

## AMENDMENTS TO SENATE BILL NO. 1062

Sponsor: REPRESENTATIVE STEPHENS

Printer's No. 1679

1 Amend Bill, page 1, line 4, by inserting after "burglary; "  
2 in minors, further providing for sentencing and penalties for  
3 trafficking drugs to minors and for drug-free school zones;  
4 in other offenses, further providing for drug trafficking  
5 sentencing and penalties; and, in sentencing, further  
6 providing for sentences for offenses committed with firearms,  
7 for sentences for certain drug offenses committed with  
8 firearms, for sentences for offenses committed on public  
9 transportation, for sentences for offenses against elderly  
10 persons, for sentences for offenses against infant persons,  
11 for sentence for failure to comply with registration of  
12 sexual offenders, for sentences for offenses committed while  
13 impersonating a law enforcement officer

14 Amend Bill, page 1, line 4, by striking out ", IN  
15 SENTENCING,"

16 Amend Bill, page 2, by inserting after line 30

17 Section 2. Sections 6314, 6317 and 7508(a), (b) and (d) of  
18 Title 18 are amended to read:

19 § 6314. Sentencing and penalties for trafficking drugs to  
20 minors.

21 (a) General rule.--A person over 18 years of age who is  
22 convicted in any court of this Commonwealth of a violation of  
23 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,  
24 No.64), known as The Controlled Substance, Drug, Device and  
25 Cosmetic Act, shall, if the delivery or possession with intent  
26 to deliver of the controlled substance was to a minor, be  
27 sentenced to a minimum sentence of at least one year total  
28 confinement, notwithstanding any other provision of this title  
29 or other statute to the contrary.

30 (b) Additional penalties.--In addition to the mandatory  
31 minimum sentence set forth in subsection (a), the person shall  
32 be sentenced to an additional minimum sentence of at least two  
33 years total confinement, notwithstanding any other provision of  
34 this title or other statute to the contrary, if the person did  
35 any of the following:

1 (1) Committed the offense with the intent to promote the  
2 habitual use of the controlled substance.

3 (2) Intended to engage the minor in the trafficking,  
4 transportation, delivery, manufacturing, sale or conveyance.

5 (3) Committed the offense within 1,000 feet of the real  
6 property on which is located a public, private or parochial  
7 school or a college or university.

8 (4) Committed the offense on a school bus or within 500  
9 feet of a school bus stop.

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

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

30 (d) Authority of court in sentencing.--There shall be no  
31 authority for a court to impose on a defendant to which this  
32 section is applicable a lesser sentence than provided for in  
33 [subsection (a)] subsections (a) and (b), to place the defendant  
34 on probation or to suspend sentence. Nothing in this section  
35 shall prevent the sentencing court from imposing a sentence  
36 greater than that provided in this section. Sentencing  
37 guidelines promulgated by the Pennsylvania Commission on  
38 Sentencing shall not supersede the mandatory sentences provided  
39 in this section. Disposition under section 17 or 18 of The  
40 Controlled Substance, Drug, Device and Cosmetic Act shall not be  
41 available to a defendant to which this section applies.

42 (e) Appeal by Commonwealth.--[If a sentencing court refuses  
43 to apply this section where applicable, the Commonwealth shall  
44 have the right to appellate review of the action of the  
45 sentencing court. The appellate court shall vacate the sentence  
46 and remand the case to the sentencing court for imposition of a  
47 sentence in accordance with this section if it finds that the  
48 sentence was imposed in violation of this section.] If the fact-  
49 finder has found any enhancing element and a sentencing court  
50 imposes a sentence below the mandatory minimum sentence, the  
51 Commonwealth shall have the right to appellate review of the

1 sentence. If the appellate court finds that the mandatory  
2 sentencing provision was applicable, the court shall vacate the  
3 sentence and remand for resentencing in accordance with that  
4 provision.

5 (f) Forfeiture.--Assets against which a forfeiture petition  
6 has been filed and is pending or against which the Commonwealth  
7 has indicated an intention to file a forfeiture petition shall  
8 not be subject to a fine under this section.

9 (g) Definition.--As used in this section, the term "minor"  
10 means an individual under 18 years of age.

11 § 6317. Drug-free school zones.

12 (a) General rule.--A person 18 years of age or older who is  
13 convicted in any court of this Commonwealth of a violation of  
14 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,  
15 No.64), known as The Controlled Substance, Drug, Device and  
16 Cosmetic Act, shall, if the delivery or possession with intent  
17 to deliver of the controlled substance occurred within 1,000  
18 feet of the real property on which is located a public, private  
19 or parochial school or a college or university or within 250  
20 feet of the real property on which is located a recreation  
21 center or playground or on a school bus, be sentenced to a  
22 minimum sentence of at least two years of total confinement,  
23 notwithstanding any other provision of this title, The  
24 Controlled Substance, Drug, Device and Cosmetic Act or other  
25 statute to the contrary. The maximum term of imprisonment shall  
26 be four years for any offense:

27 (1) subject to this section; and

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

31 If the sentencing court finds that the delivery or possession  
32 with intent to deliver was to an individual under 18 years of  
33 age, then this section shall not be applicable and the offense  
34 shall be subject to section 6314 (relating to sentencing and  
35 penalties for trafficking drugs to minors).

36 (b) [Proof at sentencing.--The provisions of this section  
37 shall not be an element of the crime. Notice of the  
38 applicability of this section to the defendant shall not be  
39 required prior to conviction, but reasonable notice of the  
40 Commonwealth's intention to proceed under this section shall be  
41 provided after conviction and before sentencing. The  
42 applicability of this section shall be determined at sentencing.  
43 The court shall consider evidence presented at trial, shall  
44 afford the Commonwealth and the defendant an opportunity to  
45 present necessary additional evidence and shall determine by a  
46 preponderance of the evidence if this section is applicable.]

47 Application of mandatory minimum penalty.--Any provision of this  
48 section that requires imposition of a mandatory minimum sentence  
49 shall constitute an element enhancing the underlying offense.  
50 Any enhancing element must be proven beyond a reasonable doubt  
51 at trial on the underlying offense and must be submitted to the

1 fact-finder for deliberation together with the underlying  
2 offense. If the fact-finder finds the defendant guilty of the  
3 underlying offense, the fact-finder shall then also decide  
4 whether any enhancing element has been proven.

5 (c) Authority of court in sentencing.--There shall be no  
6 authority for a court to impose on a defendant to which this  
7 section is applicable a lesser sentence than provided for in  
8 subsection (a), to place the defendant on probation or to  
9 suspend sentence. Nothing in this section shall prevent the  
10 sentencing court from imposing a sentence greater than that  
11 provided in this section. Sentencing guidelines promulgated by  
12 the Pennsylvania Commission on Sentencing shall not supersede  
13 the mandatory sentences provided in this section. Disposition  
14 under section 17 or 18 of The Controlled Substance, Drug, Device  
15 and Cosmetic Act shall not be available to a defendant to which  
16 this section applies.

17 (d) Appeal by Commonwealth.--[If a sentencing court refuses  
18 to apply this section where applicable, the Commonwealth shall  
19 have the right to appellate review of the action of the  
20 sentencing court. The appellate court shall vacate the sentence  
21 and remand the case to the sentencing court for imposition of a  
22 sentence in accordance with this section if it finds that the  
23 sentence was imposed in violation of this section.] If the fact-  
24 finder has found any enhancing element and a sentencing court  
25 imposes a sentence below the mandatory minimum sentence, the  
26 Commonwealth shall have the right to appellate review of the  
27 sentence. If the appellate court finds that the mandatory  
28 sentencing provision was applicable, the court shall vacate the  
29 sentence and remand for resentencing in accordance with that  
30 provision.

31 § 7508. Drug trafficking sentencing and penalties.

32 (a) General rule.--Notwithstanding any other provisions of  
33 this or any other act to the contrary, the following provisions  
34 shall apply:

35 (1) A person who is convicted of violating section 13(a)  
36 (14), (30) or (37) of the act of April 14, 1972 (P.L.233,  
37 No.64), known as The Controlled Substance, Drug, Device and  
38 Cosmetic Act, where the controlled substance is marijuana  
39 shall, upon conviction, be sentenced to a mandatory minimum  
40 term of imprisonment and a fine as set forth in this  
41 subsection:

42 (i) when the amount of marijuana involved is at  
43 least two pounds, but less than ten pounds, or at least  
44 ten live plants but less than 21 live plants[; one year  
45 in prison and a fine of \$5,000 or such larger amount as  
46 is sufficient to exhaust the assets utilized in and the  
47 proceeds from the illegal activity; however], and if at  
48 the time of sentencing the defendant has been convicted  
49 of another drug trafficking offense: [two years] one year  
50 in prison and a fine of \$10,000 or such larger amount as  
51 is sufficient to exhaust the assets utilized in and the

proceeds from the illegal activity;

(ii) when the amount of marijuana involved is at least ten pounds, but less than 50 pounds, or at least 21 live plants but less than 51 live plants; [three years] one year in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense: [four] two years in prison and a fine of \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(iii) when the amount of marijuana involved is at least 50 pounds, or at least 51 live plants; [five] three years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity[.]; however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense: five years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(2) A person who is convicted of violating section 13(a) (14), (30) or (37) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance or a mixture containing it is classified in Schedule I or Schedule II under section 4 of that act and is a narcotic drug shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) when the aggregate weight of the compound or mixture containing the substance involved is at least 2.0 grams and less than ten grams; two years in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense: three years in prison and \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity;

(ii) when the aggregate weight of the compound or mixture containing the substance involved is at least ten grams and less than 100 grams; three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; however, if at the time of sentencing the defendant has been convicted of another drug trafficking offense: five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(iii) when the aggregate weight of the compound or

1 mixture containing the substance involved is at least 100  
2 grams; five years in prison and a fine of \$25,000 or such  
3 larger amount as is sufficient to exhaust the assets  
4 utilized in and the proceeds from the illegal activity;  
5 however, if at the time of sentencing the defendant has  
6 been convicted of another drug trafficking offense: seven  
7 years in prison and \$50,000 or such larger amount as is  
8 sufficient to exhaust the assets utilized in and the  
9 proceeds from the illegal activity.

10 (3) A person who is convicted of violating section 13(a)  
11 (14), (30) or (37) of The Controlled Substance, Drug, Device  
12 and Cosmetic Act where the controlled substance is coca  
13 leaves or is any salt, compound, derivative or preparation of  
14 coca leaves or is any salt, compound, derivative or  
15 preparation which is chemically equivalent or identical with  
16 any of these substances or is any mixture containing any of  
17 these substances except decocainized coca leaves or extracts  
18 of coca leaves which (extracts) do not contain cocaine or  
19 ecgonine shall, upon conviction, be sentenced to a mandatory  
20 minimum term of imprisonment and a fine as set forth in this  
21 subsection:

22 (i) when the aggregate weight of the compound or  
23 mixture containing the substance involved is at least  
24 [2.0] 5.0 grams and less than [ten] 25 grams; one year in  
25 prison and a fine of \$5,000 or such larger amount as is  
26 sufficient to exhaust the assets utilized in and the  
27 proceeds from the illegal activity; however, if at the  
28 time of sentencing the defendant has been convicted of  
29 another drug trafficking offense: [three] two years in  
30 prison and \$10,000 or such larger amount as is sufficient  
31 to exhaust the assets utilized in and the proceeds from  
32 the illegal activity;

33 (ii) when the aggregate weight of the compound or  
34 mixture containing the substance involved is at least  
35 [ten] 25 grams and less than 100 grams; [three] two years  
36 in prison and a fine of \$15,000 or such larger amount as  
37 is sufficient to exhaust the assets utilized in and the  
38 proceeds from the illegal activity; however, if at the  
39 time of sentencing the defendant has been convicted of  
40 another drug trafficking offense: [five] four years in  
41 prison and \$30,000 or such larger amount as is sufficient  
42 to exhaust the assets utilized in and the proceeds from  
43 the illegal activity; and

44 (iii) when the aggregate weight of the compound or  
45 mixture of the substance involved is at least 100 grams;  
46 four years in prison and a fine of \$25,000 or such larger  
47 amount as is sufficient to exhaust the assets utilized in  
48 and the proceeds from the illegal activity; however, if  
49 at the time of sentencing the defendant has been  
50 convicted of another drug trafficking offense: [seven]  
51 eight years in prison and \$50,000 or such larger amount

1 as is sufficient to exhaust the assets utilized in and  
2 the proceeds from the illegal activity.

3 (4) A person who is convicted of violating section 13(a)  
4 (14), (30) or (37) of The Controlled Substance, Drug, Device  
5 and Cosmetic Act where the controlled substance is  
6 methamphetamine or phencyclidine or is a salt, isomer or salt  
7 of an isomer of methamphetamine or phencyclidine or is a  
8 mixture containing methamphetamine or phencyclidine,  
9 containing a salt of methamphetamine or phencyclidine,  
10 containing an isomer of methamphetamine or phencyclidine,  
11 containing a salt of an isomer of methamphetamine or  
12 phencyclidine shall, upon conviction, be sentenced to a  
13 mandatory minimum term of imprisonment and a fine as set  
14 forth in this subsection:

15 (i) when the aggregate weight of the compound or  
16 mixture containing the substance involved is at least  
17 five grams and less than ten grams; three years in prison  
18 and a fine of \$15,000 or such larger amount as is  
19 sufficient to exhaust the assets utilized in and the  
20 proceeds from the illegal activity; however, if at the  
21 time of sentencing the defendant has been convicted of  
22 another drug trafficking offense: five years in prison  
23 and \$30,000 or such larger amount as is sufficient to  
24 exhaust the assets utilized in and the proceeds from the  
25 illegal activity;

26 (ii) when the aggregate weight of the compound or  
27 mixture containing the substance involved is at least ten  
28 grams and less than 100 grams; four years in prison and a  
29 fine of \$25,000 or such larger amount as is sufficient to  
30 exhaust the assets utilized in and the proceeds from the  
31 illegal activity; however, if at the time of sentencing  
32 the defendant has been convicted of another drug  
33 trafficking offense: seven years in prison and \$50,000 or  
34 such larger amount as is sufficient to exhaust the assets  
35 utilized in and the proceeds from the illegal activity;  
36 and

37 (iii) when the aggregate weight of the compound or  
38 mixture containing the substance involved is at least 100  
39 grams; five years in prison and a fine of \$50,000 or such  
40 larger amount as is sufficient to exhaust the assets  
41 utilized in and the proceeds from the illegal activity;  
42 however, if at the time of sentencing the defendant has  
43 been convicted of another drug trafficking offense: eight  
44 years in prison and \$50,000 or such larger amount as is  
45 sufficient to exhaust the assets utilized in and the  
46 proceeds from the illegal activity.

47 [(5) A person who is convicted of violating section  
48 13(a)(14), (30) or (37) of The Controlled Substance, Drug,  
49 Device and Cosmetic Act, and who, in the course of the  
50 offense, manufactures, delivers, brings into this  
51 Commonwealth or possesses with intent to manufacture or

1 deliver amphetamine or any salt, optical isomer, or salt of  
2 an optical isomer, or a mixture containing any such  
3 substances shall, when the aggregate weight of the compound  
4 or mixture containing the substance involved is at least five  
5 grams, be sentenced to two and one-half years in prison and a  
6 fine of \$15,000 or such larger amount as is sufficient to  
7 exhaust the assets utilized in and the proceeds from the  
8 illegal activity; however, if at the time of sentencing the  
9 defendant has been convicted of another drug trafficking  
10 offense: be sentenced to five years in prison and \$30,000 or  
11 such larger amount as is sufficient to exhaust the assets  
12 utilized in and the proceeds from the illegal activity.

13 (6) A person who is convicted of violating section 13(a)  
14 (14), (30) or (37) of The Controlled Substance, Drug, Device  
15 and Cosmetic Act where the controlled substance is  
16 methaqualone shall, upon conviction, be sentenced to a  
17 mandatory minimum term of imprisonment and a fine as set  
18 forth in this subsection:

19 (i) when the aggregate weight of the compound or  
20 mixture containing the substance involved is at least 50  
21 tablets, capsules, caplets or other dosage units, or 25  
22 grams and less than 200 tablets, capsules, caplets or  
23 other dosage units, or 100 grams; one year in prison and  
24 a fine of \$2,500 or such larger amount as is sufficient  
25 to exhaust the assets utilized in and the proceeds from  
26 the illegal activity; however, if at the time of  
27 sentencing the defendant has been convicted of another  
28 drug trafficking offense: three years in prison and  
29 \$5,000 or such larger amount as is sufficient to exhaust  
30 the assets utilized in and the proceeds from the illegal  
31 activity; and

32 (ii) when the aggregate weight of the compound or  
33 mixture containing the substance involved is at least 200  
34 tablets, capsules, caplets or other dosage units, or more  
35 than 100 grams; two and one-half years in prison and a  
36 fine of \$15,000 or such larger amount as is sufficient to  
37 exhaust the assets utilized in and the proceeds from the  
38 illegal activity; however, if at the time of sentencing  
39 the defendant has been convicted of another drug  
40 trafficking offense: five years in prison and \$30,000 or  
41 such larger amount as is sufficient to exhaust the assets  
42 utilized in and the proceeds from the illegal activity.]

43 (7) A person who is convicted of violating section 13(a)  
44 (14), (30) or (37) of The Controlled Substance, Drug, Device  
45 and Cosmetic Act where the controlled substance or a mixture  
46 containing it is heroin shall, upon conviction, be sentenced  
47 as set forth in this paragraph:

48 (i) when the aggregate weight of the compound or  
49 mixture containing the heroin involved is at least 1.0  
50 gram but less than 5.0 grams the sentence shall be a  
51 mandatory minimum term of two years in prison and a fine



1 of \$5,000 or such larger amount as is sufficient to  
2 exhaust the assets utilized in and the proceeds from the  
3 illegal activity; however, if at the time of sentencing  
4 the defendant has been convicted of another drug  
5 trafficking offense: a mandatory minimum term of three  
6 years in prison and \$10,000 or such larger amount as is  
7 sufficient to exhaust the assets utilized in and the  
8 proceeds from the illegal activity;

9 (ii) when the aggregate weight of the compound or  
10 mixture containing the heroin involved is at least 5.0  
11 grams but less than 50 grams: a mandatory minimum term of  
12 three years in prison and a fine of \$15,000 or such  
13 larger amount as is sufficient to exhaust the assets  
14 utilized in and the proceeds from the illegal activity;  
15 however, if at the time of sentencing the defendant has  
16 been convicted of another drug trafficking offense: a  
17 mandatory minimum term of five years in prison and  
18 \$30,000 or such larger amount as is sufficient to exhaust  
19 the assets utilized in and the proceeds from the illegal  
20 activity; and

21 (iii) when the aggregate weight of the compound or  
22 mixture containing the heroin involved is 50 grams or  
23 greater: a mandatory minimum term of five years in prison  
24 and a fine of \$25,000 or such larger amount as is  
25 sufficient to exhaust the assets utilized in and the  
26 proceeds from the illegal activity; however, if at the  
27 time of sentencing the defendant has been convicted of  
28 another drug trafficking offense: a mandatory minimum  
29 term of seven years in prison and \$50,000 or such larger  
30 amount as is sufficient to exhaust the assets utilized in  
31 and the proceeds from the illegal activity.

32 (8) A person who is convicted of violating section 13(a)  
33 (12), (14) or (30) of The Controlled Substance, Drug, Device  
34 and Cosmetic Act where the controlled substance or a mixture  
35 containing it is 3,4-methylenedioxyamphetamine (MDA); 3,4-  
36 methylenedioxymethamphetamine (MDMA); 5-methoxy-3,4-  
37 methylenedioxyamphetamine (MMDA); 3,4-methylenedioxy-N-  
38 ethylamphetamine; N-hydroxy-3,4-methylenedioxyamphetamine; or  
39 their salts, isomers and salts of isomers, whenever the  
40 existence of such salts, isomers and salts of isomers is  
41 possible within the specific chemical designation, shall,  
42 upon conviction, be sentenced as set forth in this paragraph:

43 (i) When the aggregate weight of the compound or  
44 mixture containing the substance involved is at least 50  
45 tablets, capsules, caplets or other dosage units, or 15  
46 grams and less than 100 tablets, capsules, caplets or  
47 other dosage units, or less than 30 grams, the person is  
48 guilty of a felony and, upon conviction thereof, shall be  
49 sentenced to imprisonment not exceeding five years or to  
50 pay a fine not exceeding \$15,000, or both.

51 (ii) When the aggregate weight of the compound or

1 mixture containing the substance involved is at least 100  
2 tablets, capsules, caplets or other dosage units, or 30  
3 grams and less than 1,000 tablets, capsules, caplets or  
4 other dosage units, or less than 300 grams, the person is  
5 guilty of a felony and, upon conviction thereof, shall be  
6 sentenced to imprisonment not exceeding ten years or to  
7 pay a fine not exceeding \$100,000, or both.

8 (iii) When the aggregate weight of the compound or  
9 mixture containing the substance involved is at least  
10 1,000 tablets, capsules, caplets or other dosage units,  
11 or 300 grams, the person is guilty of a felony and, upon  
12 conviction thereof, shall be sentenced to imprisonment  
13 not exceeding 15 years or to pay a fine not exceeding  
14 \$250,000, or both.

15 \* \* \*

16 (b) [Proof of sentencing.--Provisions of this section shall  
17 not be an element of the crime. Notice of the applicability of  
18 this section to the defendant shall not be required prior to  
19 conviction, but reasonable notice of the Commonwealth's  
20 intention to proceed under this section shall be provided after  
21 conviction and before sentencing. The applicability of this  
22 section shall be determined at sentencing. The court shall  
23 consider evidence presented at trial, shall afford the  
24 Commonwealth and the defendant an opportunity to present  
25 necessary additional evidence and shall determine, by a  
26 preponderance of the evidence, if this section is applicable.]  
27 Application of mandatory minimum penalty.--With the exception of  
28 prior convictions, any provision of this section that requires  
29 imposition of a mandatory minimum sentence shall constitute an  
30 element enhancing the underlying offense. Any enhancing element  
31 must be proven beyond a reasonable doubt at trial on the  
32 underlying offense and must be submitted to the fact-finder for  
33 deliberation together with the underlying offense. If the fact-  
34 finder finds the defendant guilty of the underlying offense, the  
35 fact-finder shall then also decide whether any enhancing element  
36 has been proven.

37 \* \* \*

38 (d) [Appellate review.--If a sentencing court refuses to  
39 apply this section where applicable, the Commonwealth shall have  
40 the right to appellate review of the action of the sentencing  
41 court. The appellate court shall vacate the sentence and remand  
42 the case to the sentencing court for imposition of a sentence in  
43 accordance with this section if it finds that the sentence was  
44 imposed in violation of this section.] Appeal by the  
45 Commonwealth.--If the fact-finder has found any enhancing  
46 element and a sentencing court imposes a sentence below the  
47 mandatory minimum sentence, the Commonwealth shall have the  
48 right to appellate review of the sentence. If the appellate  
49 court finds that the mandatory sentencing provision was  
50 applicable, the court shall vacate the sentence and remand for  
51 resentencing in accordance with that provision.

1       \* \* \*

2       Section 3. Sections 9712(b) and (d), 9712.1(c) and (e) and  
3 9713(c) and (e) of Title 42 are amended to read:  
4 § 9712. Sentences for offenses committed with firearms.

5       \* \* \*

6       (b) [Proof at sentencing.--Provisions of this section shall  
7 not be an element of the crime and notice thereof to the  
8 defendant shall not be required prior to conviction, but  
9 reasonable notice of the Commonwealth's intention to proceed  
10 under this section shall be provided after conviction and before  
11 sentencing. The applicability of this section shall be  
12 determined at sentencing. The court shall consider any evidence  
13 presented at trial and shall afford the Commonwealth and the  
14 defendant an opportunity to present any necessary additional  
15 evidence and shall determine, by a preponderance of the  
16 evidence, if this section is applicable.] Application of  
17 mandatory minimum penalty.--Any provision of this section that  
18 requires imposition of a mandatory minimum sentence shall  
19 constitute an element enhancing the underlying offense. Any  
20 enhancing element must be proven beyond a reasonable doubt at  
21 trial on the underlying offense and must be submitted to the  
22 fact-finder for deliberation together with the underlying  
23 offense. If the fact-finder finds the defendant guilty of the  
24 underlying offense, the fact-finder shall then also decide  
25 whether any enhancing element has been proven.

26       \* \* \*

27       (d) Appeal by Commonwealth.--[If a sentencing court refuses  
28 to apply this section where applicable, the Commonwealth shall  
29 have the right to appellate review of the action of the  
30 sentencing court. The appellate court shall vacate the sentence  
31 and remand the case to the sentencing court for imposition of a  
32 sentence in accordance with this section if it finds that the  
33 sentence was imposed in violation of this section.] If the fact-  
34 finder has found any enhancing element and a sentencing court  
35 imposes a sentence below the mandatory minimum sentence, the  
36 Commonwealth shall have the right to appellate review of the  
37 sentence. If the appellate court finds that the mandatory  
38 sentencing provision was applicable, the court shall vacate the  
39 sentence and remand for resentencing in accordance with that  
40 provision.

41       \* \* \*

42 § 9712.1. Sentences for certain drug offenses committed with  
43 firearms.

44       \* \* \*

45       (c) [Proof at sentencing.--Provisions of this section shall  
46 not be an element of the crime, and notice thereof to the  
47 defendant shall not be required prior to conviction, but  
48 reasonable notice of the Commonwealth's intention to proceed  
49 under this section shall be provided after conviction and before  
50 sentencing. The applicability of this section shall be  
51 determined at sentencing. The court shall consider any evidence

1 presented at trial and shall afford the Commonwealth and the  
2 defendant an opportunity to present any necessary additional  
3 evidence and shall determine, by a preponderance of the  
4 evidence, if this section is applicable.] Application of  
5 mandatory minimum penalty.--Any provision of this section that  
6 requires imposition of a mandatory minimum sentence shall  
7 constitute an element enhancing the underlying offense. Any  
8 enhancing element must be proven beyond a reasonable doubt at  
9 trial on the underlying offense and must be submitted to the  
10 fact-finder for deliberation together with the underlying  
11 offense. If the fact-finder finds the defendant guilty of the  
12 underlying offense, the fact-finder shall then also decide  
13 whether any enhancing element has been proven.

14 \* \* \*

15 (e) Appeal by Commonwealth.--[If a sentencing court refuses  
16 to apply this section where applicable, the Commonwealth shall  
17 have the right to appellate review of the action of the  
18 sentencing court. The appellate court shall vacate the sentence  
19 and remand the case to the sentencing court for imposition of a  
20 sentence in accordance with this section if it finds that the  
21 sentence was imposed in violation of this section.] If the fact-  
22 finder has found any enhancing element and a sentencing court  
23 imposes a sentence below the mandatory minimum sentence, the  
24 Commonwealth shall have the right to appellate review of the  
25 sentence. If the appellate court finds that the mandatory  
26 sentencing provision was applicable, the court shall vacate the  
27 sentence and remand for resentencing in accordance with that  
28 provision.

29 \* \* \*

30 § 9713. Sentences for offenses committed on public  
31 transportation.

32 \* \* \*

33 (c) [Proof at sentencing.--Provisions of this section shall  
34 not be an element of the crime and notice thereof to the  
35 defendant shall not be required prior to conviction, but  
36 reasonable notice of the Commonwealth's intention to proceed  
37 under this section shall be provided after conviction and before  
38 sentencing. The applicability of this section shall be  
39 determined at sentencing. The court shall consider any evidence  
40 presented at trial and shall afford the Commonwealth and the  
41 defendant an opportunity to present any necessary additional  
42 evidence and shall determine, by a preponderance of the  
43 evidence, if this section is applicable.] Application of  
44 mandatory minimum penalty.--Any provision of this section that  
45 requires imposition of a mandatory minimum sentence constitutes  
46 an element enhancing the underlying offense. An enhancing  
47 element must be proven beyond a reasonable doubt at trial on the  
48 underlying offense and must be submitted to the finder of fact  
49 for deliberation together with the underlying offense. If the  
50 finder of fact determines the defendant is guilty of the  
51 underlying offense, the finder of fact will then decide whether

1 an enhancing element has been proven.

2 \* \* \*

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

17 Section 4. Section 9717 of Title 42 is amended by adding  
18 subsections to read:

19 § 9717. Sentences for offenses against elderly persons.

20 \* \* \*

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

31 (d) Appeal by Commonwealth.--If the finder of fact has found  
32 an enhancing element and a sentencing court imposes a sentence  
33 below the mandatory minimum sentence, the Commonwealth has the  
34 right to appellate review of the sentence. If the appellate  
35 court finds that the mandatory sentencing provision was  
36 applicable, the court must vacate the sentence and remand for  
37 resentencing in accordance with that provision.

38 Section 5. Sections 9718(c) and (e), 9718.4 and 9719(b) and  
39 (d) of Title 42 are amended to read:

40 § 9718. Sentences for offenses against infant persons.

41 \* \* \*

42 (c) [Proof at sentencing.--The provisions of this section  
43 shall not be an element of the crime, and notice of the  
44 provisions of this section to the defendant shall not be  
45 required prior to conviction, but reasonable notice of the  
46 Commonwealth's intention to proceed under this section shall be  
47 provided after conviction and before sentencing. The  
48 applicability of this section shall be determined at sentencing.  
49 The court shall consider any evidence presented at trial and  
50 shall afford the Commonwealth and the defendant an opportunity  
51 to present any necessary additional evidence and shall

determine, by a preponderance of the evidence, if this section is applicable.] Application of mandatory minimum penalty.--Any provision of this section that requires imposition of a mandatory minimum sentence constitutes an element enhancing the underlying offense. An enhancing element must be proven beyond a reasonable doubt at trial on the underlying offense and must be submitted to the finder of fact for deliberation together with the underlying offense. If the finder of fact determines the defendant is guilty of the underlying offense, the finder of fact will then decide whether an enhancing element has been proven.

\* \* \*

(e) Appeal by Commonwealth.--[If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.] If the finder of fact has found an enhancing element and a sentencing court imposes a sentence below the mandatory minimum sentence, the Commonwealth has the right to appellate review of the sentence. If the appellate court finds that the mandatory sentencing provision was applicable, the court must vacate the sentence and remand for resentencing in accordance with that provision.

§ 9718.4. Sentence for failure to comply with registration of sexual offenders.

(a) Mandatory sentence.--Mandatory sentencing shall be as follows:

(1) Sentencing upon conviction for a first offense shall be as follows:

(i) Not less than two years for an individual who:

(A) is subject to section 9799.13 (relating to applicability) and must register for a period of 15 years under section 9799.15 (relating to period of registration) or a similar provision from another jurisdiction; and

(B) violated 18 Pa.C.S. § 4915.1(a)(1) or (2) (relating to failure to comply with registration requirements).

(ii) Not less than three years for an individual

who:

(A) is subject to section 9799.13 and must register for a period of 15 years under section 9799.15 or a similar provision from another jurisdiction; and

(B) violated 18 Pa.C.S. § 4915.1(a)(3).

(iii) Not less than three years for an individual

who:

(A) is subject to section 9799.13 and must

1 register for a period of 25 years or life under  
 2 section 9799.15 or a similar provision from another  
 3 jurisdiction; and  
 4 (B) violated 18 Pa.C.S. § 4915.1(a)(1) or (2).  
 5 (iv) Not less than five years for an individual who:  
 6 (A) is subject to section 9799.13 and must  
 7 register for a period of 25 years or life under  
 8 section 9799.15 or a similar provision from another  
 9 jurisdiction; and  
 10 (B) violated 18 Pa.C.S. § 4915.1(a)(3).  
 11 (2) Sentencing upon conviction for a second or  
 12 subsequent offense shall be as follows:  
 13 (i) Not less than five years for an individual who:  
 14 (A) is subject to section 9799.13 and must  
 15 register for a period of 15 or 25 years or life under  
 16 section 9799.15 or a similar provision from another  
 17 jurisdiction; and  
 18 (B) violated 18 Pa.C.S. § 4915.1(a)(1) or (2).  
 19 (ii) Not less than seven years for an individual  
 20 who:  
 21 (A) is subject to section 9799.13 and must  
 22 register for a period of 15 or 25 years or life under  
 23 section 9799.15 or a similar provision from another  
 24 jurisdiction; and  
 25 (B) violated 18 Pa.C.S. § 4915.1(a)(3).  
 26 (a.1) Transients and mandatory sentence.--Mandatory  
 27 sentencing shall be as follows:  
 28 (1) Sentencing upon conviction for a first offense shall  
 29 be as follows:  
 30 (i) Not less than two years for an individual who:  
 31 (A) is subject to section 9799.13 and must  
 32 register for a period of 15 years under section  
 33 9799.15 or a similar provision from another  
 34 jurisdiction [and is a transient]; and  
 35 (B) violated 18 Pa.C.S. § 4915.1(a.1)(1) or (2).  
 36 (ii) Not less than three years for an individual  
 37 who:  
 38 (A) is subject to section 9799.13 and must  
 39 register for a period of 15 years under section  
 40 9799.15 or a similar provision from another  
 41 jurisdiction [and is transient]; and  
 42 (B) violated 18 Pa.C.S. § 4915.1(a.1)(3).  
 43 (iii) Not less than three years for an individual  
 44 who:  
 45 (A) is subject to section 9799.13 and must  
 46 register for a period of 25 years or life under  
 47 section 9799.15 or a similar provision from another  
 48 jurisdiction [and is transient]; and  
 49 (B) violated 18 Pa.C.S. § 4915.1(a.1)(1) or (2).  
 50 (iv) Not less than five years for an individual who:  
 51 (A) is subject to section 9799.13 and must

1 register for a period of 25 years or life under  
2 section 9799.15 or a similar provision from another  
3 jurisdiction [and is a transient]; and

4 (B) violated 18 Pa.C.S. § 4915.1(a.1)(3).

5 (2) Sentencing upon conviction for a second or  
6 subsequent offense shall be as follows:

7 (i) Not less than five years for an individual who:

8 (A) is subject to section 9799.13 and must  
9 register for a period of 15 or 25 years or life under  
10 section 9799.15 or a similar provision from another  
11 jurisdiction [and is transient]; and

12 (B) violated 18 Pa.C.S. § 4915.1(a.1)(1) or (2).

13 (ii) Not less than seven years for an individual

14 who:

15 (A) is subject to section 9799.13 and must  
16 register for a period of 15 or 25 years or life under  
17 section 9799.15 or a similar provision from another  
18 jurisdiction [and is a transient]; and

19 (B) violated 18 Pa.C.S. § 4915.1(a.1)(3).

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

31 (b.1) Application of mandatory minimum penalty.--Any  
32 provision of this section that requires imposition of a  
33 mandatory minimum sentence shall constitute an element enhancing  
34 the underlying offense. Any enhancing element must be proven  
35 beyond a reasonable doubt at trial on the underlying offense and  
36 must be submitted to the fact-finder for deliberation together  
37 with the underlying offense. If the fact-finder finds the  
38 defendant guilty of the underlying offense, the fact-finder  
39 shall then also decide whether any enhancing element has been  
40 proven.

41 (c) Authority of court in sentencing.--There shall be no  
42 authority in any court to impose on an offender to which this  
43 section is applicable any lesser sentence than provided for in  
44 subsection (a) or (a.1) or to place such offender on probation  
45 or to suspend sentence. Nothing in this section shall prevent  
46 the sentencing court from imposing a sentence greater than that  
47 provided in this section. Sentencing guidelines promulgated by  
48 the Pennsylvania Commission on Sentencing shall not supersede  
49 the mandatory sentences provided in this section.

50 (d) Appeal by Commonwealth.--[If a sentencing court refuses  
51 to apply this section where applicable, the Commonwealth shall



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

13 § 9719. Sentences for offenses committed while impersonating a  
14 law enforcement officer.

15 \* \* \*

16 (b) [Proof at sentencing.--Provisions of this section shall  
17 not be an element of the crime and notice thereof to the  
18 defendant shall not be required prior to conviction, but  
19 reasonable notice of the Commonwealth's intention to proceed  
20 under this section shall be provided after conviction and before  
21 sentencing. The applicability of this section shall be  
22 determined at sentencing. The sentencing court shall consider  
23 evidence presented at trial and shall afford the Commonwealth  
24 and the defendant an opportunity to present necessary additional  
25 evidence and shall determine, by a preponderance of the  
26 evidence, if this section is applicable.] Application of  
27 mandatory minimum penalty.--With the exception of prior  
28 convictions, any provision of this section that requires  
29 imposition of a mandatory minimum sentence constitutes an  
30 element enhancing the underlying offense. An enhancing element  
31 must be proven beyond a reasonable doubt at trial on the  
32 underlying offense and must be submitted to the finder of fact  
33 for deliberation together with the underlying offense. If the  
34 finder of fact determines the defendant is guilty of the  
35 underlying offense, the finder of fact will then decide whether  
36 an enhancing element has been proven.

37 \* \* \*

38 (d) Appeal by Commonwealth.--[If a sentencing court refuses  
39 to apply this section where applicable, the Commonwealth shall  
40 have the right to appellate review of the action of the  
41 sentencing court. The appellate court shall vacate the sentence  
42 and remand the case to the sentencing court for imposition of a  
43 sentence in accordance with this section if it finds that the  
44 sentence was imposed in violation of this section.] If the  
45 finder of fact has found an enhancing element and a sentencing  
46 court imposes a sentence below the mandatory minimum sentence,  
47 the Commonwealth has the right to appellate review of the  
48 sentence. If the appellate court finds that the mandatory  
49 sentencing provision was applicable, the court must vacate the  
50 sentence and remand for resentencing in accordance with that  
51 provision.

1       \* \* \*

2       Amend Bill, page 3, line 1, by striking out "2" and inserting

3       6

4       Amend Bill, page 3, line 8, by striking out "3" and inserting

5       7