

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2556 Session of
2000

INTRODUCED BY FLICK, CLARK, WASHINGTON, HENNESSEY, BELARDI,
CASORIO, EGOLF, FARGO, HARHAI, HERSHEY, HORSEY, MAHER,
MARSICO, MELIO, SATHER, SCHRODER, SHANER, STABACK, STEVENSON,
THOMAS, TIGUE, TULLI, WILLIAMS AND WOJNAROSKI, MAY 17, 2000

REFERRED TO COMMITTEE ON JUDICIARY, MAY 17, 2000

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for sentences
3 for offenses committed while possessing body armor.

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

6 Section 1. Title 42 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 9719.1. Sentences for offenses committed while possessing
9 body armor.

10 (a) Mandatory sentence.--Except as provided under section
11 9716 (relating to two or more mandatory minimum sentences
12 applicable), any person who is convicted in any court of this
13 Commonwealth of a crime of violence as defined in section
14 9714(g) (relating to sentences for second and subsequent
15 offenses), shall, if the person visibly possessed body armor as
16 defined in 18 Pa.C.S. § 907 (relating to possessing instruments
17 of crime) during the commission of the offense, be sentenced to

1 a minimum sentence of at least five years of total confinement
2 notwithstanding any other provision of this title or other
3 statute to the contrary. Such person shall not be eligible for
4 parole, probation, work release or furlough.

5 (b) Proof at sentencing.--Provisions of this section shall
6 not be an element of the crime and notice thereof to the
7 defendant shall not be required prior to conviction, but
8 reasonable notice of the Commonwealth's intention to proceed
9 under this section shall be provided after conviction and before
10 sentencing. The applicability of this section shall be
11 determined at sentencing. The court shall consider any evidence
12 presented at trial and shall afford the Commonwealth and the
13 defendant an opportunity to present any necessary additional
14 evidence and shall determine, by a preponderance of the
15 evidence, if this section is applicable.

16 (c) Authority of court in sentencing.--There shall be no
17 authority in any court to impose on an offender to which this
18 section is applicable any lesser sentence than provided for in
19 subsection (a) or to place such offender on probation or to
20 suspend sentence. Nothing in this section shall prevent the
21 sentencing court from imposing a sentence greater than that
22 provided in this section. Sentencing guidelines promulgated by
23 the Pennsylvania Commission on Sentencing shall not supersede
24 the mandatory sentences provided in this section.

25 (d) Appeal by Commonwealth.--If a sentencing court refuses
26 to apply this section where applicable, the Commonwealth shall
27 have the right to appellate review of the action of the
28 sentencing court. The appellate court shall vacate the sentence
29 and remand the case to the sentencing court for imposition of a
30 sentence in accordance with this section if it finds that the

1 sentence was imposed in violation of this section.

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