

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 726 Session of
1989

INTRODUCED BY FOX, CALTAGIRONE, MOEHLMANN, JAROLIN, REBER,
NAHILL, WILLIAMS, CIVERA, MORRIS, DIETTERICK, ROBINSON,
ACOSTA, WILSON, STABACK, FLEAGLE, LETTERMAN, KOSINSKI,
JADLOWIEC, J. L. WRIGHT, BUSH, FAIRCHILD, CORNELL, SAURMAN,
WASS, MELIO, TIGUE, FARMER, ADOLPH, CESSAR, CAPPABIANCA,
JACKSON, DeLUCA, SERAFINI, BELFANTI, SEMMEL, VROON, HASAY,
HESS, TANGRETTI, HERMAN, STAIRS, MRKONIC, BUNT, G. SNYDER,
J. TAYLOR, GODSHALL, JOHNSON, PERZEL, RAYMOND, RITTER,
ANGSTADT, E. Z. TAYLOR, GEIST, BELARDI, FLICK, NOYE, VEON,
LEE, MAIALE, MICOZZIE, DURHAM, MERRY, ROBBINS, BISHOP,
McVERY, GIGLIOTTI, WESTON, HOWLETT AND JAMES, MARCH 13, 1989

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 13, 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," providing for mandatory
11 sentences for certain offenses committed when in possession
12 of a firearm.

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

15 Section 1. Section 13 of the act of April 14, 1972 (P.L.233,
16 No.64), known as The Controlled Substance, Drug, Device and
17 Cosmetic Act, is amended by adding a subsection to read:

18 Section 13. Prohibited Acts; Penalties.--* * *

1 (m) A person who is convicted in any court of this
2 Commonwealth for selling or delivering a controlled substance
3 listed in Schedules I through V and who had in his possession a
4 firearm during the commission of the offense shall be sentenced
5 to imprisonment of at least five years, notwithstanding any
6 other provision of this act or any other statute to the
7 contrary. Notice of this subsection to the defendant shall not
8 be required prior to conviction, but reasonable notice of the
9 Commonwealth's intention to proceed under this subsection shall
10 be provided after conviction and before sentencing. There shall
11 be no authority in any court to impose on an offender to which
12 this section is applicable a lesser sentence than provided
13 herein or to place the offender on probation or to suspend
14 sentence. Nothing in this subsection shall prevent the
15 sentencing court from imposing the greater sentences authorized
16 in subsection (f). Sentencing guidelines promulgated by the
17 Pennsylvania Commission on Sentencing shall not supersede the
18 mandatory sentences provided in this section. If a sentencing
19 court refuses to apply this subsection, where applicable, the
20 Commonwealth shall have the right to appellate review of the
21 action of the sentencing court. The appellate court shall vacate
22 the sentence and remand the case to the sentencing court for
23 imposition of a sentence in accordance with this subsection, if
24 it finds that the sentence was imposed in violation of this
25 section. As used in this subsection, the term "firearm" means
26 any weapon (including a starter gun) which will or is designed
27 to or may readily be converted to expel a projectile by the
28 action of an explosive or the expansion of gas therein.

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