible as a prior bad act under Pa.R.E. 404(b), since it shows knowledge that his conduct could result in death of another person for purposes of proving the recklessness element of homicide by vehicle.

However, the court found evidence of alcohol consumption in the form of three beers consumed by defendant hours before the incident not admissible. It noted there was no suggestion defendant was intoxicated, and no witnesses indicated he showed any signs of intoxication.

The Superior Court declined to rule on whether evidence of guilty pleas on crimen falsi offenses arising from the same incident are admissible, since, thus far, defendant had not yet entered such pleas and the court refused to issue an advisory opinion.

TRAFFIC STOP — DRIVER FAILURE TO STOP IN LEGAL PARKING SPOT — NO OCCUPANT IN VEHICLE WITH VALID LICENSE — TOWING VEHICLE — TASK TIED TO TRAFFIC STOP — REASONABLE SUSPICION STANDARD APPLIES — AUTHORITY TO ORDER OCCUPANTS TO EXIT VEHICLE — PAT-DOWN — DRUGS — FIREARM — TOTALITY OF BEHAVIOR — JUDGMENT
OF SENTENCE AFFIRMED

Com. v. Corey Palmer, 2016 PA Super 170 (Aug. 4, 2016) — Panel opinion by Dubow affirming judgment of sentence, concluding that when officers properly stop a vehicle for a traffic violation, the car does not stop in a legal parking spot, and none of the occupants have a valid license, towing the vehicle is a task tied to the traffic stop, and officers have authority to order occupants to exit the vehicle, which may be towed; reasonable suspicion standard applies.

A person whom police knew lacked a driver’s license was behind the wheel of a vehicle. Palmer was a rear-seat passenger. Police initiated a traffic stop. The vehicle came to stop on a roadway in front of a restaurant. Police confirmed no occupants had a valid driver’s license and told the occupants to exit the vehicle so the vehicle could be towed. During that time, Palmer apparently acted suspiciously and was patted down. Drugs and a firearm were found.

The court rejected the claim that because of traffic stop, the reasonable suspicion analysis was limited only to considering behavior after exiting the vehicle. The court said that a traffic stop was still ongoing when police ordered Palmer out of the vehicle. Therefore the reasonable suspicion standard applied, and the pat-down was valid.

RECIDIVISM RISK REDUCTION INCENTIVE PROGRAM — 61 PA.C.S. 4502 — PRIOR CONVICTION — ABUSE OF CORPSE — 18 PA.C.S. 5510 — LEGALITY OF SENTENCE STATUTORY INTERPRETATION — NOT HISTORY OF PAST VIOLENT BEHAVIOR — DEFENDANT NOT INELIGIBLE PROGRAM JUDGMENT OF SENTENCE VACATED


Hodge challenged the determination that a conviction for abuse of corpse rendered him ineligible for a Recidivism Risk Reduction Incentive Sentence (RRRI) on his current corrupt organization and PWID convictions.

The court noted abuse of corpse is not included in the definition of crime of violence in the Sentencing Code, 42 Pa.C.S. 9714, and does not render an offender ineligible for inmate motivational camp, is not included in personal injury crime, or does not preclude a person from possessing or using a firearm. Therefore, it agreed he should not be ineligible for the RRRI sentence simply by virtue of the conviction for abuse of corpse.

MOTION FOR CONTINUANCE — MADE BY COMMON

WEALTH — MADE AFTER JURY SELECTION — MATERIALLY FALSE STATEMENT REGARDING FIREARM PURCHASE — 18 PA.C.S. 6111(G) — UNSWORN FALSIFICATION TO AUTHORITIES — 18 PA.C.S. 4904(A)(1) — DEFENSE CONTINUANCES PREVIOUSLY GRANTED — COMMONWEALTH BEFORE WITNESSES — ASSERTION BY DEFENDANT OF LACK OF KNOWLEDGE OF OUT-OF-STATE PFA ORDER — DENIAL OF MOTION AFFIRMED

Com v. Harry Gordon Norton Jr., 2016 PA Super 163 (July 22, 2016) — Panel opinion by Stevens affirming an order denying a commonwealth motion for continuance made after jury selection when, despite prior continuances by defense, the commonwealth asserted it needed time to get witnesses because it discovered defendant was prepared to assert he lacked knowledge of an out-of-state PFA order since the commonwealth should have anticipated such a defense and the need for court documents and witnesses months earlier. Gordon was charged with making false statements on an application to purchase a firearm. The commonwealth claimed he said he was not subject to a PFA order when he was subject to a PFA order from the state of Florida.

After jury selection, on the eve of trial, the commonwealth asserted it needed to secure witnesses’ documents to rebut Norton’s claim that he did not know he was subject to the order. The court noted the commonwealth should have known months earlier the documents and witnesses would be needed. The Superior Court agreed and affirmed the denial of continuance.

IDSI — ALLEGED MISSING ELEMENT OF OFFENSE — LACK OF MARRIAGE — FRAMED AS CHALLENGE TO LEGALITY OF SENTENCE — ACTUAL CHALLENGE TO SUFFICIENCY OF EVIDENCE — FAILURE TO RAISE RULE 1925(B) STATEMENT — CLAIM WAIVED — CONDUCT IN TWO COUNTIES — VENUE — PA.R.CRM.P. 130 — AMENDMENT OF INFORMATION — DEFECT IN FORM — DAY OF TRIAL — PA.R.CRM.P. 564 — NO SURPRISE — PREJUDICE — INTERROGATION — LACK OF MIRANDA WARNINGS — DEFENDANT TOLD HE WAS FREE TO LEAVE — INTERROGATION CUSTODIAL — CONSENSUAL INTERCEPTIONS — WIRETAP ACT — JUDGMENT OF SENTENCE AFFIRMED

Com v. Michael Witmayer, ___ Pa. Super ___, 144 A.3d 968 (July 22, 2016) — Panel opinion by Bowes affirming judgment of sentence for sexual offenses, rejecting claims that it was error to allow prosecution in one county for actions that occurred in another county, since they were part of the same criminal episode involving a pattern of abuse on the same victim, or to permit the commonwealth to correct a defect in form in the information on the eve of trial.

Witmayer was charged with sexual offenses, which occurred over a two-county area but involved the same victim. The court found no error allowing prosecution of the
offenses in one county since the offenses were in the course of sexual abuse. The court also rejected claims the commonwealth should not have been permitted to correct the information so near trial, that statements given to police should have been suppressed, noting defendant was told he was free to leave the interview at any time. The court also found a challenge to sentence waived for failure to raise it in the Rule 1925(B) statement.

RETAILIATION AGAINST PROSECUTOR OR JUDICIAL OFFICER — SECTION 4953.1 — CRIMES CODE — 18 PA.C.S. 4953.1 — TYPE OF HARM REQUIRED TO SUSTAIN CONVICTION — RETALIATION FOR LAWFUL ACTION — SAME TYPE OF HARM REQUIRED FOR RETALIATION AGAINST WITNESS — INCIDENT IN PUBLIC AREA — COMMENTS TO PROSECUTOR — TRIAL — TERRORISTIC THREATS — 18 PA.C.S. 2706 — SPUR OF MOMENT THREAT — HARASSMENT — 18 PA.C.S. 2709 — JUDGMENT OF SENTENCE AFFIRMED IN PART

Com. v. Salim Walls, 2016 PA Super 156 (July 19, 2016) — Panel opinion by Olson holding that standards for retaliating against prosecutor or judicial officer are the same as for retaliating against witness and concluding that retaliatory action is sufficient to sustain the charge but that evidence was insufficient to establish defendant retaliated against prosecutor when he suggested her actions during trial were such that they caused injury to his mother and that she should be next.

Walls approached a prosecutor in a shopping mall and told her she had prosecuted him for a crime he did not commit. He said the prosecutor’s actions caused his mother’s death, and that she should be next. There was no physical contact. He was charged with retaliating against a prosecutor or judicial official, terroristic threats and harassment.

The court affirmed judgment of sentence in part, finding insufficient evidence to sustain the retaliation against prosecutor or judicial official conviction. It also concluded evidence was insufficient for terroristic threats because the incident reflected a spur of the moment threat, resulting from transitory anger. However, it found sufficient evidence to sustain the conviction for harassment.

PARKING — SECTION 3353(A)(3) — VEHICLE CODE — 75 PA.C.S. 3353(A)(3) — TRAFFIC OR ENGINEERING STUDY NOT REQUIRED — PRESUMPTION OF VALIDITY — SUFFICIENCY OF EVIDENCE — DEFINITION OF HIGHWAY — 75 PA.C.S. 102 — DEDICATION TO TOWNSHIP NOT RELEVANT FACTOR — ROADWAY OPENED TO PUBLIC FOR VEHICULAR TRAFFIC — LACK OF NO TRESPASSING SIGNS — JUDGMENT OF SENTENCE AFFIRMED

Com. v. William Ansell, 2016 PA Super 151 (July 15, 2016) — Panel opinion by Olson affirming summary convictions for unlawful parking violation under 75 Pa.C.S. 3353(a)(3), concluding whether a road is dedicated to the township is not a relevant factor in determining whether it is a highway under Section 102 of the Vehicle Code, 75 Pa.C.S. 102, but rather whether the road is open to public for traffic controls its status.

Ansell was convicted of parking violations. He asserted the township never acquired ownership of the road and that it remained private land. He argued the road had not been dedicated and was not open to the public, therefore he could not be guilty of a parking violation. He also asserted the lack of a traffic study rendered the roadway private. The Superior Court disagreed, noting the road is open to the public for vehicular traffic controls whether it is a highway or not under the Vehicle Code.


Com. v. Dan Tucker, 2016 PA Super 157 (July 19, 2016) — Panel opinion by Stevens vacating judgment sentence of five- to 10-years imprisonment for a violation of the Uniform Firearms Act since the maximum term of imprisonment for a third-degree felony is seven years but affirming judgment of sentence for other offenses, concluding the defendant failed to preserve an objection to the prosecution.

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reading the transcript of a pretrial interview with a witness by failing to object during testimony of the witness but objecting after both that witness and another witness testified.

Tucker was convicted of third-degree murder and numerous other charges. The Superior Court rejected the claim that it was error to permit the prosecutor to read a transcript of a pretrial interview of the witness, which included the fact that Tucker had previously gone to jail, though the court had warned the prosecution moments earlier to avoid reading answers that referred to jail. The court noted counsel failed to object until both that witness and another witness had testified.

It also found denial of a request for a continuance to conduct DNA test of a knife was not error when the request was made the day before trial, but existence of the knife was known by defense months earlier, and concluding use of a prior consistent statement of a witness was permitted per Pa.R.E. 613 since on cross examination, defense counsel had suggested the witness fabricated her testimony.

**CONSOLIDATION OF CHARGES — SEPARATE HOMICIDES — FIRING INTO CROWD — SHOOTING DURING UNRELATED ROBBERY SIX DAYS LATER — BALLISTICS EVIDENCE — PA.R.CRIM. 5820 EVIDENCE OF ONE OFFENSE ADMISSIBLE IN TRIAL FOR OTHER — MATCH OF BULLET FRAGMENTS — LIMITED STANDARD OF REVIEW — FAILURE TO ESTABLISH PREJUDICE — JURY INSTRUCTIONS — PHOTOGRAPHIC ARRAY — JUDGMENT OF SENTENCE AFFIRMED**

*Com. v. Rafik Stiles, ___ Pa.Super. ____, 143 A.3d 968 (July 19, 2016)* — Panel opinion by Stevens affirming judgment of sentence for two counts of first-degree murder, concluding it was not error to consolidate the offenses, which occurred six days apart, one that involved shooting into a crowd and the other that was a shooting after a robbery, finding ballistics evidence was relevant to determine the identity of shooter.

Defendant was charged with murder and was then charged with an unrelated robbery that occurred six days later. The charges were consolidated.

The Superior Court found no error in doing so, despite their unrelated nature. It said since bullet fragments recovered from the second incident matched those recovered from the victim in the first incident, joinder was not improper.

The court rejected the claim that defendant was prejudiced, noting he failed to even aver prejudice and, given that though there were similarities between the crimes, they were easily distinguishable.


*Com. v. Eric John Stine, 2016 PA Super 154 (July 18, 2016)* — Panel opinion by Platt affirming judgment of sentence for DUI, finding amphetamine test results performed at a laboratory, which had a Department of Health permit, are admissible since the department knew the lab would be using liquid chromatograph and approved its use.

The opinion deals with whether the test used must be on a list of tests approved by the Pennsylvania Code. The Superior Court rejected that claim and found that since the lab was approved and the department knew which testing methods would be performed at the lab, the results were admissible.

**DOUBLE JEOPARDY — ALLEGED BRADY VIOLATION — FAILURE TO DISCLOSE CRIMEN FALSI OF WITNESS — INFORMATION NOT IN EXCLUSIVE CONTROL OF COMMONWEALTH — PRIOR INCONSISTENT STATEMENTS — PA.R.E. 403 — BALANCING — PREJUDICIAL EFFECT — PROBATIVE VALUE — SHOOTING IN BAR — PURPOSEFUL ATTEMPT NOT TO IDENTIFY SHOOTER IN LINEUP — RETrial — PRIOR CONSISTENT STATEMENTS — PA.R.E. 613 — JUDGMENT OF SENTENCE AFFIRMED**
Com. v. Zachary T. Wilson, 2016 Pa.Super. 144 (July 6, 2016)—Panel opinion by Lazarus affirming judgment of sentence for murder, finding no error in alleged failure to disclose crimen falsi of witness since information in a criminal record is not within the exclusive control of the commonwealth and in allowing the commonwealth to introduce prior consistent statements to rebut prior inconsistent statements introduced for those purposes on cross-examination.

This case arises from a murder that occurred in a bar. The case was tried three times. The Superior Court rejected the claim that double jeopardy barred retrial because of the prosecutor’s intentional failure to disclose Brady information. The court said that information, in the form of criminal record of a witness, does not constitute Brady material since it is not within the exclusive control of the commonwealth.

The opinion discussed prior consistent statements and prior inconsistent statements in various contexts. The court ultimately rejected the claim that prior consistent statements may be used to rebut prior inconsistent statements introduced on cross-examination only if they explain or predate the inconsistent statements.

The court also rejected claims relating to failure to disclose the psychiatric history of a witness, and evidence related to status of a witness as an informant.

— HUFFING — MALICE — KNOWLEDGE OF EFFECTS
— PRIOR TO USE — BLACKING OUT FROM USE ON PRIOR OCCASIONS — STATEMENTS BY DEFENDANT
— BLOOD CONCENTRATION LEVEL — STANDARD OF REVIEW — JURY INSTRUCTIONS — JUDGMENT OF SENTENCE AFFIRMED

Com. v. Danielle Nicole Packer, 2016 PA Super 143 (July 6, 2016) — Panel opinion by Ott affirming judgment of sentence for third degree murder and related offenses arising from a fatal automobile accident, finding sufficient evidence to establish actual malice when defendant had been huffing aerosol, and stated she had done so on previous occasions, and when before driving blacked out and asked her passenger if he trusted her.

Defendant and her passenger huffed from aerosol immediately before she drove a vehicle, and she caused a head-on fatal collision. She was described as zombielike before the collision.

She asserted evidence was not sufficient to establish actual malice. The Superior Court disagreed. It noted she was aware of her condition and harm she might cause, as evidenced by the fact she asked her passenger if he trusted her and admitted she had blacked out after prior occasions of huffing.

The court also rejected the claim that an anatomical forensic pathologist would have supplied exculpatory impeachment evidence when that expert declined to give a formal opinion based on limited knowledge of the case.

POSSESSION OF WEAPON ON SCHOOL PROPERTY — SECTION 912 — CRIMES CODE — 18 PA.C.S. 912 — PARENT ON PROPERTY TO DISCUSS POSSESSION OF KNIFE BY SON — POSSESSION OF SEPARATE KNIFE BY PARENT — KNIFE NEVER — OPENED — NO OTHER LAWFUL PURPOSE — JUDGMENT OF SENTENCE AFFIRMED

Com. v. Andrew Josiah Goslin, 2016 PA Super 145 (July 6, 2016) — Panel opinion by Mundy affirming judgment of sentence for possession of weapon on school property, 18 Pa.C.S. 912, when a parent appeared on school with a knife for no lawful purpose as defined by statute, though he never used or threatened to use the knife.

Goslin went to school to meet regarding an incident when his son was found with a knife on school property. During the meeting, Goslin took a knife from his pocket and placed it on the table. The knife was not pointed at anyone and remained in a closed state the entire time.

The opinion surrounds meaning of “other lawful purpose” in the statute. The court reviewed legislative intent under 1 Pa.C.S. 1921 and agreed with the trial court view that a lawful purpose must be related to the reason one is on school property. In this case, the court found there was no reason to have a knife when a person was on school property for a meeting. Therefore, it affirmed judgment of sentence.

— HUFFING — MALICE — KNOWLEDGE OF EFFECTS
— PRIOR TO USE — BLACKING OUT FROM USE ON PRIOR OCCASIONS — STATEMENTS BY DEFENDANT
— BLOOD CONCENTRATION LEVEL — STANDARD OF REVIEW — JURY INSTRUCTIONS — JUDGMENT OF SENTENCE AFFIRMED

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Please be sure to provide the PBA with your email address (office or home) so that we can notify you when a new issue of the newsletter has been posted to the website.

Simply type “Member email address update” in the subject line of an email and send to jodi.wilbert@pabar.org, or login to the PBA website and update your information via the PBA member dashboard.

If you know of fellow Section members who have not supplied their email addresses, please urge them to do so.
TIMELINESS — STATE PAROLE HEARING — REVOCATION — SECTION 6138(A)(5.1) — PRISONS AND PAROLE CODE — 61 PA.C.S. 6138(A)(5.1) — CONVICTION IN FEDERAL COURT — FAILURE TO TAKE PAROLEE INTO CUSTODY — SERVICE OF ORIGINAL STATE SENTENCE REQUIRED BEFORE SERVING FEDERAL SENTENCE — CONVICTION IN FEDERAL COURT BASIS TO DETAIN — NO REASON TO FAIL TO DETAIN PAROLEE — DENIAL OF ADMINISTRATIVE RELIEF REVERSED

Wayne Fumea v. P.B.P.P., No. 1551 C.D. 2015 (Sept. 16, 2016) — Panel opinion by Jubelirer reversing denial of the administrative relief, concluding a revocation hearing was untimely when held more than 120 days after federal conviction, since balance of original state sentence must be served before serving the new federal sentence when the board offered no explanation for failure to take custody of parolee while he was still available to the board at or before federal sentencing, when board was aware of conviction, and a parole agent attended sentencing and board issued detainer at sentencing.

IMPLIED CONSENT — SECTION 1547 — VEHICLE CODE — 75 PA.C.S. 1547 — MOTION TO SUPPRESS EVIDENCE IN CRIMINAL CASE GRANTED — LAWFULNESS OF TRAFFIC STOP — SECTION 6308 — VEHICLE CODE — 75 PA.C.S. 6308 — IMPLIED CONSENT TO POSSIBLY IMPROPER SEIZURE FOR PURPOSES OF CIVIL LICENSE SUSPENSIONS — FOURTH AMENDMENT — ARTICLE I, SECTION 8 — DENIAL OF LICENSEE APPEAL AFFIRMED

Jeffrey Ryan Regula v. DOT, No. 57 C.D. 2016 (Sept. 6, 2016) — Panel opinion by Jebelier affirming an order denying the appeal of a licensee from suspension of operating privilege for refusal to submit to chemical testing, finding the court did not err by refusing to take judicial notice of or admit as evidence the grant of a motion to suppress and dismissing the underlying DUI charge, since probable cause for the stop is not required for license suspension for refusal to submit to chemical testing.

Regula was stopped for a lane violation. He refused to submit to chemical testing. His motion to suppress evidence was granted in the underlying DUI case. He argued the lower court erred by refusing to consider that the motion to suppress evidence had been granted.

The Commonwealth Court disagreed. It noted that probable cause for the stop is not required for a license suspension for refusal to submit to chemical testing in that Section 6308 of the Vehicle Code, 75 Pa.C.S. 6308, requires reasonable suspicion that a violation of the Vehicle Code has occurred before a traffic stop may be affected.

IMPLIED CONSENT — SECTION 1547 — VEHICLE CODE — 75 PA.C.S. 1547 — REASONABLE GROUNDS TO BELIEVE LICENSEE DUI — DISABLED VEHICLE ON ROADWAY — NO OCCUPANT — SCRATCHES ON PASSENGER SIDE — APPROACH OF DEFENDANT — GLASSY EYES — SORT SPEECH — ODOR OF ALCOHOL ADMISSION TO DRIVING VEHICLE — LACK OF CAR KEYS — CREDIBILITY OF OFFICER TESTIMONY RE ADMISSION OF DRIVING — ORDER SUSTAINING APPEAL FROM SUSPENSION VACATED

Christopher Marnik Jr. v. DOT, ___Pa. Comm. ___, 145 A.3d 208 (Aug. 9, 2016) — Panel opinion by Covey vacating an order sustaining an appeal from suspension of operating privileges per Section 1547 of the Vehicle Code, 75 Pa.C.S. 1547, finding remand necessary to clarify whether the court found credible police testimony that licensee admitted driving a vehicle the police found disabled and that the vehicle was not present at the scene 15 minutes before they found it.

Police observed a disabled and damaged vehicle with no occupant on the roadway. The vehicle had not been present when police had passed by 15 minutes earlier. While police were at the scene, licensee approached, stumbling, with glassy eyes and slurred speech. He smelled of alcohol, and police said he admitted to driving the vehicle, but he did not have car keys. Marnik refused to submit to chemical testing. His operating privileges were suspended.

The trial court sustained the appeal from suspension of operating privileges for refusal to submit to chemical testing. The Commonwealth Court vacated the order. It said DOT need only show licensee was driving the vehicle and that the conclusion he drove while intoxicated was reasonable under totality of circumstances. It remanded for the court to clarify whether it had found credible police testimony that licensee admitted driving the vehicle and that the vehicle was not present at the scene 15 minutes before police found it.

SEXUAL OFFENDERS REMOVAL FROM REGISTRY — OUT OF STATE CONVICTION — INDECENT CONTACT — PLACEMENT ONE REGISTRY IN OTHER STATE — 10 YEAR REGISTRATION REQUIREMENT — EQUAL PRO-
Tommy Lee Jackson v. Com., No. 388 M.D. 2014 (July 7, 2016) — Panel opinion by Pellegrini granting a petition to remove petitioner from the sexual registration list, finding an equal protection violation when he was not given credit against his registration period for time spent on a sexual offender registry in another state.

Jackson was convicted of indecent assault on a child in Texas. He was ultimately sentenced to 10 years’ imprisonment. Pursuant to Texas law, he registered as a sexual offender and had served six years of registration. Jackson later moved to Pennsylvania. At the time, Megan’s Law II was in effect and required him to register for 10 years. In 2011, SORNA was enacted, which reclassified Jackson as a Tier III offender and required him to register for the rest of his life. Jackson sought relief, claiming that, if given credit for the time he spent on the registry in Texas, the 10-year registration period expired for the enactment of SORNA.

The Commonwealth Court agreed there is no rational basis to differentiate between registration requirements based solely on the fact that his offense occurred in another jurisdiction. It said requiring him to register for the rest of his life now and not giving credit for the years registered in other states only because the offense was committed somewhere else is not reasonably related to enhancing public safety and welfare. Therefore, using a rational basis test, it granted him relief.

Pasquale Leo Capizzi v. DOT, __ Pa.Comm. ___, 141 A3d 635 (June 23, 2016) — Panel opinion by Jubelirer affirming an order sustaining an appeal from suspension of operating privileges when, despite no fault of DOT, there was nearly an eight-year delay between the conviction and reporting of the conviction by the Clerk of Court to DOT, licensee maintained a clean record in the interim and would have suffered prejudice from suspension.

Capizzi was convicted of a drug offense in 2007. The Clerk of Court did not certify the conviction until November 2014. Once notified, DOT promptly mailed notice of the suspension to licensee.

In the intervening seven years, licensee had become manager for a parking service and was required to move vehicles. The parties stipulated that he was prejudiced but that it was through no fault of DOT.

The court noted suspension appeals are generally not sustained when DOT is not at fault. However, it said given the length of time, the fact that licensee maintained a clean record for an extended period and would suffer prejudice, it was not inappropriate to grant relief.

Mark Your Calendar for These Upcoming Events

PBA Commission on Women in the Profession Full Commission Meeting
Jan. 9 • Harrisburg, Pittsburgh, Philadelphia

Family Law Section Winter Meeting
Jan. 13-15 • Loews Philadelphia Hotel

PBA Midyear Meeting
Jan. 25-29 • St. Kitts Marriott Resort, Frigate Bay, West Indies

Elder Law Section and Real Property, Probate and Trust Law Section Symposium
Feb. 9 • Pittsburgh, Philadelphia, Mechanicsburg

Conference of County Bar Leaders
Feb. 23-25 • Nittany Lion Inn, State College

Annual Health Law Institute
March 7-8 • PBI Professional Development Conference Center, Pittsburgh

Labor and Employment Law Section Retreat
March 10-11 • Hotel Hershey, Hershey

Civil Litigation Section Retreat
March 24-26 • Nemacolin Woodlands, Farmington

Find more information about what’s going on in the PBA Events Calendar at www.pabar.org or call 800-932-0311.
The following is a list of the acts signed by the governor since August 2016 related to the practice of criminal law. More information about these laws, the legislative process, and the work of the PABAR-PAC and PBA Legislative Department can be found under the “Legislative News” link on the PBA website, www.pabar.org.

**Legislative Update**

By Samantha M. Laverty, Esq.

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**Act 24 of 2016**

H.B. 12 (Representative Schlossberg, D-Lehigh County)

Protections for Victims of Domestic Violence in Divorce

An act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes in preliminary provisions relating to divorce, further providing for definitions; and in dissolution of marital status, further providing for grounds for divorce for counseling and for decree of court.

**Act 56 of 2016**

S.B. 1077 (Senator Vogel, R-Beaver, Butler and Lawrence counties)

Prohibition of Interception and Disclosure of Communications

An act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes in wiretapping and electronic surveillance, further providing for exceptions to prohibition of interception and disclosure of communications.

**Act 64 of 2016**

S.B. 936 (Senator Browne, R-Lehigh County)

Child Support Garnishment — One-Time Employer Fee

An act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes in support matters generally, further providing for attachment of income.

**Act 78 of 2016**

S.B. 917 (Senator Browne, R-Lehigh County)

Interagency Information Sharing

An act amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes in juvenile matters, providing for interagency information sharing.

**Act 102 of 2016**

H.B. 380 (Representative Toohil, R-Luzerne County)

Reduces the Waiting Period for No-Fault Divorce

An act amending Title 23 (Domestic Relations) of the Pennsylvania Consolidated Statutes in dissolution of marital status, further providing for grounds for divorce and for decree of court.

**Act 111 of 2016**

H.B. 1581 (Representative Corbin, R-Chester County)

Strangulation

An act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes in assault, providing for the offense of strangulation.

**Act 115 of 2016**

S.B. 1311 (Senator Vance, R-Cumberland and York counties)

Grounds for Involuntary Termination of Parental Rights

An act amending Title 23 and Title 42 in adoption, further providing for grounds for involuntary termination; in child protective services, further providing for definitions and for release of information in confidential reports; and in juvenile matters, further providing for definitions.

**Act 131 of 2016**

H.B. 1118 (Representative Vereb, R-Montgomery County)

Independent Counsel Statute

An act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, providing for conflicts of interest; and repealing and adding provisions relating to independent counsel.

**Act 134 of 2016**

H.B. 1496 (Representative Stephens, R-Montgomery County)

Persons Not to Possess

An act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes in firearms and other dangerous articles, further providing for persons not to possess, use, manufacture, control, sell or transfer firearms.

**Act 158 of 2016**

S.B. 1062 (Senator Rafferty, R-Berks, Chester, and Montgomery counties)

Home Invasion Burglaries

An act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes in burglary and other criminal intrusions, further providing for burglary; and in sentencing, providing for sentencing for burglary.