SCOPE:
County Mental Health/Mental Retardation Administrators
Base Service Unit Directors
Community Home Directors
Family Living Home Agency Directors
Adult Training Facility Directors
Vocational Facility Directors
State Center and Mental Retardation Unit Directors
Non-State Operated Intermediate Care Facility for the Mentally Retarded (ICF/MR) Directors

PURPOSE:
The purpose of this bulletin is to distribute Act 26 of 1997.

DISCUSSION:
Act 26 of 1997 was enacted on June 25, 1997, with an effective date of sixty days from its enactment. A copy of the new legislation is attached.

The most significant relevance of Act 26 to persons in the mental retardation field is that Act 26 amends Act 28 of 1995 by adding "intermediate care facility for the mentally retarded" to the definition of "caretaker" as set forth in the Act. This includes State Centers and Mental Retardation Units as well as Non-State Operated Intermediate Care Facilities for the Mentally Retarded.

Attachment

REFER COMMENTS AND QUESTIONS TO:
Appropriate Regional Mental Retardation Program Manager
AN ACT

1 Amending-Title-18-(Crimes-and-Offenses)-of-the-Pennsylvania <--
2 Consolidated-Statutes,-providing-a-penalty-for-possession-of
3 a-controlled-substance-by-an-inmate.
4 AMENDING TITLE 18 (CRIMES AND OFFENSES) OF THE PENNSYLVANIA <--
5 CONSOLIDATED STATUTES, FURTHER PROVIDING FOR THE DEFINITION
6 OF "CARETAKER," FOR THEFT OF TRADE SECRETS AND FOR
7 CONTRABAND; AND PROVIDING FOR DRUG-FREE SCHOOL ZONES.

The General Assembly of the Commonwealth of Pennsylvania

hereby enacts as follows:

10 Section-1.--Section-5123{a:2}-of-Title-18-of-the-Pennsylvania <--
11 Consolidated-Statutes-is-amended-to-read:

12 SECTION 1. SECTION 2713(F) OF TITLE 18 OF THE PENNSYLVANIA <--
13 CONSOLIDATED STATUTES IS AMENDED TO READ:

14 § 2713. NEGLECT OF CARE-DEPENDENT PERSON.

15 * * *

16 (F) DEFINITIONS.--AS USED IN THIS SECTION, THE FOLLOWING
17 WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
18 SUBSECTION:

19 "CARE-DEPENDENT PERSON." ANY ADULT WHO, DUE TO PHYSICAL OR
"CARETAKER." ANY PERSON WHO:

(1) IS AN OWNER, OPERATOR, MANAGER OR EMPLOYEE OF A
NURSING HOME, PERSONAL CARE HOME, DOMICILIARY CARE HOME,
COMMUNITY RESIDENTIAL FACILITY, INTERMEDIATE CARE FACILITY
FOR THE MENTALLY RETARDED, ADULT DAILY LIVING CENTER, HOME
HEALTH AGENCY OR HOME HEALTH SERVICE PROVIDER WHETHER
LICENSED OR UNLICENSED;

(2) PROVIDES CARE TO A CARE-DEPENDENT PERSON IN THE
SETTING DESCRIBED IN PARAGRAPH (1); OR

(3) HAS AN OBLIGATION TO CARE FOR A CARE-DEPENDENT
PERSON FOR MONETARY CONSIDERATION IN THE SETTINGS DESCRIBED
IN PARAGRAPH (1) OR IN THE CARE-DEPENDENT PERSON'S HOME.

"PERSON." A NATURAL PERSON, CORPORATION, PARTNERSHIP,
UNINCORPORATED ASSOCIATION OR OTHER BUSINESS ENTITY.

SECTION 2. SECTION 3930(E) OF TITLE 18, AMENDED OCTOBER 16,
1996 (P.L.715, NO.128), IS AMENDED TO READ:
§ 3930. THEFT OF TRADE SECRETS.

* * *

(E) DEFINITIONS.—AS USED IN THIS SECTION THE FOLLOWING
WORDS AND PHRASES SHALL HAVE THE MEANINGS GIVEN TO THEM IN THIS
SUBSECTION:

"ARTICLE." ANY OBJECT, MATERIAL, DEVICE OR SUBSTANCE OR COPY
THEREOF, INCLUDING ANY WRITING, RECORD, RECORDING, DRAWING,
DESCRIPTION, SAMPLE, SPECIMEN, PROTOTYPE, MODEL, PHOTOGRAPH,
MICROORGANISM, BLUEPRINT OR MAP.

"COPY." ANY FACSIMILE, REPLICA, PHOTOGRAPH OR REPRODUCTION
OF, AN ARTICLE, OR ANY NOTE, DRAWING, SKETCH, OR DESCRIPTION
"REPRESENTING" "DESCRIPTING, DEPICTING, CONTAINING,
CONSTITUTING, REFLECTING OR RECORDING.
"TRADE SECRET." THE WHOLE OR ANY PORTION OR PHASE OF ANY
SCIENTIFIC OR TECHNICAL INFORMATION, DESIGN, PROCESS, PROCEDURE,
FORMULA OR IMPROVEMENT [OR CUSTOMER OR SALES INFORMATION OR ANY
OTHER PRIVILEGED OR CONFIDENTIAL INFORMATION] WHICH IS OF VALUE
AND HAS BEEN SPECIFICALLY IDENTIFIED BY THE OWNER AS OF A
CONFIDENTIAL CHARACTER, AND WHICH HAS NOT BEEN PUBLISHED OR
OTHERWISE BECOME A MATTER OF GENERAL PUBLIC KNOWLEDGE. THERE
SHALL BE A REBUTTABLE PRESUMPTION THAT SCIENTIFIC OR TECHNICAL
INFORMATION [OR CUSTOMER OR SALES INFORMATION OR ANY OTHER
PRIVILEGED OR CONFIDENTIAL INFORMATION] HAS NOT BEEN PUBLISHED
OR OTHERWISE BECOME A MATTER OF GENERAL PUBLIC KNOWLEDGE WHEN
THE OWNER THEREOF TAKES MEASURES TO PREVENT IT FROM BECOMING
AVAILABLE TO PERSONS OTHER THAN THOSE SELECTED BY HIM TO HAVE
ACCESS THERETO FOR LIMITED PURPOSES.

SECTION 3. SECTION 5123(A.2) OF TITLE 18 IS AMENDED TO READ:

§ 5123. Contraband.

***

(a.2) Possession of controlled substance contraband by
inmate prohibited.--A prisoner or inmate commits a [misdemeanor
of the first degree] felony of the second degree if he
unlawfully has in his possession or under his control any
controlled substance in violation of section 13(a)(16) of The
Controlled Substance, Drug, Device and Cosmetic Act. For
purposes of this subsection, no amount shall be deemed de
minimis.

***

SECTION 4. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ:

19970S0135B1135
§ 6317. DRUG-FREE SCHOOL ZONES.

(A) GENERAL RULE. -- A PERSON 18 YEARS OF AGE OR OLDER WHO IS

CONVICTED IN ANY COURT OF THIS COMMONWEALTH OF A VIOLATION OF

SECTION 13(A)(14) OR (30) OF THE ACT OF APRIL 14, 1972 (P.L.233,

NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND

COSMETIC ACT, SHALL, IF THE DELIVERY OR POSSESSION WITH INTENT

TO DELIVER OF THE CONTROLLED SUBSTANCE OCCURRED WITHIN 1,000

FEET OF THE REAL PROPERTY ON WHICH IS LOCATED A PUBLIC, PRIVATE

OR PAROCHIAL SCHOOL OR A COLLEGE OR UNIVERSITY OR WITHIN 250

FEET OF THE REAL PROPERTY ON WHICH IS LOCATED A RECREATION

CENTER OR PLAYGROUND OR ON A SCHOOL BUS, BE SENTENCED TO A

MINIMUM SENTENCE OF AT LEAST TWO YEARS OF TOTAL CONFINEMENT,

NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, THE

CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT OR OTHER

STATUTE TO THE CONTRARY. THE MAXIMUM TERM OF IMPRISONMENT SHALL

BE FOUR YEARS FOR ANY OFFENSE:

(1) SUBJECT TO THIS SECTION; AND

(2) FOR WHICH THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND

COSMETIC ACT PROVIDES FOR A MAXIMUM TERM OF IMPRISONMENT OF

LESS THAN FOUR YEARS.

IF THE SENTENCING COURT FINDS THAT THE DELIVERY OR POSSESSION

WITH INTENT TO DELIVER WAS TO AN INDIVIDUAL UNDER 18 YEARS OF

AGE, THEN THIS SECTION SHALL NOT BE APPLICABLE, AND THE OFFENSE

SHALL BE SUBJECT TO SECTION 6314 (RELATING TO SENTENCING AND

PENALTIES FOR TRAFFICKING DRUGS TO MINORS).

(B) PROOF AT SENTENCING. -- THE PROVISIONS OF THIS SECTION

SHALL NOT BE AN ELEMENT OF THE CRIME. NOTICE OF THE

APPLICABILITY OF THIS SECTION TO THE DEFENDANT SHALL NOT BE

REQUIRED PRIOR TO CONVICTION, BUT REASONABLE NOTICE OF THE

COMMONWEALTH'S INTENTION TO PROCEED UNDER THIS SECTION SHALL BE
Provided after conviction and before sentencing, the applicability of this section shall be determined at sentencing. The court shall consider evidence presented at trial, shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence and shall determine by a preponderance of the evidence if this section is applicable.

(C) Authority of court in sentencing.--There shall be no authority for a court to impose on a defendant to which this section is applicable a lesser sentence than provided for in subsection (A), to place the defendant on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section. Disposition under section 17 or 18 of the controlled substance, drug, device and cosmetic act shall not be available to a defendant to which this section applies.

(D) Appeal by Commonwealth.--If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Section 5. The addition of 18 Pa.C.S. § 6317 shall apply to all offenses occurring on or after the effective date of this act.

Section 26. This act shall take effect in 60 days.