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## Criminal Justice Update - October 2022

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## Criminal Justice Update - October 2022

### 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 (no updates this month)
  - PA Supreme Court: Criminal Law & Procedure
  - PA Superior Court: Criminal Law & Procedure

### Keywords

Criminal Justice Update, Adams County Bar Foundation, ACBF

### 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

*October 2022*

Keep up to date with developments in criminal law, criminal procedure, and victims' rights 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

Senate Bill 118 – Adding Sex Traffickers to Megan's Law Registry

Final Passage in the House, October 24, 2022

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&sind=0&body=S&type=B&bn=118>

Senate Bill 118 would amend Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes to "classify the following convictions relating to human trafficking as tiered sexual offenses subject to registration:

- 18 Pa.C.S. §3011(a) Trafficking in individuals - Tier I Sexual Offense, 15 years registration
- 18 Pa.C.S. §3012 Sexual servitude - Tier II Offense, 25 year registration
- 18 Pa.C.S. §3013 Patronizing a victim of sexual servitude – Tier 1 Sexual Offense, 15 years registration

Tier classifications are based upon the grading of the offenses. Those trafficking offenses that are second-degree felonies will be considered Tier I Sexual Offenses and first-degree felonies will be classified as Tier II Sexual Offenses.

House Bill 2525 – Increasing Crime Victims' Access to Criminal History Information

Final Passage in the House, October 26, 2022

<https://www.legis.state.pa.us/cfdocs/billinfo/billinfo.cfm?year=2021&sind=0&body=H&type=B&bn=2525>

House Bill 2525 would amend Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes to “create a process by which crime victims can request dissemination of criminal history investigative information which is relevant to a civil action arising out of the crime, provided the victim swears under penalty of law that the information is material and necessary to the civil action. The information can then only be used for the civil lawsuit; any harassing, intimidating or threatening use of the information would be punishable as a crime. Meanwhile, law enforcement would be able to share the relevant information only if doing so does not threaten a person or public safety, adversely affect a current investigation, or will cause substantial emotional distress to a victim of child abuse, domestic abuse, or sexual abuse. The civil defendants will have access to the same information for use in the civil case, as the crime victim will be obligated to share that information as part of the civil lawsuit with all parties.”

## Updates from the Courts

### U.S. Supreme Court

*\*No new updates this month*

### PA Supreme Court

#### **SCOTT v. PENNSYLVANIA BOARD OF PROBATION AND PAROLE**

**DECIDED: October 19, 2022**

Majority Opinion (Justice Donohue)

<https://www.pacourts.us/assets/opinions/Supreme/out/J-30-2022mo%20-%20105310550201283796.pdf?cb=1>

“The four named appellants were convicted of what is today codified as second degree murder and as a result are ineligible for parole per 61 Pa.C.S. § 6137(a)(1). (“The board may parole ... any offender to whom the power to parole is granted to the board by this chapter, except an offender condemned to death or serving life imprisonment.”). Appellants filed a petition for review in the nature of a complaint in the Commonwealth Court, seeking a declaration that Section 6137(a)(1) is unconstitutional as applied on the grounds that depriving Appellants of any opportunity for parole violates the constitutions of this Commonwealth and the United States. We granted review to determine whether this suit was within the Commonwealth Court’s original jurisdiction to hear suits against government agencies like the Board of Probation and Parole (“Board”) or whether the petition fell within the statutory exception for petitions in the nature of post-conviction relief. We affirm the Commonwealth Court’s holding that it lacked jurisdiction. While some claims challenging parole eligibility may be heard in the Commonwealth Court, these claims, which require the declaration of a new constitutional holding that life sentences without the possibility of parole (“LWOP”) sentences are unconstitutional, are encompassed by the statutory exception for petitions in the nature of post-conviction relief. We therefore affirm.”

Dissenting Opinion (Justice Wecht)

<https://www.pacourts.us/assets/opinions/Supreme/out/J-30-2022do%20-%20105310550201284349.pdf?cb=1>

## COMMONWEALTH OF PENNSYLVANIA v. NATHANIAL RAY PRICE

**DECIDED: October 19, 2022**

Majority Opinion (Justice Donohue)

<https://www.pacourts.us/assets/opinions/Supreme/out/J-27-2022mo%20-%20105310597201287119.pdf?cb=1>

“We granted allocatur review in this case to determine whether the Commonwealth waived reliance on the doctrine of inevitable discovery where its Concise Statement of Matters Complained of on Appeal filed pursuant to Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure asserted only that the trial court erred in granting a motion to suppress filed by Appellant Nathaniel Ray Price (“Price”) because the affidavit of probable cause at issue failed to assert probable cause sufficient for the issuance of a warrant. In particular, we must address whether, under these circumstances, the doctrine of inevitable discovery constitutes a “subsidiary issue” to the issue of the sufficiency of probable cause under Pa.R.A.P. 1925(b)(4)(v) and was thus not waived by operation of Pa.R.A.P. 1925(b)(4)(vii). Concluding that it was not a subsidiary issue and thus not preserved for review by the Superior Court, we vacate that court’s order.”

Dissenting Opinion (Justice Mundy)

<https://www.pacourts.us/assets/opinions/Supreme/out/J-27-2022do%20-%20105310597201287073.pdf?cb=1>

### PA Superior Court

*(Reporting only cases with precedential value)*

### Criminal Law & Procedure

## COMMONWEALTH OF PENNSYLVANIA v. RICHARD ALEKSANDR MOROZ

**FILED: October 4, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-E01003-22o%20-%20105295343200006772.pdf?cb=1>

“Appellant, the Commonwealth of Pennsylvania, appeals from the judgment of sentence entered in the Centre County Court of Common Pleas, following the guilty pleas of Appellee, Richard Aleksandr Moroz, to driving under the influence—high rate of alcohol (“DUI”), careless driving, and general lighting requirements. We vacate the judgment of sentence and remand the matter for further proceedings.”

## COMMONWEALTH OF PENNSYLVANIA v. JONATHAN RICHARDS

**FILED: October 4, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-E01004-22o%20-%20105295035199968809.pdf?cb=1>

“Appellant, Jonathan Richards, appeals from the judgment of sentence entered in the Bucks County Court of Common Pleas, following his guilty plea to two counts of driving under the influence (“DUI”) and related Motor Vehicle Code violations. We affirm.”

## **SHANNON CHILUTTI AND KEITH CHILUTTI v. UBER TECHNOLOGIES INC.**

**FILED: October 12, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A03009-22o%20-%20105303490200746756.pdf?cb=1>

“This appeal arises out of a motor vehicle accident that occurred on March 20, 2019. On that date, Shannon Chilutti, who is wheelchair bound, was injured while riding in a car provided by the transportation service company, Uber Technologies, Inc. (Uber), on the way home from a medical appointment in Langhorne, Pennsylvania.<sup>1</sup> Central to this case is whether a party should be deprived of their constitutional right to a jury trial when they purportedly enter into an arbitration agreement via a set of hyperlinked “terms and conditions” on a website or smartphone application that they never clicked on, viewed, or read.

This Commonwealth guarantees its citizens a constitutional right to a jury trial: “Trial by jury shall be as heretofore, and the right thereof remain inviolate.” PA CONST. art. 1, § 6 (emphasis added). “Inviolable” is defined as “[f]ree from violation; not broken, infringed, or impaired.” Black’s Law Dictionary, “INVIOLATE” (11th ed. 2019). Since 1847, the Pennsylvania Supreme Court has safeguarded this constitutional protection by recognizing that a victim who has suffered personal injuries is guaranteed the right to a jury trial: The bill of rights, which is forever excluded from legislative invasion, declares that the trial by jury shall remain as heretofore, and the right thereof be inviolate; that all courts shall be open, and that every man shall have redress by the due course of law, and that no man can be deprived of his right, except by the judgment of his peers or the law of the land. *Brown v. Hummel*, 6 Pa. 86, 90 (1847).

As will be discussed below, when Appellants filed the negligence lawsuit, Uber, Raiser-PA LLC, Raiser, LLC, (collectively, Uber Appellees) moved to compel arbitration, asserting that the couple’s conduct on the company’s website and application, when they registered for the ridesharing service, signified that they agreed to be bound by the mandatory arbitration provision found in the hyperlinked terms and conditions, thereby relinquishing their right to a jury trial. The trial court granted the petition, determining the parties had not been forced out of court. In doing so, the court failed to consider that important and protected constitutional right. Because we conclude that Appellants are legally entitled to relief, we reverse the trial court’s order granting Uber Appellees’ petition. We further opine that Appellants demonstrated there was a lack of a valid agreement to arbitrate; therefore, they are entitled to invoke their constitutional right to a jury trial. Accordingly, we reverse and remand for further proceedings.”

## **COMMONWEALTH OF PENNSYLVANIA v. FERDINAND FITZGERALD**

**FILED: October 13, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-A15002-22o%20-%20105305245200880462.pdf?cb=1>

“The Commonwealth of Pennsylvania (“Commonwealth”) appeals from the May 6, 2021 order dismissing the charges against Ferdinand Fitzgerald (“Appellee”). After careful review, we reverse and remand for further proceedings.”

## **COMMONWEALTH OF PENNSYLVANIA v. TREMAINE DIVINE JACKSON**

**FILED: October 14, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S23040-22o%20-%20105306515200981854.pdf?cb=1>

“Appellant, Tremaine Divine Jamison, appeals from the judgment of sentence of 18 to 40 years’ incarceration, imposed after he pled guilty to third degree murder. For the reasons set forth below, we affirm.”

## **COMMONWEALTH OF PENNSYLVANIA v. MARC W. NUZZO**

**FILED: October 18, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S07011-22o%20-%20105310581201285678.pdf?cb=1>

“Appellant, Marc W. Nuzzo, appeals from the May 20, 2021 order denying his request to seal an amended petition seeking an order directing an evaluation of his competency to stand trial. In addition, the challenged order designated Appellant’s competency petition as a public document, subject to disclosure except for certain communications related to Appellant’s prior medical treatment and diagnosis. We vacate the May 20, 2021 order and remand this case for further proceedings in accordance with this opinion.”

## **COMMONWEALTH OF PENNSYLVANIA v. DAVID KENNETH ARNOLD**

**FILED: October 20, 2022**

<https://www.pacourts.us/assets/opinions/Superior/out/J-S25014-22o%20-%20105313272201534362.pdf?cb=1>

“Appellant, David Kenneth Arnold, appeals from the judgment of sentence of an aggregate term of 2-4 years’ incarceration, imposed after a jury found him guilty under two provisions of the contraband

statute involving separate acts. Appellant challenges the constitutionality of the Contraband Offense, alleging that its ostensible lack of a mens rea element violates his due process rights. Appellant also challenges the weight and sufficiency of the evidence supporting the Possession Offense. After careful review, we vacate Appellant's judgment of sentence and remand for a new trial with respect to the Contraband Offense. Otherwise, we affirm with respect to Appellant's conviction for the Possession Offense."

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