

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 454 Session of  
1999

INTRODUCED BY HERMAN, CLARK, BARD, BELARDI, M. COHEN, GEIST,  
HARHAI, S. MILLER, READSHAW, SATHER, SAYLOR, SEYFERT,  
STABACK, E. Z. TAYLOR AND TRELLO, FEBRUARY 9, 1999

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 9, 1999

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for aggravated  
3 assault and for use of tear or noxious gas in labor disputes.

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

6 Section 1. Section 2702 of Title 18 of the Pennsylvania  
7 Consolidated Statutes, amended December 21, 1998 (P.L.  
8 No.159), is amended to read:

9 § 2702. Aggravated assault.

10 (a) Offense defined.--A person is guilty of aggravated  
11 assault if he:

12 (1) attempts to cause serious bodily injury to another,  
13 or causes such injury intentionally, knowingly or recklessly  
14 under circumstances manifesting extreme indifference to the  
15 value of human life;

16 (2) attempts to cause or intentionally, knowingly or  
17 recklessly causes serious bodily injury to any of the  
18 officers, agents, employees or other persons enumerated in

1 subsection (c) or to an employee of an agency, company or  
2 other entity engaged in public transportation, while in the  
3 performance of duty;

4 (3) attempts to cause or intentionally or knowingly  
5 causes bodily injury to any of the officers, agents,  
6 employees or other persons enumerated in subsection (c), in  
7 the performance of duty;

8 (4) attempts to cause or intentionally or knowingly  
9 causes bodily injury to another with a deadly weapon;

10 (5) attempts to cause or intentionally or knowingly  
11 causes bodily injury to a teaching staff member, school board  
12 member or other employee, including a student employee, of  
13 any elementary or secondary publicly-funded educational  
14 institution, any elementary or secondary private school  
15 licensed by the Department of Education or any elementary or  
16 secondary parochial school while acting in the scope of his  
17 or her employment or because of his or her employment  
18 relationship to the school; [or]

19 (6) attempts by physical menace to put any of the  
20 officers, agents, employees or other persons enumerated in  
21 subsection (c), while in the performance of duty, in fear of  
22 imminent serious bodily injury[.] ; or

23 (7) uses tear or noxious gas as defined in section  
24 2708(b) (relating to use of tear or noxious gas in labor  
25 disputes) in an offensive manner against any officer,  
26 employee or other person enumerated in subsection (c), while  
27 acting in the scope of his employment.

28 (b) Grading.--Aggravated assault under subsection (a) (1) and  
29 (2) is a felony of the first degree. Aggravated assault under  
30 subsection (a) (3), (4), (5) [and], (6) and (7) is a felony of

1 the second degree.

2 (c) Officers, employees, etc., enumerated.--The officers,  
3 agents, employees and other persons referred to in subsection

4 (a) shall be as follows:

5 (1) Police officer.

6 (2) Firefighter.

7 (3) County adult probation or parole officer.

8 (4) County juvenile probation or parole officer.

9 (5) An agent of the Pennsylvania Board of Probation and  
10 Parole.

11 (6) Sheriff.

12 (7) Deputy sheriff.

13 (8) Liquor control enforcement agent.

14 (9) Officer or employee of a correctional institution,  
15 county jail or prison, juvenile detention center or any other  
16 facility to which the person has been ordered by the court  
17 pursuant to a petition alleging delinquency under 42 Pa.C.S.  
18 Ch. 63 (relating to juvenile matters).

19 (10) Judge of any court in the unified judicial system.

20 (11) The Attorney General.

21 (12) A deputy attorney general.

22 (13) A district attorney.

23 (14) An assistant district attorney.

24 (15) A public defender.

25 (16) An assistant public defender.

26 (17) A Federal law enforcement official.

27 (18) A State law enforcement official.

28 (19) A local law enforcement official.

29 (20) Any person employed to assist or who assists any  
30 Federal, State or local law enforcement official.

- 1 (21) Emergency medical services personnel.  
2 (22) Parking enforcement officer.  
3 (23) A district justice.  
4 (24) A constable.  
5 (25) A deputy constable.  
6 (26) A psychiatric aide.  
7 (27) A teaching staff member, a school board member or  
8 other employee, including a student employee, of any  
9 elementary or secondary publicly funded educational  
10 institution, any elementary or secondary private school  
11 licensed by the Department of Education or any elementary or  
12 secondary parochial school while acting in the scope of his  
13 or her employment or because of his or her employment  
14 relationship to the school.  
15 (28) Governor.  
16 (29) Lieutenant Governor.  
17 (30) Auditor General.  
18 (31) State Treasurer.  
19 (32) Member of the General Assembly.

20 (d) Definition.--As used in this section, the term  
21 "emergency medical services personnel" includes, but is not  
22 limited to, doctors, residents, interns, registered nurses,  
23 licensed practical nurses, nurse aides, ambulance attendants and  
24 operators, paramedics, emergency medical technicians and members  
25 of a hospital security force while working within the scope of  
26 their employment.

27 Section 2. Section 2708 of Title 18 is amended to read:  
28 § 2708. Use of tear or noxious gas in labor disputes.

29 (a) Offense defined.--A person other than a duly constituted  
30 officer of the law is guilty of a misdemeanor of the first



1 degree if he uses or directs the use of tear or noxious gas  
2 against any person involved in a labor dispute.

3 (b) Definition.--As used in this section, the term "tear or  
4 noxious gas" means any liquid or gaseous substance that, when  
5 dispersed in the atmosphere, blinds the eyes with tears or  
6 irritates or injures other organs and tissues of the human body  
7 or causes nausea, including, but not limited to, red pepper  
8 spray.

9 Section 3. This act shall take effect in 60 days.



**HOUSE OF REPRESENTATIVES**  
**REPUBLICAN CAUCUS**

BILL SUMMARY

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DATE: 3/4/99

COMMITTEE: Judiciary

BILL NO.: HB 454

PRIME SPONSOR: Herman

PRINTER'S NO.: 474

PREPARED BY: James G. Mann

PHONE NO.: 2-6947

A. PRELIMINARY SUMMARY:

House Bill 454 amends Title 18 (relating to crimes and offenses) of the Pennsylvania Consolidated Statutes to further provide for the use of tear or noxious gas.

Under this legislation, a person would commit an aggravated assault if that person uses tear or noxious gas (including red pepper spray) in an offensive manner against any of the enumerated officers, agents or employees enumerated in subsection (c) of current law and who are acting in the scope of their duties. The list of enumerated officials under 18 Pa.C.S. § 2702(c) has been expanded to also include the governor, the lieutenant governor, the auditor general, the state treasurer and members of the general assembly. An aggravated assault with tear or noxious gas shall be graded a felony of the second degree.

A felony of the second degree is punishable by a term of imprisonment of up to ten years and a fine of up to \$25,000.00.

This act shall take effect in 60 days.

B. EXISTING LAW:

The only statute which specifically addresses the use of tear or noxious gases is found in 18 Pa.C.S. § 2708 (relating to use of tear or noxious gas in labor disputes) which states that a person is guilty of a misdemeanor of the first degree for the use of tear or noxious gas against any person involved in a labor dispute. This statute would not apply to persons enumerated in this legislation.

Neither Section 2701 (relating to simple assault) nor Section 2702 (relating to aggravated assault) specifically address the use of tear or noxious gases in an offensive manner. However, since the offensive use of tear or noxious gas may constitute causing or attempting to cause bodily injury, such actions may be considered a simple assault.

Simple assault is a misdemeanor of the second degree, punishable by a term of imprisonment of up to two years and a fine of up to \$2,500.00.

18 Pa.C.S. § 2702(a)(3) defines the offense of aggravated assault as attempts to cause or intentionally or knowingly causing bodily injury to any of the officers, agents, employees or other persons enumerated in subsection (c). Under 18 Pa.C.S. § 2702(a)(5), it is an offense to attempt to cause or intentionally or knowingly cause bodily injury to teachers and employees of public, private and parochial schools and the Department of Education. Under either subsections (3) or (5), an offense under this section is graded a felony of the second degree, punishable by a term of imprisonment of up to ten years and a fine of up to \$25,000.00.

The officials enumerated under 18 Pa.C.S. § 2702(c) include the following:

- (1) Police officer
- (2) Firefighter.
- (3) County adult probation or parole officer.
- (4) County juvenile probation or parole officer.
- (5) An agent of the Pennsylvania Board of Probation and Parole.
- (6) Sheriff.
- (7) Deputy sheriff.
- (8) Liquor control enforcement agent.
- (9) Officer or employee of a correctional institution, county jail or prison, juvenile detention center or any other facility to which the person has been ordered by the court pursuant to a petition alleging delinquency under 42 Pa.C.S. Ch. 63 (relating to juvenile matters).
- (10) Judge of any court in the unified judicial system.
- (11) The Attorney General.
- (12) A deputy attorney general.
- (13) A district attorney.
- (14) An assistant district attorney.
- (15) A public defender.
- (16) An assistant public defender.
- (17) A federal law enforcement official.
- (18) A state law enforcement official.
- (19) A local law enforcement official.
- (20) Any person employed to assist or who assists any federal, state or local law enforcement official.
- (21) Emergency medical services personnel.
- (22) Parking enforcement officer.
- (23) A district justice.
- (24) A constable.
- (25) A deputy constable.
- (26) A psychiatric aide.

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1640 Session of  
1999

INTRODUCED BY KAISER, WOJNAROSKI, SOLOBAY, CLARK, FICHTER,  
STABACK, WALKO, HARHAI, MARKOSEK, LEDERER, LAUGHLIN,  
J. TAYLOR AND YOUNGBLOOD, JUNE 14, 1999

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 14, 1999

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, providing for definition of and use or  
3 possession of personal protection spray devices.

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

6 Section 1. Title 18 of the Pennsylvania Consolidated  
7 Statutes is amended by adding a section to read:

8 § 908.1. Use or possession of personal protection spray  
9 devices.

10 (a) Offense defined.--A person commits an offense by using a  
11 personal protection spray device on a law enforcement officer or  
12 another person with the intent to commit any crime.

13 (b) Authorized possession.--A person may possess and use a  
14 personal protection spray device in the exercise of reasonable  
15 force in defense of the person or the person's property only if  
16 the personal protection spray device is labeled with or  
17 accompanied by clearly written instructions as to its use and  
18 the dangers involved in its use.

1 (c) Prohibited possession.--

2 (1) No person under 18 years of age shall purchase or  
3 possess a personal protection spray device unless the person  
4 is at least 14 years of age and has the written consent of a  
5 parent or guardian to do so.

6 (2) No person prohibited from possessing a firearm  
7 pursuant to section 6105 (relating to persons not to possess,  
8 use, manufacture, control, sell or transfer firearms) may  
9 possess or use a personal protection spray device.

10 (d) Grading.--An offense under subsection (a) shall  
11 constitute a felony of the second degree if the actor acted with  
12 the intent to commit a felony. Otherwise any offense under this  
13 section is a misdemeanor of the first degree.

14 (e) Exceptions.--Nothing in this section shall prohibit the  
15 sale or furnishing of any personal protection spray device to or  
16 its possession of or use by a law enforcement agency, peace  
17 officer, the National Guard or National Guard reserves or a  
18 member of the National Guard or National Guard reserves for use  
19 in their official duties.

20 (f) Civil liability.--Any civil liability of a minor arising  
21 out of the minor's use of a personal protection spray device  
22 other than for self-defense is imposed upon the person, parent  
23 or guardian who signed the statement of consent specified in  
24 subsection (c)(1) who shall be jointly and severally liable with  
25 the minor for any damages proximately resulting from the  
26 negligent or wrongful act or omission of the minor in the use of  
27 the personal protection spray device.

28 (g) Definition.--As used in this section, the following  
29 words and phrases shall have the meanings given to them in this  
30 subsection:

1 "Personal protection spray device." A commercially available  
2 dispensing device designed and intended for use in self-defense  
3 and containing a nonlethal sternutator or lacrimator agent,  
4 including, but not limited to:

5 (1) tear gas, the active ingredient of which is either  
6 chloracetophenone (CN) or O-chlorobenzylidene malonotrile  
7 (CS); or

8 (2) other agent commonly known as mace, pepper mace or  
9 pepper gas.

10 Section 2. This act shall take effect immediately.

**HOUSE OF REPRESENTATIVES**  
**REPUBLICAN CAUCUS**

BILL SUMMARY

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DATE: 8/5/99

COMMITTEE: Judiciary

BILL NO.: HB 1640

PRIME SPONSOR: Kaiser

PRINTER'S NO.: 2005

PREPARED BY: James G. Mann

PHONE NO.: 2-6947

A. PRELIMINARY SUMMARY:

House Bill 1640, Printer's Number 2005, amends Title 18 (Crimes) of the Pennsylvania Consolidated Statutes by adding a new section relating to the use or possession of personal protection spray devices.

18 Pa.C.S. §908.1 is added to provide that a person commits an offense by using a personal protection spray device on a law enforcement officer or another person with the intent to commit any crime. An offense under this section shall constitute a felony of the second degree if the actor acted with the intent to commit a felony. Otherwise any offense under this section is a misdemeanor of the first degree.

This new section provides that a person may possess and use a personal protection spray device in the exercise of reasonable force in defense of the person or the person's property only if the personal protection spray device is labeled with or accompanied by clearly written instructions as to its use and the dangers involved in its use. However, persons under 18 years of age and persons prohibited from possessing a firearm pursuant to section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) are prohibited from purchase or possession of a personal protection spray device.

A person between the ages of 14 and 18 years may possess a personal protection spray device with the written consent of a parent or guardian to do so. Any civil liability of a minor arising out of the minor's use of a personal protection spray device other than for self-defense is imposed upon the person, parent or guardian who signed the statement of consent who shall be jointly and severally liable with the minor for any damages proximately resulting from the negligent or wrongful act or omission of the minor in the use of the personal protection spray device.



Nothing in this new section shall prohibit the sale or furnishing of any personal protection spray device to or its possession of or use by a law enforcement agency, peace officer, the National Guard or National Guard reserves or a member of the National Guard or National Guard reserves for use in their official duties.

"Personal protection spray device" is defined as any commercially available dispensing device designed and intended for use in self-defense and containing a nonlethal sternutator or lacrimator agent, including, but not limited to: tear gas, the active ingredient of which is either chloracetophenone (CN) or O-chlorobenzylidene malonotrile (CS); or, other agent commonly known as mace, petter mace or pepper gas.

This act shall take effect immediately.

B. EXISTING LAW:

18 Pa.C.S. §2708 (relating to use of tear or noxious gas in labor disputes) is the only statute which specifically addresses the use of tear or noxious gases. This section provides that a person is guilty of a misdemeanor of the first degree for the use of tear or noxious gas against any person involved in a labor dispute. However, this section does not relate to the use of personal protection spray devices generally. Existing law does not address the age at which an individual may possess personal protection spray devices or limit the types of persons who may possess such an implement.

Neither 18 Pa.C.S. §2701 (relating to simple assault) nor §2702 (relating to aggravated assault) specifically address the use of tear or noxious gases in an offensive manner. However, the offensive use of tear or noxious gas may constitute causing or attempting to cause bodily injury. Therefore, such acts may be considered a simple assault. A person may also commit an offense under 18 Pa.C.S. §908 (relating to possession of instruments of crime) if a personal protection spray device is used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have. Such an offense is graded a misdemeanor of the first degree.

As existing law relates to civil liability of parents for the acts of children, 23 Pa.C.S. §5502 (relating to parental liability) provides that "[a]ny parent whose child is found liable or is adjudged guilty by a court of competent jurisdiction of a tortious act shall be liable to the person who suffers the injury to the extent set forth in this chapter." This chapter limits a parent's liability to "[t]he sum of \$1,000 for injuries suffered by any one person as a result of one tortious act or continuous series of tortious acts..." and, "[t]he sum of \$2,500 regardless of the number of persons who suffer injury as a result of one tortious act or continuous series of tortious acts." 23 Pa.C.S. §5505. However, the liability imposed upon parents "shall not limit the common-law liability of parents for damages caused by a

child and shall be separate and apart from any liability which may be imposed upon the child." 23 Pa.C.S. §5509.

JGM:cmw

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1666 Session of  
1999

INTRODUCED BY ORIE, SEYFERT, GEIST, WOJNAROSKI, E. Z. TAYLOR,  
SCRIMENTI, RUBLEY, B. SMITH, CLARK, MANN, STABACK, DEWEESE,  
STERN, CORRIGAN, MELIO, EGOLF, BELFANTI, MICOZZIE, VAN HORNE,  
LAUGHLIN, MICHLOVIC, FRANKEL, CURRY, RAMOS, J. TAYLOR, STURLA  
AND THOMAS, JUNE 15, 1999

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 15, 1999

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for definition of  
3 "offensive weapons"; and providing for use or possession of  
4 electric or electronic incapacitation devices.

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

7 Section 1. Section 908 of Title 18 of the Pennsylvania  
8 Consolidated Statutes is amended to read:

9 § 908. Prohibited offensive weapons.

10 \* \* \*

11 (c) Definition.--As used in this section, the following  
12 words and phrases shall have the meanings given to them in this  
13 subsection:

14 \* \* \*

15 "Offensive weapons." Any bomb, grenade, machine gun, sawed-  
16 off shotgun with a barrel less than 18 inches, firearm specially  
17 made or specially adapted for concealment or silent discharge,

1 any blackjack, sandbag, metal knuckles, dagger, knife, razor or  
2 cutting instrument, the blade of which is exposed in an  
3 automatic way by switch, push-button, spring mechanism, or  
4 otherwise, any stun gun, stun baton, taser or other electric or  
5 electronic weapon, or other implement for the infliction of  
6 serious bodily injury which serves no common lawful purpose.

7 \* \* \*

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

9 § 908.1. Possession or use of electric or electronic  
10 incapacitation devices.

11 (a) Offense defined.--Except as provided in subsections (b)  
12 and (d), a person commits an offense if he possesses or uses an  
13 electric or electronic incapacitation device or weapon on a law  
14 enforcement officer or another person with the intent to commit  
15 a crime.

16 (b) Authorized possession.--

17 (1) A person may possess or use an electric or  
18 electronic incapacitation device in the exercise of  
19 reasonable force in defense of the person or the person's  
20 property only if the electronic incapacitation device is  
21 labeled with or accompanied by clearly written instructions  
22 as to its use and the dangers involved in its use.

23 (2) This subsection shall not apply to:

24 (i) A person under 18 years of age.

25 (ii) A person prohibited from possessing a firearm  
26 pursuant to section 6105 (relating to persons not to  
27 possess, use, manufacture, control, sell or transfer  
28 firearms).

29 (c) Grading.--An offense under subsection (a) shall  
30 constitute a felony of the second degree if the actor acted with

1 the intent to commit a felony, otherwise an offense under this  
2 section shall be graded as a misdemeanor of the first degree.

3 (d) Exceptions.--Nothing in this section shall prohibit the  
4 possession or use of by, or the sale or furnishing of any  
5 electric or electronic incapacitation device to a law  
6 enforcement agency, peace officer, the National Guard or  
7 reserves or a member of the National Guard or reserves for use  
8 in official duties.

9 (e) Definition.--As used in this section, "electric or  
10 electronic incapacitation device" means a portable device which  
11 is designed or intended by the manufacturer to be used,  
12 offensively or defensively, to temporarily immobilize or  
13 incapacitate persons by means of electric pulse or current,  
14 including devices operating by means of carbon dioxide  
15 propellant. This term does not include cattle prods, electric  
16 fences or other electric devices when used in agricultural,  
17 animal husbandry or food production activities.

18 Section 3. This act shall take effect immediately.



**HOUSE OF REPRESENTATIVES**  
**REPUBLICAN CAUCUS**

**BILL SUMMARY**

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DATE: 8-12-99

COMMITTEE: Judiciary

BILL NO.: HB 1666

PRIME SPONSOR: Orie

PRINTER'S NO.: 2041

PREPARED BY: James G. Mann

PHONE NO.: 2-6947

**A. PRELIMINARY SUMMARY:**

House Bill 1666, Printer's Number 2041, amends Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for the definition of "offensive weapons"; and providing for use or possession of electric or electronic incapacitation devices.

Specifically, 18 Pa.C.S. §908 (prohibited offensive weapons) is amended to include any stun gun, stun baton, taser or other electric or electronic weapon within the definition of the term "offensive weapons."

A new section is added to provide for the possession or use of electric or electronic incapacitation devices. 18 Pa.C.S. §908.1 defines the new offense of possession or use of an electric or electronic incapacitation device or weapon on a law enforcement officer or another person with the intent to commit a crime. An offense under this new section shall constitute a felony of the second degree if the person acted with the intent to commit a felony, otherwise an offense under this section shall be graded as a misdemeanor of the first degree.

A person may possess or use such devices in the exercise of reasonable force in defense of the person or the person's property only if the electronic incapacitation device is labeled with or accompanied by clearly written instructions as to its use and the dangers involved in its use. However, a person under 18 years of age and a person prohibited from possessing a firearm pursuant to section 6105 (relating to persons not to possess, use, manufacture, control, sell or transfer firearms) may not possess an electric or electronic incapacitation device under any circumstance.

Nothing in this section shall prohibit the possession or use of, or the sale or furnishing of any electric or electronic incapacitation device to a law enforcement agency, peace officer, the National Guard or reserves or a member of the National Guard or reserves for use in official duties.

As used in this section, an "electric or electronic incapacitation device" means a portable device which is designed or intended by the manufacturer to be used, offensively or defensively, to temporarily immobilize or incapacitate persons by means of electric pulse or current, including devices operating by means of carbon dioxide propellant. This term does not include cattle prods, electric fences or other electric devices when used in agricultural, animal husbandry or food production activities.

This act shall take effect immediately.

B. EXISTING LAW:

Neither 18 Pa.C.S. §2701 (relating to simple assault) nor §2702 (relating to aggravated assault) specifically address the use of an "electric or electronic incapacitation device" in an offensive manner. However, the offensive use of an "electric or electronic incapacitation device" may constitute causing or attempting to cause either bodily injury or serious bodily injury. Therefore, such acts may be considered a simple assault or an aggravated assault depending on the circumstances.

A person may also commit an offense under 18 Pa.C.S. §908 (relating to possession of instruments of crime) if an "electric or electronic incapacitation device" is used for criminal purposes and possessed by the actor under circumstances not manifestly appropriate for lawful uses it may have. Such an offense is graded a misdemeanor of the first degree.

JGM:cmw