

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 114 Session of
2005

INTRODUCED BY BLAUM, DeWEESE, GEORGE, FABRIZIO, TIGUE,
HENNESSEY, STABACK, CALTAGIRONE, WOJNAROSKI, SATHER, LEACH,
E. Z. TAYLOR, CURRY, YUDICHAK, CAWLEY, KIRKLAND, FREEMAN,
EACHUS, SHANER, HERSHEY, GEIST, VEON, MUNDY, HARPER, GRUCELA,
YOUNGBLOOD, McCALL, GOODMAN, JOSEPHS, GERGELY AND BROWNE,
JANUARY 26, 2005

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES,
JUNE 13, 2005

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for the offense
3 relating to corrupt organizations; AND PROVIDING FOR AN
4 OFFENSE RELATING TO DRUG-FREE PARK ZONES. <—

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

7 Section 1. Section 911(h)(1) of Title 18 of the Pennsylvania
8 Consolidated Statutes is amended to read:

9 § 911. Corrupt organizations.

10 * * *

11 (h) Definitions.--As used in this section:

12 (1) "Racketeering activity" means:

13 (i) any act which is indictable under any of the
14 following provisions of this title:

15 Chapter 25 (relating to criminal homicide)

16 Section 2706 (relating to terroristic threats)

Chapter 29 (relating to kidnapping)

Chapter 33 (relating to arson, [etc.] criminal mischief and other property destruction)

Chapter 37 (relating to robbery)

Chapter 39 (relating to theft and related offenses)

Section 4107 (relating to deceptive or fraudulent business practices)

Section 4108 (relating to commercial bribery and breach of duty to act disinterestedly)

Section 4109 (relating to rigging publicly exhibited contest)

Section 4117 (relating to insurance fraud)

Chapter 47 (relating to bribery and corrupt influence)

Chapter 49 (relating to falsification and intimidation)

Section 5111 (relating to dealing in proceeds of unlawful activities)

Section 5512 [through 5514 (relating to gambling)] (relating to lotteries, etc.)

Section 5513 (relating to gambling devices, gambling, etc.)

Section 5514 (relating to pool selling and bookmaking)

Chapter 59 (relating to public indecency)

(ii) any offense indictable under section 13 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act [(relating to the sale and dispensing of narcotic

1 drugs)];

2 (iii) any conspiracy to commit any of the offenses
3 set forth in [subparagraphs (i) and (ii) of] this
4 paragraph; [or]

5 (iv) the collection of any money or other property
6 in full or partial satisfaction of a debt which arose as
7 the result of the lending of money or other property at a
8 rate of interest exceeding 25% per annum or the
9 equivalent rate for a longer or shorter period, where not
10 otherwise authorized by law[.]; or

11 (v) any offense under Part IV of the act of December
12 5, 1972 (P.L.1280, No.284), known as the Pennsylvania
13 Securities Act of 1972.

14 Any act which otherwise would be considered racketeering
15 activity by reason of the application of this paragraph,
16 shall not be excluded from its application solely because the
17 operative acts took place outside the jurisdiction of this
18 Commonwealth, if such acts would have been in violation of
19 the law of the jurisdiction in which they occurred.

20 * * *

21 SECTION 2. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ: <—

22 § 7508.2. DRUG-FREE PARK ZONES.

23 (A) GENERAL RULE.--A PERSON 18 YEARS OF AGE OR OLDER WHO IS
24 CONVICTED IN ANY COURT OF THIS COMMONWEALTH OF A VIOLATION OF
25 SECTION 13(A)(14) OR (30) OF THE ACT OF APRIL 14, 1972 (P.L.233,
26 NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND
27 COSMETIC ACT, SHALL, IF THE DELIVERY OR POSSESSION WITH INTENT
28 TO DELIVER OF THE CONTROLLED SUBSTANCE OCCURRED WITHIN 1,000
29 FEET OF THE REAL PROPERTY ON WHICH IS LOCATED A STATE, COUNTY,
30 CITY, BOROUGH, INCORPORATED TOWN OR TOWNSHIP PARK, BE SENTENCED

1 TO A MINIMUM SENTENCE OF AT LEAST TWO YEARS OF TOTAL
2 CONFINEMENT, NOTWITHSTANDING ANY OTHER PROVISIONS OF THIS TITLE,
3 THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT OR OTHER
4 STATUTE TO THE CONTRARY. THE MAXIMUM TERM OF IMPRISONMENT SHALL
5 BE FOUR YEARS FOR ANY OFFENSE:

6 (1) SUBJECT TO THIS SECTION; AND

7 (2) FOR WHICH THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND
8 COSMETIC ACT PROVIDES FOR A MAXIMUM TERM OF IMPRISONMENT OF
9 LESS THAN FOUR YEARS.

10 IF THE SENTENCING COURT FINDS THAT A VIOLATION OF ANY OTHER
11 STATUTE WOULD IMPOSE A LARGER MINIMUM SENTENCE, SUCH SENTENCING
12 PROVISION SHALL APPLY.

13 (B) PROOF AT SENTENCING.--THE PROVISIONS OF THIS SECTION
14 SHALL NOT BE AN ELEMENT OF THE CRIME. NOTICE OF THE
15 APPLICABILITY OF THIS SECTION TO THE DEFENDANT SHALL NOT BE
16 REQUIRED PRIOR TO CONVICTION, BUT REASONABLE NOTICE OF THE
17 COMMONWEALTH'S INTENTION TO PROCEED UNDER THIS SECTION SHALL BE
18 PROVIDED AFTER CONVICTION AND BEFORE SENTENCING. THE
19 APPLICABILITY OF THIS SECTION SHALL BE DETERMINED AT SENTENCING.
20 THE COURT SHALL CONSIDER EVIDENCE PRESENTED AT TRIAL, SHALL
21 AFFORD THE COMMONWEALTH AND THE DEFENDANT AN OPPORTUNITY TO
22 PRESENT NECESSARY ADDITIONAL EVIDENCE AND SHALL DETERMINE BY A
23 PREPONDERANCE OF THE EVIDENCE IF THIS SECTION IS APPLICABLE.

24 (C) AUTHORITY OF COURT IN SENTENCING.--THERE SHALL BE NO
25 AUTHORITY FOR A COURT TO IMPOSE ON A DEFENDANT TO WHICH THIS
26 SECTION IS APPLICABLE A LESSER SENTENCE THAN PROVIDED FOR IN
27 SUBSECTION (A), TO PLACE THE DEFENDANT ON PROBATION OR TO
28 SUSPEND SENTENCE. NOTHING IN THIS SECTION SHALL PREVENT THE
29 SENTENCING COURT FROM IMPOSING A SENTENCE GREATER THAN THAT
30 PROVIDED IN THIS SECTION. SENTENCING GUIDELINES PROMULGATED BY

1 THE PENNSYLVANIA COMMISSION ON SENTENCING SHALL NOT SUPERSEDE
2 THE MANDATORY SENTENCES PROVIDED IN THIS SECTION. DISPOSITION
3 UNDER SECTION 17 OR 18 OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE
4 AND COSMETIC ACT SHALL NOT BE AVAILABLE TO A DEFENDANT TO WHICH
5 THIS SECTION APPLIES.

6 (D) APPEAL BY COMMONWEALTH.--IF A SENTENCING COURT REFUSES
7 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL
8 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE
9 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE
10 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A
11 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE
12 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.

13 Section 2 3. This act shall take effect in 60 days.

<—