

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1851 Session of 2019

INTRODUCED BY STEPHENS, QUINN, BERNSTINE, ROTHMAN, MILLARD, BURNS, READSHAW, MOUL, SCHWEYER, DeLUCA AND POLINCHOCK, SEPTEMBER 19, 2019

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, SEPTEMBER 24, 2019

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in sentencing, further
3 providing for sentences for offenses committed with firearms
4 and for sentences for second and subsequent offenses. <--
5 PROVIDING FOR SENTENCES FOR PERSONS NOT TO POSSESS, USE, <--
6 MANUFACTURE, CONTROL, SELL OR TRANSFER FIREARMS.

7 The General Assembly of the Commonwealth of Pennsylvania
8 hereby enacts as follows:

9 Section 1. Section 9712(a), (b) and (d) of Title 42 of the
10 Pennsylvania Consolidated Statutes are amended and the section
11 is amended by adding a subsection to read:

12 § 9712. Sentences for offenses committed with firearms.

13 (a) Mandatory sentence.--Except as provided under section
14 9716 (relating to two or more mandatory minimum sentences
15 applicable), any person who is convicted in any court of this
16 Commonwealth of a crime of violence as defined in section
17 9714(g) (relating to sentences for second and subsequent
18 offenses), shall, if the person [visibly] possessed a firearm
19 [or] during the commission of the offense, regardless of whether

1 the firearm was loaded or functional, or the person visibly
2 possessed a replica of a firearm[, whether or not the firearm or
3 replica was loaded or functional,] that placed the victim in
4 reasonable fear of death or serious bodily injury, during the
5 commission of the offense, be sentenced to a minimum sentence of
6 at least five years of total confinement notwithstanding any
7 other provision of this title or other statute to the contrary.
8 Such persons shall not be eligible for parole, probation, work
9 release or furlough.

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

21 (b.1) Application of mandatory minimum penalty.--Any
22 provision of this section that requires imposition of a
23 mandatory minimum sentence shall constitute an element enhancing
24 the underlying offense. Any enhancing element must be proven
25 beyond a reasonable doubt at trial on the underlying offense and
26 must be submitted to the finder of fact for deliberation
27 together with the underlying offense. If the finder of fact
28 finds the defendant guilty of the underlying offense, the finder
29 of fact shall then also decide whether any enhancing element has
30 been proven.

1 * * *

2 (d) Appeal by Commonwealth.--[If a sentencing court refuses
3 to apply this section where applicable, the Commonwealth shall
4 have the right to appellate review of the action of the
5 sentencing court. The appellate court shall vacate the sentence
6 and remand the case to the sentencing court for imposition of a
7 sentence in accordance with this section if it finds that the
8 sentence was imposed in violation of this section.] If the
9 finder of fact has found any enhancing element and a sentencing
10 court imposes a sentence below the mandatory minimum sentence,
11 the Commonwealth shall have the right to appellate review of the
12 sentence. If the appellate court finds that the mandatory
13 sentencing provision was applicable, the court shall vacate the
14 sentence and remand the case for resentencing in accordance with
15 that provision.

16 * * *

17 ~~Section 2. Section 9714(g) of Title 42 is amended to read: <--~~
18 ~~§ 9714. Sentences for second and subsequent offenses.~~

19 * * *

20 ~~(g) Definition. As used in this section, the term "crime of~~
21 ~~violence" means murder of the third degree, voluntary~~
22 ~~manslaughter, manslaughter of a law enforcement officer as~~
23 ~~defined in 18 Pa.C.S. § 2507(e) or (d) (relating to criminal~~
24 ~~homicide of law enforcement officer), murder of the third degree~~
25 ~~involving an unborn child as defined in 18 Pa.C.S. § 2604(e)~~
26 ~~(relating to murder of unborn child), aggravated assault of an~~
27 ~~unborn child as defined in 18 Pa.C.S. § 2606 (relating to~~
28 ~~aggravated assault of unborn child), aggravated assault as~~
29 ~~defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to~~
30 ~~aggravated assault), assault of law enforcement officer as~~

1 ~~defined in 18 Pa.C.S. § 2702.1 (relating to assault of law~~
2 ~~enforcement officer), use of weapons of mass destruction as~~
3 ~~defined in 18 Pa.C.S. § 2716(b) (relating to weapons of mass~~
4 ~~destruction), terrorism as defined in 18 Pa.C.S. § 2717(b) (2)~~
5 ~~(relating to terrorism), trafficking of persons when the offense~~
6 ~~is graded as a felony of the first degree as provided in 18~~
7 ~~Pa.C.S. § 3002 (relating to trafficking of persons), rape,~~
8 ~~involuntary deviate sexual intercourse, aggravated indecent~~
9 ~~assault, incest, sexual assault, arson endangering persons or~~
10 ~~aggravated arson as defined in 18 Pa.C.S. § 3301(a) or (a.1)~~
11 ~~(relating to arson and related offenses), ecoterrorism as~~
12 ~~classified in 18 Pa.C.S. § 3311(b) (3) (relating to~~
13 ~~ecoterrorism), kidnapping, burglary as defined in 18 Pa.C.S. §~~
14 ~~3502(a) (1) (relating to burglary), robbery as defined in 18~~
15 ~~Pa.C.S. § 3701(a) (1) (i), (ii) or (iii) (relating to robbery), or~~
16 ~~robbery of a motor vehicle, drug delivery resulting in death as~~
17 ~~defined in 18 Pa.C.S. § 2506(a) (relating to drug delivery~~
18 ~~resulting in death), possession, use, manufacture, control, sale~~
19 ~~or transfer of firearms as defined in 18 Pa.C.S. § 6105(a)~~
20 ~~(relating to persons not to possess, use, manufacture, control,~~
21 ~~sell or transfer firearms) by a person convicted of a felony~~
22 ~~enumerated under 18 Pa.C.S. § 6105(b) or a felony under the act~~
23 ~~of April 14, 1972 (P.L.233, No.64), known as The Controlled~~
24 ~~Substance, Drug, Device and Cosmetic Act, or any equivalent~~
25 ~~Federal statute or equivalent statute of any other state~~
26 ~~punishable by a term of imprisonment exceeding two years, or~~
27 ~~criminal attempt, criminal conspiracy or criminal solicitation~~
28 ~~to commit murder or any of the offenses listed above, or an~~
29 ~~equivalent crime under the laws of this Commonwealth in effect~~
30 ~~at the time of the commission of that offense or an equivalent~~

1 ~~crime in another jurisdiction.~~

2 SECTION 2. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ: <--

3 § 9712.2. SENTENCES FOR PERSONS NOT TO POSSESS, USE,

4 MANUFACTURE, CONTROL, SELL OR TRANSFER FIREARMS.

5 (A) FIRST CONVICTION.--ANY PERSON WHO IS CONVICTED UNDER 18
6 PA.C.S. § 6105(A) (RELATING TO PERSONS NOT TO POSSESS, USE,
7 MANUFACTURE, CONTROL, SELL OR TRANSFER FIREARMS) AS A RESULT OF
8 A FELONY ENUMERATED UNDER 18 PA.C.S. § 6105(B) OR A FELONY UNDER
9 THE ACT OF APRIL 14, 1972 (P.L.233, NO.64), KNOWN AS THE
10 CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT, OR ANY
11 EQUIVALENT FEDERAL STATUTE OR EQUIVALENT STATUTE OF ANY STATE
12 PUNISHABLE BY A TERM OF IMPRISONMENT EXCEEDING TWO YEARS, SHALL
13 BE SENTENCED TO A MINIMUM SENTENCE OF AT LEAST FIVE YEARS OF
14 TOTAL CONFINEMENT NOTWITHSTANDING ANY OTHER PROVISION OF THIS
15 TITLE OR OTHER STATUTE TO THE CONTRARY.

16 (B) SECOND AND SUBSEQUENT CONVICTIONS.--A SECOND OR
17 SUBSEQUENT CONVICTION UNDER 18 PA.C.S. § 6105(A) AS A RESULT OF
18 A FELONY ENUMERATED UNDER 18 PA.C.S. § 6105(B) OR A FELONY UNDER
19 THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT, OR ANY
20 EQUIVALENT FEDERAL STATUTE OR EQUIVALENT STATUTE OF ANY STATE
21 PUNISHABLE BY A TERM OF IMPRISONMENT EXCEEDING TWO YEARS, SHALL
22 CONSTITUTE A "CRIME OF VIOLENCE" AS THAT TERM IS DEFINED IN
23 SECTION 9714(G) (RELATING TO SENTENCES FOR SECOND AND SUBSEQUENT
24 OFFENSES) AND THE PERSON SHALL BE SENTENCED IN ACCORDANCE WITH
25 SECTION 9714.

26 (C) PROOF AT SENTENCING.--PROVISIONS OF THIS SECTION SHALL
27 NOT BE AN ELEMENT OF THE CRIME AND NOTICE THEREOF TO THE
28 DEFENDANT SHALL NOT BE REQUIRED PRIOR TO CONVICTION, BUT
29 REASONABLE NOTICE OF THE COMMONWEALTH'S INTENTION TO PROCEED
30 UNDER THIS SECTION SHALL BE PROVIDED AFTER CONVICTION AND BEFORE

1 SENTENCING. THE APPLICABILITY OF THIS SECTION SHALL BE
2 DETERMINED AT SENTENCING. THE SENTENCING COURT, PRIOR TO
3 IMPOSING SENTENCE ON AN OFFENDER UNDER SUBSECTION (A), SHALL
4 HAVE A COMPLETE RECORD OF THE PREVIOUS CONVICTIONS OF THE
5 OFFENDER, COPIES OF WHICH SHALL BE FURNISHED TO THE OFFENDER. IF
6 THE OFFENDER OR THE ATTORNEY FOR THE COMMONWEALTH CONTESTS THE
7 ACCURACY OF THE RECORD, THE COURT SHALL SCHEDULE A HEARING AND
8 DIRECT THE OFFENDER AND THE ATTORNEY FOR THE COMMONWEALTH TO
9 SUBMIT EVIDENCE REGARDING THE PREVIOUS CONVICTIONS OF THE
10 OFFENDER. THE COURT SHALL THEN DETERMINE, BY A PREPONDERANCE OF
11 THE EVIDENCE, THE PREVIOUS CONVICTIONS OF THE OFFENDER AND, IF
12 THIS SECTION IS APPLICABLE, SHALL IMPOSE SENTENCE IN ACCORDANCE
13 WITH THIS SECTION. SHOULD A PREVIOUS CONVICTION BE VACATED AND
14 AN ACQUITTAL OR FINAL DISCHARGE ENTERED SUBSEQUENT TO IMPOSITION
15 OF SENTENCE UNDER THIS SECTION, THE OFFENDER SHALL HAVE THE
16 RIGHT TO PETITION THE SENTENCING COURT FOR RECONSIDERATION OF
17 SENTENCE IF THIS SECTION WOULD NOT HAVE BEEN APPLICABLE EXCEPT
18 FOR THE CONVICTION WHICH WAS VACATED.

19 (D) APPEAL BY COMMONWEALTH.--IF A SENTENCING COURT REFUSES
20 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL
21 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE
22 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE
23 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A
24 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE
25 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.

26 Section 3. This act shall take effect in 60 days.