

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

# HOUSE BILL

No. 417 Session of  
2001

---

INTRODUCED BY BARD, CLARK, STURLA, FEESE, THOMAS, RUBLEY,  
T. ARMSTRONG, BARRAR, BROWNE, BUNT, CALTAGIRONE, CAPPELLI,  
CORRIGAN, CRUZ, CURRY, FREEMAN, GEIST, HARHAI, HERSHEY,  
McILHATTAN, MELIO, ORIE, SOLOBAY, STABACK, TRELLO, TRICH,  
WOJNAROSKI, PIPPY, MARSICO, WILT, MAHER, SAYLOR, SCHRODER,  
E. Z. TAYLOR, HORSEY, L. I. COHEN, FRANKEL, STEELMAN,  
J. TAYLOR AND STRITTMATTER, FEBRUARY 5, 2001

---

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,  
NOVEMBER 13, 2002

---

AN ACT

1 ~~Amending Title 42 (Judiciary and Judicial Procedure) of the~~ <—  
2 ~~Pennsylvania Consolidated Statutes, further providing for~~  
3 ~~sentences for offenses committed with firearms.~~

4 AMENDING TITLE 18 (CRIMES AND OFFENSES) OF THE PENNSYLVANIA <—  
5 CONSOLIDATED STATUTES, PROVIDING FOR THE OFFENSE OF  
6 DELIVERING A CONTROLLED SUBSTANCE WHILE IN POSSESSION OF A  
7 FIREARM.

8 The General Assembly of the Commonwealth of Pennsylvania  
9 hereby enacts as follows:

10 ~~Section 1. Section 9712(a) of Title 42 of the Pennsylvania~~ <—  
11 ~~Consolidated Statutes is amended to read:~~

12 ~~§ 9712. Sentences for offenses committed with firearms.~~

13 ~~(a) Mandatory sentence.—~~

14 ~~(1) Except as provided under section 9716 (relating to~~  
15 ~~two or more mandatory minimum sentences applicable), any~~  
16 ~~person who is convicted in any court of this Commonwealth of~~  
17 ~~a crime of violence as defined in section 9714(g) (relating~~

1 ~~to sentences for second and subsequent offenses), shall, if~~  
2 ~~the person visibly possessed a firearm or a replica of a~~  
3 ~~firearm, whether or not the firearm or replica was loaded or~~  
4 ~~functional, that placed the victim in reasonable fear of~~  
5 ~~death or serious bodily injury, during the commission of the~~  
6 ~~offense, be sentenced to a minimum sentence of at least five~~  
7 ~~years of total confinement notwithstanding any other~~  
8 ~~provision of this title or other statute to the contrary.~~  
9 ~~Such persons shall not be eligible for parole, probation,~~  
10 ~~work release or furlough.~~

11 ~~(2) Any person who is convicted of a violation of~~  
12 ~~section 13(a)(30) of the act of April 14, 1972 (P.L.233,~~  
13 ~~No.64), known as The Controlled Substance, Drug, Device and~~  
14 ~~Cosmetic Act, when at the time of the offense, the person or~~  
15 ~~the person's accomplice is in physical possession or control~~  
16 ~~of a firearm or replica firearm, whether visible, concealed~~  
17 ~~about the person or the person's accomplice or within the~~  
18 ~~actor's or accomplice's reach or in close proximity to the~~  
19 ~~controlled substance, shall likewise be sentenced to a~~  
20 ~~minimum sentence of at least five years of total confinement.~~

21 ~~(3) Where a defendant is subject to a mandatory minimum~~  
22 ~~sentence under 18 Pa.C.S. § 7508(a) (relating to drug~~  
23 ~~trafficking sentencing and penalties) and is also subject to~~  
24 ~~an additional penalty under paragraph (2), and where the~~  
25 ~~court elects to aggregate these penalties, the combined~~  
26 ~~minimum sentence may not exceed the statutory maximum~~  
27 ~~sentence of imprisonment allowable under The Controlled~~  
28 ~~Substance, Drug, Device and Cosmetic Act.~~

29 \* \* \*

30 SECTION 1. TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED

<—

1 STATUTES IS AMENDED BY ADDING A SECTION TO READ:

2 § 7331. DELIVERING A CONTROLLED SUBSTANCE WHILE IN POSSESSION  
3 OF A FIREARM.

4 (A) OFFENSE DEFINED.--ANY PERSON WHO VIOLATES SECTION  
5 13(A)(30) OF THE ACT OF APRIL 14, 1972 (P.L.233, NO.64), KNOWN  
6 AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT, WHEN  
7 AT THE TIME OF THE VIOLATION, THE PERSON OR THE PERSON'S  
8 ACCOMPLICE IS IN PHYSICAL POSSESSION OR CONTROL OF A FIREARM OR  
9 REPLICA FIREARM, WHETHER VISIBLE, CONCEALED ABOUT THE PERSON OR  
10 THE PERSON'S ACCOMPLICE OR WITHIN THE PERSON'S OR ACCOMPLICE'S  
11 REACH OR IN CLOSE PROXIMITY TO THE CONTROLLED SUBSTANCE, COMMITS  
12 AN OFFENSE IN ADDITION TO THE VIOLATION OF SECTION 13(A)(30).

13 (B) GRADING.--THE OFFENSE DEFINED IN SUBSECTION (A) SHALL BE  
14 A FELONY OF THE SECOND DEGREE. A SECOND OR SUBSEQUENT OFFENSE  
15 SHALL BE A FELONY OF THE FIRST DEGREE.

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

19 "FIREARM." A WEAPON, INCLUDING A STARTER GUN, WHICH EXPELS  
20 OR IS DESIGNED TO OR MAY READILY BE CONVERTED TO EXPEL A  
21 PROJECTILE BY THE ACTION OF AN EXPLOSIVE OR THE EXPANSION OF GAS  
22 THEREIN.

23 "REPLICA OF A FIREARM." AN ITEM THAT CAN REASONABLY BE  
24 PERCEIVED TO BE A FIREARM.

25 Section 2. This act shall take effect in 60 days.