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Criminal Justice Update - June 2021

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Criminal Justice Update - June 2021

Abstract

The Criminal Justice Update is a monthly newsletter created by the Adams County Bar Foundation Fellow providing updates in criminal justice policy coming from Pennsylvania's courts and legislature as well as the US Supreme Court.

Contents:

- Updates from PA Governor's Office (no updates this month)
- Updates from the PA Legislature
- Updates from the Courts
 - U.S. Supreme Court: Criminal Law & Procedure
 - PA Supreme Court: Criminal Law & Procedure
 - PA Superior Court: Criminal Law & Procedure

Keywords

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Disciplines

Criminology and Criminal Justice | Public Affairs, Public Policy and Public Administration



CRIMINAL JUSTICE UPDATE



A monthly newsletter produced by the ACBA Fellow at Gettysburg College

June 2021

Keep up to date with developments in criminal law, criminal procedure, and victims issues via this monthly newsletter.

Comments or questions?
Contact Patrick Mahoney at
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Updates from PA Governor's Office

**No new updates this month*

Updates from the PA Legislature

Criminal Law & Procedure

House Bill 1429 — Preventing and Investigating Cases of Elder-Care Abuse

Final Passage in the House, June 15, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=1429>

House Bill 1429 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes “to give the Attorney General’s office concurrent jurisdiction to investigate individuals who use their position of trust to financially exploit older adults and care-dependent people”

House Bill 975 --- Protecting Elderly Victims of Sexual Assault and Abuse

Final Passage in the House, June 16, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=975>

House Bill 975 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes “to extend the protections of the institutional sexual assault statute to cover elders and other care-dependent persons who are assaulted by those who have the responsibility of providing care.”

Under House Bill 975, “this new offense would be triggered when a caretaker engages in sexual intercourse or indecent contact with a care-dependent person who receives care in or from a facility. A

person convicted under this new subsection of institutional sexual assault would commit a 3rd degree felony, punishable by up to 7 years imprisonment and/or a fine up to \$15,000.”

House Bill 87 --- Protecting Victims of Child Abuse and Pornography

Final Passage in the House, June 24, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=S&type=B&bn=87>

House Bill 87 would amend Titles 18 (Crimes and Offenses), 23 (Domestic Relations), and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes “to increase penalties for those convicted of child pornography where those images or videos depict a victim that is younger than 10 years of age or prepubescent, permit the Pennsylvania Commission of Sentencing to provide a sentence enhancement for those convicted of the sexual abuse of children where the person depicted is known as the defendant, and establish a two-year, 23-member Task Force on child pornography.”

House Bill 954 --- Investigating Cases and Protecting Victims of Child Abuse

Final Passage in the Senate, June 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=954>

House Bill 954 would amend Titles 18 (Crimes and Offenses) and 23 (Domestic Relations) “by further providing for criminal history record information in central repository or automated systems and further providing services for prevention, investigation and treatment of child abuse.”

Senate Bill 411 — Amending the Consolidation of the Department of Corrections and Parole Board

Final Passage in the House, June 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=S&type=B&bn=411>

House Bill 411 would amend Titles 42 (Judiciary and Judicial Procedure), 61 (Prisons and Parole), and 71 (State Government) of the Pennsylvania Consolidated Statutes to authorize the Department of Corrections “to create parole violator centers to expand its ability to work with parolees during the reentry process. State parole agents would be required to receive training in social work, criminology, psychology, psychiatry, and criminal justice”

Senate Bill 246 --- Protecting Victims of Human Trafficking

Final Passage in the Senate, June 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=H&type=B&bn=246>

Senate Bill 246 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes “to prohibit defendants from introducing evidence of a human trafficking victim’s past sexual victimization and allegations of past sexual victimization in any prosecution arising under Chapter 30 (relating to human trafficking).”

Senate Bill 708 --- Strengthening Victims' Access to Services and Compensation

Final Passage in the Senate, June 25, 2021

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&ind=0&body=S&type=B&bn=708>

Senate Bill 708 would amend the Crime Victims Act of 1998 to “help streamline the victim compensation process, make certain more victims receive the help they need and know their right to be enrolled into the Address Confidentiality Program.”

The Act would strengthen victims' access to services and compensation “by extending the time limit to file for compensation, eliminating the 72-hour time limit for reporting crimes to authorities, allowing alternative forms of reporting to qualify for compensation, and ensuring that a victim’s conduct, such as marijuana possession, does not immediately bar him or her from qualifying for compensation”

Updates from the Courts

U.S. Supreme Court

Criminal Law & Procedure

Terry v. United States

DECIDED: June 14, 2021

https://www.supremecourt.gov/opinions/20pdf/20-5904_i4dk.pdfv

“Petitioner Tarahrick Terry contends that he is eligible to receive a sentence reduction for his 2008 crack cocaine conviction. In 1986, Congress established mandatory-minimum penalties for certain drug offenses. That legislation defined three relevant penalties for possession with intent to distribute cocaine. The first two carried mandatory minimum sentences based on drug quantity: a 5-year mandatory minimum (triggered by either 5 grams of crack cocaine or 500 grams of powder cocaine) and a 10-year mandatory minimum (triggered by either 50 grams of crack or 5 kilograms of powder). 100 Stat. 3207–2, 3207–3. The third penalty differed from the first two: it did not carry a mandatory minimum sentence, did not treat crack and powder cocaine offenses differently, and did not depend on drug quantity. *Id.*, at 3207–4. Petitioner was subjected to this third penalty when he pleaded guilty in 2008 to possession with intent to distribute an unspecified amount of crack. The District Court determined that his offense involved about 4 grams of crack. Two years later, Congress passed the Fair Sentencing Act of 2010, which increased the crack quantity thresholds from 5 grams to 28 for the 5-year mandatory minimum and from 50 grams to 280 for the 10-year mandatory minimum. §2(a), 124 Stat. 2372. But Congress did not make this change retroactive until 2018, when it enacted the First Step Act. After that, Petitioner sought resentencing on the ground that he was convicted of a crack offense

modified by the Fair Sentencing Act. The District Court denied his motion, and the Eleventh Circuit affirmed.

Held: A crack offender is eligible for a sentence reduction under the First Step Act only if convicted of a crack offense that triggered a mandatory minimum sentence. The First Step Act makes an offender eligible for a sentence reduction only if the offender previously received “a sentence for a covered offense.” §404(b), 132 Stat. 5222. The Act defines “ ‘covered offense’ ” as “a violation of a Federal criminal statute, the statutory penalties for which were modified by” certain provisions in the Fair Sentencing Act. §404(a), *ibid*. The Fair Sentencing Act modified the statutory penalties for offenses that triggered mandatory minimum penalties because a person charged with the same conduct today no longer would face the same statutory penalties that they would have faced before 2010. For example, a person charged with knowing or intentional possession with intent to distribute at least 50 grams of crack was subject to a 10-year mandatory minimum before 2010. Now, he would be subject only to a 5-year mandatory minimum. But the Fair Sentencing Act did not modify the statutory penalties for petitioner’s offense. Before 2010, a person charged with petitioner’s offense—knowing or intentional possession with intent to distribute an unspecified amount of a schedule I or II drug—was subject to statutory penalties of imprisonment of 0-to-20 years and up to a \$1 million fine, or both, and a period of supervised release. After 2010, a person charged with this conduct is subject to the exact same statutory penalties. Petitioner thus is not eligible for a sentence reduction. Pp. 5– 8.”

[Lange v. California](#)

DECIDED: June 23, 2021

https://www.supremecourt.gov/opinions/20pdf/20-18_new_6k47.pdf

“This case arises from a police officer’s warrantless entry into petitioner Arthur Lange’s garage. Lange drove by a California highway patrol officer while playing loud music and honking his horn. The officer began to follow Lange and soon after turned on his overhead lights to signal that Lange should pull over. Rather than stopping, Lange drove a short distance to his driveway and entered his attached garage. The officer followed Lange into the garage. He questioned Lange and, after observing signs of intoxication, put him through field sobriety tests. A later blood test showed that Lange’s blood-alcohol content was three times the legal limit. The State charged Lange with the misdemeanor of driving under the influence. Lange moved to suppress the evidence obtained after the officer entered his garage, arguing that the warrantless entry violated the Fourth Amendment. The Superior Court denied Lange’s motion, and its appellate division affirmed. The California Court of Appeal also affirmed. It concluded that Lange’s failure to pull over when the officer flashed his lights created probable cause to arrest Lange for the misdemeanor of failing to comply with a police signal. And it stated that Lange could not defeat an arrest begun in a public place by retreating into his home. The pursuit of a suspected misdemeanor, the court held, is always permissible under the exigent-circumstances exception to the warrant requirement. The California Supreme Court denied review.

Held: Under the Fourth Amendment, pursuit of a fleeing misdemeanor suspect does not always—that is, categorically—justify a warrantless entry into a home. Pp. 3–16. (a) The Court’s Fourth Amendment

precedents counsel in favor of a case-by-case assessment of exigency when deciding whether a suspected misdemeanor's flight justifies a warrantless home entry. The Fourth Amendment ordinarily requires that a law enforcement officer obtain a judicial warrant before entering a home without permission. *Riley v. California*, 573 U. S. 373, 382. But an officer may make a warrantless entry when "the exigencies of the situation," considered in a case-specific way, create "a compelling need for official action and no time to secure a warrant." *Kentucky v. King*, 563 U. S. 452, 460; *Missouri v. McNeely*, 569 U. S. 141, 149. The Court has found that such exigencies may exist when an officer must act to prevent imminent injury, the destruction of evidence, or a suspect's escape. The amicus contends that a suspect's flight always supplies the exigency needed to justify a warrantless home entry and that the Court endorsed such a categorical approach in *United States v. Santana*, 427 U. S. 38. The Court disagrees. In upholding a warrantless entry made during a "hot pursuit" of a felony suspect, the Court stated that Santana's "act of retreating into her house" could "not defeat an arrest" that had "been set in motion in a public place." *Id.*, at 42–43. Even assuming that Santana treated fleeing-felon cases categorically, that statement still does not establish a flat rule permitting warrantless home entry whenever a police officer pursues a fleeing misdemeanor. *Santana* did not resolve the issue of misdemeanor pursuit; as the Court noted in a later case, "the law regarding warrantless entry in hot pursuit of a fleeing misdemeanor is not clearly established" one way or the other. *Stanton v. Sims*, 571 U. S. 3, 8, 10. Misdemeanors run the gamut of seriousness, and they may be minor. States tend to apply the misdemeanor label to less violent and less dangerous crimes. The Court has held that when a minor offense (and no flight) is involved, police officers do not usually face the kind of emergency that can justify a warrantless home entry. See *Welsh v. Wisconsin*, 466 U. S. 740, 742–743. Add a suspect's flight and the calculus changes—but not enough to justify a categorical rule. In many cases, flight creates a need for police to act swiftly. But no evidence suggests that every case of misdemeanor flight creates such a need. The Court's Fourth Amendment precedents thus point toward assessing case by case the exigencies arising from misdemeanants' flight. When the totality of circumstances shows an emergency—a need to act before it is possible to get a warrant—the police may act without waiting. Those circumstances include the flight itself. But pursuit of a misdemeanor does not trigger a categorical rule allowing a warrantless home entry. Pp. 3–12. (b) The common law in place at the Constitution's founding similarly does not support a categorical rule allowing warrantless home entry whenever a misdemeanor flees. Like the Court's modern precedents, the common law afforded the home strong protection from government intrusion and it generally required a warrant before a government official could enter the home. There was an oft-discussed exception: An officer, according to the common-law treatises, could enter a house to pursue a felon. But in the misdemeanor context, officers had more limited authority to intrude on a fleeing suspect's home. The commentators generally agreed that the authority turned on the circumstances; none suggested a rule authorizing warrantless entry in every misdemeanor-pursuit case. In short, the common law did not have—and does not support—a categorical rule allowing warrantless home entry when a suspected misdemeanor flees. Pp. 12–16. Vacated and remanded.

PA Supreme Court

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. KHALID M. HARTH

DECIDED: June 22, 2021

<https://www.pacourts.us/assets/opinions/Supreme/out/J-102-2020mo%20-%20104811371138377098.pdf?cb=1>

“In this appeal by allowance, we consider whether a trial court may rely upon its own unavailability as justification for denying a defendant’s motion to dismiss pursuant to the speedy trial provisions of Pa.R.Crim.P. 600, without first requiring the Commonwealth to demonstrate that it acted with due diligence in prosecuting the defendant’s case. For the reasons that follow, we find that a trial court may invoke “judicial delay” in order to deny a defendant’s Rule 600 motion to dismiss only after the Commonwealth has demonstrated that it complied with the due diligence requirements of Rule 600 at all relevant periods throughout the life of the case. Thus, we reverse the order of the Superior Court, reverse Appellant’s judgment of sentence, and discharge him.”

COMMONWEALTH OF PENNSYLVANIA v. WILLIAM HENRY COSBY, JR.

DECIDED: June 30, 2021

<https://www.pacourts.us/assets/opinions/Supreme/out/J-100-2020mo%20-%20104821740139246918.pdf?cb=1>

“In 2005, Montgomery County District Attorney Bruce Castor learned that Andrea Constand had reported that William Cosby had sexually assaulted her in 2004 at his Cheltenham residence. Along with his top deputy prosecutor and experienced detectives, District Attorney Castor thoroughly investigated Constand’s claim. In evaluating the likelihood of a successful prosecution of Cosby, the district attorney foresaw difficulties with Constand’s credibility as a witness based, in part, upon her decision not to file a complaint promptly. D.A. Castor further determined that a prosecution would be frustrated because there was no corroborating forensic evidence and because testimony from other potential claimants against Cosby likely was inadmissible under governing laws of evidence. The collective weight of these considerations led D.A. Castor to conclude that, unless Cosby confessed, “there was insufficient credible and admissible evidence upon which any charge against Mr. Cosby related to the Constand incident could be proven beyond a reasonable doubt.”¹ Seeking “some measure of justice” for Constand, D.A. Castor decided that the Commonwealth would decline to prosecute Cosby for the incident involving Constand, thereby allowing Cosby to be forced to testify in a subsequent civil action, under penalty of perjury, without the benefit of his Fifth Amendment privilege against self-incrimination. ² Unable to invoke any right not to testify in the civil proceedings, Cosby relied upon the district attorney’s declination and proceeded to provide four sworn depositions. During those depositions, Cosby made several incriminating statements. D.A. Castor’s successors did not feel bound by his decision, and decided to prosecute Cosby notwithstanding that prior undertaking. The fruits of Cosby’s reliance upon D.A. Castor’s decision—Cosby’s sworn inculpatory testimony—were then used by D.A. Castor’s

successors against Cosby at Cosby’s criminal trial. We granted allowance of appeal to determine whether D.A. Castor’s decision not to prosecute Cosby in exchange for his testimony must be enforced against the Commonwealth.”

PA Superior Court

(Reporting only cases with precedential value)

Criminal Law & Procedure

COMMONWEALTH OF PENNSYLVANIA v. CHRISTOPHER KOGER

FILED: June 5, 2021

<https://www.pacourts.us/assets/opinions/Superior/out/J-A06036-21o%20-%20104795940137030609.pdf?cb=1>

“Christopher Albert Koger (Appellant) appeals from the judgment of sentence entered in the Washington County Court of Common Pleas, following his second revocation of parole for his conviction of possession of child pornography¹ and his second revocation of probation for his conviction of criminal use of a communication facility.² Appellant challenges the sufficiency of evidence for his probation and parole revocations, arguing the Commonwealth did not establish the specific conditions of his parole and probation. This appeal returns to this panel after remand, on March 31, 2021, for supplemental information. The trial court has provided this information. We hold that because the court did not advise Appellant of the conditions of his probation and parole at the time of the initial sentencing, the court could not have found he violated these conditions. Thus, we vacate the instant revocation of probation and parole (VOP) judgment of sentence.”

COMMONWEALTH OF PENNSYLVANIA v. TAYLOR JEFFERSON

FILED: June 7, 2021

<https://www.pacourts.us/assets/opinions/Superior/out/J-E02001-20o%20-%20104797464137160073.pdf?cb=1>

“Appellant, Taylor Jefferson, appeals from the judgment of sentence of 42-84 months’ incarceration, imposed following his conviction of firearms not to be carried without a license.¹ Herein, Appellant challenges the trial court’s decision to deny his motion to suppress the seized firearm under the Fourth Amendment to the United States Constitution and, alternatively, under Article I, Section 8 of the Pennsylvania Constitution. He contends that the police lacked reasonable suspicion to stop his vehicle based solely on the inference that the registered owner of the vehicle, who had an outstanding warrant, would be found in the vehicle. After careful review, we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. JOSEPH AULISIO

FILED: June 8, 2021

<https://www.pacourts.us/assets/opinions/Superior/out/J-A07025-21o%20-%20104799332137304819.pdf?cb=1>

“Appellant Joseph Gerard Aulisio appeals from the Judgment of Sentence imposed at a resentencing hearing following the U.S. Supreme Court decisions in Miller and Montgomery. 1 He challenges the court’s imposition of two consecutive terms of incarceration of thirty years to life, arguing that the aggregate minimum term of sixty years is a de facto life sentence. After careful review, and pursuant to Commonwealth v. Foust, 180 A.3d 416 (Pa. Super. 2018), we affirm.”

COMMONWEALTH OF PENNSYLVANIA v. BRY’DRICK DA’MICHAEL WRIGHT

FILED: June 9, 2021

<https://www.pacourts.us/assets/opinions/Superior/out/J-A07041-21o%20-%20104800899137429508.pdf?cb=1>

“Appellant, Bry’Drick Da’Michael Wright, appeals from the judgment of sentence of 42 to 84 months’ incarceration entered in the Court of Common Pleas of Dauphin County after a jury found him guilty of Possession With Intent to Deliver (“PWID”), Possession of Marijuana—Small Amount Personal Use, and Use or Possession of Drug Paraphernalia.1 He challenges the denial of his motion to suppress a state parole officer’s warrantless vehicle search, the sufficiency of evidence offered to prove his constructive possession of contraband recovered from the vehicle, and the admission of incriminating text messages retrieved from his cell phone. We affirm.”

COMMONWEALTH OF PENNSYLVANIA v. CHARLES E. WILLIAMS

FILED: June 15, 2021

<https://www.pacourts.us/assets/opinions/Superior/out/J-S54032-20o%20-%20104806896137922914.pdf?cb=1>

“Charles E. Williams (“Williams”) appeals from the judgment of sentence imposed following his conviction of first-degree murder, criminal attempt, and possession of firearm prohibited.1 We affirm.”

COMMONWEALTH OF PENNSYLVANIA v. AARON CHARLES MARTIN

FILED: June 23, 2021

<https://www.pacourts.us/assets/opinions/Superior/out/J-A06007-21o%20-%20104814184138588537.pdf?cb=1>

“Appellant, Aaron Charles Martin, appeals from the judgment of sentence of 8-16 months’ imprisonment and 2 years’ consecutive probation, imposed after he was found guilty of carrying a firearm without a license¹ following a stipulated, non-jury trial. Appellant contends that the trial court erred in denying his motion to suppress the seized firearm, arguing that the seizure was the poisonous fruit of observations made by police after an unconstitutional entry into the hotel room where he was found. Alternatively, Appellant maintains that, even if observed from a lawful vantage point, the police did not possess reasonable suspicion to enter the room and search him for a firearm. After careful review, we reverse Appellant’s conviction and vacate his judgment of sentence.”

COMMONWEALTH OF PENNSYLVANIA v. ANDREW THOMAS ALEXANDER

Filed: June 29, 2021

<https://www.pacourts.us/assets/opinions/Superior/out/J-S17041-21o%20-%20104819877139092537.pdf?cb=1>

“Andrew Thomas Alexander appeals the judgment of sentence entered by the Court of Common Pleas of Lycoming County (trial court) following a non-jury trial in which he was found guilty of one count of obscenity in violation of 18 Pa.C.S. § 5903(a)(3)(i) based on sexually explicit text messages he sent to an unidentified recipient. Alexander now contends that the evidence of obscenity was legally insufficient, and that his text messages are statutorily and constitutionally protected communications. Because his texts do not fit the statutory definition of obscene material, we reverse the conviction and vacate the judgment of sentence.”

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