

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1298 Session of
1989

INTRODUCED BY THOMAS, MOEHLMANN, CALTAGIRONE, ALLEN, ANGSTADT, ARGALL, BELARDI, BILLOW, BIRMELIN, BLAUM, BOYES, BUSH, CAWLEY, CESSAR, CHADWICK, D. F. CLARK, CLYMER, COLAIZZO, CORNELL, COWELL, DAVIES, DeLUCA, DEMPSEY, DIETTERICK, DISTLER, DOMBROWSKI, DORR, FARGO, FARMER, FEE, FOX, GEIST, GIGLIOTTI, GODSHALL, GRUPPO, HAGARTY, HALUSKA, HARPER, HAYDEN, HAYES, HERMAN, HOWLETT, JACKSON, JADLOWIEC, JOHNSON, KASUNIC, KENNEY, KOSINSKI, LaGROTTA, LEH, LLOYD, MAIALE, MARKOSEK, MARSICO, MAYERNIK, McVERRY, MELIO, MERRY, MICOZZIE, MORRIS, MRKONIC, NAHILL, NAILOR, PICCOLA, PITTS, TRICH, PRESSMANN, RAYMOND, ROBBINS, ROBINSON, RYBAK, SAURMAN, SCHEETZ, SEMMEL, SERAFINI, S. H. SMITH, D. W. SNYDER, STABACK, STEIGHNER, STUBAN, TANGRETTI, E. Z. TAYLOR, TRELLO, VAN HORNE, WAMBACH, WESTON, WOGAN, J. L. WRIGHT, YANDRISEVITS, J. H. CLARK, PHILLIPS, G. SNYDER, LASHINGER, BURD, O'BRIEN, LANGTRY, BATTISTO, F. TAYLOR AND NOYE, APRIL 25, 1989

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 25, 1989

AN ACT

1 Amending the act of April 14, 1972 (P.L.233, No.64), entitled
2 "An act relating to the manufacture, sale and possession of
3 controlled substances, other drugs, devices and cosmetics;
4 conferring powers on the courts and the secretary and
5 Department of Health, and a newly created Pennsylvania Drug,
6 Device and Cosmetic Board; establishing schedules of
7 controlled substances; providing penalties; requiring
8 registration of persons engaged in the drug trade and for the
9 revocation or suspension of certain licenses and
10 registrations; and repealing an act," further providing for
11 prohibited acts and penalties; providing for recidivism
12 penalties; and further providing for pretrial disposition of
13 certain cases.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Section 13(a) of the act of April 14, 1972

1 (P.L.233, No.64), known as The Controlled Substance, Drug,
2 Device and Cosmetic Act, is amended by adding clauses and the
3 section is amended by adding subsections to read:

4 Section 13. Prohibited Acts; Penalties.--(a) The following
5 acts and the causing thereof within the Commonwealth are hereby
6 prohibited:

7 * * *

8 (37) The use of any communication facility in committing,
9 causing or facilitating the commission of any act constituting a
10 felony under this act. Each separate use of a communication
11 facility shall be a separate offense under this clause. For the
12 purposes of this clause, the term "communication facility" means
13 public and private instrumentalities used or useful in the
14 transmission of writing, signs, data signals, pictures or sound
15 and includes mail, telephone, wire, radio and all other means of
16 communications.

17 (38) The engaging in a continuing criminal enterprise. For
18 purposes of this clause, a person is engaged in a continuing
19 criminal enterprise if all of the following apply:

20 (i) The person violates any provision of this act classified
21 as a felony.

22 (ii) The violation is a part of a continuing series of
23 violations of this act:

24 (A) which are undertaken by the person in concert with three
25 or more other persons with respect to whom the person occupies a
26 position of organizer, financier or supervisory or any other
27 position of management; and

28 (B) from which the person obtains substantial income or
29 resources.

30 A violation of this clause constitutes an offense separate and

1 distinct from the offenses which constitute the continuing
2 series of violations of this act that must be proven to
3 establish a violation of this clause; and separate sentences,
4 either concurrent or consecutive, may be imposed for a violation
5 of this clause and for the separate offenses which constitute
6 the continuing series of violations of the act.

7 (39) The knowing or intentional keeping or maintaining of
8 any store, shop, warehouse, dwelling, building, vehicle, boat,
9 aircraft or other structure or place which a person knows is
10 resorted to for the purpose of possessing, keeping,
11 transporting, distributing or manufacturing controlled
12 substances in violation of this act.

13 (40) Except as authorized by this act, the managing or
14 controlling of any building, room or enclosure, as an owner,
15 lessee, agent, employee or mortgagee, and the knowing and
16 intentional renting, leasing or making available for use, with
17 or without compensation, the building, room, or enclosure for
18 the purpose of unlawfully manufacturing a controlled substance.

19 (41) Except as authorized by this act, the possession of any
20 of the following combinations of precursors of controlled
21 substances with intent to manufacture a controlled substance:

22 (i) Urea and malonic acid or its derivatives.

23 (ii) Ergot or an ergot derivative and hydrazine or
24 diethylamine or demethylformamide or diethylamide.

25 (iii) Benzaldehyde and nithroethane.

26 (iv) Phenylacetone and hydroxylamine or ammonia or formamide
27 or methylamine or methylformamide.

28 (v) Piperidine and cyclohexanone (or piperidine cyclohexene
29 carbonitrile) and bromobenzene and magnesium.

30 (vi) 2-methyl-benzoxazone and 0-toluidine or anthranilic

1 acid or its N-acetyl derivative and 0-toluidine.

2 (vii) Any two or more chemicals necessary to synthesize a
3 controlled substance.

4 * * *

5 (m) Notwithstanding any other provision of this or any other
6 act to the contrary, the following mandatory minimum fines shall
7 be imposed upon any person who violates the provisions of clause
8 (16) of subsection (a):

9 (1) Upon the first conviction, five hundred dollars (\$500).

10 (2) Upon conviction for another violation subject to
11 sentencing under this subsection, three thousand dollars
12 (\$3,000).

13 There shall be no authority in any court to impose on an
14 offender to which this subsection is applicable a lesser fine
15 than provided for in this subsection. Nothing in this subsection
16 shall prevent the sentencing court from imposing a fine greater
17 than provided in this subsection. If a sentencing court refuses
18 to apply this subsection where applicable, the Commonwealth
19 shall have the right to appellate review of the action of the
20 sentencing court. The appellate court shall vacate the sentence
21 and remand the case to the sentencing court for imposition of
22 sentence in accordance with this subsection if it finds that the
23 sentence was imposed in violation of this subsection.

24 (n) Any person who violates clause (37) of subsection (a) is
25 guilty of a felony and upon conviction thereof shall be
26 sentenced to imprisonment not exceeding seven years or to pay a
27 fine not exceeding fifteen thousand dollars (\$15,000), or both.

28 (o) Any person who violates clause (38) of subsection (a) is
29 guilty of a felony and upon conviction thereof shall be
30 sentenced to imprisonment not exceeding forty years or to pay a

1 fine not exceeding one hundred thousand dollars (\$100,000), or
2 both, and shall forfeit to the Commonwealth:

3 (1) The proceeds obtained by the person in, resulting from
4 or derived from the enterprise.

5 (2) Any of the person's interest in, claim against or
6 property or contractual rights of any kind affording a source of
7 influence over the enterprise which the person established,
8 operated, controlled or conducted in violation of clause (38) of
9 subsection (a).

10 (3) An amount equal to the gain the person has acquired,
11 derived or maintained as a result of violations of clause (38)
12 of subsection (a).

13 (p) Except as provided in subsection (q), any person who
14 violates clause (39) of subsection (a) is guilty of a felony and
15 upon conviction thereof shall be sentenced to imprisonment not
16 exceeding seven years or to pay a fine not exceeding ten
17 thousand dollars (\$10,000), or both.

18 (q) Any person who violates clause (40) of subsection (a) or
19 who violates clause (39) of subsection (a) where the structure
20 or place kept or maintained is fortified is guilty of a felony
21 and upon conviction thereof shall be sentenced to imprisonment
22 not exceeding ten years or to pay a fine not exceeding fifteen
23 thousand dollars (\$15,000), or both.

24 (r) Any person who violates clause (40) of subsection (a)
25 where the controlled substance manufacturing or related activity
26 creates a substantial risk of harm to human life is guilty of a
27 felony and upon conviction thereof shall be sentenced to
28 imprisonment not exceeding twenty years or to pay a fine not
29 exceeding one hundred thousand dollars (\$100,000), or both.

30 (s) Any person who violates clause (41) of subsection (a) is

1 guilty of a felony and upon conviction thereof shall be
2 sentenced to imprisonment of not more than fifteen years or to
3 pay a fine not exceeding fifty thousand dollars (\$50,000), or
4 both.

5 Section 2. Section 15 of the act, amended October 26, 1972
6 (P.L.1048, No.263), is amended to read:

7 Section 15. Second [or Subsequent] Offense.--(a) Any person
8 convicted of a second [or subsequent] offense under clause (30)
9 of subsection (a) of section 13 of this act or of a similar
10 offense under any statute of the United States or of any state
11 may be imprisoned for a term up to twice the term otherwise
12 authorized, fined an amount up to twice that otherwise
13 authorized, or both.

14 (b) For purposes of this section, an offense is considered a
15 second [or subsequent] offense, if, prior to the commission of
16 the second offense, the offender has at any time been convicted
17 under clause (30) of subsection (a) of section 13 of this act or
18 of a similar offense under any statute of the United States or
19 of any state relating to controlled substances.

20 Section 3. The act is amended by adding sections to read:

21 Section 15.1. Second or Subsequent Offense of Continuing
22 Criminal Enterprise.--(a) Any person convicted of a second or
23 subsequent offense under clause (38) of subsection (a) of
24 section 13 of this act or of a similar offense under any statute
25 of the United States or of any state shall be sentenced to life
26 imprisonment and fined an amount up to twice that otherwise
27 authorized.

28 (b) For purposes of this section, an offense is considered a
29 second or subsequent offense, if, prior to the commission of the
30 second offense, the offender has at any time been convicted

1 under clause (38) of subsection (a) of section (13) of this act
2 or of a similar offense under any statute of the United States
3 or of any state relating to controlled substances.

4 Section 15.2. Third or Subsequent Offense.--(a) Any person
5 convicted of a third or subsequent offense under clause (30) of
6 subsection (a) of section 13 of this act or of a similar offense
7 under any statute of the United States or of any state shall be
8 sentenced to life imprisonment and fined an amount up to three
9 times that otherwise authorized.

10 (b) For purposes of this section, an offense is considered a
11 third or subsequent offense, if prior to the commission of the
12 third or subsequent offense, the offender has at any time twice
13 been convicted under clause (30) of subsection (a) of section 13
14 of this act or of a similar offense under any statute of the
15 United States or of any state relating to controlled substances.

16 Section 4. Sections 17 and 18 of the act, amended October
17 26, 1972 (P.L.1048, No.263), are amended to read:

18 Section 17. Probation Without Verdict.--A person may be
19 entitled to probation without verdict under the following
20 circumstances:

21 (1) A person who has not previously been convicted of an
22 offense under this act or under a similar act of the United
23 States, or any other state, is eligible for probation without
24 verdict if he pleads nolo contendere or guilty to, or is found
25 guilty of, any nonviolent offense under this act. The court may,
26 without entering a judgment, and with the consent of such person
27 and the prosecuting attorney, defer further proceedings and
28 place him on probation for a specific time period not to exceed
29 the maximum for the offense upon such reasonable terms and
30 conditions as it may require.

1 Probation without verdict shall not be available if the
2 prosecuting attorney does not consent and shall not be available
3 to any person who is charged with violating clause (30) of
4 subsection (a) of section 13 of this act and who is not himself
5 a drug abuser and who does not prove the fact of such drug abuse
6 to the satisfaction of the court.

7 (2) Upon violation of a term or condition of probation, the
8 court may enter a judgment and proceed as in any criminal case,
9 or may continue the probation without verdict.

10 (3) Upon fulfillment of the terms and conditions of
11 probation, the court shall discharge such person and dismiss the
12 proceedings against him. Discharge and dismissal shall be
13 without adjudication of guilt and shall not constitute a
14 conviction for any purpose whatever, including the penalties
15 imposed for second or subsequent convictions: Provided, That
16 probation without verdict shall be available to any person only
17 once: And further provided, That notwithstanding any other
18 provision of this act, the prosecuting attorney or the court,
19 and the council shall keep a list of those persons placed on
20 probation without verdict, which list may only be used to
21 determine the eligibility of persons for probation without
22 verdict and the names on such lists may be used for no other
23 purpose whatsoever.

24 Section 18. Disposition in Lieu of Trial or Criminal
25 Punishment.--(a) If a person charged with a nonviolent crime
26 claims to be drug dependent or a drug abuser and prior to trial
27 he requests appropriate treatment, including but not limited to,
28 admission or commitment under the Mental Health and Mental
29 Retardation Act of 1966 in lieu of criminal prosecution, a
30 physician experienced or trained in the field of drug dependency

1 or drug abuse shall be appointed by the court to examine, if
2 necessary, and to review the accused's record and advise the
3 [government] prosecuting attorney, the accused and the court in
4 writing setting forth that for the treatment and rehabilitation
5 of the accused it would be preferable for the criminal charges
6 to be held in abeyance or withdrawn in order to institute
7 treatment for drug dependence, or for the criminal charges to be
8 prosecuted. The [government] prosecuting attorney shall exercise
9 his discretion whether or not to accept the physician's
10 recommendation.

11 (b) In the event that he does not accept the physician's
12 recommendation [he shall state in writing and furnish the
13 defendant a copy of his decision and the reasons therefor],
14 disposition under this section shall not be available; and the
15 case shall be listed for trial or other disposition.

16 (c) If the [government] prosecuting attorney accepts the
17 physician's advice to hold in abeyance, he shall arrange for a
18 hearing before the appropriate court to hold in abeyance the
19 criminal prosecution. The court, upon its approval, shall
20 proceed to make appropriate arrangements for treatment.

21 (d) The [government] prosecuting attorney, upon his own
22 application, may institute proceedings for appropriate
23 treatment, including but not limited to, commitment pursuant to
24 the Mental Health and Mental Retardation Act of 1966.

25 (e) A criminal charge may be held in beyance pursuant to
26 this section for no longer than the lesser of either (i) the
27 appropriate statute of limitations or (ii) the maximum term that
28 could be imposed for the offense charged. At the expiration of
29 such period, the criminal charge shall be automatically
30 dismissed. A criminal charge may not be prosecuted except by

1 order of court so long as the medical director of the treatment
2 facility certifies that the accused is cooperating in a
3 prescribed treatment program and is benefiting from treatment.

4 (f) If, after conviction, the defendant requests probation
5 with treatment or civil commitment for treatment in lieu of
6 criminal punishment, the court may appoint a qualified physician
7 to advise the court in writing whether it would be preferable
8 for the purposes of treatment and rehabilitation for him to
9 receive a suspended sentence and probation on the condition that
10 he undergo education and treatment for drug abuse and drug
11 dependency, or to be committed pursuant to the Mental Health and
12 Mental Retardation Act of 1966 for treatment in lieu of criminal
13 punishment, or to receive criminal incarceration. A copy of the
14 physician's report shall be furnished the court, the defendant
15 and the [government] prosecuting attorney. The court shall
16 exercise its discretion whether to accept the physician's
17 advice.

18 (g) Disposition in lieu of trial as provided in this section
19 shall be available to any person only once.

20 Section 5. This act shall take effect immediately.