

AMENDMENTS TO HOUSE BILL NO. 1601

Sponsor: REPRESENTATIVE MARSICO

Printer's No. 2408

1 Amend Bill, page 1, line 3, by inserting after "Statutes,"
2 in minors, further providing for sentencing and penalties for
3 trafficking drugs to minors and for drug-free school zones;

4 Amend Bill, page 1, lines 14 and 15, by striking out all of
5 said lines and inserting

6 Section 1. Sections 6314, 6317 and 7508(a), (b) and (d) of
7 Title 18 of the Pennsylvania Consolidated Statutes are amended
8 to read:

9 § 6314. Sentencing and penalties for trafficking drugs to
10 minors.

11 (a) General rule.--A person over 18 years of age who is
12 convicted in any court of this Commonwealth of a violation of
13 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,
14 No.64), known as The Controlled Substance, Drug, Device and
15 Cosmetic Act, shall, if the delivery or possession with intent
16 to deliver of the controlled substance was to a minor, be
17 sentenced to a minimum sentence of at least one year total
18 confinement, notwithstanding any other provision of this title
19 or other statute to the contrary.

20 (b) Additional penalties.--In addition to the mandatory
21 minimum sentence set forth in subsection (a), the person shall
22 be sentenced to an additional minimum sentence of at least two
23 years total confinement, notwithstanding any other provision of
24 this title or other statute to the contrary, if the person did
25 any of the following:

26 (1) Committed the offense with the intent to promote the
27 habitual use of the controlled substance.

28 (2) Intended to engage the minor in the trafficking,
29 transportation, delivery, manufacturing, sale or conveyance.

30 (3) Committed the offense within 1,000 feet of the real
31 property on which is located a public, private or parochial
32 school or a college or university.

33 (4) Committed the offense on a school bus or within 500
34 feet of a school bus stop.

35 (c) [Proof at sentencing.--The provisions of this section
36 shall not be an element of the crime. Notice of the
37 applicability of this section to the defendant shall not be

1 required prior to conviction, but reasonable notice of the
2 Commonwealth's intention to proceed under this section shall be
3 provided after conviction and before sentencing. The
4 applicability of this section shall be determined at sentencing.
5 The court shall consider evidence presented at trial, shall
6 afford the Commonwealth and the defendant an opportunity to
7 present necessary additional evidence, and shall determine, by a
8 preponderance of the evidence, if this section is applicable.]

9 Application of mandatory minimum penalty.--Any provision of this
10 section that requires imposition of a mandatory minimum sentence
11 shall constitute an element enhancing the underlying offense.
12 Any enhancing element must be proven beyond a reasonable doubt
13 at trial on the underlying offense and must be submitted to the
14 fact-finder for deliberation together with the underlying
15 offense. If the fact-finder finds the defendant guilty of the
16 underlying offense, the fact-finder shall then also decide
17 whether any enhancing element has been proven.

18 (d) Authority of court in sentencing.--There shall be no
19 authority for a court to impose on a defendant to which this
20 section is applicable a lesser sentence than provided for in
21 [subsection (a)] subsections (a) and (b), to place the defendant
22 on probation or to suspend sentence. Nothing in this section
23 shall prevent the sentencing court from imposing a sentence
24 greater than that provided in this section. Sentencing
25 guidelines promulgated by the Pennsylvania Commission on
26 Sentencing shall not supersede the mandatory sentences provided
27 in this section. Disposition under section 17 or 18 of The
28 Controlled Substance, Drug, Device and Cosmetic Act shall not be
29 available to a defendant to which this section applies.

30 (e) Appeal by Commonwealth.--[If a sentencing court refuses
31 to apply this section where applicable, the Commonwealth shall
32 have the right to appellate review of the action of the
33 sentencing court. The appellate court shall vacate the sentence
34 and remand the case to the sentencing court for imposition of a
35 sentence in accordance with this section if it finds that the
36 sentence was imposed in violation of this section.] If the fact-
37 finder has found any enhancing element and a sentencing court
38 imposes a sentence below the mandatory minimum sentence, the
39 Commonwealth shall have the right to appellate review of the
40 sentence. If the appellate court finds that the mandatory
41 sentencing provision was applicable, the court shall vacate the
42 sentence and remand for resentencing in accordance with that
43 provision.

44 (f) Forfeiture.--Assets against which a forfeiture petition
45 has been filed and is pending or against which the Commonwealth
46 has indicated an intention to file a forfeiture petition shall
47 not be subject to a fine under this section.

48 (g) Definition.--As used in this section, the term "minor"
49 means an individual under 18 years of age.
50 § 6317. Drug-free school zones.

51 (a) General rule.--A person 18 years of age or older who is

1 convicted in any court of this Commonwealth of a violation of
2 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,
3 No.64), known as The Controlled Substance, Drug, Device and
4 Cosmetic Act, shall, if the delivery or possession with intent
5 to deliver of the controlled substance occurred within 1,000
6 feet of the real property on which is located a public, private
7 or parochial school or a college or university or within 250
8 feet of the real property on which is located a recreation
9 center or playground or on a school bus, be sentenced to a
10 minimum sentence of at least two years of total confinement,
11 notwithstanding any other provision of this title, The
12 Controlled Substance, Drug, Device and Cosmetic Act or other
13 statute to the contrary. The maximum term of imprisonment shall
14 be four years for any offense:

15 (1) subject to this section; and

16 (2) for which The Controlled Substance, Drug, Device and
17 Cosmetic Act provides for a maximum term of imprisonment of
18 less than four years.

19 If the sentencing court finds that the delivery or possession
20 with intent to deliver was to an individual under 18 years of
21 age, then this section shall not be applicable and the offense
22 shall be subject to section 6314 (relating to sentencing and
23 penalties for trafficking drugs to minors).

24 (b) [Proof at sentencing.--The provisions of this section
25 shall not be an element of the crime. Notice of the
26 applicability of this section to the defendant shall not be
27 required prior to conviction, but reasonable notice of the
28 Commonwealth's intention to proceed under this section shall be
29 provided after conviction and before sentencing. The
30 applicability of this section shall be determined at sentencing.
31 The court shall consider evidence presented at trial, shall
32 afford the Commonwealth and the defendant an opportunity to
33 present necessary additional evidence and shall determine by a
34 preponderance of the evidence if this section is applicable.]

35 Application of mandatory minimum penalty.--Any provision of this
36 section that requires imposition of a mandatory minimum sentence
37 shall constitute an element enhancing the underlying offense.
38 Any enhancing element must be proven beyond a reasonable doubt
39 at trial on the underlying offense and must be submitted to the
40 fact-finder for deliberation together with the underlying
41 offense. If the fact-finder finds the defendant guilty of the
42 underlying offense, the fact-finder shall then also decide
43 whether any enhancing element has been proven.

44 (c) Authority of court in sentencing.--There shall be no
45 authority for a court to impose on a defendant to which this
46 section is applicable a lesser sentence than provided for in
47 subsection (a), to place the defendant on probation or to
48 suspend sentence. Nothing in this section shall prevent the
49 sentencing court from imposing a sentence greater than that
50 provided in this section. Sentencing guidelines promulgated by
51 the Pennsylvania Commission on Sentencing shall not supersede

1 the mandatory sentences provided in this section. Disposition
2 under section 17 or 18 of The Controlled Substance, Drug, Device
3 and Cosmetic Act shall not be available to a defendant to which
4 this section applies.

5 (d) Appeal by Commonwealth.--[If a sentencing court refuses
6 to apply this section where applicable, the Commonwealth shall
7 have the right to appellate review of the action of the
8 sentencing court. The appellate court shall vacate the sentence
9 and remand the case to the sentencing court for imposition of a
10 sentence in accordance with this section if it finds that the
11 sentence was imposed in violation of this section.] If the fact-
12 finder has found any enhancing element and a sentencing court
13 imposes a sentence below the mandatory minimum sentence, the
14 Commonwealth shall have the right to appellate review of the
15 sentence. If the appellate court finds that the mandatory
16 sentencing provision was applicable, the court shall vacate the
17 sentence and remand for resentencing in accordance with that
18 provision.