Commonwealth of Pennsylvania
Municipal Police Officers’
Education And Training Commission

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INFORMATION

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___________________________________________
Lieutenant Stephen L. Kiessling, Acting Director
Municipal Police Officers’ Education and Training Commission
Commonwealth of Pennsylvania
2015

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MPOETC MANDATORY IN-SERVICE TRAINING PROGRAM (MIST)

On December 21, 1988 Act 180 was passed, amending ACT 120 of 1974 and establishing a Mandatory In-Service Training Program for all persons subject to the Municipal Police Education Training Act (53 Pa. C. S. Ch.21 Subchapter D) as required by law. The program began in 1991.

As in prior years, topics are determined based on the Commission’s latest Statewide Job Task Analysis completed in 2013, and from an ongoing, comprehensive analysis of training needs begun in 1989. Additionally, feedback from the Survey of Municipal Police Departments conducted by the Pennsylvania State Police and an ongoing survey of police officers attending MIST programs sponsored by the Commission was considered. Moreover, our annual development involves soliciting input from the Commission’s In-Service Training Committee, police chiefs, school directors, academy instructors, and police officers in the field. Next, the Commission identified qualified law enforcement professionals, subject matter experts, and police trainers to serve on the various Course Development Committees.

Committee Members and Commission Staff have developed a comprehensive lesson plan and training materials for each course and also serve as presenters at regional instructor training workshops.

Course design and development processes incorporate an extensive review by each Course Development Committee, technical advisors, and Commission Legal Counsel & Staff. This practice ensures the highest quality and most cost effective training for Pennsylvania’s law enforcement officers required by the Municipal Police Education Training Act. We recognize the excellent work and commitment in the development process made by:

<table>
<thead>
<tr>
<th>16-201 Legal Update</th>
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<tbody>
<tr>
<td>Louis C. Blauth, Jr., Esq.</td>
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<tr>
<td>James J. Coughlin</td>
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<tr>
<td>Rodney Hartman</td>
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<tr>
<td>Susan E. Moyer, Esq.</td>
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<tr>
<td>Stuart B. Suss, Esq. (Ret.)</td>
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<tr>
<td>Timothy R. Ebersole, M.S.</td>
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<tr>
<th>16-202 Use of Force</th>
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<tbody>
<tr>
<td>Christopher P. Boyle, Esq.</td>
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<tr>
<td>Emanuel Kapelsohn, Esq.</td>
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<tr>
<td>Robert P. Sands</td>
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<tr>
<td>Timothy R. Ebersole, M.S.</td>
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<tr>
<th>16-203 Tactical Medicine</th>
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<tbody>
<tr>
<td>Craig K. Hall Paramedic</td>
</tr>
<tr>
<td>Jonah Thompson Paramedic</td>
</tr>
<tr>
<td>SA Jared S. Zimmerman EMT</td>
</tr>
<tr>
<td>Leah Napoli M. Ed.</td>
</tr>
<tr>
<td>Bill Kaiser, M. Ed.</td>
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</tbody>
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Sincerely,

[Signature]

Lieutenant Stephen L. Kiessling
Acting Director
Editor’s Preface

This informational lesson plan is intended for police officers to use during the Municipal Police Officers’ Education and Training Commission’s 2016 Mandatory In-Service Training course titled, “Legal Update: 16-201”. This manual can be used as a guide to later help police officers with legal issues, case preparation, and courtroom testimony.

This course and publication is the result of an enormous team effort. The committee was comprised of experienced and knowledgeable attorneys, police officers, judges, and professional police educators. The committee members developed a solid in-service training course that is practical, job related, and one that will aid Pennsylvania police officers to successfully accomplish their law enforcement mission.

I would personally like to express my sincere appreciation and gratitude to all of the course development committee members for their hard work and dedication for developing “Legal Update: 16-201” and for conducting train-the-trainer seminars for our academy MIST instructors.

Timothy R. Ebersole, M.S.
Editor
## MPOETC 2015 Legal Update
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**Course Overview**

**Course Number and Title:**

16-201; Legal Updates

**Instructional Hours:**

Three (3) Hours

**Summary of Content:**

This is a required three-hour course for all MPOETC certified police officers in Pennsylvania. This course is designed to provide law enforcement officers with an update in the following areas:

A review of significant law changes occurring between July 1, 2014 and June 30, 2015 in the following Commonwealth of Pennsylvania statutes:

- Crimes Code
- Vehicle Code
- Rules of Criminal Procedure
- Pennsylvania Code

A review of significant U.S. Supreme Court, PA Supreme Court, PA Superior Court, and PA Commonwealth Court case law, based on decisions available from July 1, 2014 to June 30, 2015.

A ten-question examination will be administered at the end of the course to test the participant’s knowledge. A minimum score of 70% is required in order to successfully complete the course. Scoring of the test will follow. Failure will result in the participant remaining for remedial training, a re-test with a different test, and depending on the results of the second test, returning to take the course over again.
Course Goals:

I. Identify major law changes that police officers need to know to accomplish their mission.

II. Analyze court decisions that impact operational activities and the case preparation process of officers “on the street” as well as police criminal investigators.

III. Provide MPOETC certified police officers with updated information on legal issues directly related to law enforcement in the Commonwealth of Pennsylvania.

Instructional Objectives – Upon completion of this course, participants (police officers) will be able to:

1) Review the Child Protective Service Laws and Mandated Reporting.

2) Explain Sexual Violence Protective Orders.

3) Discuss body camera laws and possible policy considerations.

4) Summarize the new Sexual Assault Evidence Collection laws and procedures. (SAFER)

5) Outline what constitutes the crime of Possession of Animal Fighting Paraphernalia.

6) Decide what violation to charge if a person has a veteran status on his/her driver’s license and is not a veteran.

7) Explain Cyber Harassment of a Child section of the Crimes Code.

8) Summarize the law regarding administration of overdose medications (Naloxone).

9) Explain the Kelsey Smith Act and Mobile Communication Tracking Information.
10) Discuss how pedalcycles with electric assist and neighborhood electric vehicles (NEV) are defined in the vehicle code.

11) Summarize Rule 452 of the Pennsylvania Rules of Criminal Procedure as it relates to collateral in summary cases.

12) Summarize Rules 542 of the Pennsylvania Rules of Criminal Procedure as it relates to hearsay evidence at preliminary hearings.

13) Recognize that Section 6502 A of the Vehicle Code is not a chargeable offense.

14) Identify how the two hour rule found in 75 Pa.C.S. Section 3802 is applied. (Wilson)

15) Explain what evidence a police officer needs to ask a motorist to submit to a chemical test. (Jones)

16) Recognize that traffic stops can be investigative in nature and *Miranda* warnings are not required. (Walkden)

17) Outline what evidence is required to verify a driver’s operating privilege has been suspended. (Harden)

18) Review when police officers can testify to Horizontal Gaze Nystagmus (HGN) results. (Weaver)

19) Explain the importance of articulation of facts in determining the reasonableness of a stop and frisk of a suspect. (Ranson, Davis, and Carter)

20) Identify exigent circumstances that are required to search a home without a search warrant. (United States v Mallory and Bowmaster)

21) Explain when police officers are allowed to search the contents of a cell phone without a search warrant. (United States v Camou)

22) Understand that Pennsylvania does not allow the “Good Faith” exception to the Exclusionary Rule. (Fleet)
23) Identify when collective knowledge can be used to make an arrest. (Yong)

24) Summarize when exigent circumstance exist to draw blood from a motorist of a vehicle. (Myers)

25) Review the “plain feel doctrine.” (Griffin)

26) Realize that extending the duration of a traffic stop without evidence of criminal activity could jeopardize evidence later seized. (Rodriguez v United States)

27) Summarize when a police officer must conclude the traffic stop. (Ngyuen)

28) Outline when a police officer is allowed to use exigent circumstance to gain entry into a home on a domestic violence incident. (Davido)

29) Articulate when a third party can give consent to search another person’s personal items. (Perel)

30) Explain the probable cause needed to support the crime of Hindering apprehension. (Johnson)

31) Identify if facts of a vehicular homicide incident are sufficiently egregious to support the charge of third degree murder. (Thompson)

32) Summarize what evidence is required to establish intent to deliver. (Mosley)

33) Review of the Wiretap Act and texting. (Diego)

34) Explain what constitutes the crime of Disorderly Conduct. (Forrey and Mauz)

35) Review of the grading to escape and flight changes. (Stoppard)

36) Identify which law enforcement agency has jurisdiction in terroristic threat incidents. (Vergilio)
Instructional Methods:

Concept briefings/lectures/facilitation of class discussion, use of PowerPoint slides, video vignettes, and handout.

Instructional Materials:

1. Easel/Pad, Smart board or chalk board
2. Classroom handouts
3. Laptop computer/Projector/Screen/DVD player/Monitor
4. MPOETC/PSP DVD program titled, “2016 Legal Updates”
5. Instructor’s lesson plan and PowerPoint slides

Instructional Preparation:

By utilizing a standard lesson plan and comprehensive instructor notes, the MPOETC is providing specific course content requirements and teaching method instructions to trainers in the field. However, the Commission fully expects every instructor to complete their own research and preparation, modify the lesson plan within prescribed limits and with prior approval of the MPOETC Executive Director, to meet the needs of their delivery style, audience (local needs and problems), and to take any other steps necessary to present the course in the most professional manner possible. This includes being aware of updated information, law changes, and relevant court decisions that may impact the content of the course.

Although copies of the cases and statutes are on the CD/DVD for this course, instructors may find the following websites helpful:

   http://www.supremecourt.gov/
   http://www.pacourts.us/
   www.legis.state.pa.us
   www.mpoetc.state.pa.us

Additionally, significant statutory changes may occur beyond the printing date of this lesson plan. As they occur, instructors are expected to incorporate those significant changes into their class presentations.
Instructional Hours:

Instructors are advised that times specified in each section of the lesson plan are guidelines, and may be adjusted to meet the overall course objectives and presentation requirements. However, all times must conform to the Commission’s minimum requirement that three (3) instructional hours be presented.

MPOETC MIST Testing Protocol:

- Course Instructors will administer the Commission developed 10-question test immediately following the three hours of instruction. Testing will take place outside of the three hours of instruction provided for by the Commission.

- Instructors will distribute a blank single-course answer sheet for each course exam. If an instructor uses a multi-test answer sheet, only one test must be recorded on the sheet. Under no circumstances should instructors provide participants with a multi-course answer sheet containing a previously corrected test.

- Participants will be instructed to discontinue the use of and secure all cell phones, camera phones, PDA’s, Blackberries, etc. during the testing procedure.

- All booklets, note pads, paper, reference material, etc. will be removed from the desk / table tops during examinations.

- When possible, adequate space between participants will be maintained.

- Participants will be instructed to read the Commission Cheating Policy and sign the acknowledgement that they have read and understood that policy.

- Upon completing the test, participants shall return the test and answer sheet to the instructor, and immediately leave the room. No participant shall be allowed to observe the instructor correcting any answer sheet.

- A minimum score of 70% is needed to pass this test. Participants who pass the exam will be released.

- Participants failing the exam will be identified pursuant to academy protocol. The instructor shall conduct a brief review of the course objectives
and main points and orally administer a second form of the test. A participant who fails the retest will be required to repeat the course.

Important Note:

Some of the information contained in the following program may not apply to your law enforcement agency, training school or jurisdiction. Training information presented in this program should be considered in conjunction with State Laws, Municipal Ordinances, Local Judicial Rules and Regulations, District Attorney’s Procedures, and individual Department Policies and Procedures.

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**Time Allocations and Course Content Timing Guideline for Legal Update (16-201)**

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<th>Total Time (in Minutes)</th>
<th>Suggested Clock Times</th>
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<tr>
<td>Introduction and Overview</td>
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<tr>
<td>Statutory Changes</td>
<td>30</td>
<td>0910 - 0940</td>
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<td>PA Rules of Criminal Procedure</td>
<td>10</td>
<td>0940-0950</td>
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<td>0950-1000</td>
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<td>20</td>
<td>1000-1020</td>
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<tr>
<td>Search and Seizure Cases</td>
<td>30</td>
<td>1020-1050</td>
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<tr>
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<td>1050-1100</td>
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<td>1100-1125</td>
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<tr>
<td>Statutory Construction Cases</td>
<td>35</td>
<td>1125-1200</td>
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<td>Closing and WRITTEN TEST</td>
<td>Outside 3 hours of instruction</td>
<td>Administer exam per MPOETC Policy</td>
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<td>TOTAL</td>
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Legal Updates 2016

I) Introduction and Opening

A) Course Overview
Instructors will address significant changes to the Pennsylvania Crimes Code; Vehicle Code; Rules of Criminal Procedure as well as court decisions from the Pennsylvania Commonwealth, Superior and Supreme Courts, the United States Supreme Court and other federal courts.

B) Course Goals
Major pieces of legislation passed from July 1, 2014 that affects police operations and investigations, will be thoroughly discussed as well as legal issues directly impacting on police procedures and the case preparation process.

II) Statutory changes

Child Protective Service Laws and Mandated Reporting
Effective: December 31, 2014 and amended July 1, 2015

1. 23 Pa.C.S. § 6311 Persons required to report suspected child abuse

(a) Mandated reporters.--The following adults shall make a report of suspected child abuse, subject to subsection (b), if the person has reasonable cause to suspect that a child is a victim of child abuse:
   (1) A person licensed or certified to practice in any health-related field under the jurisdiction of the Department of State.
   (2) A medical examiner, coroner or funeral director.
   (3) An employee of a health care facility or provider licensed by the Department of Health, who is engaged in the admission, examination, care or treatment of individuals.
   (4) A school employee.
   (5) An employee of a child-care service who has direct contact with children in the course of employment.
   (6) A clergyman, priest, rabbi, minister, Christian Science practitioner, religious healer or spiritual leader of any regularly established church or other religious organization.
(7) An individual paid or unpaid, who, on the basis of the individual’s role as an integral part of a regularly scheduled program, activity or service is a person responsible for the child’s welfare or has direct contact with children.
(8) An employee of a social services agency who has direct contact with children in the course of employment.
(9) A peace officer or law enforcement official.
(10) An emergency medical services provider certified by the Department of Health.
(11) An employee of a public library who has direct contact with children in the course of employment.
(12) An individual supervised or managed by a person listed under paragraphs (1), (2), (3), (4), (5), (6), (7), (8), (9), (10), (11) and (13) who has direct contact with children in the course of employment.
(13) An independent contractor.
(14) An attorney affiliated with an agency, institution, organization or other entity, including a school or regularly established religious organization that is responsible for the care, supervision, guidance or control of children.
(15) A foster parent.
(16) An adult Family member who is a person responsible for the child’s welfare and provides services to a child in a family living home, community home for individuals with an intellectual disability or host home for children which are subject to supervision or licensure by the department under Articles IX and X of the act of June 13, 1967 (P.L.31, No. 21), known as the Public Welfare Code.

(b) Basis to report.--
(1) A mandated reporter enumerated in subsection (a) shall make a report of suspected child abuse in accordance with section 6313 (relating to reporting procedure), if the mandated reporter has reasonable cause to suspect that a child is a victim of child abuse under any of the following circumstances:
   (i) The mandated reporter comes into contact with the child in the course of employment, occupation and practice of a profession or through a regularly scheduled program, activity or service.
   (ii) The mandated reporter is directly responsible for the care, supervision, guidance or training of the child, or is affiliated with an agency, institution, organization, school, regularly established church or religious organization or other entity that is directly responsible for the care, supervision, guidance or training of the child.
(iii) A person makes a specific disclosure to the mandated reporter that an identifiable child is the victim of child abuse.

(iv) An individual 14 years of age or older makes a specific disclosure to the mandated reporter that the individual has committed child abuse.

(2) Nothing in this section shall require a child to come before the mandated reporter in order for the mandated reporter to make a report of suspected child abuse.

(3) Nothing in this section shall require the mandated reporter to identify the person responsible for the child abuse to make a report of suspected child abuse.

(c) Staff members of institutions, etc.—Whenever a person is required to report under subsection (b) in the capacity as a member of the staff of a medical or other public or private institution, school, facility or agency, that person shall report immediately in accordance with section 6313 and shall immediately thereafter notify the person in charge of the institution, school, facility or agency or the designated agent of the person in charge. Upon notification, the person in charge or the designated agent, if any, shall facilitate the cooperation of the institution, school, facility or agency with the investigation of the report. Any intimidation, retaliation or obstruction in the investigation of the report is subject to the provisions of 18 Pa.C.S. § 4958 (relating to intimidation, retaliation or obstruction in child abuse cases). This chapter does not require more than one report from any such institution, school, facility or agency.

23 Pa.C.S. § 6303 - Definitions:
“Law enforcement official.” The term includes the following:
(1) The Attorney General.
(2) A Pennsylvania district attorney.
(3) A Pennsylvania State Police officer.
(4) A municipal police officer.

2. Who has to be reported?

Direct Perpetrator:
1. A parent of a child.
2. A spouse or former spouse of the child’s parent.
3. A paramour or former paramour of the child’s parent.
4. An individual 14 years of age or older and responsible for the child’s welfare or having direct contact with children as an employee of child-care services, a school or through a program, activity or service.
5. An individual 14 years of age or older who resides in the same home as the child.
6. An individual 18 years of age or older who does not reside in the same home as the child but is related within the third degree of consanguinity or affinity by birth or adoption to the child.

### Consanguinity

<table>
<thead>
<tr>
<th>First Degree</th>
<th>Second Degree</th>
<th>Third Degree</th>
</tr>
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<tbody>
<tr>
<td>1. Father or Mother</td>
<td>1. Grandparents</td>
<td>1. Great Grandparents</td>
</tr>
<tr>
<td>2. Son or Daughter (Spouse)</td>
<td>2. Grandchildren (Spouse)</td>
<td>2. Great Grandchildren (Spouse)</td>
</tr>
<tr>
<td></td>
<td>3. Uncle or Aunt (Spouse)</td>
<td>3. Great Uncle or Aunt (Spouse)</td>
</tr>
<tr>
<td></td>
<td>4. First Cousin (Spouse)*</td>
<td>4. Children or Great Uncle or Aunt (Spouse)</td>
</tr>
<tr>
<td></td>
<td>5. Nephew or Niece (Spouse)</td>
<td>5. Second Cousin (Spouse)</td>
</tr>
<tr>
<td></td>
<td>6. Brother or Sister (Spouse)</td>
<td>7. Grandchildren of First Cousin (Spouse)</td>
</tr>
</tbody>
</table>

*First cousins share a grandparent, second cousins share a great-grandparent, third cousins share a great-great-grandparent, and so on. The degree of cousinhood ("first," "second," etc.) denotes the number of generations between two cousins and their nearest common ancestor.

Perpetrator by Failure to Act:

1. A parent of the child.
2. A spouse or former spouse of the child's parent.
3. A paramour or former paramour of the child's parent.
4. A person 18 years of age or older and responsible for the child's welfare.
5. A person 18 years of age or older who resides in the same home as the child.
3. What has to be reported?

Child abuse is:

Intentionally, knowingly or recklessly doing any of the following:

1. Causing bodily injury to a child through any recent act or failure to act
2. Fabricating, feigning, or intentionally exaggerating or inducing a medical symptom or disease which results in a potentially harmful medical evaluation or treatment to a child through any recent act.
3. Causing or substantially contributing to a serious mental injury to a child through any act or failure to act or a series of such acts or failures to act
4. Causing sexual abuse or exploitation of a child through any act or failure to act
5. Creating a reasonable likelihood of bodily injury to a child through any recent act or failure to act
6. Creating a likelihood of sexual abuse or exploitation of a child through any recent act or failure to act
7. Causing serious physical neglect of a child
8. Engaging in any of the following recent acts:
   a. kicking, biting, throwing, burning, stabbing, or cutting in a manner that endangers the child
   b. unreasonably restraining or confining a child, based on consideration of the method, location, and duration of the restraint or confinement
   c. forcefully shaking a child under one year of age
   d. forcefully slapping or otherwise striking a child under one year of age
   e. Interfering with the breathing of a child
   f. Causing a child to be present at a location while a violation of 18 Pa.C.S. §7508.2 (relating to operation of methamphetamine laboratory) is occurring, provided that the violation is being investigated by law enforcement
   g. Leaving a child unsupervised with an individual, other than the child’s parent, who the actor knows or reasonably should have known:
      1. is required to register as a Tier II or III sexual offender, where the victim of the sexual offense was under 18 when the crime was committed
      2. has been determined to be an SVP
      3. has been determined to be a sexually violent delinquent child
9. Causing the death of a child through any act or failure to act.
4. More definitions under 23 Pa.C.S. § 6303

**“Adult Family Member.”** A person 18 years or age or older who has the responsibility to provide care or services to an individual with an intellectual disability or chronic psychiatric disability.

**“Direct Volunteer Contact.”** The care supervision, guidance or control of children and routine interaction with children.

**“Person responsible for the child’s welfare.”** A person who provides permanent or temporary care, supervision, mental health diagnosis or treatment training or control of a child in lieu of parental care, supervision and control.

**“Routine Interaction.”** Regular and repeated contact that is integral to a person’s employment or volunteer responsibilities.

**“School Employee.”** An individual who is employed by a school or who proves a program, activity or service sponsored by a school. The term does not apply to administrative or other support personnel unless the administrative or other support personnel has direct contact with children.

**“Serious bodily injury.”** Bodily injury which creates a substantial risk of death or which causes serious permanent disfigurement or protracted loss or impairment of function of any bodily member or organ.

**“Serious mental injury.”** A psychological condition, as diagnosed by a physician or licensed psychologist, including the refusal of appropriate treatment, that:

(1) renders a child chronically and severely anxious, agitated, depressed, socially withdrawn, psychotic or in reasonable fear that the child's life or safety is threatened; or

(2) seriously interferes with a child's ability to accomplish age-appropriate developmental and social tasks.

**“Serious physical neglect.”** Any of the following when committed by a perpetrator that endangers a child's life or health, threatens a child's well-being, causes bodily injury or impairs a child's health, development or functioning:
(1) A repeated, prolonged or egregious failure to supervise a child in a manner that is appropriate considering the child's developmental age and abilities.

(2) The failure to provide a child with adequate essentials of life, including food, shelter or medical care.

“Sexual abuse or exploitation.” Any of the following:

(1) The employment, use, persuasion, inducement, enticement or coercion of a child to engage in or assist another individual to engage in sexually explicit conduct, which includes, but is not limited to, the following:

   (i) Looking at the sexual or other intimate parts of a child or another individual for the purpose of arousing or gratifying sexual desire in any individual.

   (ii) Participating in sexually explicit conversation either in person, by telephone, by computer or by a computer-aided device for the purpose of sexual stimulation or gratification of any individual.

   (iii) Actual or simulated sexual activity or nudity for the purpose of sexual stimulation or gratification of any individual.

   (iv) Actual or simulated sexual activity for the purpose of producing visual depiction, including photographing, videotaping, computer depicting or filming.

This paragraph does not include consensual activities between a child who is 14 years of age or older and another person who is 14 years of age or older and whose age is within four years of the child's age.

(2) Any of the following offenses committed against a child:

   (i) Rape as defined in 18 Pa.C.S. § 3121 (relating to rape).

   (ii) Statutory sexual assault as defined in 18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

   (iii) Involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).
(iv) Sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault).

(v) Institutional sexual assault as defined in 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).

(vi) Aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

(vii) Indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault).

(viii) Indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).

(ix) Incest as defined in 18 Pa.C.S. § 4302 (relating to incest).

(x) Prostitution as defined in 18 Pa.C.S. § 5902 (relating to prostitution and related offenses).

(xi) Sexual abuse as defined in 18 Pa.C.S. § 6312 (relating to sexual abuse of children).

(xii) Unlawful contact with a minor as defined in 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

(xiii) Sexual exploitation as defined in 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

6. § 6304. Exclusions from child abuse

(a) Environmental factors.—No child shall be deemed to be physically or mentally abused based on injuries that result solely from environmental factors, such as inadequate housing, furnishings, income, clothing and medical care, that are beyond the control of the parent or person responsible for the child's welfare with whom the child resides. This subsection shall not apply to any child-care service as defined in this chapter, excluding an adoptive parent.
(b) **Practice of religious beliefs.**—If, upon investigation, the county agency determines that a child has not been provided needed medical or surgical care because of sincerely held religious beliefs of the child's parents or relative within the third degree of consanguinity and with whom the child resides, which beliefs are consistent with those of a bona fide religion, the child shall not be deemed to be physically or mentally abused. In such cases the following shall apply:

1. The county agency shall closely monitor the child and the child's family and shall seek court-ordered medical intervention when the lack of medical or surgical care threatens the child's life or long-term health.
2. All correspondence with a subject of the report and the records of the department and the county agency shall not reference child abuse and shall acknowledge the religious basis for the child's condition.
3. The family shall be referred for general protective services, if appropriate.
4. This subsection shall not apply if the failure to provide needed medical or surgical care causes the death of the child.
5. This subsection shall not apply to any child-care service as defined in this chapter, excluding an adoptive parent.

(c) **Use of force for supervision, control and safety purposes.**—Subject to subsection (d), the use of reasonable force on or against a child by the child's own parent or person responsible for the child's welfare shall not be considered child abuse if any of the following conditions apply:

1. The use of reasonable force constitutes incidental, minor or reasonable physical contact with the child or other actions that are designed to maintain order and control.
2. The use of reasonable force is necessary:
   i. to quell a disturbance or remove the child from the scene of a disturbance that threatens physical injury to persons or damage to property;
   ii. to prevent the child from self-inflicted physical harm;
   iii. for self-defense or the defense of another individual; or
   iv. to obtain possession of weapons or other dangerous objects or controlled substances or paraphernalia that are on the child or within the control of the child.

(d) **Rights of parents.**—Nothing in this chapter shall be construed to restrict the generally recognized existing rights of parents to use reasonable force on or against their children for the purposes of supervision, control and discipline of their children. Such reasonable force shall not constitute child abuse.
(e) Participation in events that involve physical contact with child.--An individual participating in a practice or competition in an interscholastic sport, physical education, a recreational activity or an extracurricular activity that involves physical contact with a child does not, in itself, constitute contact that is subject to the reporting requirements of this chapter.

(f) Child-on-child contact.--
(1) Harm or injury to a child that results from the act of another child shall not constitute child abuse unless the child who caused the harm or injury is a perpetrator.
(2) Notwithstanding paragraph (1), the following shall apply:
   (i) Acts constituting any of the following crimes against a child shall be subject to the reporting requirements of this chapter:
      (A) rape as defined in 18 Pa.C.S. § 3121 (relating to rape);
      (B) involuntary deviate sexual intercourse as defined in 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse);
      (C) sexual assault as defined in 18 Pa.C.S. § 3124.1 (relating to sexual assault);
      (D) aggravated indecent assault as defined in 18 Pa.C.S. § 3125 (relating to aggravated indecent assault);
      (E) indecent assault as defined in 18 Pa.C.S. § 3126 (relating to indecent assault);
      (F) indecent exposure as defined in 18 Pa.C.S. § 3127 (relating to indecent exposure).
   (ii) No child shall be deemed to be a perpetrator of child abuse based solely on physical or mental injuries caused to another child in the course of a dispute, fight or scuffle entered into by mutual consent.
   (iii) A law enforcement official who receives a report of suspected child abuse is not required to make a report to the department under section 6334(a) (relating to disposition of complaints received), if the person allegedly responsible for the child abuse is a nonperpetrator child.

(g) Defensive force.--Reasonable force for self-defense or the defense of another individual, consistent with the provisions of 18 Pa.C.S. §§ 505 (relating to use of force in self-protection) and 506 (relating to use of force for the protection of other persons), shall not be considered child abuse.
6. How to Report:

1. Call Childline: (24/7) 1-800-932-0313
2. Go On-line: www.compass.state.pa.us/cwis

The Website will take you to the Pennsylvania Child Welfare Information Portal. The initial pages will explain how and when to use the portal and will guide you through setting up an account.

7. Clearances

Clearances generally are required if you work or volunteer with children. Clearances are required by December 31, 2014 for existing employees while new employees must obtain clearances prior to beginning employment. New volunteers must have clearances by August 25, 2015 and existing volunteers must have clearances by July 1, 2016.

Clearances must be obtained by:

1. Employees having contact with children
   - An employee of child-care services.
   - A foster parent.
   - A self-employed provider of child-care services in a family child-care home.
   - An individual 14 years of age or older applying for or holding a paid position as an employee with a program, activity or service, as a person responsible for the child’s welfare or having direct contact with children.
   - Any individual seeking to provide child-care services under contract with a child-care facility or program.
   - Any individual seeking to provide child-care services under contract with a child-care facility or program.
   - Any individual 18 years of age or older who resides for at least 30 days in a calendar year in certain listed types of homes
   - Certain listed school employees
   - Certain minors (aged 14 to 17 years).
   - Certain Exchange visitors in possession of a nonimmigrant visa, a “J-1” Visa.
Three Clearances are required for Employees: 1. Child Abuse, 2. PSP and 3. FBI (Includes Fingerprinting). Renewals every 5 years.

2. Volunteers
   - Any adult applying for an unpaid position as a volunteer who has direct contact with children and who has routine interaction with children.
   - Direct contact with children is defined as the care, supervision, guidance or control of children or routine interaction with children.
   - Certain student volunteers are exempted – e.g., student is enrolled in school and volunteering for an event on school grounds that is not part of child-care services.

Two or Three Clearances are required: 1. Child Abuse, 2. PSP and Possibly 3. FBI (includes fingerprinting) if the volunteer has not continuously been a Pennsylvania resident for 10 years). Renewal every 5 years.

Note that criminal penalties (misdemeanor of the third degree) exist against employers and volunteer agencies that fail to require this documentation.

Instructions and links to apply for the required Clearances can be found at:

http://www.dhs.pa.gov/publications/findaform/childabusehistoryclearanceforms/
PROTECTION OF VICTIMS OF SEXUAL VIOLENCE OR INTIMIDATION

Act 25 of 2014 (3/21/14), SB 681, PN 1812 (eff. 7/1/15)

This statute is applied in a manner that is very similar to the PFA Statute in that it allows for the issuance of an order of protection for certain victims of sexual violence or intimidation. The protected persons are victims of SEXUAL VIOLENCE OR victims of INTIMIDATION.

Victim and perpetrator cannot be related or household members.

SEXUAL VIOLENCE: Conduct constituting a crime under any of the following with provision between persons who are not family or household members:

- 18 Pa.C.S. Ch. 31 (relating to sexual offenses), except 18 Pa.C.S. §§ 3129 (relating to sexual intercourse with animal) and 3130 (relating to conduct relating to sexual offenders).
- 18 Pa.C.S. § 4304 (relating to endangering welfare of children) if the offense involved sexual contact with the victim.
- 18 Pa.C.S. § 6312(b) (relating to sexual abuse of children).
- 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).
- 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

INTIMIDATION: Conduct constituting a crime under either of the following provisions between persons who are not family or household members:

- 18 Pa.C.S. § 2709(a)(4), (5), (6) or (7) (relating to harassment) where the conduct is committed by a person 18 years of age or older against a person under 18 years of age.
- 18 Pa.C.S. § 2709.1 (relating to stalking) where the conduct is committed by a person 18 years of age or older against a person under 18 years of age.
Who Can Apply For An Order:

Any victim of **SEXUAL VIOLENCE OR INTIMIDATION** if they are not family or household members of the perpetrator including:

1. Any adult or minor.
2. Any parent, adult household member or guardian *ad litem* on behalf of a minor child who is the victim.
3. The guardian or person of an adult who has been declared incapacitated pursuant to 20 Pa.C.S. Chapter 55 (relating to incapacitated persons) may seek relief on behalf of an incapacitated adult.
4. A victim of “intimidation” must be **under 18 years of age** in order to seek relief.

**Police Departments (State System of Higher Education)**

Act 41 of 2015 (10/1/15), SB 678, PN 1121 (eff. 11/30/15)

Police at State System of Higher Education universities (“state owned”) may exercise powers on the “grounds” of the institution.

Act 41 amends the definition of “grounds” to include the highlighted language:
"Grounds" shall mean all lands and buildings owned, controlled, leased or managed by the system and all highways, trafficways and bicycle and pedestrian facilities that traverse or abut such lands and buildings.

The intent of this legislation was to overturn a 2014 Superior Court ruling which prevented the police officers of Slippery Rock University from enforcing traffic laws on a road which the university does not own or maintain but which runs through the campus.

Act 41 applies to all 14 universities of the State System of Higher Education.

(1) Bloomsburg
(2) California
(3) Cheyney
(4) Clarion
(5) East Stroudsburg
(6) Edinboro
Police departments of “state aided” and “state related” colleges and universities are governed by a different statute. These police departments may exercise their powers on the institution’s lands and buildings or within 500 yards.

**Body Cameras**

**Act 9 of 2014** (2/4/14), SB 57, PN 1660

Act 9 permits the use of body cameras under the Wiretap Act. However, body cameras may not be used to record inside of a residence. (Pa. Crimes Code Section 5704 (16)(i)).

The decision to implement the use of body cameras remains with each individual police department.

A police department body camera policy should address many issues, including, but not limited to, the following issues:

1. How do you implement the prohibition against the interception of communications inside a residence?
2. Under what circumstances does recording stop when the officer is off-duty or off the clock temporarily?
3. Civilian witnesses or victims and confidential informants may be subject to intimidation or retaliation if their cooperation with the police is made public. Should interviews between the police and cooperating civilians be recorded?
4. Are officers permitted to review the video before writing reports and making formal statements?
5. How should video be stored and retained?
The Office of Community Oriented Policing Services, U.S. Department of Justice, has prepared a document, “Implementing a Body-Worn Camera Program, Recommendations and Lessons Learned.” A summary of the recommendations and the full text of the document are available.

The International Association of Chiefs of Police also has a Model Policy for body cameras.

**Sexual Assault Evidence Collection**

Act 27 of 2015 (7/10/15), HB 272, PN 1202 (eff. 9/8/15)

Requires reporting of rape kit backlogs and procedures for storage of Jane Doe Rape Kits. In 2004, Congress passed the Debbie Smith Act, which provides federal grants to eligible states to conduct analyses of backlogged DNA samples collected from crime victims. In order to qualify for funding, states must, among other things, identify untested evidence and create a comprehensive plan for the expeditious testing of samples.

Act 27 amends the Sexual Assault Testing and Evidence Collection Act (Act 165 of 2006) to mandate time frames for the submission and forensic analysis of sexual assault evidence from rape kits. It requires the appropriate local law enforcement agency to take possession of evidence from a health care facility within 72 hours of collection.

If the victim consents to testing, the evidence must be submitted to an approved laboratory within 15 days of receipt. Analysis must be completed within 6 months, if possible (although evidence is not considered backlogged until 12 months). As discussed below, the only obligation that goes with evidence being backlogged is that such must be included in an annual report to the Department of Health.

If a victim has not consented to testing of the samples, the evidence must be preserved for at least two years under guidelines to be established by the PA State Police, in consultation with the Pennsylvania Chiefs of Police Association and the Pennsylvania District Attorneys Association.

If a victim later consents to testing, the victim or an advocate must notify the District Attorney and the law enforcement agency of that fact.
Within six months of the effective date, each local law enforcement agency must submit a list to the PA Department of Health (DOH) of all evidence in its possession that has not been submitted for analysis and arrange to have analysis completed by a laboratory. Laboratories are required to report all untested evidence that was in their possession prior to the effective date.

Thereafter, evidence must be submitted to a laboratory within one year, and the laboratory must complete testing within three years. Evidence that has remained untested for 12 months, which law enforcement has determined should be tested, must annually be reported to DOH as backlogged evidence. The data must be publicly posted and reported to the General Assembly. The bill requires DOH, with the concurrence of the State Police, to establish criteria that a forensic laboratory must meet to be certified to perform analysis.

The bill also establishes new rights for sexual assault victims and their families, including the right to disclosure of information about the submission of evidence, status of analysis, requests to compare DNA profiles recovered to DNA profiles stored in the national or state databases and any matches discovered.

INSTRUCTOR NOTE: For more information regarding the amends the Sexual Assault Testing and Evidence Collection Act view the SAFER PPT Presentation that is attached to the 2016 Legal Update DVD. If additional is information is needed, contact: Deborah A. Calhoun, Director, Scientific Services Division, Pennsylvania State Police, Bureau of Forensic Services 1800 Elmerton Avenue Harrisburg, PA 17110 Phone: 717-705-8096 Email: dcalhoun@pa.gov

Another contact is Beth Zakutney at the Department of Health; Phone: 717-547-3234 Email: bzakutney@pa.gov
Possession Of Animal Fighting Paraphernalia 18 Pa.C.S. § 5511(h)(2)

Act 24 of 2015 (7/10/15), HB 164, PN 787 (eff. 9/8/15)

Creates a new crime, graded as an M3, if a person knowingly owns or possesses animal fighting paraphernalia. The bill defines “animal fighting paraphernalia” as “any device, implement, object, or drug used, or intended to be used for animal fighting, to train an animal for animal fighting, or in furtherance of animal fighting.”

Although there is a separate crime of animal fighting, graded as an F3, there had not previously been a separate crime of possessing animal fighting paraphernalia.

False Representation Of Veteran Status On License Application

Act 32 of 2015 (7/10/15), SB 42, PN 1025 (eff. 9/8/15)

Pursuant to newly enacted section 1510(a.1) of the Vehicle Code, the Department of Transportation shall issue a driver's license or identification card that clearly indicates that the person is a veteran of the United States Armed Forces. A qualified applicant is an individual who has served in the United States Armed Forces, including a reserve component or the National Guard, and who was discharged or released from such service under conditions other than dishonorable.

There shall be no fee for the veteran designation however the qualified applicant must pay any renewal fees.

A person who falsely represents himself as a veteran on an application for a driver's license or identification card is subject to the penalty under 18 Pa.C.S. § 4904(b) (relating to unsworn falsification to authorities).
**Pedalcycles and Neighborhood Electric Vehicles**

**Act 154 of 2014** (10/22/14), HB 573, PN 4170 (various effective dates)

**Act 177 of 2014** (10/22/14), SB 83, PN 2323 (eff. 5/1/15)

Act 154 of 2014 amends Section 102 of Title 75 to include “pedalcycle with electric assist” to the existing definition for pedalcyles. Section 102 has been further amended to define “pedalcycle with electric assist” as follows:

“Pedalcycle with electric assist.” A vehicle weighing not more than 100 pounds with two or three wheels more than 11 inches in diameter, manufactured or assembled with an electric motor system rated at not more than 750 watts and equipped with operable pedals and capable of a speed not more than 20 miles per hour on a level surface when powered by the motor source only. The term does not include a device specifically designed for use by persons with disabilities.

Pedalcycles with electric assist are no longer considered a moped and will be treated as a bicycle. Pedalcycles with electric assist do not required titling, registration or insurance. The operator does not require a driver’s license, but must be at least 16 years of age.

Act 154 also defines a “neighborhood electric vehicle.”

"Neighborhood electric vehicle." A four-wheeled electric vehicle that has a maximum design speed of not less than 20 miles per hour and of not more than 25 miles per hour and that complies with the Federal safety standards established in 49 CFR 571.500 (relating to standard no. 500; low-speed vehicles).

Act 177 of 2014 became law on May 1, 2015 adds sections to Chapter 35 of the Vehicle Code regarding the operation of a neighborhood electric vehicle (NEV).

**Section 3592:**

A NEV shall be equipped with the following equipment:

1. Brakes
2. An odometer
3. A speedometer
4. A VIN number
5. A windshield wiper
6. A horn
7. A battery charge indicator
The vehicle shall also have a safety information decal as provided by the manufacturer affixed in a conspicuous place on the rear of the vehicle, which shall display in prominent lettering “25 MPH Vehicle.” The decal shall be at least 4 inches in height by 10 inches in length.

It is a summary offense to operate a NEV without the required equipment.

Section 3593: Operation on certain highways or roadways. (Effective May 1, 2015).

Unless regulations provide an exception, a NEV may not be operated upon any highway or roadway with a posted speed in excess of 25 miles per hour.

It is a summary offense to operate a NEV in violation of this section.

Section 3594: Same treatment as passenger cars. (Effective May 1, 2015).
A NEV is shall be considered a passenger car for the purpose of Part II (relating to title, registration and licensing and section 4581 (relating to restraint systems).

Cyber Harassment of a Child
Act 26 of 2015 (7/10/15), HB 229, PN 486 (eff. 9/8/15)

Act 26 creates a new subsection to 18 Pa.C.S. § 2709, Harassment. Subsection (a.1) Cyber harassment of a child has been added. It is an offense if the person, with intent to harass, annoy or alarm engages in a continuing course of conduct of making either a seriously disparaging statement or opinion about the child’s physical characteristics, sexuality, sexual activity, mental health, physical health or a threat to inflict harm.

The offender must use electronic means communicated directly to a child or must publish the statement, opinion or threat through an electronic social media service.

The offense may be deemed to have been committed at the place where the child victim resides. That location is a proper venue for prosecution.

Definition changes under Act 26:

Course of conduct - A pattern of action composed of more than one act over a period of time, however short, evidencing a continuity of conduct. The term
includes lewd, lascivious, threatening or obscene words, language, drawings, caricatures or actions, either in person or anonymously. Acts indicating a course of conduct which occur in more than one jurisdiction may be used by any other jurisdiction in which an act occurred as evidence of a continuing pattern of conduct or a course of conduct.”

Emotional distress - A temporary or permanent state of mental anguish.

"Seriously disparaging statement or opinion." A statement or opinion which is intended to and under the circumstances is reasonably likely to cause substantial emotional distress to a child of the victim's age and which produces some physical manifestation of the distress.

A violation of this section constitutes a misdemeanor of the third degree. A diversionary program is available for juvenile offenders.

**Drug Overdoses**

*Act 139 of 2014* (9/30/14), SB 1164, PN 2328 (eff. 11/29/14)

The act contains additions to the Controlled Substance, Drug, Device and Cosmetic Act (CSDDCA). Specifically, new sections dealing with overdose immunity and administration of Naloxone to overdose victims have been added.

§ 13.7, entitled Drug Overdose Response Immunity, provides that a person may not be charged with a violation of sections 13(a) (5), (16), (19), (31), (32), (33) and (37) of the CSDDCA (or a probation or parole violation) if certain conditions are in place.

To qualify for the immunity provided by this section the person reporting a drug overdose must report the overdose event to a 911 system, a law enforcement officer, campus security, or emergency services personnel. The reporter must also reasonably believe that the overdose victim was in need of immediate medical attention and that the reporting was necessary to prevent death or serious bodily injury.

Additionally, the person reporting must provide his own name and location and cooperate with the responders. Lastly, the person reporting must remain with the
overdose victim until assistance arrives. The person experiencing the overdose is also granted immunity from prosecution for the same violations previously listed.

If a law enforcement officer obtains information prior to or independent of the actions of the person seeking or obtaining emergency assistance, there is no bar to charging or prosecuting that person. This section does not bar prosecution of delivery and distribution of controlled substances, drug induced homicide and offenses not specifically listed under the immunity provision. The changes do not bar admissibility of evidence in prosecutions of defendants who are not given immunity.

§ 13.8 of the CSDDCA provides for the administration of drug overdose medication. This section requires the State Health Department to approve training and instructional materials on recognition of opioid related overdoses and approve training in the administration of Naloxone to opioid overdose victims. The law provides that a law enforcement agency may opt to provide this service but the agency must enter into a written agreement with an emergency medical services agency and the agency must provide specific approved training to law enforcement officers authorized to administer Naloxone. After completion of the training, a law enforcement officer may administer Naloxone to an individual undergoing an opioid related overdose.

An officer who administers Naloxone in good faith with reasonable care is given immunity from liability in criminal proceedings, civil actions and professional review boards.

**Subscriber Identification Information** 18 Pa.C.S. § 5743.1
**Act 151 of 2014** (10/22/14), HB 90, PN 4253 (eff. 12/21/14)

- Permits administrative subpoenas by district attorneys and the attorney general in an “ongoing investigation that monitors or utilizes online services or other means of electronic communication to identify individuals engaged in an offense involving the sexual exploitation or abuse of children.”

  Crimes covered are: An offense relating to kidnapping (Chapter 29), human trafficking (Chapter 30), sexual offenses (Chapter 31), sexual abuse of children (§ 6312), unlawful contact with minors (§ 6318), and sexual exploitation of children (§ 6320) (including attempt, conspiracy or solicitation), where the victim is an individual under the age of 18.
• Subpoena may be issued to a provider of electronic communication service or remote computing service, requiring the following information to be provided:
  Disclosure of a subscriber or customer’s name, address, telephone or other subscriber number of identify; or
  Custodian of records required to give testimony or provide affidavit concerning production and authentication of the records or information.

• Without court approval, no person or entity may disclose (other than to an attorney for legal advice) the existence of the subpoena for a period of up to 90 days.

• Court may issue order requiring subpoenaed person to appear before the Attorney General or district attorney to produce records. Failure to do so may be punished as contempt of court.

Mobile Communications Tracking Information – Kelsey Smith Act
Act 181 of 2014 (10/22/14), SB 1290, PN 2320 (eff. 12/21/14)

The Kelsey Smith Act deals with the release of mobile communications tracking information without a search warrant under certain conditions.

The background for the enactment comes from a murder which was committed in Kansas in 2007.

On June 2, 2007, 18 year old Kelsey Smith was abducted, raped, and murdered after shopping at a local mall. Her car was found in a nearby parking lot. A search for her began immediately. Police made a request of Kelsey’s cell phone carrier to release the tracking information of her phone. Initially, law enforcement officials were not able to obtain her cell phone location information because there was no law requiring the cell phone carrier to release information without a search warrant or other court order. On June 6, Verizon released the information of Kelsey’s cell phone “ping” and the search area was narrowed. Kelsey’s body was found about 45 minutes later in a wooded area. Kelsey’s killer was captured and pled guilty to the murder and other crimes and is serving a life without parole sentence.
Kelsey’s parents began a movement to change laws that restricted the release of cell phone information to law enforcement without a subpoena or search warrant. Their efforts prompted Kansas to pass the first Kelsey’s Law in 2009. The law requires a cell phone provider to release location information in emergency situations. Since 2009, 15 additional states have enacted similar laws.

The passage of Pennsylvania’s Kelsey Smith Act requires a wireless telecommunications service provider (TSP) to release mobile communications tracking information (the location of an electronic device) to investigative or law enforcement officers under certain emergency conditions.

When the TSP receives a written request from a law enforcement officer, the provider must provide the requested information about the target telecommunication device. The written request must contain 1) the name and signature of the officer, 2) the jurisdiction of the officer, 3) a description of the request for information, 4) a declaration by the officer that the information is needed in an emergency situation that involves risk of death or serious physical harm to the person who possesses a telecommunication device and that the disclosure of information is required without delay.

The Act also provides that the TSP and its employees are granted immunity from civil and criminal action stemming from the release of the requested information.

III) RULES OF CRIMINAL PROCEDURE

A) **Rule 452 and related rules – Collateral in summary cases**

Court order, Text of rules, Rules Committee Report

The Supreme Court of Pennsylvania has directed Magisterial District Judges in summary cases to release defendants on recognizance and not to set collateral (bail) unless there is reasonable grounds to believe that the defendant will not appear.

If collateral is set, the Magisterial District Judge must state in writing why the defendant has not been released on recognizance.

This procedure applies to all defendants, including those who have been arrested pursuant to a warrant for failing to appear for their trial or for failing to pay restitution, fines or court costs after a conviction.
B) **Rule 542 (Hearsay at preliminary hearings)**

Pa.R.Crim.P. 542

. . .

(E) Hearsay as provided by law shall be considered by the issuing authority in determining whether a *prima facie* case has been established. Hearsay evidence shall be sufficient to establish any element of an offense, including, but not limited to, those requiring proof of the ownership of, non-permitted use of, damage to, or value of property.

**Commonwealth v. Ricker**, 120 A.3d 349  (Pa. Super. 7/17/15)

If hearsay evidence is sufficient to establish one or more elements of the crime, it follows that, under the rule, it is sufficient to meet all of the elements. Accordingly, we find that the rule does allow hearsay evidence **alone** to establish a *prima facie* case.

The right to confrontation is a trial right, not applicable at a preliminary hearing.

In the *Ricker* case, at the preliminary hearing, one state trooper played a recording of an interview with his colleague who did not testify.

PLEASE CONSULT WITH YOUR LOCAL DISTRICT ATTORNEY TO DETERMINE THE AMOUNT OF HEARSAY THAT IS ALLOWED AT PRELIMINARY HEARINGS IN YOUR COUNTY.

**IV) VEHICLE CODE**

**Sections 6502 and 6110 of the Vehicle Code:**

§ 6502. Summary offenses.

(a) Violations of this title.--It is a summary offense for any person to violate any of the provisions of this title unless the violation is by this title or other statute of this Commonwealth declared to be a misdemeanor or felony. Every person convicted of a summary offense for a violation of any of the provisions of this title for which another penalty is not provided shall be sentenced to pay a fine of $25.
(b) Violations of regulations.--It is a summary offense for a person to violate any provision of any regulation promulgated under the authority of this title. A person convicted of violating any provision of a regulation promulgated under the authority of this title shall pay the fine established in the section of this title on which the regulation is based or, if no fine is established in that section of this title, the fine shall be $25.

(c) Title 18 inapplicable.--Title 18 (relating to crimes and offenses), insofar as it relates to fines and imprisonment for convictions of summary offenses, is not applicable to this title.

There is an equivalent section for the Pennsylvania Turnpike:
§ 6110. Regulation of traffic on Pennsylvania Turnpike.

(a) General rule.--The provisions of this title apply upon any turnpike or highway under the supervision and control of the Pennsylvania Turnpike Commission unless specifically modified by rules and regulations promulgated by the commission which shall become effective only upon publication in accordance with law. A copy of the rules and regulations, so long as they are effective, shall be posted at all entrances to the turnpike or highway for the inspection of persons using the turnpike or highway. This section does not authorize the establishment of a maximum speed limit greater than 55 miles per hour, except that a 65-miles-per-hour or 70-miles-per-hour maximum speed limit for all vehicles may be established where the commission has posted a 65-miles-per-hour or 70-miles-per-hour speed limit.

(a.1) Posting.--No maximum speed limit established under subsection (a) shall be effective unless posted on fixed or variable official traffic-control devices erected after each interchange on the portion of highway on which the speed limit is in effect and wherever else the commission shall determine.

(b) Penalties.--
(1) Except as otherwise provided in this subsection, any person violating any of the rules and regulations of the Pennsylvania Turnpike Commission for which no penalty has otherwise been provided by statute commits a summary offense and shall, upon conviction, be sentenced to pay a fine of $25.

INSTRUCTIONAL POINTS:
1. Neither section 6502 nor section 6110 is an offense. Nothing in either section sets forth any vehicular conduct which is prohibited upon a highway or upon the turnpike. Police officers should not file citations charging section 6502 or section 6110.
2. The previous paragraph represents the opinion of the Legal Updates Course Planning Committee. There is no case that has been decided that sets forth this principle as a matter of state law. Until there is a formal court ruling, some Magisterial District Judges will continue to accept citations charging these sections and will continue to accept guilty pleas.

3. If the police/district attorney, defendant/defense attorney and the court are in agreement that there should be a guilty plea to a lesser vehicle offense than the one that has been charged, there are other offenses within the Vehicle Code to which a defendant may plead guilty.


FACTS: On February 25, 2012, at 11:55 p.m., Philadelphia Police Officer Gregory Dixon stopped Wilson's vehicle at the 1900 block of 54th Street in the city of Philadelphia for driving while under the influence. The legality of the stop and the legality of the arrest were not challenged. Wilson was transported to the Philadelphia Detention Unit (PDU) for processing. Because of the large number of arrests that night, Wilson was not presented for blood processing until 2:25 a.m. and his blood sample was not tested until 2:36 a.m. The police eventually charged Wilson with driving under the influence of a controlled substance, 75 Pa.C.S. § 3802(d).

ISSUE: Should the blood test result be suppressed because it was not obtained within 2 hours of the time defendant was driving?

RULING: No. The plain language of subsection 3802(d)(1) "prohibits one from driving if there is any amount of a Schedule I controlled substance, any amount of a Schedule II or Schedule III controlled substance that has not been medically prescribed for the individual, or any amount of a metabolite of a controlled substance in one's blood." By contrast, the plain language of subsections 3802(a)(2), (b) and (c) require the offender's blood alcohol content reach a specified level within two hours of driving.

We find that the absence of any such time requirement in subsection 3802(d) persuasive that the legislature did not envision a time limit on testing for the presence of controlled substances after driving.
SIGNIFICANCE OF THE CASE: The two hour deadline for obtaining a test sample applies to testing for alcohol content in the blood. The deadline does not apply to testing for the presence of controlled substances.


FACTS: On April 28, 2013 Adams Township Police officer Ed Lentz stopped Patrick Jones for a suspended registration. When the officer approached the car he immediately noticed a very strong odor of burnt marijuana coming from the car. Jones was the driver of the car. The officer briefly spoke to Jones about the registration. He then ordered Jones from the car and placed him in handcuffs. Jones was asked to submit to chemical blood testing. He agreed to take the test. The results revealed the presence of THC in the blood.

ISSUE: Was the odor of marijuana coming from inside Jones’ car sufficient to support a request for chemical testing?

RULING: Yes. To administer a blood test under 75 Pa.C.S. § 1547(a)(1) an officer needs reasonable grounds to believe that a person was driving under the influence of alcohol or controlled substances. Based on previous court decisions, reasonable grounds equates to probable cause.

Officer Lentz testified that when he approached Jones’ car he immediately smelled a very strong odor of burnt marijuana emanating from the car. Based on his experience and training, Officer Lentz had no doubt that what he smelled was burnt marijuana. Jones was the only occupant in the car.

The Vehicle Code treats consumption of alcohol differently from the consumption of marijuana. The Vehicle Code prohibits an adult from operating a motor vehicle only “after imbibing a sufficient amount of alcohol such that the individual is rendered incapable of safely driving, operating or being in actual physical control of the movement of the vehicle.” 75 Pa. C.S. § 3802(a)(1) (emphasis added). Therefore, when consumption of alcohol is at issue, the odor of alcohol is an insufficient basis for requesting chemical testing. The officer must observe some further indicia of intoxication, such as erratic driving, slurred speech, bloodshot eyes, balance issues, etc . . .
On the other hand, the Vehicle Code precludes an individual from operating a motor vehicle with any amount of controlled substance, or a metabolite thereof, in the driver’s blood. 75 Pa. C.S. § 3802(d). Therefore, any evidence of operator consumption of any marijuana is enough to allow the police to request chemical testing.

SIGNIFICANCE OF THE CASE: Proof that the motorist was incapable of safe driving is not an element of the offense when the motorist is to be charged with having “any amount” of controlled substance in the blood. The officer may request chemical testing without evidence of erratic driving or slurred speech.

**Walkden v. Dept. of Transportation**, 103 A.3d 432 (Pa. Cmwlth. 11/6/14)

FACTS: On August 14, 2013, Pennsylvania State Police Trooper Crystal Dugan was dispatched for a disturbance call from the owner of the Peach Bottom Inn in Peach Bottom Township, reporting that a white Jeep had almost run him over in the parking lot of the Inn and that the driver of the vehicle, who appeared to be intoxicated, cursed at him. Trooper Dugan located a vehicle matching this description in the parking lot and spoke with the occupant of the vehicle, Walkden, who slurred his speech, had difficulty responding to questions and could not locate his license. Trooper Dugan asked Walkden to step out of his vehicle. Walkden told Trooper Dugan that he was not sure where he was or how he had arrived there, but he responded in the affirmative when asked if he had driven to his present location. Trooper Dugan detected the odor of alcohol emanating from the vehicle and noticed an open bottle of vodka in the passenger area of the vehicle.

Walkden failed field sobriety tests. Trooper Dugan then transported him to York Hospital for chemical testing. Trooper Dugan read the DL-26 Implied Consent Warning Form twice to Walkden advising him that failure to consent to testing would result in suspension of his driving privileges and asked him to provide a blood sample for testing. Walkden refused to submit to blood testing or sign the DL-26 Form and instead requested that his handcuffs be taken off. Trooper Dugan explained to Walkden that the handcuffs would be removed when the blood sample was taken, however she needed him to answer affirmatively that he would submit to a blood test before she took them off, but Walkden still refused the blood test.

ISSUE #1: Was Walkden in custody? Should he have been given *Miranda* warnings before being asked if he had driven to his present location?
RULING #1: No (for both questions). Walkden was already pulled over and parked when Trooper Dugan arrived on the scene, and Trooper Dugan's questioning of Walkden occurred in the parking lot of an establishment that was visible to the public. There is no evidence either that Trooper Dugan's questioning of Walkden was coercive, sustained or repetitive or that their interaction was prolonged beyond the appropriate amount of time required for her to investigate whether Walkden was driving under the influence. Furthermore, though Trooper Dugan had to physically assist Walkden to his feet so that he could attempt to perform the field sobriety tests, this was not indicative of any show or threat of force but rather was required by Walkden's intoxicated state. The record therefore reflects that Trooper Dugan's interactions with Walkden do not show the coerciveness or restriction of freedom that have been determined in other cases to be the functional equivalent of an arrest.

ISSUE #2: Did Trooper Dugan have reasonable grounds to arrest Walkden without having seen him drive the Jeep?

RULING #2: Yes. Though Trooper Dugan did not personally observe Walkden operating his vehicle, she was dispatched to the Peach Bottom Inn based on a disturbance call from the owner of that establishment reporting that a driver of a white jeep — the same car Walkden was found in — had cursed at him, almost run him over and appeared intoxicated. Trooper Dugan also spoke to the owner of the Inn and another employee when she arrived at the scene and they informed her that Walkden had not patronized the Inn prior to the call. Walkden told Trooper Dugan that he had driven to his present location. Trooper Dugan had credible information that Walkden had only recently arrived at the premises and had not consumed any alcohol at the Peach Bottom Inn. It was reasonable for Trooper Dugan to conclude that it was impossible for Walkden to have become as intoxicated as he appeared in the period between the dispatch and the time Trooper Dugan arrived.

ISSUE #3: Did Walkden have a meaningful opportunity to submit to chemical testing since Trooper Dugan refused to remove his handcuffs while at the hospital?

RULING #3: Yes. Rather than answer affirmatively that he would submit to a blood test, Walkden placed a condition on his answering the question: the release of his handcuffs. Walkden's behavior demonstrates not a legitimate concern regarding the administration of the blood test, but rather his desire to simply be let go. Walkden was under arrest when he was asked to submit to the chemical test and the determination of whether and in what manner to restrain an individual.
under arrest is traditionally left to the discretion of the arresting officer. That Walkden had not manifested any danger to the public or himself does not make us reconsider this position, particularly in light of Walkden's apparent high degree of impairment and the location of the testing site in a public hospital.

SIGNIFICANCE OF THE CASE:
1. Absent coercive circumstances or a lengthy detention, a traffic stop, prior to an arrest, is not “custody” which requires Miranda warnings.
2. In a license suspension case the reasonable grounds standard for requesting chemical testing is less rigorous than the beyond a reasonable doubt standard required for a criminal conviction or the probable cause standard required for an arrest in a criminal prosecution.
3. A motorist must give an "unqualified, unequivocal assent" to the administration of chemical testing.


FACTS: On May 20, 2011, after being pulled over for a suspected DUI, Harden refused to submit to a chemical test. Harden received a license suspension of one year. Because Harden's license was suspended already due to previous Motor Vehicle Code violations, the suspension relating to the violation of section 1547 did not become effective until July 29, 2013.

On July 15, 2013, Officer Devin McGee stopped Harden because his vehicle had a broken tail light. The status of Harden’s driving record was "suspended DUI related." At the trial, Officer McGee explained that Harden provided no photo identification, but rather gave a "false identification." Also at the trial evidence was presented that the Department of Transportation mailed the official notice of suspension to Harden on June 16, 2011.

ISSUE #1: Was Harden correctly charged with a DUI related suspension for his driving on July 15, since his DUI related suspension did not become effective until July 29?

RULING #1: Yes. When a person receives notice that their operating privilege is or will be suspended or revoked for a DUI related offense, that person is subject to the penalties of 75 Pa.C.S. § 1543(b). That person will be subject to the penalties of § 1543(b) throughout any current suspension or revocation and any subsequent
suspensions or revocations until the end of their DUI related suspension or revocation.  *Commonwealth v. Jenner*, 545 Pa. 445, 681 A.2d 1266 (7/30/96);  

ISSUE #2: Did the evidence prove that Harden received notice of his DUI related suspension?

RULING #2: Yes. Although evidence that a notice of suspension was mailed is not sufficient, standing alone, to sustain a conviction for driving with a suspended license, there was additional evidence in this case. Harden failed to provide photo identification. Failure to possess a current license is presumptive knowledge of suspension. Harden’s failure to provide photo identification to Officer McGee during the traffic stop, together with evidence that notice was mailed, is sufficient to permit the court to infer that Harden had knowledge of his DUI related suspension.

SIGNIFICANCE OF THE CASE: A motorist may be charged with a DUI related suspension even if it becomes effective after the current date. Failure to provide a current license or photo identification is evidence of knowledge of a suspension.

**CASE UPDATE: Commonwealth v. Weaver**

In the 2014 Legal Updates course, we taught *Commonwealth v. Weaver*, 76 A.3d 562 (Pa. Super. 8/28/13), which held that although Horizontal Gaze Nystagmus (HGN) results are inadmissible at trials, an officer may rely upon HGN results for determining probable cause to arrest and may testify about HGN at a suppression hearing.

On December 1, 2014, the Supreme Court of Pennsylvania unanimously affirmed the Superior Court’s ruling, *Commonwealth v. Weaver*, ___ Pa. ___, 105 A.3d 656 (12/1/14). The Supreme Court did not issue an opinion in support of its ruling. That leaves the 2013 Superior Court opinion as the most recent statement on this issue.
V) SEARCH AND SEIZURE – Case Law

**Commonwealth v. Ranson**, 103 A.3d 73 (Pa. Super. 10/8/14)

[Link to: Bender, J. dissenting](#)

FACTS: Pittsburgh Police Detective Curry, with a total of 18 years experience in policing, was working an approved uniform overtime detail at a night club. The night club was in a high crime location where prior incidents of fights, shootings and homicides had occurred. Many of the club patrons were parole and probation violators. On the night of the incident, the detective and two other police were outside the club when it closed at about 3:30 a.m. The informant, a patron of the club, approached Detective Curry and said there was a male on the corner with a gun. A description was given as a male with a black “hoodie”, black jeans, and a long beard. The informant pointed out the person, later identified as Herbert Ranson, to the detective. Although Detective Curry did not know the informant’s name, the detective saw him on a regular basis as the informant was at the club “every single weekend.” The detective told the other two officers about the potential gunman and all three police officers approached Ranson. Ranson began to walk away. The officers told Ranson to stop. Ranson kept walking, but eventually did comply with the stop order. As Ranson turned to face the officers, the detective noticed the imprint of a gun under Ranson’s sweatshirt. Ranson was searched and a Taurus .45 caliber pistol was recovered from the front pocket of the sweatshirt.

ISSUE: Was the detective permitted to rely on information received from the informant, whose name was not known to the detective, in order to justify an investigatory stop?

RULING: Yes. The detective did not receive the initial tip from an anonymous tipster but rather from a known individual who he had dealt with and seen on a regular basis at this particular club. Also, the club location was in a high crime area where probationers and parolees frequently gather. Lastly, the officers were all in uniform and when they approached Ranson he began to walk away before commands to stop were given. It was reasonable to infer that Ranson was trying to evade the oncoming police. The totality of the circumstances justified an investigatory stop.

SIGNIFICANCE OF THE CASE: While these factors standing alone may not be enough to justify reasonable suspicion, when taken together they are sufficient to
justify an investigative detention. Information from a familiar person may be relied upon, even if the name of that person is not known to the officer.

**Commonwealth v. Davis**, 102 A.3d 996 (Pa. Super. 10/14/14)

FACTS: Two Philadelphia Police Officers were patrolling in the area of 52nd and Arch on December 22, 2012. At about 2:00 a.m. they saw two males standing over a third man who was lying unconscious in the street. Nathaniel Davis was one of the males standing over the unconscious man. The officers pulled over, put on the overhead emergency lights and initiated an investigation of the three males. One officer noticed that one of the males was going through the prone man’s pockets. The officer stated the unconscious man was unresponsive and was not speaking. The unconscious man had no visible injuries but the officer thought that he may have been attacked by the other two males. The officer also testified that he noticed an object weighing down the right breast pocket of Davis’ jacket. The officer approached Davis and began a pat down. Davis swatted at the officer’s hand and flailed his arms. The officer at that point recognized that the object was a gun. He and his partner secured Davis and recovered a .357 Magnum revolver from the pocket. Davis was charged with Uniform Firearms Act violations and resisting arrest.

ISSUE: Were there sufficient facts to support an investigative detention.

RULING: Yes. The officer testified that the area of 52nd and Arch was a high crime area where he had made more than 100 arrests for “every type” of crime including assaults and firearms offenses. The officer was concerned that the man in the street had been beaten and was being robbed. Upon seeing the weighted pocket the officer believed it could be a gun. His belief was the reason he conducted the pat down. Once the officer confirmed the object was a gun he made the arrest.

The Superior Court ruled, that when establishing reasonable suspicion, the totality of circumstances test does not require that the activity unquestioningly be criminal. The possible innocent explanations for Davis’ behavior do not negate the reasonableness of the officer’s suspicion of criminal activity. The officer suspected criminal activity and believed that Davis was armed and potentially dangerous.
Based on *Terry v. Ohio* and the “totality of the circumstances” test, the gun was properly seized from Davis.

SIGNIFICANCE OF THE CASE: Both of these cases illustrate that articulation of facts is critical when determining the reasonableness of a stop and frisk of a suspect.


FACTS: On November 9, 2011 at about 9:00 p.m. two Philadelphia police officers were on patrol in the 700 block of E. Madison Street approaching ‘G’ Street. The officers saw Hykeem Carter standing on the northeast corner. The testifying officer stated that he immediately saw a bulge in the left pocket of Carter’s coat. The officer believed the object was heavy because of the way it weighed the coat down and the way it protruded. The officers continued northbound and Carter looked in their direction and began to walk southbound. The officers circled the block and approached the intersection from a different direction. When they got to the intersection Carter was back and the bulge was still present in his coat. The officers came down the street two additional times and each time Carter looked in their direction and began walking in the opposite direction, away from the police. The officers decided to get out of the car and approach Carter. Upon approach they noticed that Carter turned his body away from the officers so the bulge in the coat would not be visible to them. Based on the size and shape of the bulge, the way it weighed the coat down and the way it hung the officers believed it was a weapon. Carter was stopped and patted down. During the pat down the testifying officer immediately felt that the bulge had the shape of a firearm. The officer subsequently recovered a Walther Model P-22 with an obliterated serial number. Carter was arrested and charged with three violations of the Uniform Firearms Act.

ISSUE: Was there reasonable suspicion for an investigatory stop?

RULING: Yes. ‘G’ and Madison was a known drug corner in the 25th District. The officer was a six year veteran officer with all of his time in the 25th District, the officer made about seventy-five (75) gun arrests in the district and 8-10 of those arrests had been in the area of ‘G’ and Madison. The officer also stated that, based on his experience, when a person carries a gun it is typically either in a coat pocket or tucked in a waistband.
A suppression court is required to “afford due weight to the specific, reasonable inferences drawn from the facts in light of the officer’s experience.” The officer saw Carter in a high crime area at night. Carter had a weighted and angled bulge visible in his coat pocket. Guns are frequently carried in coat pockets. Carter was alerted to the officers and intentionally turned his body away from the police, not once but several times. Carter walked away from the known drug corner whenever the officers approached. Based on the totality of these facts it was reasonable for the officers to believe that Carter was involved in criminal activity and that he was armed. Those facts justified a stop and frisk of Carter.

SIGNIFICANCE OF THE CASE: The articulation of experience and key observations are critical to establishing reasonable suspicion of criminal activity and that the individual is armed and the officer’s safety is at risk.

**United States v. Mallory**, 765 F.3d 373 (3rd Cir. 9/3/14)

FACTS: Police officers saw a revolver in the waistband of Mallory’s pants while Mallory was standing on a public sidewalk outside a house. Mallory refused the officers’ commands to stop and ran into the house. Officers Richard Hough and William Lynch, Jr., entered the house, without a warrant, and ordered all of the occupants outside while the officers searched the house for Mallory. The officers found Mallory in a bathroom, handcuffed him and arrested him for unlawful carrying of a firearm on the public streets of Philadelphia. As the officers escorted Mallory from the house, one of the officers looked behind the front door, which had swung open into the house and found a revolver under an umbrella. Mallory was subsequently charged with a federal firearms offense.

ISSUE: After Mallory had been captured, were there exigent circumstances justifying the warrantless search for and seizure of the revolver?

RULING: No. The premises had already been secured, Mallory had been located and handcuffed, and Mallory’s family members, except for his stepmother, were outside the home. As By the time Officer Hough decided to check behind the door, he and his partner had conducted a thorough sweep of the premises and had determined that the house did not contain any confederates who might aid Mallory in an escape or acts of aggression.
Factors that will be useful for determining whether the search in this case was justified by officer safety include, but are not limited to:

1. how soon after the alleged offense the search occurred;
2. whether the alleged offense was violent in nature;
3. whether the search occurred prior to or contemporaneous with Mallory's apprehension;
4. whether the premises as a whole had been secured, or whether it was possible that unknown individuals remained in the house;
5. whether Mallory or any of his family members had acted in an aggressive or threatening manner toward the police;
6. whether other members of the family were free to move about the house unsupervised by an officer;
7. how easily Mallory or a family member could have obtained and used the firearm;
8. the degree of intrusiveness of the search.

By the time Officer Hough searched behind the door and under an umbrella to find the gun, the police had secured Mallory, the family, and the home, and were in control of the situation. Mallory was in handcuffs and was being escorted out of the house by multiple officers. Although he had earlier fled arrest, there was no indication that Mallory resisted either physically or orally once he was apprehended. The house had been thoroughly swept and there were no persons left unaccounted for who might attack the officers by surprise. There was no evidence that Mallory's family members posed a threat to the officers, or that they even knew the location of the gun. Each of the family members, except the stepmother, was outside on the porch, and she, far from being threatening, had actually attempted to assist the officers in apprehending Mallory without violence by urging him to come out of a locked bathroom.

Mallory was handcuffed and under the control of multiple officers and he had not, since his capture, acted violently or aggressively. We recognize that Mallory's alleged crime had taken place only minutes earlier and that the crime of unlawful possession of a firearm, while not itself a crime of violence, could certainly lead the officers to reasonably be concerned that their suspect could be dangerous. However, the officers' securing of the premises and apprehension of Mallory were intervening events reducing any imminent need to locate the gun.
There was no imminent risk that a family member would move the gun. There was no evidence that the family members even knew where the gun was. Once Mallory was secured speed was not essential. Anyone else who could have destroyed or hidden the gun was under police supervision. Nothing prevented the officers from controlling the residence and preventing the family from finding or moving the gun until the police could obtain a search warrant.

Link to: Olson, J. concurring

FACTS: On October 25, 2012, at approximately 2:10 in the morning, two Pennsylvania State Troopers received information from a burglary victim that a handgun stolen from her home was located in the shed behind defendant's residence. The troopers went immediately to defendant's residence to investigate, arriving at approximately 3:15 A.M.

Defendant lived in a mobile home park. His trailer was situated perpendicular to the road. The door of the home, located on the side of the trailer, was accessible only by walking half the length of the building, through defendant's yard. Defendant's yard was surrounded by a chain-link fence and closed gate. "Private Property" and "Beware of Dog" signs were posted on the fence.

While one trooper knocked on the mobile home's door, the other trooper peered through the window beside the door and was able to observe a large knife, what he believed to be heroin packets on a coffee table, and a rifle in the corner of the room. Further, Trooper Mincer reported smelling a chemical smell consistent with burnt synthetic drugs.

After defendant answered the door, the one trooper explained why they were there. The other trooper then asked defendant whether anyone else was in the home. Defendant responded "No." Based on his earlier observations, one trooper performed a protective sweep of the trailer, during which he detained two adult individuals and one child, and observed a large knife, a rifle, and assorted packaged drugs in plain view. A search warrant was obtained. Following the execution of the warrant, the state police seized from defendant's home various quantities of narcotics, various quantities of prescription medication, multiple scales, a number of laptop computers, three safes, various indicia of drug use and trafficking, as well as other contraband.
ISSUE: Were there exigent circumstances justifying the warrantless entry into the trailer?

RULING: No. Defendant's yard was fenced and gated at the time of the incident. The fence contained numerous signs which indicated that the area was off-limits to the general public. The side yard of his home constituted the curtilage of his property and was subject to a reasonable expectation of privacy.

It is well established that probable cause alone will not support a warrantless search or arrest in a residence unless some exception to the warrant requirement is also present. In determining whether exigent circumstances exist, a number of factors are to be considered, such as:

1. the gravity of the offense,
2. whether the suspect is reasonably believed to be armed,
3. whether there is above and beyond a clear showing of probable cause,
4. whether there is strong reason to believe that the suspect is within the premises being entered,
5. whether there is a likelihood that the suspect will escape if not swiftly apprehended,
6. whether the entry was peaceable, and
7. the time of the entry, i.e., whether it was made at night.

These factors are to be balanced against one another in determining whether the warrantless intrusion was justified.

In this case, a balancing of the factors demonstrates a lack of exigency for a warrantless search of defendant's property. Assuming the gravity of the offense of possession of a potentially stolen gun is high, the officers had no reason to believe the occupants of the home were aware of the officers' presence such that destruction of evidence, escape, or violence was imminent. There was no exigency or urgency established such that this search could not wait until morning or until a warrant was procured. More importantly, the time of day of the warrantless search (3:15 am) weighs heavily in favor of defendant's contention that the officers should have obtained a search warrant.

SIGNIFICANCE OF THE TWO CASES: Courts are not permitting warrantless searches of homes unless there are clear exigent circumstances.
**United States v. Camou**, 777 F.3d 932 (9th Cir. 12/11/14)

FACTS: United States Border Patrol agents stopped a truck belonging to Chad Camou at a primary inspection checkpoint in California. An undocumented immigrant was spotted on the floor behind the truck’s front seats. Camou was arrested and a mobile phone found in the cab of the truck was seized. One hour and twenty minutes later the contents of the phone were searched and child pornography was discovered.

ISSUE #1: What was the legal rationale upon which *Riley v. California*, 573 U.S. ___, 134 S.Ct. 2473, 189 L.Ed.2d 430 (6/25/14) (pertaining to warrantless mobile phone searches), was decided?

RULING #1: *Riley v. California* held that a mobile phone could not be searched without a warrant incident to the arrest of the owner of the phone.

ISSUE #2: Apart from *Riley v. California* why was this not a lawful search incident to Camou’s arrest?

RULING #2: A search incident to an arrest must be of an object within the defendant’s immediate grasp and control at the time of the arrest, and the search must occur close in time to the arrest. Without deciding the “grasp and control” issue, the court ruled that the delay of one hour and twenty minutes between the arrest and the search was too long a delay to qualify as a search incident to Camou’s arrest.

ISSUE #3: Were there exigent circumstances justifying a warrantless search of the phone?

RULING #3: No. There was no evidence of imminent destruction of the contents of the phone.

ISSUE #4: Was the phone a “container” in the vehicle, subject to a warrantless search pursuant to the vehicle exception to the warrant requirement?

RULING #4: No. Phones implicate privacy concerns far beyond those implicated by the search of a cigarette pack, a wallet, or a purse. We extend the reasoning in Riley from the search incident to arrest exception to the vehicle exception. Phones are not treated as containers for purposes of the vehicle exception to the warrant requirement.
requirement, and the search of Camou’s phone cannot be justified under that exception.

SIGNIFICANCE OF THE CASE: Courts are treating phones as being entitled to the highest privacy protections. Absent exigent circumstances, the contents of phones should not be searched without a search warrant.


Link to: Allen, J. dissenting

FACTS: Jennifer Fleet entered the Crafton Borough Police station with text messages and other indications that her daughter, Samantha, was a suicide risk. Rita Agostinelli at the Allegheny County Mental Health Department agreed to sign the paperwork for a warrant and mental health commitment pursuant to section 302 of the Mental Health Procedures Act.

Jennifer Fleet followed the police officer and the ambulance to Samantha’s house. The officer informed Samantha that a search was required prior to transportation pursuant to a warrant, and asked Samantha if she had anything on her. Samantha informed the officer that she had heroin on her, and handed the officer a capped syringe and five "stamp bags" containing heroin. Samantha was charged with the possession of that heroin.

ISSUE: Was Samantha lawfully detained pursuant to the Section 302 mental health warrant?

RULING: No. If evidence in a criminal case is discovered as a result of a seizure pursuant to a mental health warrant, then it must be established that the mental health warrant and paperwork set forth sufficient legal justification for the person’s civil commitment. The court concluded that there was insufficient evidence presented to it that Samantha had attempted suicide in the 30 days prior to the mental health commitment order. The heroin was suppressed because Samantha was not lawfully seized.
SIGNIFICANCE OF THE CASE:
1. Some police departments may not make arrests based on contraband that is found on a person who is subject to a mental health commitment.
2. If an arrest is made in such a situation, the validity of the mental health warrant will have to be established at a suppression hearing.
3. There is no “good faith” exception in Pennsylvania suppression law. Even if police officers rely upon a mental health warrant that appears valid, evidence will be suppressed if a lawful basis for a mental health commitment is not established.

(Commonwealth v. Yong, 120 A.3d 299 (Pa. Super. 7/16/15)  
Link to: Lazarus, J. concurring)

FACTS: Officer Smith arrested Yong. Officer Smith lacked probable cause to do so. Defendant did not dispute that Officer Smith’s colleague, Officer Jones, knew that Yong participated in a narcotics transaction two days earlier, and that the collective knowledge of the two officers amounted to sufficient probable cause to justify the arrest. However, it was Officer Smith, not Officer Jones, who ultimately arrested Yong.

ISSUE: Can probable cause to arrest be found based on the collective knowledge of both Officer Smith and Officer Jones?

RULING: No. Some courts have placed the collective knowledge cases into two categories, vertical and horizontal. The "vertical" collective knowledge cases exist where one law enforcement officer who possesses probable cause instructs a fellow officer to act. Pennsylvania courts have consistently applied this version of the doctrine for several decades, with little controversy.

By contrast, the "horizontal" collective knowledge cases arise when individual law enforcement officers each possess pieces of the probable cause puzzle, but no single police officer possesses information that amounts to probable cause. Under this approach, which has never been adopted in Pennsylvania, courts evaluate probable cause by combining the knowledge of two or more police officers who are working together on an investigation.

The horizontal collective knowledge approach requires some degree of communication between the officer who possesses the incriminating knowledge
and the officer who does not. There was no testimony that Officer Smith and Officer Jones communicated with each other.

SIGNIFICANCE OF THE CASE: If police officer #1 requests the assistance of police officer #2, by verbal or written communication, then the knowledge of police officer #1 is imputed to police officer #2. The specifics of the first officer’s knowledge need not be included within the communication. Absent some form of communication, one police officer’s knowledge is not imputed to another officer.

The officer who possessed the knowledge constituting probable cause to arrest must testify at the suppression hearing.

INSTRUCTOR NOTE: The names of the officers are fictitious.

**Commonwealth v. Myers**, 118 A.3d 1122 (Pa. Super. 6/15/15)

FACTS: A police officer made a lawful drunk driving arrest of Myers at 3:30 pm. The officer was of the opinion that Myers was in need of medical attention. Myers was promptly transported to a hospital. Myers was given drugs which rendered him unconscious at 4:40 pm. The police department’s chemical testing officer did not arrive at the hospital until 4:45 pm. When he could not communicate with Myers, the officer requested that the hospital draw blood from Myers. The warrantless blood draw occurred at 5:01 pm.

ISSUE: Was a search warrant needed for the blood draw requested by the police?

RULING: Yes. *Missouri v. McNeely*, 569 U.S. ___, 133 S.Ct. 1552, 185 L.Ed.2d 696 (4/17/13), requires a search warrant or exigent circumstances before blood may be withdrawn from a motorist without his consent. Because police did not act pursuant to the implied consent law until 4:45 p.m., after Myers had been rendered unconscious by an intervening cause that occurred subsequent to his DUI arrest and transport to the hospital, we conclude *McNeely* controls here. The Commonwealth did not justify the failure to obtain a warrant prior to the 5:01 p.m. blood draw.
SIGNIFICANCE OF THE CASE:
1. The legal concept of “implied consent” permits Pennsylvania to suspend the license of a motorist who refuses a lawfully requested breath test or blood test. “Implied consent” does NOT authorize a request for chemical testing without probable cause and does NOT authorize a search without a warrant when a search warrant is required.
2. This was not a case where the hospital conducted a blood test for its own medical purposes. This was not a case where the hospital drew blood after having made its own determination of probable cause pursuant to 75 Pa.C.S. § 3755.
3. The blood draw was requested by the police. Exigent circumstances or a search warrant is necessary.


FACTS: In the early morning hours of May 1, 2013, Pittsburgh police officers conducted a traffic stop based upon their observation of an inoperable rear brake light on the vehicle. The cruiser's dashboard camera was activated a few moments before the stop took place and it recorded the entire incident. The officer testified that defendant, a passenger in the vehicle, stepped out of the rear passenger side door and proceeded to walk toward the police car. When defendant was immediately ordered to get back in the vehicle, he went back to it, but he did not get into the car.

The officer believed that defendant was armed as he observed defendant "adjusting his pants" and "looking around". Based upon his experience and training (his second drug arrest), along with his observation that defendant was "generally just moving his clothing more than what would be usual" and "looked nervous," the officer conducted a Terry frisk.

The officer testified that, while patting down defendant’s trousers, he felt a large baggie with what felt to be a powder like substance inside and that the baggie was knotted at the top. 38 knotted baggie corners of powder cocaine were removed from defendant’s pocket. Following the pat-down, a firearm was seized from the vehicle.

ISSUE: Was the seizure of the cocaine lawful based upon what the officer felt in defendant’s pocket?
RULING: No. The “plain feel” doctrine permits a police officer to seize contraband detected through the officer's sense of touch during a frisk if (1) the officer is lawfully in a position to detect the presence of contraband, (2) the incriminating nature of the contraband is immediately apparent from its tactile impression, and (3) the officer has a lawful right of access to the object. “Immediately apparent” means that the officer readily perceives, without further exploration or searching, that what he is feeling is contraband.

The dashboard camera showed the police officer asking defendant "What's this?" while squeezing and tugging his pocket. On cross-examination, the officer acknowledged that he knew the object he felt was not a weapon and that he never felt anything apparent to be a weapon during the pat-down.

Given the officer's admitted manipulation, the nature of the objects in defendant's pocket could not have been immediately apparent. While the officer testified that he felt something "soft, granular," that led him to believe defendant's pocket contained narcotics, he became aware of this from an unconstitutional squeezing, rubbing, and manipulation. We conclude that the officer's tactile impression of the object was not immediately apparent.

SIGNIFICANCE OF THE CASE: Once it is determined that an item felt is not a weapon, a Terry frisk does not permit any additional squeezing or manipulation of that item. Officers are also reminded that judges will evaluate the credibility of a police officer’s testimony by comparing the testimony to that which can be seen from a review of the video from a dashboard or body camera.


FACTS: Shortly after midnight, a Nebraska police officer, Morgan Struble, lawfully stopped Rodriguez for erratic driving. Struble decided to issue a warning ticket to Rodriguez for driving on the shoulder of the road. By 12:27 or 12:28 a.m., Struble had finished explaining the warning to Rodriguez, and had returned to Rodriguez all of his documents.

Struble asked for permission to walk his dog around Rodriguez’s vehicle. Rodriguez said no. Struble then instructed Rodriguez to turn off the ignition, exit the vehicle, and stand in front of the patrol car to wait for a backup officer.
Rodriguez complied. At 12:33 a.m., a deputy sheriff arrived. Struble retrieved his dog and led him twice around the Mountaineer. The dog alerted to the presence of drugs halfway through Struble’s second pass. All told, seven or eight minutes had elapsed from the time Struble issued the written warning until the dog indicated the presence of drugs. A search of the vehicle revealed a large bag of methamphetamine.

ISSUE: Was Rodriguez lawfully detained until the dog sniff of the vehicle was completed?

RULING: No. The permissible duration of police inquiries in the traffic-stop context is determined by the seizure’s “mission”—to address the traffic violation that warranted the stop, and attend to related safety concerns. Because addressing the infraction is the purpose of the stop, it may last no longer than is necessary to effectuate that purpose. Authority for the seizure thus ends when tasks tied to the traffic infraction are—or reasonably should have been—completed.

Beyond determining whether to issue a traffic ticket, an officer’s mission includes ordinary inquiries incident to the traffic stop. Typically such inquiries involve checking the driver’s license, determining whether there are outstanding warrants against the driver, and inspecting the automobile’s registration and proof of insurance. These checks serve the same objective as enforcement of the traffic code: ensuring that vehicles on the road are operated safely and responsibly.

A dog sniff, by contrast, is a measure aimed at detecting evidence of ordinary criminal wrongdoing. Lacking the same close connection to roadway safety as the ordinary inquiries, a dog sniff is not fairly characterized as part of the officer’s traffic mission.

The 7-8 minute delay for the dog sniff was not related to the mission of the traffic stop and was an unlawful detention. The evidence discovered by the dog was the fruit of that unlawful detention.

SIGNIFICANCE OF THE CASE: If an officer can complete traffic-based inquiries expeditiously, then that is the amount of time reasonably required to complete the stop’s mission. At that time, unless the police have additional evidence of criminal activity, the traffic stop must end. An efficient police officer, who completes traffic-based inquiries promptly, does not obtain additional time to conduct unrelated criminal investigations.

FACTS: Defendant was a passenger in a vehicle which was lawfully stopped for speeding. The trooper obtained the driver’s license and registration, and asked the driver to exit the vehicle. The trooper observed the driver “moving around excessively,” “overtalking” and noticed that the driver was “overly apologetic” during the stop.

When the driver was asked to step to the rear of the vehicle, the trooper walked to the passenger side of the vehicle and asked the passenger, the defendant, for his driver’s license. Defendant refused to answer the trooper’s questions and did not make eye contact. The trooper stated that in his experience, this type of behavior is consistent with narcotics activity discovered during traffic stops.

The trooper ran both the driver and defendant’s information through both NCIC and PENNDOT. Defendant came back with numerous prior drug arrests. The trooper issued a written warning for speeding and following too closely. He returned the driver’s and the defendant’s paperwork to them. The trooper then told the driver that the traffic stop was complete and that he was free to go.

The driver began walking back towards his car and the troopers walked towards their patrol vehicle. Before the trooper entered the patrol car, he turned around and reengaged the driver. The trooper explained that he had approached his door and the driver had reached the front driver’s side door by this time. The trooper asked the driver if he could ask him some more questions, and the driver said yes. The trooper obtained from the driver consent to search the vehicle. Defendant, the passenger, was asked to step out of the vehicle and was told that the driver had given consent to search the vehicle. Defendant did not make eye contact with the trooper. Cocaine and cash were recovered from the defendant.

ISSUE: Was the evidence lawfully obtained?

RULING: No. Because the trooper had accomplished the purpose of the stop, as indicated by his issuance of a warning and stating that the driver and defendant were free to go, the driver would have been within his rights to drive away at that point. Nevertheless, the trooper’s subsequent actions were inconsistent with his statement that they were free to leave. After walking toward his cruiser, the trooper turned around and returned to the driver’s vehicle, approached the driver, and began to ask the driver additional questions. Moreover, when the trooper re-
engaged the driver, the driver was still standing outside of his vehicle. When a person is standing outside rather than inside his vehicle, he is less likely to believe that he can actually leave the area by entering the car and driving away. We conclude that the driver and defendant were not involved in a mere encounter with the troopers at that point, but were subjected to a second investigative detention.

The driver’s behavior of being overly apologetic or nervous was insufficient to establish reasonable suspicion which would have justified either an extension of the first detention or the start of a second detention.

SIGNIFICANCE OF THE CASE:
A traffic stop must end when the purpose of the traffic stop has been completed.

If a police officer re-engages with a motorist who has been stopped before the motorist has been permitted to reenter his vehicle, that motorist will reasonably believe that he is not free to leave.

As a result of Rodriguez and Nguyen the Pennsylvania State Police and some district attorneys do not believe that officers should request consent to search a vehicle after a traffic stop has “ended” and before the motorist has driven away. The current state of the law is uncertain, and police officers should seek guidance from their local district attorney.

Commonwealth v. Davido, 106 A.3d 611 (12/15/14)
Link to: Castille, C.J. concurring
Link to: Saylor, J. concurring

FACTS: Two police officers were immediately dispatched to investigate a domestic situation that involved a man hitting a woman, and were informed on their way that loud screaming had been heard from inside the residence. The officers arrived at the residence shortly before 8:00 a.m., but all was quiet. They knocked at the front and back doors, but no one answered. They opened an unsecured window in the front of the house, announced themselves and listened for any response, but heard nothing. The officers radioed police dispatch for information regarding the 911 caller or for the phone number within the residence. The officers were told by dispatch that the 911 call had come from a pay phone and that no phone number was listed for the address. The officers heard a phone ringing inside but the call was not answered. Responding to what the officer
described as a "gut feeling" that someone inside might be injured or otherwise in need of assistance, one officer entered the residence through an unsecured window, unlocked a deadbolt on the front door, and admitted the other officer. The officers continued to announce themselves and their reason for being there, and proceeded to conduct a floor-to-floor, room-to-room search for any injured person who might have been in need of assistance.

The officers made their way to the rear bedroom on the third floor, where they discovered the victim, a woman who had been severely beaten and who subsequently died. The police then secured the scene and obtained a search warrant for the residence.

ISSUE: Were there exigent circumstances justifying the warrantless entry through the window?

RULING: Yes. The potential for imminent physical harm in the domestic context may justify a limited police intrusion into a dwelling. Courts have recognized the combustible nature of domestic disputes, and have accorded great latitude to an officer's belief that warrantless entry was justified by exigent circumstances when the officer had substantial reason to believe that one of the parties to the dispute was in danger.

We do not suggest that domestic abuse cases create a per se exigent need for warrantless entry; rather, a reviewing court must assess the totality of the circumstances presented to the officer before the entry in order to determine if exigent circumstances relieved the officer of the duty to secure a warrant. We do recognize, however, that the police have a duty to respond seriously to reported domestic conflict situations, and in doing so, they must be accorded some latitude in making on-the-spot judgments as to what actions to take and what actions are reasonably necessary to protect themselves and potential victims of abuse.

The anonymity of a call reporting domestic abuse is not fatal to establishing the exigency necessary to enter a dwelling without a warrant under the totality of the circumstances. Here, the 911 call reporting domestic violence contained the fairly specific details that a man was beating a woman within a specifically identified residence, and a separate report indicated that screaming could be heard emanating from within that residence. Yet, when the officers arrived at the scene shortly before 8:00 a.m. on that Sunday morning, approximately three minutes after the
911 call had been received, no one answered the door, and no sound could be heard except the unanswered ringing of a telephone within the residence.

In domestic disputes the signs of danger may be masked. In domestic violence situations, the victim often remains silent, or does not seek police intervention, or lies to protect the abuser for fear of retaliation. A domestic abuse victim who has been severely injured may be unable to communicate in response to an officer's investigatory efforts outside the home. Thus, the apparent exigencies of a domestic disturbance situation are not necessarily negated when officers find a quiet residence while promptly responding to a report of violence. Whether the actions of the police are objectively reasonable is to be judged by the circumstances known to them.

We conclude that the officers' entry into the residence without a warrant to search for an injured or otherwise non-responsive domestic abuse victim was objectively reasonable under the totality of circumstances. Indeed, the officers would have been remiss in their duty had they abandoned the scene simply because no one answered the door. We agree that erring on the side of caution is exactly what we expect of conscientious police officers where rescue is the objective, rather than a search for crime, and we should not second-guess the officers' objectively reasonable decision to enter and search a residence without a warrant in such a case.

We reiterate that we do not recognize a *per se* exigency in domestic abuse situations, and we caution that entry and search in the context of a rescue is limited to proper police attempts to find a person in need of assistance, based on a reasonable belief that such a person will be inside the area searched. A reasonable belief must be based on the totality of the circumstances, which may include the exigencies inherent when a report of domestic violence is being promptly investigated. A rescue search is not a search for evidence of criminal activity; here, the officers clearly testified that their only reason for entering the residence was their concern for the safety of a potential domestic abuse victim. The police did not search for any weapons or other evidence of criminal activity. The subsequent search for evidence of criminal activity was conducted only after and pursuant to the issuance of a search warrant after the police discovered the unresponsive victim and had her transported to a hospital trauma unit.

The officers' entry into the home was justified under the recognized "persons in immediate need of assistance" exigency exception to the warrant requirement.
SIGNIFICANCE OF THE THREE CASES: Exigent circumstances are required for a warrantless entry into a residence, especially at night time, or when the location has been secured. In domestic violence situations, when the police objective is rescue, not a search for evidence, police are granted greater freedom of action.


Link to: Olson, J. dissenting

FACTS: Perel and his former cellmate, Holcomb, departed for an overnight trip. Perel was driving. Perel pulled over, reached under his seat, pulled out a small leather shaving type bag with a gun protruding from it. Perel robbed Holcomb, and then entered his girlfriend’s apartment.

The police obtained written consent from the girlfriend to search her apartment. The police found a small leather shaving type bag which contained a handgun, drugs, condoms and ammunition.

ISSUE: Was the warrantless search for Perel’s belongings valid based on his girlfriend’s consent?

RULING: No. Her consent did not extend to Perel’s leather bag. The girlfriend did not have common authority, joint authority or mutual use of the shaving bag.

SIGNIFICANCE OF THE CASE: A homeowner cannot give valid third party consent over a guest’s closed containers unless the homeowner actually or apparently has common authority, joint authority or mutual use of those items.
VI) STATUTORY INTERPRETATION

Commonwealth v. Johnson, 100 A.3d 207 (Pa. Super. 8/20/14)

FACTS: On September 15, 2011, at approximately 12:00 noon, twenty FBI agents and United States Marshals went to an apartment located in a building at 633 West Rittenhouse Street, Philadelphia, to execute an arrest warrant for Rodney Thompson. Defendant, Sincerity Johnson, shared the apartment with her mother. The law enforcement officers knocked, announced that they were police officers, and stated that they had a warrant. Initially, there was no response. After knocking a second time, defendant inquired who they were. Upon being informed again that they were police officers with a warrant, defendant told them to wait while she dressed. After five minutes, the officers heard someone running within the apartment, and they attempted to force open the door, but stopped when defendant did so. When questioned, defendant denied that there was anyone else in the apartment; after being shown a photograph of Thompson, she denied knowing him.

The law enforcement officers noticed that a window was open and that the subject of the warrant was running on the second floor roof of the apartment. Thompson was apprehended behind the apartment building. Defendant was taken into custody and charged with hindering apprehension.

ISSUE #1: Was the evidence sufficient to establish the offense of hindering apprehension?

RULING #1: No. Where a person is charged with the felony offense of hindering apprehension, 18 Pa.C.S. § 5105, the Commonwealth must establish that the actor knew that the conduct charged against the aided person or which was liable to be charged against the aided person, would constitute a felony of the first or second degree.

The Commonwealth offered no evidence as to why Thompson was wanted or whether it was in connection with a crime, or violation of the terms of probation, parole, intermediate punishment or Accelerated Rehabilitative Disposition. It did not place the warrant into evidence and no witness testified regarding Thompson's purported crime. The fact that the Commonwealth offered evidence that police officers apprised defendant that they had a federal warrant, even an arrest warrant, was not enough to satisfy this element.
ISSUE #2: Was the evidence sufficient to establish the offense of obstructing administration?

RULING #2: Yes. Defendant intentionally delayed in opening the locked door to police officers who had announced their presence. The conduct was to permit Thompson to escape apprehension. This constituted physical interference or an obstacle to execution of the warrant. The evidence was sufficient to sustain the conviction for a violation of 18 Pa.C.S. § 5101.

SIGNIFICANCE OF THE CASE: In a prosecution for hindering apprehension of a person, it must be proved that the defendant knew the offenses for which the person was being sought.

Commonwealth v. Thompson, 106 A.3d 742 (Pa. Super. 12/10/14)

Link to: Bowes, J. concurring

FACTS: Defendant was driving at a high rate of speed (55-61 miles per hour in a 30-40 miles per hour zone), while under the influence of marijuana, in an attempt to flee from a police officer's pursuit. Defendant proceeded through a steady red light, fatally striking two young pedestrians. Upon being struck, the children were propelled from 50 to 100 feet. Both children subsequently died. Instead of stopping at the scene of the accident, defendant fled, abandoned the vehicle involved in the accident, and hid from police.

ISSUE: Was the evidence sufficient to establish the offense of third degree murder?

RULING: Yes. There were no adverse weather conditions during this time that impeded defendant's sight or precluded him from stopping after the accident. These actions demonstrated a complete disregard of the unjustified and extremely high risk that his actions would cause death or serious bodily injury. The Commonwealth presented sufficient evidence to prove that defendant acted with the requisite malice to support his third-degree murder convictions.

SIGNIFICANCE OF THE CASE: When the facts of a vehicular homicide are sufficiently egregious, check with your district attorney to see if Third Degree Murder should be charged.

**FACTS:** On August 13, 2012, at approximately 2:00 p.m., Ridley Township Police Officer Leo Doyle was on patrol in the Secane area in response to a complaint about illegal drug activity at the Presidential Square Apartments on South Avenue. The complainant, Mr. Latticlaw, had told the police that squatters were selling drugs out of his apartment. Sergeant Charles Palo and Corporal Daniel Smith, also members of the Ridley Township Police Department, accompanied Officer Doyle to the Secane address in a separate police vehicle. When the two police vehicles arrived at the apartment complex, the police observed a black Cadillac driving towards them and saw Latticlaw pointing toward the Cadillac.

After seeing the complainant point toward the Cadillac, both police vehicles followed the car as it pulled out of the parking lot. While only a few feet behind the Cadillac, Officer Doyle saw Mosley, the driver of the Cadillac, put his arm out of the driver's side window and drop two clear plastic bags. Corporal Smith picked up the two bags while Officer Doyle activated his siren and police lights and pulled the Cadillac over. Corporal Smith contacted Officer Doyle to tell him the baggies contained narcotics. Doyle arrested Mosley and, in a search incident to arrest, recovered two cellular phones and $117.00 in cash from his person.

Sgt. Kenneth Rutherford testified that the phones contained text messages from various people indicating "there was a sale of narcotics, there was a request for different types of narcotics, drugs, meet, locations, places to meet, things like that." Sergeant Rutherford consistently testified to common street terms used in illegal drug sales, the manner in which dealers often stamp their bags of drugs with symbols and wording, and that text messages are often sent to a phone in an attempt to buy drugs.

**ISSUE:** Was the evidence sufficient to establish that the narcotics were possessed with intent to deliver?

**RULING:** Yes. Mosley was driving the car from which two clear plastic bags (each containing multiple baggies within) were thrown out of the driver's side window. No drugs, paraphernalia or other incriminating drug evidence was found on the passenger in the Cadillac. Expert testimony by Sgt. Rutherford confirmed that the packaging, weight and type of drugs, in addition to the $117.00 and cell phones found on Mosley's person at the time of his arrest, are all indicative of possessing drugs with the intent to deliver.
SIGNIFICANCE OF THE CASE: Intent to deliver is proven based on the totality of the circumstances including the quality of any expert testimony which is presented.


FACTS: Following an investigation, Detective James Moyer of the Swatara Police Department determined that Gary Still was involved in the theft of approximately twelve (12) firearms from the residence of 740 High Street. Detective Moyer advised Mr. Still of his *Miranda* rights. Mr. Still stated that he took numerous guns over a period of eight (8) weeks, and told the officers that he purchased heroin from the defendant, Diego.

Detective Moyer testified that he asked Mr. Still if he would set up a heroin deal with Diego. Mr. Still was told by the officers that it would be in his best interest to do so. Mr. Still agreed, telling the officers that he would use the text messaging service on his iPad. The transaction took place in the basement of the police station and was set up with Mr. Still communicating directly with Diego on the iPad. Mr. Still relayed to the detectives each response from Diego.

ISSUE: Did the police violate the Wiretap Act by receiving information communicated by Diego to Still which was received on Still’s iPad?

RULING: No. When Diego engaged in a text message conversation with Gary Still, defendant risked that Gary Still would share the contents of that conversation with a third party. When an individual sends a text message, he or she should know that the recipient, and not the sender, controls the destiny of the content of that message once it is received.

Gary Still, and not the police, communicated directly with defendant by text message, and he did so voluntarily. Still was a party to the conversation, and therefore he could not be said to have intercepted it simply because he received it. That he subsequently relayed the contents of that conversation to the police does not render either his or the police's conduct an "interception" under the plain meaning of the Wiretap Act.
SIGNIFICANCE OF THE CASE: When a participant in a communication shares the information with the police, there is no violation of the Wiretap Act.


FACTS: On the evening of June 3, 2013, two State Police troopers were patrolling on U.S. Route 15, a rural road in Adams County. The troopers came upon a truck pulled over to the side of the road, the lights were off and the truck appeared to be disabled. The troopers stopped to investigate and discovered a large trail of debris extending from the truck up to 75 feet down an embankment. The debris included glass, papers, TVs, VCRs, clothes, clocks, an American flag and other material. The defendant was uncooperative, screamed and cursed at the Troopers and continuously walked towards the traffic on Route 15. He made statements including, “all you f***ing cops are communists just like Obama,” “[t]his f***ing country sucks,” and “[y]ou better watch your back.” One trooper could hear the defendant yelling from down the trash strewn embankment.

Defendant was convicted of Disorderly conduct (unreasonable noise).

ISSUE: Was the evidence sufficient to sustain the defendant’s conviction?

RULING: No. The Commonwealth must prove that the noise occurred in a public place and that the noise was unreasonable in that it was inconsistent with the particular neighborhood tolerance or standards. Although the act of yelling and cursing occurred on a public highway, the highway was rural and the area sparsely populated. There was no evidence that any member of the public heard the noise or that any passing motorist was aware of what was occurring.


FACTS: The victim was at her home setting up a fire in a fire pit in her backyard. She was able to see defendant standing at the front door of his residence which was diagonal from her own residence. Defendant repeatedly directed statements toward the victim such as that the victim’s "fat mom humps [her] dog" and "whore." The statements made her feel "uncomfortable and scared." Defendant was found guilty of disorderly conduct (hazardous or physically offensive condition).
ISSUE: Was the evidence was sufficient to sustain the defendant’s conviction?

RULING: No. A five or six foot fence separated the two properties. There was no evidence that anyone other than the victim heard defendant's remarks. Defendant made his offensive remarks in a private setting and the remarks were heard only by the victim. Defendant's remarks were brief and did not cause public unrest or create a risk of public unrest.

SIGNIFICANCE OF THE TWO CASES: Disorderly conduct is not a catchall for every annoying act or disturbance. The statute has a specific purpose of criminalizing either the intentional or reckless act of unreasonable noise. Such noise is defined as “not fitting or proper in respect to the conventional standards of organized society.” A “hazardous or physically offensive condition” is one which creates a risk of injury resulting from public disorder.

Commonwealth v. Stoppard, 103 A.3d 120 (Pa. Super. 10/29/14)

FACTS: Defendant was charged with Burglary and other offenses arising from the theft of items located in a carport of a home. A warrant was issued for his arrest. Defendant was apprehended. The police advised defendant he was under arrest and instructed him to put his hands behind his back for handcuffing. The defendant ran from the building jumped in his car and fled.

Defendant was charged with Escape and with Flight to avoid apprehension. Since defendant was being arrested for a felony burglary when he fled, the Escape and Flight charges were graded as felonies. The Commonwealth later withdrew the felony Burglary and Conspiracy charges, leaving only the misdemeanor Theft charges.

ISSUE: Did the withdrawal of the felony charges require the lowering of the grade of the Escape and Flight charges?

RULING: No. The withdrawal of the felony did not require the lowering of the grade of the Escape and Flight charges.

SIGNIFICANCE OF THE CASE: The grading of the Escape and Flight charges depends on the grade of the underlying offense at the time the escape and flight occurs. At the time of the escape and flight the underlying Burglary and
Conspiracy charges were graded as felonies. It was, therefore, appropriate for the grade of the Escape and Flight charges to remain as felonies.

**Commonwealth v. Vergilio**, 103 A.3d 831 (Pa. Super. 11/6/14)

**FACTS:** On December 3 and 4, 2011 Frank Vergilio had two telephone communications with the victim, the son of Vergilio’s girlfriend. Both communications occurred while Vergilio was located in New Jersey and the victim was located in Montgomery County, Pennsylvania. During both communications Vergilio made threats which contained language that was intended to terrorize the victim.

On April 10, 2012 the Montgomery County authorities charged Vergilio with two counts of terroristic threats and one count of harassment.

**ISSUE:** Because the communications originated in New Jersey, was Montgomery County, Pennsylvania a proper venue to charge Vergilio with the crime?

**RULING:** Yes. The statute requires that there be a threat to commit a crime of violence and that the threat is communicated with the intent to terrorize. The term communicates means to “convey in person or by written or electronic means, including telephone.” The statute does not expressly address whether the threat is made when it is spoken or at the time it is received.

The court ruled that a person’s personal security cannot be seriously impaired by a threat unless the threat is actually heard. By logical progression the court concluded that the term “communicates” presumes that the threat has to be received in order to cause terror. When the threat is received the necessary element of communication is completed. The place where the threat is received is where the statute is violated. The threat was received in Montgomery County, Pennsylvania; therefore, Montgomery County, Pennsylvania was a proper venue to charge Vergilio.

**SIGNIFICANCE OF THE CASE:** When a terroristic threat is transmitted outside Pennsylvania but received inside Pennsylvania; Montgomery County, Pennsylvania is a proper venue for the criminal proceedings against the offender.

VII) Conclusion and Testing
Appendix 1: Pa Act 27 of 2015 (SAFER Presentation) Presentation developed by Pennsylvania State Police Bureau of Forensic Services. Presentation is hyperlinked in PPT Slide Presentation “SAFER Presentation” or can be accessed via the disk.
Appendix 2:

Controlled Substance Act Violations Subject to Immunity Under Act 39 of 2014

§13 (a) (5) - The adulteration, mutilation, destruction, obliteration or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a controlled substance, other drug, device or cosmetic, if such act is done while such substance or article is held for sale and results in such substance or article being adulterated or misbranded.

§13 (a) (16) - Knowingly or intentionally possessing a controlled or counterfeit substance by a person not registered under this act, or a practitioner not registered or licensed by the appropriate State board, unless the substance was obtained directly from, or pursuant to, a valid prescription order or order of a practitioner, or except as otherwise authorized by this act.

§13 (a) (19) - The intentional purchase or knowing receipt in commerce by any person of any controlled substance, other drug or device from any person not authorized by law to sell, distribute, dispense or otherwise deal in such controlled substance, other drug or device.

§13 (a) (31) - Notwithstanding other subsections of this section, (i) the possession of a small amount of marihuana only for personal use; (ii) the possession of a small amount of marihuana with the intent to distribute it but not to sell it; or (iii) the distribution of a small amount of marihuana but not for sale. For purposes of this subsection, thirty (30) grams of marihuana or eight (8) grams of hashish shall be considered a small amount of marihuana.

§13 (a) (32) - The use of, or possession with intent to use, drug paraphernalia for the purpose of planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packing, repacking, storing, containing, concealing, injecting, ingesting, inhaling or otherwise introducing into the human body a controlled substance in violation of this act.

§13 (a) (33) - The delivery of, possession with intent to deliver, or manufacture with intent to deliver, drug paraphernalia, knowing, or under circumstances where one reasonably should know, that it would be used to plant, propagate, cultivate, grow, harvest, manufacture, compound, convert, produce, process, prepare, test, analyze, pack, repack, store, contain, conceal, inject, ingest, inhale or otherwise introduce into the human body a controlled substance in violation of this act.

§13 (a) (37) - The possession by any person, other than a registrant, of more than thirty doses labeled as a dispensed prescription or more than three trade packages of any anabolic steroids listed in section 4(3)(vii)