

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2921 Session of
1996

INTRODUCED BY BOSCOLA, ROONEY, CORPORA, HASTE, THOMAS, SANTONI, BELARDI, ITKIN, COWELL, COY, TRUE, BARD, HALUSKA, BATTISTO, MARKOSEK, READSHAW, MAITLAND, TIGUE, CLARK, ROBERTS, DIGIROLAMO, CORRIGAN, STABACK, FEESE, BEBKO-JONES, STEELMAN, DONATUCCI, FAIRCHILD, STURLA, FAJT, ADOLPH, SCHRODER, RUBLEY, ROEBUCK, DALEY, TRAVAGLIO, ARMSTRONG, TANGRETTI, LEDERER, SAINATO, SHANER, SERAFINI, TRELLO, L. I. COHEN, RAMOS AND YOUNGBLOOD, OCTOBER 1, 1996

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 1, 1996

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for drug-free
3 recreation zones.

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 in a drug-free
9 recreation zone.

10 (a) General rule.--A person 18 years of age or older who is
11 convicted in any court of this Commonwealth of a violation of
12 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,
13 No.64), known as The Controlled Substance, Drug, Device and
14 Cosmetic Act, shall, if the delivery or possession with intent
15 to deliver of the controlled substance occurred within 1,000

1 feet of the real property on which is located a public park,
2 pool or playground, be sentenced to a minimum sentence of at
3 least two years of total confinement, notwithstanding any other
4 provision of this title or Title 18 (relating to crimes and
5 offenses), The Controlled Substance, Drug, Device and Cosmetic
6 Act or other statute to the contrary. The maximum term of
7 imprisonment shall be four years for any offense:

8 (1) subject to this section; and

9 (2) for which The Controlled Substance, Drug, Device and
10 Cosmetic Act provides for a maximum term of imprisonment of
11 less than four years.

12 If the sentencing court finds that the delivery or possession
13 with intent to deliver was to an individual under 18 years of
14 age, then this section shall not be applicable and the offense
15 shall be subject to 18 Pa.C.S. § 6314 (relating to sentencing
16 and penalties for trafficking drugs to minors).

17 (b) Proof at sentencing.--The provisions of this section
18 shall not be an element of the crime. Notice of the
19 applicability of this section to the defendant shall not be
20 required prior to conviction, but reasonable notice of the
21 Commonwealth's intention to proceed under this section shall be
22 provided after conviction and before sentencing. The
23 applicability of this section shall be determined at sentencing.
24 The court shall consider evidence presented at trial, shall
25 afford the Commonwealth and the defendant an opportunity to
26 present necessary additional evidence and shall determine, by a
27 preponderance of the evidence, if this section is applicable.

28 (c) Authority of court in sentencing.--There shall be no
29 authority for a court to impose on a defendant to which this
30 section is applicable a lesser sentence than provided for in

1 subsection (a), to place the defendant on probation or to
2 suspend sentence. Nothing in this section shall prevent the
3 sentencing court from imposing a sentence greater than that
4 provided in this section. Sentencing guidelines promulgated by
5 the Pennsylvania Commission on Sentencing shall not supersede
6 the mandatory sentences provided in this section. Disposition
7 under section 17 or 18 of The Controlled Substance, Drug, Device
8 and Cosmetic Act shall not be available to a defendant to which
9 this section applies.

10 (d) Appeal by Commonwealth.--If a sentencing court refuses
11 to apply this section where applicable, the Commonwealth shall
12 have the right to appellate review of the action of the
13 sentencing court. The appellate court shall vacate the sentence
14 and remand the case to the sentencing court for imposition of a
15 sentence in accordance with this section if it finds that the
16 sentence was imposed in violation of this section.

17 Section 2. This act shall apply to all offenses occurring on
18 or after the effective date of this act.

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