

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 521

Session of
1983

INTRODUCED BY HASAY, TIGUE, CAWLEY, BLAUM, GODSHALL, WASS,
DeLUCA, HERSHEY AND DAVIES, MARCH 21, 1983

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 21, 1983

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, adding provisions relating to tampering with food,
4 drugs or medicine.

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

7 Section 1. Section 2502(a) of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 2502. Murder.

10 (a) Murder of the first degree.--A criminal homicide
11 constitutes murder of the first degree when it is committed by
12 an intentional killing or by activity set forth in section 2711
13 (relating to tampering with food, drugs or medicine).

14 * * *

15 Section 2. Title 18 is amended by adding a section to read:

16 § 2711. Tampering with food, drugs or medicine.

17 (a) Offense defined.--

18 (1) A person commits a felony of the third degree if he

1 intentionally places foreign material into any item of food
2 or any drug or medicine, and the food, drug or medicine:

3 (i) is offered for sale, or the person believes that
4 it will be offered for sale, to the general public; or

5 (ii) is given out as a treat or gift.

6 (2) If the activity set forth in paragraph (1) results
7 in serious bodily injury to an individual who ingested or
8 otherwise consumed the food, drug or medicine, the person
9 commits a felony of the first degree.

10 (b) Definition.--As used in this section the term "foreign
11 material" means any of the following:

12 (1) Any object which, if ingested or attempted to be
13 ingested, could cause serious bodily injury. The term
14 includes, but is not limited to, razor blades, pins, nails,
15 tacks, wire and glass.

16 (2) Any chemical substance, poison or hallucinogen,
17 whether in solid or liquid form, which, if ingested or
18 attempted to be ingested or otherwise consumed, could cause
19 serious bodily injury. The term includes, but is not limited
20 to, cyanide, arsenic, warfarin, insecticide, sulphuric acid
21 and lye.

22 (3) Any pill, capsule, tablet or other unit of drug or
23 medicine which, if ingested or attempted to be ingested,
24 could cause serious bodily injury.

25 Section 3. Section 9711(d) of Title 42 is amended by adding
26 a paragraph to read:

27 § 9711. Sentencing procedure for murder of the first degree.

28 * * *

29 (d) Aggravating circumstances.--Aggravating circumstances
30 shall be limited to the following:

1 * * *

2 (11) The victim died as a result of ingesting or
3 otherwise consuming an item of food, drug, or medicine which
4 had been tampered with by the defendant as provided in 18
5 Pa.C.S. § 2711 (relating to tampering with food, drugs or
6 medicine).

7 * * *

8 Section 4. Title 42 is amended by adding a section to read:
9 § 9719. Sentences for offenses involving tampering with food,
10 drugs or medicine.

11 (a) Mandatory sentence.--Any person who is convicted in any
12 court of this Commonwealth of tampering with food, drugs or
13 medicine as defined in 18 Pa.C.S. § 2711 (relating to tampering
14 with food, drugs or medicine) shall be sentenced to a minimum
15 sentence of at least three years of total confinement, if
16 convicted of a felony of the third degree, or a minimum sentence
17 of at least five years of total confinement, if convicted of a
18 felony of the first degree, notwithstanding any other provision
19 of this title or other statute to the contrary.

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

1 (c) Authority of court in sentencing.--There shall be no
2 authority in any court to impose on an offender to which this
3 section is applicable any lesser sentence than provided for in
4 subsection (a) or to place the offender on probation or to
5 suspend sentence. Nothing in this section shall prevent the
6 sentencing court from imposing a sentence greater than that
7 provided in this section. Sentencing guidelines promulgated by
8 the Pennsylvania Commission on Sentencing shall not supersede
9 the mandatory sentences provided in this section.

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

17 Section 5. This act shall take effect in 60 days.