
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1274

Session of
1989

INTRODUCED BY CALTAGIRONE, MOEHLMANN, BIRMELIN, ACOSTA, ADOLPH, ANGSTADT, ARGALL, BELARDI, BELFANTI, BILLOW, BISHOP, BLACK, BLAUM, BOYES, BUNT, BURD, BUSH, CIVERA, COLAIZZO, COLE, CORRIGAN, DALEY, DeLUCA, FAIRCHILD, FARGO, FEE, FOX, GEIST, GIGLIOTTI, HAGARTY, HALUSKA, HARPER, HERMAN, HOWLETT, JOHNSON, KASUNIC, KOSINSKI, LASHINGER, LETTERMAN, MAIALE, MARKOSEK, MELIO, MORRIS, MRKONIC, PISTELLA, PITTS, PRESSMANN, RAYMOND, ROBINSON, SERAFINI, B. SMITH, G. SNYDER, STABACK, STEIGHNER, STUBAN, TANGRETTI, J. TAYLOR, TRELLO, TRICH, VEON, WAMBACH, WASS, WOGAN, WOZNIAK, J. L. WRIGHT, O'BRIEN, F. TAYLOR, NOYE, FLICK, COY, STISH, LINTON AND BROUJOS, APRIL 24, 1989

SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,
DECEMBER 5, 1989

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for the sale of
3 tobacco and for drug trafficking offenses and penalties; and
4 providing for illegal use of real property.

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

7 Section 1. Sections 6305, 6314(a) and (b) and 7508 of Title
8 18 of the Pennsylvania Consolidated Statutes are amended ~~and the~~ <—
9 ~~sections are amended by adding subsections to read:~~

10 § 6305. Sale of tobacco.

11 (a) Offense defined.--A person is guilty of a summary
12 offense if he sells tobacco, in any form, to any minor under the

1 age of [16] 18 years, or by purchase, gift or other means,
2 furnishes tobacco, in any form, to a minor under the age of [16]
3 18 years.

4 (b) Penalty.--A person who violates this section shall, upon
5 conviction, be sentenced to pay a fine of not less than \$25 for
6 a first offense and not less than \$100 for a subsequent offense.

7 § 6314. Sentencing and penalties for trafficking drugs to
8 minors.

9 (a) General rule.--A person over 18 years of age who is
10 convicted in any court of this Commonwealth of a violation of
11 section 13(a)(14) [or], (30) or (36) of the act of April 14,
12 1972 (P.L.233, No.64), known as The Controlled Substance, Drug,
13 Device and Cosmetic Act, shall, if the delivery or possession
14 with intent to deliver of the controlled substance was to a
15 minor, be sentenced to a minimum sentence of at least one year
16 total confinement, notwithstanding any other provision of this
17 title or other statute to the contrary. ~~A person convicted of a~~ <—
18 ~~violation of section 13(a)(37) shall be sentenced to a mandatory~~
19 ~~minimum term of imprisonment of at least three years and a~~
20 ~~mandatory minimum fine of \$10,000 or such larger amount as is~~
21 ~~sufficient to exhaust the assets utilized in and the profits~~
22 ~~obtained from the illegal activity.~~

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

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

(2) Intended to engage [the] a minor in the trafficking,
transportation, delivery, manufacturing, sale or conveyance
OF A CONTROLLED SUBSTANCE, OBSTRUCTION OF AN INVESTIGATION <—
FOR AN OFFENSE UNDER THE CONTROLLED SUBSTANCE, DRUG, DEVICE
AND COSMETIC ACT OR COMMISSION OF AN OFFENSE UNDER 18 PA.C.S.
CH. 51 SUBCH. A (RELATING TO OBSTRUCTING GOVERNMENTAL
OPERATIONS) WITH RESPECT TO AN OFFENSE UNDER THE CONTROLLED
SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT OR A VIOLATION OF 18
PA.C.S. CH. 51 SUBCH. A WITH RESPECT TO AN OFFENSE UNDER THE
CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT.

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

* * *

~~(d.1) Place of confinement. Notwithstanding the provisions~~ <—
~~of this title or any other statute to the contrary, persons~~
~~sentenced under the provisions of this section shall be~~
~~committed to the Department of Corrections for confinement in~~
~~State correctional facilities.~~

§ 7508. Drug trafficking sentencing and penalties.

(a) General rule.--Notwithstanding any other provisions of
this or any other act to the contrary, the following provisions
shall apply:

(1) A person who is convicted of violating section
13(a)(14) [or (30)], (30) or (37) of the act of April 14,
1972 (P.L.233, No.64), known as The Controlled Substance,
Drug, Device and Cosmetic Act, where the controlled substance
is marijuana shall, upon conviction, be sentenced to a
mandatory minimum term of imprisonment and a fine as set
forth in this subsection:

1 (i) [upon the first conviction] when the amount of
2 marijuana involved is at least two pounds, but less than
3 ten pounds, or at least ten live plants but less than 21
4 live plants; one year in prison and a fine of \$5,000 or
5 such larger amount as is sufficient to exhaust the assets
6 utilized in and the proceeds from the illegal activity
7 [and, upon conviction for another offense subject to
8 sentencing under this section;]; however, if at the time
9 of sentencing the defendant has been convicted of another
10 drug trafficking offense: two years in prison and a fine
11 of \$10,000 or such larger amount as is sufficient to
12 exhaust the assets utilized in and the proceeds from the
13 illegal activity;

14 (ii) [upon the first conviction] when the amount of
15 marijuana involved is at least ten pounds, but less than
16 50 pounds, or at least 21 live plants but less than 51
17 live plants; three years in prison and a fine of \$15,000
18 or such larger amount as is sufficient to exhaust the
19 assets utilized in and the proceeds from the illegal
20 activity [and, upon conviction for another offense
21 subject to sentencing under this section;]; however, if
22 at the time of sentencing the defendant has been
23 convicted of another drug trafficking offense: four years
24 in prison and a fine of \$30,000 or such larger amount as
25 is sufficient to exhaust the assets utilized in and the
26 proceeds from the illegal activity; and

27 (iii) [upon conviction] when the amount of marijuana
28 involved is at least 50 pounds, or at least 51 live
29 plants; five years in prison and a fine of \$50,000 or
30 such larger amount as is sufficient to exhaust the assets

utilized in and the proceeds from the illegal activity.

(2) A person who is convicted of violating section 13(a)(14) [or (30)], (30) or (37) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance or a mixture containing it is classified in Schedule I or Schedule II under section 4 of that act and is a narcotic drug shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) [upon the first conviction] when the [amount of] aggregate weight of the compound or mixture containing the substance involved is at least 2.0 grams and less than ten grams; two years in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity [and, upon conviction for another offense subject to sentencing under this section;]; however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense: three years in prison and \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity;

(ii) [upon the first conviction] when the [amount of] aggregate weight of the compound or mixture containing the substance involved is at least ten grams and less than 100 grams; three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity [and, upon conviction for another offense subject to sentencing under this section;];

1 however, if at the time of sentencing the defendant has
2 been convicted of another drug trafficking offense: five
3 years in prison and \$30,000 or such larger amount as is
4 sufficient to exhaust the assets utilized in and the
5 proceeds from the illegal activity; and

6 (iii) [upon the first conviction] when the [amount
7 of] aggregate weight of the compound or mixture
8 containing the substance involved is at least 100 grams;
9 five years in prison and a fine of \$25,000 or such larger
10 amount as is sufficient to exhaust the assets utilized in
11 and the proceeds from the illegal activity [and, upon
12 conviction for another offense subject to sentencing
13 under this section;]; however, if at the time of
14 sentencing the defendant has been convicted of another
15 drug trafficking offense: seven years in prison and
16 \$50,000 or such larger amount as is sufficient to exhaust
17 the assets utilized in and the proceeds from the illegal
18 activity.

19 (3) A person who is convicted of violating section
20 13(a)(14) [or (30)], (30) or (37) of The Controlled
21 Substance, Drug, Device and Cosmetic Act where the controlled
22 substance is coca leaves or is any salt, compound, derivative
23 or preparation of coca leaves or is any salt, compound,
24 derivative or preparation which is chemically equivalent or
25 identical with any of these substances or is any mixture
26 containing any of these substances except decocainized coca
27 leaves or extracts of coca leaves which (extracts) do not
28 contain cocaine or ecgonine shall, upon conviction, be
29 sentenced to a mandatory minimum term of imprisonment and a
30 fine as set forth in this subsection:

1 (i) [upon the first conviction] when the [amount of]
2 aggregate weight of the compound or mixture containing
3 the substance involved is at least 2.0 grams and less
4 than ten grams; one year in prison and a fine of \$5,000
5 or such larger amount as is sufficient to exhaust the
6 assets utilized in and the proceeds from the illegal
7 activity [and, upon conviction for another offense
8 subject to sentencing under this section;]; however, if
9 at the time of sentencing the defendant has been
10 convicted of another drug trafficking offense: three
11 years in prison and \$10,000 or such larger amount as is
12 sufficient to exhaust the assets utilized in and the
13 proceeds from the illegal activity;

14 (ii) [upon the first conviction] when the [amount
15 of] aggregate weight of the compound or mixture
16 containing the substance involved is at least ten grams
17 and less than 100 grams; three years in prison and a fine
18 of \$15,000 or such larger amount as is sufficient to
19 exhaust the assets utilized in and the proceeds from the
20 illegal activity [and, upon conviction for another
21 offense subject to sentencing under this section;];
22 however, if at the time of sentencing the defendant has
23 been convicted of another drug trafficking offense: five
24 years in prison and \$30,000 or such larger amount as is
25 sufficient to exhaust the assets utilized in and the
26 proceeds from the illegal activity; and

27 (iii) [upon the first conviction] when the [amount
28 of] aggregate weight of the compound or mixture of the
29 substance involved is at least 100 grams; four years in
30 prison and a fine of \$25,000 or such larger amount as is

1 sufficient to exhaust the assets utilized in and the
2 proceeds from the illegal activity [and, upon conviction
3 for another offense subject to sentencing under this
4 section;]; however, if at the time of sentencing the
5 defendant has been convicted of another drug trafficking
6 offense: seven years in prison and \$50,000 or such larger
7 amount as is sufficient to exhaust the assets utilized in
8 and the proceeds from the illegal activity.

9 (4) A person who is convicted of violating section
10 13(a)(14) [or (30)], (30) or (37) of The Controlled
11 Substance, Drug, Device and Cosmetic Act where the controlled
12 substance is methamphetamine or phencyclidine or is a salt,
13 isomer or salt of an isomer of methamphetamine or [is]
14 phencyclidine or is a mixture containing methamphetamine or
15 phencyclidine, containing a salt of methamphetamine or
16 phencyclidine, containing an isomer of methamphetamine or
17 phencyclidine, containing a salt of an isomer of
18 methamphetamine or [containing] phencyclidine shall, upon
19 conviction, be sentenced to a mandatory minimum term of
20 imprisonment and a fine as set forth in this subsection:

21 (i) [upon the first conviction] when the [amount of]
22 aggregate weight of the compound or mixture containing
23 the substance involved is at least five grams and less
24 than ten grams; three years in prison and a fine of
25 \$15,000 or such larger amount as is sufficient to exhaust
26 the assets utilized in and the proceeds from the illegal
27 activity [and, upon conviction for another offense
28 subject to sentencing under this section;]; however, if
29 at the time of sentencing the defendant has been
30 convicted of another drug trafficking offense: five years

1 in prison and \$30,000 or such larger amount as is
2 sufficient to exhaust the assets utilized in and the
3 proceeds from the illegal activity;

4 (ii) [upon the first conviction] when the [amount
5 of] aggregate weight of the compound or mixture
6 containing the substance involved is at least ten grams
7 and less than 100 grams; four years in prison and a fine
8 of \$25,000 or such larger amount as is sufficient to
9 exhaust the assets utilized in and the proceeds from the
10 illegal activity [and, upon conviction for another
11 offense subject to sentencing under this section;];
12 however, if at the time of sentencing the defendant has
13 been convicted of another drug trafficking offense: seven
14 years in prison and \$50,000 or such larger amount as is
15 sufficient to exhaust the assets utilized in and the
16 proceeds from the illegal activity; and

17 (iii) [upon the first conviction] when the [amount
18 of] aggregate weight of the compound or mixture
19 containing the substance involved is at least 100 grams;
20 five years in prison and a fine of \$50,000 or such larger
21 amount as is sufficient to exhaust the assets utilized in
22 and the proceeds from the illegal activity [and, upon
23 conviction for another offense subject to sentencing
24 under this section;]; however, if at the time of
25 sentencing the defendant has been convicted of another
26 drug trafficking offense: eight years in prison and
27 \$50,000 or such larger amount as is sufficient to exhaust
28 the assets utilized in and the proceeds from the illegal
29 activity.

30 (5) A person who is convicted of violating section

1 13(a)(14) [or (30)], (30) or (37) of The Controlled
2 Substance, Drug, Device and Cosmetic Act, and who, in the
3 course of the offense, manufactures, delivers, brings into
4 this Commonwealth or possesses with intent to manufacture or
5 deliver amphetamine or any salt, optical isomer, or salt of
6 an optical isomer, or a mixture containing any such
7 substances shall, [upon the first conviction] when the
8 [amount of] aggregate weight of the compound or mixture
9 containing the substance involved is at least five grams, be
10 sentenced to two and one-half years in prison and a fine of
11 \$15,000 or such larger amount as is sufficient to exhaust the
12 assets utilized in and the proceeds from the illegal activity
13 [and, upon conviction for a subsequent offense under this
14 section,]; however, if at the time of sentencing the
15 defendant has been convicted of another drug trafficking
16 offense: be sentenced to five years in prison and \$30,000 or
17 such larger amount as is sufficient to exhaust the assets
18 utilized in and the proceeds from the illegal activity.

19 (6) A person who is convicted of violating section
20 13(a)(14) [or (30)], (30) or (37) of The Controlled
21 Substance, Drug, Device and Cosmetic Act where the controlled
22 substance is methaqualone shall, upon conviction, be
23 sentenced to a mandatory minimum term of imprisonment and a
24 fine as set forth in this subsection:

25 (i) [upon the first conviction] when the [amount of]
26 aggregate weight of the compound or mixture containing
27 the substance involved is at least 50 tablets, capsules,
28 caplets or other dosage units, or [the equivalent
29 quantity] 25 grams and less than 200 tablets, capsules,
30 caplets or other dosage units, or [the equivalent

1 quantity] 100 grams; one year in prison and a fine of
2 \$2,500 or such larger amount as is sufficient to exhaust
3 the assets utilized in and the proceeds from the illegal
4 activity [and, upon conviction for another offense
5 subject to sentencing under this section;]; however, if
6 at the time of sentencing the defendant has been
7 convicted of another drug trafficking offense: three
8 years in prison and \$5,000 or such larger amount as is
9 sufficient to exhaust the assets utilized in and the
10 proceeds from the illegal activity; and

11 (ii) [upon the first conviction] when the [amount
12 of] aggregate weight of the compound or mixture
13 containing the substance involved is at least 200
14 tablets, capsules, caplets or other dosage units, or [the
15 equivalent quantity] more than 100 grams; two and one-
16 half years in prison and a fine of \$15,000 or such larger
17 amount as is sufficient to exhaust the assets utilized in
18 and the proceeds from the illegal activity [and, upon
19 conviction for another offense subject to sentencing
20 under this section;]; however, if at the time of
21 sentencing the defendant has been convicted of another
22 drug trafficking offense: five years in prison and
23 \$30,000 or such larger amount as is sufficient to exhaust
24 the assets utilized in and the proceeds from the illegal
25 activity.

26 (7) A person who is convicted of violating section
27 13(a)(14), (30) or (37) of The Controlled Substance, Drug,
28 Devices and Cosmetic Act where the controlled substance or
29 mixture contains a nonwater soluble concentrated cocaine
30 base, created by removing hydrochloric acid, salts and

1 chemicals adulterates, otherwise known as "crack," shall,
2 upon conviction, be sentenced to a mandatory minimum term of
3 imprisonment and a fine as set forth in this subsection:

4 (i) upon the first conviction when the aggregate
5 weight of the compound or mixture containing the
6 substance involved is at least one gram and less than
7 five grams; three years in prison and a fine of \$15,000
8 or such larger amount as is sufficient to exhaust the
9 assets utilized in and the proceeds from the illegal
10 activity and, upon conviction for another offense subject
11 to sentencing under this section; five years in prison
12 and \$30,000 or such larger amount as is sufficient to
13 exhaust the assets utilized in and the proceeds from the
14 illegal activity;

15 (ii) upon the first conviction when the aggregate
16 weight of the compound or mixture containing the
17 substance involved is at least five grams and less than
18 50 grams; four years in prison and a fine of \$25,000 or
19 such larger amount as is sufficient to exhaust the assets
20 utilized in and the proceeds from the illegal activity
21 and, upon conviction for another offense subject to
22 sentencing under this section; seven years in prison and
23 \$50,000 or such larger amount as is sufficient to exhaust
24 the assets utilized in and the proceeds from the illegal
25 activity; and

26 (iii) upon the first conviction when the aggregate
27 weight of the compound or mixture containing the
28 substance involved is at least 50 grams; five years in
29 prison and a fine of \$50,000 or such larger amount as is
30 sufficient to exhaust the assets utilized in and the

1 proceeds from the illegal activity and, upon conviction
2 for another offense subject to sentencing under this
3 section; eight years in prison and \$50,000 or such larger
4 amount as is sufficient to exhaust the assets utilized in
5 and the proceeds from the illegal activity.

6 (a.1) Previous conviction.--For purposes of this section, it
7 shall be deemed that a defendant has been convicted of another
8 drug trafficking offense when the defendant has been convicted
9 of another offense under section 13(a)(14) or (30) of The
10 Controlled Substance, Drug, Device and Cosmetic Act, or of a
11 similar offense under any statute of any state or the United
12 States, whether or not judgment of sentence has been imposed or
13 litigation is pending concerning that offense.

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

25 (c) Mandatory sentencing.--There shall be no authority in
26 any court to impose on an offender to which this section is
27 applicable a lesser sentence than provided for herein or to
28 place the offender on probation, parole, work release or
29 prerelease or to suspend sentence. Nothing in this section shall
30 prevent the sentencing court from imposing a sentence greater

1 than provided herein. Sentencing guidelines promulgated by the
2 Pennsylvania Commission on Sentencing shall not supersede the
3 mandatory sentences provided herein. Disposition under section
4 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic
5 Act shall not be available to a defendant to which this section
6 applies.

7 ~~(c.1) Place of confinement. Notwithstanding the provisions~~ <—
8 ~~of this title or any other statute to the contrary, persons~~
9 ~~sentenced under the provisions of this section shall be~~
10 ~~committed to the Department of Corrections for confinement in~~
11 ~~State correctional facilities.~~

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

19 (e) Forfeiture.--Assets against which a forfeiture petition
20 has been filed and is pending or against which the Commonwealth
21 has indicated an intention to file a forfeiture petition shall
22 not be subject to a fine.

23 ~~(f) Methodology of analysis. Analysis shall be conducted~~ <—
24 ~~utilizing a statistically based sampling method of the evidence,~~
25 ~~provided that this method has a minimum confidence factor of 95%~~
26 ~~while allowing for a 20% failure rate when extrapolated to the~~
27 ~~total population. The statistically based sampling shall then be~~
28 ~~subject to qualitative analysis to determine the presence and~~
29 ~~identity of the controlled substance.~~

30 ~~(g) Determination of weight. The weights expressed in this~~

~~section shall be the aggregate of the samples submitted for analysis and include all compounds, mixtures, cutting agents and vegetable matter. The determination of weight shall not include packaging, sealant, staples or other like material, except material used to administer the controlled substance by use which are utilized or destroyed in the use of the controlled substance such as blotter paper and papers impregnated with the controlled substance.~~

~~(h)~~ (F) Growing plants.--When the controlled substance is marijuana in the form of growing plants and the number of plants is nine or less, weighing may be accomplished by law enforcement officials utilizing any certified scale convenient to the place of arrest for the purpose of determining the weight of the growing marijuana plant. The aggregate weight of the plant is to include the whole plant including the root system if possible. The weight is not to include any substance not a part of the growing plant.

Section 2. Title 18 is amended by adding ~~sections~~ A SECTION to read:

§ 7509. Unlawful rental, possession, use, maintenance and operation of real property.

~~(a) Renting, leasing and availability of real property. It is unlawful for any person to knowingly rent, lease or make available for use, with or without legal consideration or compensation, real property to any other person for the purpose of violating, or doing any act or engaging in conduct which violates, the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.~~

~~(b)~~ (A) Fortification of real property.--It is unlawful for any person to fortify real property or knowingly allow real

property to be fortified in a manner which obstructs or suppresses the entry of law enforcement officers for the purpose of doing or furthering any act or engaging in any conduct which violates The Controlled Substance, Drug, Device and Cosmetic Act.

~~(e)~~ (B) Use of fortified real property.--It is unlawful for any person to possess, occupy, use, upkeep, improve or maintain real property which is fortified in a manner which obstructs or suppresses the entry of law enforcement officers for the purpose of doing or furthering any act or engaging in any conduct which violates The Controlled Substance, Drug, Device and Cosmetic Act.

~~(d)~~ (C) Penalties and fines.--Notwithstanding any other provision of this title or other statute to the contrary, the following penalties and fines shall apply:

~~(1) A person who violates subsection (a) shall be guilty of a misdemeanor, and shall, upon conviction, be sentenced to a term of imprisonment not exceeding one year, or to pay a fine not exceeding \$100,000, or both.~~

~~(2)~~ (1) A person who violates subsection ~~(b)~~ (A) shall be guilty of a misdemeanor, and shall, upon conviction, be sentenced to a term of imprisonment not exceeding two years, or to pay a fine not exceeding \$300,000, or both.

~~(3)~~ (2) A person who violates subsection ~~(e)~~ (B) shall be guilty of a misdemeanor, and shall, upon conviction, be sentenced to a term of imprisonment not exceeding three years, or to pay a fine not exceeding \$300,000, or both.

~~(e)~~ (D) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

1 (1) "Person." Includes a corporation, partnership,
2 association, natural person or any group thereof, having an
3 interest in real property, whether as owner, lessee or
4 mortgagee, or managing and controlling real property as an
5 agent, servant or employee of an owner, lessee or mortgagee.

6 (2) "Real property." Land and all buildings and
7 improvements thereon and any parts thereof, including without
8 limitation rooms, spaces and enclosures.

9 ~~§ 7510. Sentencing and penalties for trafficking drugs to~~ <—
10 ~~pregnant women.~~

11 ~~(a) Penalties. Notwithstanding section 7508 (relating to~~
12 ~~drug trafficking sentencing and penalties) and any other~~
13 ~~provision of this title or other statute to the contrary, any~~
14 ~~person who is convicted in any court of this Commonwealth of a~~
15 ~~violation of section 13(a)(14), (30) or (36) of the act of April~~
16 ~~14, 1972 (P.L.233, No.64), known as The Controlled Substance,~~
17 ~~Drug, Device and Cosmetic Act, shall be sentenced to a mandatory~~
18 ~~term of imprisonment of at least one year, if the delivery or~~
19 ~~possession with intent to deliver the controlled substance or~~
20 ~~the distribution or possession with intent to distribute the~~
21 ~~designer drug was to a pregnant female.~~

22 ~~(b) Proof of sentencing. The provisions of this section~~
23 ~~shall not be an element of the crime. Notice of the~~
24 ~~applicability of this section to the defendant shall not be~~
25 ~~required prior to conviction, but reasonable notice of the~~
26 ~~Commonwealth's intention to proceed under this section shall be~~
27 ~~provided after conviction and before sentencing. The~~
28 ~~applicability of this section shall be determined at sentencing.~~
29 ~~The court shall consider evidence presented at trial, shall~~
30 ~~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.~~

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

~~(f) Definitions. As used in this section, the following words and phrases shall have the meanings given to them in this subsection:~~

~~"Controlled substance." As defined in the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug,~~

1 ~~Device and Cosmetic Act.~~

2 ~~"Designer drug." As defined in section 13(a)(36) of the act~~
3 ~~of April 14, 1972 (P.L.233, No.64), known as The Controlled~~
4 ~~Substance, Drug, Device and Cosmetic Act.~~

5 ~~Section 3. 42 Pa.C.S. § 9762 (relating to sentencing~~
6 ~~proceeding; place of confinement), is repealed insofar as it is~~
7 ~~inconsistent with the provisions of this act.~~

8 Section 4 3. This act shall take effect in 60 days.

<—