



The Judiciary Review

Report from the Senate Judiciary Committee (D)

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June 2002

JOINT AND SEVERAL LIABILITY REVISIONS ADOPTED

The Senate adopted Senate Bill 1089—a partial repeal of joint and several liability.

The bill shifts to a system of proportionate liability, making defendants responsible only for their proportionate share of damages with certain exceptions. In a civil action for negligence or strict liability with multiple defendants, each defendant is responsible for the amount of damages proportionate to that defendant's share of the liability. Any defendant found to be greater than 60% liable, may be held jointly and severally liable for the total amount of damages. However, such a defendant may seek contribution from the remaining defendants under UCATA.

Joint and several liability continues to be applied in the following cases regardless of the amount of liability of any defendant:

- **Dram Shop**—Actions involving a violation of section 497 of the Liquor Code by a licensee.
- **Toxic Tort**—Actions based on release or the threatened release of a hazardous substance under section 702 of the Hazardous Sites Cleanup Act.
- **Intentional Torts.**
- **Intentional Misrepresentation.**

The Senate Amendment, adopted June 12, deleted provisions described as the “empty chair.” Subject to existing rules of evidence, the jury may be provided with a release or settlement entered by an

injured victim with a non-party for the purpose of determining proportionate liability. However, the jury is not required to assign a specific amount of liability or damages to a released non-party. The liability of employers may not be considered as they are immunized under the Workers' Compensation Act.

The amendments to the joint and several provisions are effective sixty (60) days after enactment and are applicable to causes of action that accrue after the effective date.

Additionally, the bill revises the DNA Detection of Sexual and Violent Offenders Act by consolidating the act in Title 42 (Judiciary and Judicial Procedure) and further defining felony sex offense and “other specified offenses.” The bill adds the following offenses requiring a person convicted to provide a DNA sample to the Pennsylvania State Police DNA Databank: incest, prostitution offenses, sexual exploitation of children, kidnapping, luring a child into a motor vehicle, burglary, robbery, unlawful contact or communication with a minor and obscene materials where the underlying offenses constitute a felony.

Incarcerated offenders convicted prior to the effective date of Act 14, are required to submit a DNA sample and may not seek expungement from the DNA database on the grounds that the conviction occurred prior to the effective date of the act.

Current Status: Signed by Governor—Act 57 of 2002

BILLS RECENTLY REPORTED BY THE SENATE JUDICIARY COMMITTEE

■ **Senate Bill No. 1323** **Printer's No. 1593**

The legislation provides for the place of confinement for criminal sentences. A person convicted and sentenced to a maximum term of confinement of less than two years must be confined in a county prison. However, the legislation provides that a person sentenced to a maximum term of total confinement of two years or more be confined in a state correctional institution and provides for automatic aggregation of consecutive sentences. The legislation retains a county incarceration option for those with a maximum term between two and five years when the county prison board, with the written consent of the county governing authority, or the mayor of a city of the first class, must certify that available capacity exists in the county jail or prison for such prisoners. The Department of Corrections is required to develop guidelines for use by the counties in determining available capacity.

Current Status:
Senate Appropriations Committee

■ **House Bill No. 1433** **Printer's No. 2067**

The legislation places the Commonwealth and its political subdivisions sixth on the list for the payment of claims when insufficient funds exist to satisfy all debts. The Commonwealth and political sub-

divisions will be above the general category "all other claims" that are not specifically provided for in the list of preferred claims.

Current Status:

Senate Calendar—Second Consideration

■ Senate Bill No. 1210
Printer's No. 2100

The bill increases the grading and license suspension for certain serious motor vehicle offenses that occur in construction zones. Homicide by vehicle is increased to a felony of the second degree, homicide by vehicle while driving under the influence and aggravated assault by motor vehicle while driving under the influence are increased to a felony of the first degree. Last, the bill adds aggravated assault by motor vehicle providing that any person who negligently causes serious bodily injury to another commits a felony of the third degree. The offense is increased to a felony of the second degree when it occurs in a construction zone. A one-year period of license suspension for Aggravated Assault by Motor Vehicle is provided. The period of license suspension increases to two years for the offenses of homicide by vehicle, homicide by vehicle while DUI, aggravated assault by vehicle while DUI, and aggravated assault by vehicle when those offenses occur in a construction zone.

Current Status:

Senate Calendar—Third Consideration

■ Senate Bill No. 1452
Printer's No. 2040

The bill adds two Judges to the Courts of Common Pleas for Bucks County, one for Mercer County and one for Northampton County. The new judicial positions would be filled by election at the 2003 Municipal Election and will commence on January 5, 2004.

Current Status:

Senate Appropriations Committee

■ House Bill No. 582
Printer's No. 3061

The bill provides that a person commits the offense of criminal

mischievous if he intentionally defaces or otherwise damages tangible public property or the property of another with graffiti by using aerosol spray paint, broad-tipped indelible marker or a similar marking device. The term "graffiti" is amended to include the unauthorized inscription, word, figure, mark or design which is written, marked, etched, scratched, drawn or painted. Last, a person commits institutional vandalism if he knowingly vandalizes, defaces or otherwise damages any State or local government building or vehicle.

Current Status:

Senate Calendar—Third Consideration

■ House Bill No. 2445
Printer's No. 3888

The legislation makes it a felony of the third degree to kill, maim or disfigure an assistance dog for the physically impaired. Last, a person convicted of this offense is required to make reparation for veterinary costs and the costs of obtaining and training a replacement dog if necessary.

Current Status:

Senate Calendar—Third Consideration

SENATE BILL ON CHILDHOOD SEXUAL ABUSE RETURNS FROM HOUSE FOR CONCURRENCE VOTE

■ Senate Bill No. 212
Printer's No. 2066

The legislation provides an additional twelve year statute of limitations after reaching the age of eighteen for a victim to institute a civil action for damages resulting from childhood sexual abuse that was the result of forcible compulsion or threat of forcible compulsion. Childhood sexual abuse is defined as sexual intercourse, deviate sexual intercourse and indecent contact. Further a twelve year statute of limitation is added for the criminal prosecution of the following offenses: rape, statutory sexual assault, involuntary deviate sexual intercourse, sexual assault, aggravated indecent assault, incest, and sexual abuse of children. Finally, this measure allows for a magisterial seal to be a facsimile or reprinted in place of the original.

Current Status:

Senate Rules Committee



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