

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 449 Session of 2017

INTRODUCED BY BARTOLOTTA, TARTAGLIONE, VULAKOVICH, BREWSTER, YUDICHAK, RAFFERTY, GORDNER, VOGEL, COSTA, HUGHES, WARD, BROWNE, KILLION, MENSCH, YAW AND BOSCOLA, FEBRUARY 27, 2017

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JANUARY 23, 2018

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, in assault, further providing for
3 probable cause arrests in domestic violence cases.

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

6 Section 1. Section 2711(c)(2) of Title 18 of the <--
7 Pennsylvania Consolidated Statutes is amended and the section is
8 amended by adding a subsection to read:

9 SECTION 1. SECTION 2711(A) AND (C)(2) OF TITLE 18 OF THE <--
10 PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED AND THE SECTION
11 IS AMENDED BY ADDING SUBSECTIONS TO READ:

12 § 2711. Probable cause arrests in domestic violence cases.

13 (A) GENERAL RULE.--A POLICE OFFICER SHALL HAVE THE SAME <--
14 RIGHT OF ARREST WITHOUT A WARRANT AS IN A FELONY WHENEVER HE HAS
15 PROBABLE CAUSE TO BELIEVE THE DEFENDANT HAS VIOLATED SECTION
16 2504 (RELATING TO INVOLUNTARY MANSLAUGHTER), 2701 (RELATING TO
17 SIMPLE ASSAULT), 2702(A)(3), (4) AND (5) (RELATING TO AGGRAVATED

1 ASSAULT), 2705 (RELATING TO RECKLESSLY ENDANGERING ANOTHER
2 PERSON), 2706 (RELATING TO TERRORISTIC THREATS) [OR] 2709.1
3 (RELATING TO STALKING) OR 2718 (RELATING TO STRANGULATION)
4 AGAINST A FAMILY OR HOUSEHOLD MEMBER ALTHOUGH THE OFFENSE DID
5 NOT TAKE PLACE IN THE PRESENCE OF THE POLICE OFFICER. A POLICE
6 OFFICER MAY NOT ARREST A PERSON PURSUANT TO THIS SECTION WITHOUT
7 FIRST OBSERVING RECENT PHYSICAL INJURY TO THE VICTIM OR OTHER
8 CORROBORATIVE EVIDENCE. FOR THE PURPOSES OF THIS SUBSECTION, THE
9 TERM "FAMILY OR HOUSEHOLD MEMBER" HAS THE MEANING GIVEN THAT
10 TERM IN 23 PA.C.S. § 6102 (RELATING TO DEFINITIONS).

11 * * *

12 (c) Bail.--

13 * * *

14 (2) In determining whether to admit the defendant to
15 bail, the issuing authority shall consider whether the
16 defendant poses a threat of danger to the victim ~~and may use~~ <--
17 ~~a risk assessment tool adopted under subsection (e).~~ IN <--
18 MAKING A DETERMINATION WHETHER THE DEFENDANT POSES A THREAT
19 OF DANGER TO THE VICTIM IN CASES UNDER THIS SECTION, THE
20 ISSUING AUTHORITY MAY USE A PRETRIAL RISK ASSESSMENT TOOL AS
21 SET FORTH IN SUBSECTION (C.1). If the issuing authority makes
22 such a determination, it shall require as a condition of bail
23 that the defendant shall refrain from entering the residence
24 or household of the victim and the victim's place of
25 employment and shall refrain from committing any further
26 criminal conduct against the victim and shall so notify the
27 defendant thereof at the time the defendant is admitted to
28 bail. Such condition shall expire at the time of the
29 preliminary hearing or upon the entry or the denial of the
30 protection of abuse order by the court, whichever occurs

1 first. A violation of this condition may be punishable by the
2 revocation of any form of pretrial release or the forfeiture
3 of bail and the issuance of a bench warrant for the
4 defendant's arrest or remanding him to custody or a
5 modification of the terms of the bail. The defendant shall be
6 provided a hearing on this matter.

7 (C.1) PRETRIAL RISK ASSESSMENT TOOL.--THE PRESIDENT JUDGE OF <--
8 A COURT OF COMMON PLEAS MAY ADOPT A PRETRIAL RISK ASSESSMENT
9 TOOL FOR USE BY THE COURT OF COMMON PLEAS OR BY THE PHILADELPHIA
10 MUNICIPAL COURT, THE PITTSBURGH MAGISTRATES COURT OR MAGISTERIAL
11 DISTRICT JUDGES WHEN ACTING AS THE ISSUING AUTHORITY IN CASES
12 UNDER THIS SECTION. THE ISSUING AUTHORITY MAY USE THE PRETRIAL
13 RISK ASSESSMENT TOOL TO AID IN DETERMINING WHETHER THE DEFENDANT
14 POSES A THREAT OF DANGER TO THE VICTIM. HOWEVER, THE PRETRIAL
15 RISK ASSESSMENT TOOL MAY NOT BE THE ONLY MEANS OF DETERMINING
16 WHETHER TO ADMIT THE DEFENDANT TO BAIL. NOTHING IN THIS
17 SUBSECTION SHALL BE CONSTRUED TO CONFLICT WITH THE ISSUING
18 AUTHORITY'S ABILITY TO DETERMINE WHETHER TO ADMIT THE DEFENDANT
19 TO BAIL UNDER THE PENNSYLVANIA RULES OF CRIMINAL PROCEDURE.

20 (C.2) PENNSYLVANIA COMMISSION ON SENTENCING.--THE FOLLOWING
21 APPLY TO THE PENNSYLVANIA COMMISSION ON SENTENCING:

22 (1) THE COMMISSION SHALL DEVELOP A MODEL PRETRIAL RISK
23 ASSESSMENT TOOL WHICH MAY BE USED BY THE ISSUING AUTHORITY IN
24 CASES UNDER THIS SECTION, AS SET FORTH IN SUBSECTION (C.1).

25 (2) SUBJECT TO ANY INCONSISTENT RULE OF COURT, IN ORDER
26 TO ENSURE THAT THE MODEL PRETRIAL RISK ASSESSMENT TOOL OR
27 OTHER PRETRIAL RISK ASSESSMENT TOOL ADOPTED UNDER THIS
28 SECTION IS EFFECTIVE, ACCURATE AND FREE FROM RACIAL OR
29 ECONOMIC BIAS, PRIOR TO THE ADOPTION OF THE TOOL, THE
30 COMMISSION SHALL PUBLISH A REPORT OF VALIDATION USING

1 INFORMATION FROM CASES FROM THE JUDICIAL DISTRICT WHERE THE
2 TOOL IS TO BE UTILIZED. THE REPORT SHALL BE UPDATED EVERY TWO
3 YEARS.

4 * * *

5 ~~(c) Risk assessment tool. A court of common pleas may adopt <--~~
6 ~~a bail risk assessment tool to aid in evaluating the relative~~
7 ~~risk that a defendant will assault the defendant's alleged~~
8 ~~victim while on bail.~~

9 Section 2. This act shall take effect ~~in 60 days.~~ AS <--
10 FOLLOWS:

11 (1) THE ADDITION OF 18 PA.C.S. § 2711(C.2) (2) SHALL TAKE
12 EFFECT IN TWO YEARS.

13 (2) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT IN 60
14 DAYS.