

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1601 Session of 2015

INTRODUCED BY VEREB, MARSICO, BAKER, D. COSTA, GROVE, A. HARRIS, KAUFFMAN, MAHONEY, McNEILL, MILLARD, HARHART, MCGINNIS, READSHAW, JOZWIAK AND KORTZ, OCTOBER 5, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, OCTOBER 26, 2015

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, IN MINORS, FURTHER PROVIDING FOR SENTENCING AND <--
4 PENALTIES FOR TRAFFICKING DRUGS TO MINORS AND FOR DRUG-FREE
5 SCHOOL ZONES; in other offenses, further providing for drug
6 trafficking sentencing and penalties; in sentencing
7 authority, further providing for sentences for offenses
8 committed on public transportation, for sentences for
9 offenses against elderly persons, for sentences for offenses
10 against infant persons and for sentences for offenses
11 committed while impersonating a law enforcement officer.

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

14 ~~Section 1. Section 7508(a), (b) and (d) of Title 18 of the <--
15 Pennsylvania Consolidated Statutes are amended to read:~~

16 SECTION 1. SECTIONS 6314, 6317 AND 7508(A), (B) AND (D) OF <--
17 TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES ARE AMENDED
18 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

1 CONVICTED IN ANY COURT OF THIS COMMONWEALTH OF A VIOLATION OF
2 SECTION 13(A) (14) OR (30) OF THE ACT OF APRIL 14, 1972 (P.L.233,
3 NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND
4 COSMETIC ACT, SHALL, IF THE DELIVERY OR POSSESSION WITH INTENT
5 TO DELIVER OF THE CONTROLLED SUBSTANCE WAS TO A MINOR, BE
6 SENTENCED TO A MINIMUM SENTENCE OF AT LEAST ONE YEAR TOTAL
7 CONFINEMENT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE
8 OR OTHER STATUTE TO THE CONTRARY.

9 (B) ADDITIONAL PENALTIES.--IN ADDITION TO THE MANDATORY
10 MINIMUM SENTENCE SET FORTH IN SUBSECTION (A), THE PERSON SHALL
11 BE SENTENCED TO AN ADDITIONAL MINIMUM SENTENCE OF AT LEAST TWO
12 YEARS TOTAL CONFINEMENT, NOTWITHSTANDING ANY OTHER PROVISION OF
13 THIS TITLE OR OTHER STATUTE TO THE CONTRARY, IF THE PERSON DID
14 ANY OF THE FOLLOWING:

15 (1) COMMITTED THE OFFENSE WITH THE INTENT TO PROMOTE THE
16 HABITUAL USE OF THE CONTROLLED SUBSTANCE.

17 (2) INTENDED TO ENGAGE THE MINOR IN THE TRAFFICKING,
18 TRANSPORTATION, DELIVERY, MANUFACTURING, SALE OR CONVEYANCE.

19 (3) COMMITTED THE OFFENSE WITHIN 1,000 FEET OF THE REAL
20 PROPERTY ON WHICH IS LOCATED A PUBLIC, PRIVATE OR PAROCHIAL
21 SCHOOL OR A COLLEGE OR UNIVERSITY.

22 (4) COMMITTED THE OFFENSE ON A SCHOOL BUS OR WITHIN 500
23 FEET OF A SCHOOL BUS STOP.

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

1 THE COURT SHALL CONSIDER EVIDENCE PRESENTED AT TRIAL, SHALL
2 AFFORD THE COMMONWEALTH AND THE DEFENDANT AN OPPORTUNITY TO
3 PRESENT NECESSARY ADDITIONAL EVIDENCE, AND SHALL DETERMINE, BY A
4 PREPONDERANCE OF THE EVIDENCE, IF THIS SECTION IS APPLICABLE.]
5 APPLICATION OF MANDATORY MINIMUM PENALTY.--ANY PROVISION OF THIS
6 SECTION THAT REQUIRES IMPOSITION OF A MANDATORY MINIMUM SENTENCE
7 SHALL CONSTITUTE AN ELEMENT ENHANCING THE UNDERLYING OFFENSE.
8 ANY ENHANCING ELEMENT MUST BE PROVEN BEYOND A REASONABLE DOUBT
9 AT 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 (D) AUTHORITY OF COURT IN SENTENCING.--THERE SHALL BE NO
15 AUTHORITY FOR A COURT TO IMPOSE ON A DEFENDANT TO WHICH THIS
16 SECTION IS APPLICABLE A LESSER SENTENCE THAN PROVIDED FOR IN
17 [SUBSECTION (A)] SUBSECTIONS (A) AND (B), TO PLACE THE DEFENDANT
18 ON PROBATION OR TO SUSPEND SENTENCE. NOTHING IN THIS SECTION
19 SHALL PREVENT THE SENTENCING COURT FROM IMPOSING A SENTENCE
20 GREATER THAN THAT PROVIDED IN THIS SECTION. SENTENCING
21 GUIDELINES PROMULGATED BY THE PENNSYLVANIA COMMISSION ON
22 SENTENCING SHALL NOT SUPERSEDE THE MANDATORY SENTENCES PROVIDED
23 IN THIS SECTION. DISPOSITION UNDER SECTION 17 OR 18 OF THE
24 CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT SHALL NOT BE
25 AVAILABLE TO A DEFENDANT TO WHICH THIS SECTION APPLIES.

26 (E) APPEAL BY COMMONWEALTH.--[IF A SENTENCING COURT REFUSES
27 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL
28 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE
29 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE
30 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A

1 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE
2 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.] IF THE FACT-
3 FINDER HAS FOUND ANY ENHANCING ELEMENT AND A SENTENCING COURT
4 IMPOSES A SENTENCE BELOW THE MANDATORY MINIMUM SENTENCE, THE
5 COMMONWEALTH SHALL HAVE THE RIGHT TO APPELLATE REVIEW OF THE
6 SENTENCE. IF THE APPELLATE COURT FINDS THAT THE MANDATORY
7 SENTENCING PROVISION WAS APPLICABLE, THE COURT SHALL VACATE THE
8 SENTENCE AND REMAND FOR RESENTENCING IN ACCORDANCE WITH THAT
9 PROVISION.

10 (F) FORFEITURE.--ASSETS AGAINST WHICH A FORFEITURE PETITION
11 HAS BEEN FILED AND IS PENDING OR AGAINST WHICH THE COMMONWEALTH
12 HAS INDICATED AN INTENTION TO FILE A FORFEITURE PETITION SHALL
13 NOT BE SUBJECT TO A FINE UNDER THIS SECTION.

14 (G) DEFINITION.--AS USED IN THIS SECTION, THE TERM "MINOR"
15 MEANS AN INDIVIDUAL UNDER 18 YEARS OF AGE.

16 § 6317. DRUG-FREE SCHOOL ZONES.

17 (A) GENERAL RULE.--A PERSON 18 YEARS OF AGE OR OLDER WHO IS
18 CONVICTED IN ANY COURT OF THIS COMMONWEALTH OF A VIOLATION OF
19 SECTION 13(A) (14) OR (30) OF THE ACT OF APRIL 14, 1972 (P.L.233,
20 NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND
21 COSMETIC ACT, SHALL, IF THE DELIVERY OR POSSESSION WITH INTENT
22 TO DELIVER OF THE CONTROLLED SUBSTANCE OCCURRED WITHIN 1,000
23 FEET OF THE REAL PROPERTY ON WHICH IS LOCATED A PUBLIC, PRIVATE
24 OR PAROCHIAL SCHOOL OR A COLLEGE OR UNIVERSITY OR WITHIN 250
25 FEET OF THE REAL PROPERTY ON WHICH IS LOCATED A RECREATION
26 CENTER OR PLAYGROUND OR ON A SCHOOL BUS, BE SENTENCED TO A
27 MINIMUM SENTENCE OF AT LEAST TWO YEARS OF TOTAL CONFINEMENT,
28 NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, THE
29 CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT OR OTHER
30 STATUTE TO THE CONTRARY. THE MAXIMUM TERM OF IMPRISONMENT SHALL

1 BE FOUR YEARS FOR ANY OFFENSE:

2 (1) SUBJECT TO THIS SECTION; AND

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

6 IF THE SENTENCING COURT FINDS THAT THE DELIVERY OR POSSESSION
7 WITH INTENT TO DELIVER WAS TO AN INDIVIDUAL UNDER 18 YEARS OF
8 AGE, THEN THIS SECTION SHALL NOT BE APPLICABLE AND THE OFFENSE
9 SHALL BE SUBJECT TO SECTION 6314 (RELATING TO SENTENCING AND
10 PENALTIES FOR TRAFFICKING DRUGS TO MINORS).

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

22 APPLICATION OF MANDATORY MINIMUM PENALTY.--ANY PROVISION OF THIS
23 SECTION THAT REQUIRES IMPOSITION OF A MANDATORY MINIMUM SENTENCE
24 SHALL CONSTITUTE AN ELEMENT ENHANCING THE UNDERLYING OFFENSE.
25 ANY ENHANCING ELEMENT MUST BE PROVEN BEYOND A REASONABLE DOUBT
26 AT TRIAL ON THE UNDERLYING OFFENSE AND MUST BE SUBMITTED TO THE
27 FACT-FINDER FOR DELIBERATION TOGETHER WITH THE UNDERLYING
28 OFFENSE. IF THE FACT-FINDER FINDS THE DEFENDANT GUILTY OF THE
29 UNDERLYING OFFENSE, THE FACT-FINDER SHALL THEN ALSO DECIDE
30 WHETHER ANY ENHANCING ELEMENT HAS BEEN PROVEN.

1 (C) AUTHORITY OF COURT IN SENTENCING.--THERE SHALL BE NO
2 AUTHORITY FOR A COURT TO IMPOSE ON A DEFENDANT TO WHICH THIS
3 SECTION IS APPLICABLE A LESSER SENTENCE THAN PROVIDED FOR IN
4 SUBSECTION (A), TO PLACE THE DEFENDANT ON PROBATION OR TO
5 SUSPEND SENTENCE. NOTHING IN THIS SECTION SHALL PREVENT THE
6 SENTENCING COURT FROM IMPOSING A SENTENCE GREATER THAN THAT
7 PROVIDED IN THIS SECTION. SENTENCING GUIDELINES PROMULGATED BY
8 THE PENNSYLVANIA COMMISSION ON SENTENCING SHALL NOT SUPERSEDE
9 THE MANDATORY SENTENCES PROVIDED IN THIS SECTION. DISPOSITION
10 UNDER SECTION 17 OR 18 OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE
11 AND COSMETIC ACT SHALL NOT BE AVAILABLE TO A DEFENDANT TO WHICH
12 THIS SECTION APPLIES.

13 (D) APPEAL BY COMMONWEALTH.--[IF A SENTENCING COURT REFUSES
14 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL
15 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE
16 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE
17 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A
18 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE
19 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.] IF THE FACT-
20 FINDER HAS FOUND ANY ENHANCING ELEMENT AND A SENTENCING COURT
21 IMPOSES A SENTENCE BELOW THE MANDATORY MINIMUM SENTENCE, THE
22 COMMONWEALTH SHALL HAVE THE RIGHT TO APPELLATE REVIEW OF THE
23 SENTENCE. IF THE APPELLATE COURT FINDS THAT THE MANDATORY
24 SENTENCING PROVISION WAS APPLICABLE, THE COURT SHALL VACATE THE
25 SENTENCE AND REMAND FOR RESENTENCING IN ACCORDANCE WITH THAT
26 PROVISION.

27 § 7508. Drug trafficking sentencing and penalties.

28 (a) General rule.--Notwithstanding any other provisions of
29 this or any other act to the contrary, the following provisions
30 shall apply:

1 (1) A person who is convicted of violating section 13(a)
2 (14), (30) or (37) of the act of April 14, 1972 (P.L.233,
3 No.64), known as The Controlled Substance, Drug, Device and
4 Cosmetic Act, where the controlled substance is marijuana
5 shall, upon conviction, be sentenced to a mandatory minimum
6 term of imprisonment and a fine as set forth in this
7 subsection:

8 (i) when the amount of marijuana involved is at
9 least two pounds, but less than ten pounds, or at least
10 ten live plants but less than 21 live plants[; one year
11 in prison and a fine of \$5,000 or such larger amount as
12 is sufficient to exhaust the assets utilized in and the
13 proceeds from the illegal activity; however], and if at
14 the time of sentencing the defendant has been convicted
15 of another drug trafficking offense: [two years] one year
16 in prison and a fine of \$10,000 or such larger amount as
17 is sufficient to exhaust the assets utilized in and the
18 proceeds from the illegal activity;

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

30 (iii) when the amount of marijuana involved is at

1 least 50 pounds, or at least 51 live plants; [five] three
2 years in prison and a fine of \$50,000 or such larger
3 amount as is sufficient to exhaust the assets utilized in
4 and the proceeds from the illegal activity[.]; however,
5 if at the time of sentencing the defendant has been
6 convicted of another drug trafficking offense: five years
7 in prison and a fine of \$50,000 or such larger amount as
8 is sufficient to exhaust the assets utilized in and the
9 proceeds from the illegal activity.

10 (2) 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 or a mixture
13 containing it is classified in Schedule I or Schedule II
14 under section 4 of that act and is a narcotic drug shall,
15 upon conviction, be sentenced to a mandatory minimum term of
16 imprisonment and a fine as set forth in this subsection:

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

27 (ii) when the aggregate weight of the compound or
28 mixture containing the substance involved is at least ten
29 grams and less than 100 grams; three years in prison and
30 a fine of \$15,000 or such larger amount as is sufficient

1 to exhaust the assets utilized in and the proceeds from
2 the illegal activity; however, if at the time of
3 sentencing the defendant has been convicted of another
4 drug trafficking offense: five years in prison and
5 \$30,000 or such larger amount as is sufficient to exhaust
6 the assets utilized in and the proceeds from the illegal
7 activity; and

8 (iii) when the aggregate weight of the compound or
9 mixture containing the substance involved is at least 100
10 grams; five years in prison and a fine of \$25,000 or such
11 larger amount as is sufficient to exhaust the assets
12 utilized in and the proceeds from the illegal activity;
13 however, if at the time of sentencing the defendant has
14 been convicted of another drug trafficking offense: seven
15 years in prison and \$50,000 or such larger amount as is
16 sufficient to exhaust the assets utilized in and the
17 proceeds from the illegal activity.

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

30 (i) when the aggregate weight of the compound or

1 mixture containing the substance involved is at least
2 [2.0] 5.0 grams and less than [ten] 25 grams; one year in
3 prison and a fine of \$5,000 or such larger amount as is
4 sufficient to exhaust the assets utilized in and the
5 proceeds from the illegal activity; however, if at the
6 time of sentencing the defendant has been convicted of
7 another drug trafficking offense: [three] two years in
8 prison and \$10,000 or such larger amount as is sufficient
9 to exhaust the assets utilized in and the proceeds from
10 the illegal activity;

11 (ii) when the aggregate weight of the compound or
12 mixture containing the substance involved is at least
13 [ten] 25 grams and less than 100 grams; [three] two years
14 in prison and a fine of \$15,000 or such larger amount as
15 is sufficient to exhaust the assets utilized in and the
16 proceeds from the illegal activity; however, if at the
17 time of sentencing the defendant has been convicted of
18 another drug trafficking offense: [five] four years in
19 prison and \$30,000 or such larger amount as is sufficient
20 to exhaust the assets utilized in and the proceeds from
21 the illegal activity; and

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

1 the proceeds from the illegal activity.

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

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

25 (ii) when the aggregate weight of the compound or
26 mixture containing the substance involved is at least ten
27 grams and less than 100 grams; four years in prison and a
28 fine of \$25,000 or such larger amount as is sufficient to
29 exhaust the assets utilized in and the proceeds from the
30 illegal activity; however, if at the time of sentencing

1 the defendant has been convicted of another drug
2 trafficking offense: seven years in prison and \$50,000 or
3 such larger amount as is sufficient to exhaust the assets
4 utilized in and the proceeds from the illegal activity;
5 and

6 (iii) when the aggregate weight of the compound or
7 mixture containing the substance involved is at least 100
8 grams; five years in prison and a fine of \$50,000 or such
9 larger amount as is sufficient to exhaust the assets
10 utilized in and the proceeds from the illegal activity;
11 however, if at the time of sentencing the defendant has
12 been convicted of another drug trafficking offense: eight
13 years in prison and \$50,000 or such larger amount as is
14 sufficient to exhaust the assets utilized in and the
15 proceeds from the illegal activity.

16 [(5) A person who is convicted of violating section
17 13(a)(14), (30) or (37) of The Controlled Substance, Drug,
18 Device and Cosmetic Act, and who, in the course of the
19 offense, manufactures, delivers, brings into this
20 Commonwealth or possesses with intent to manufacture or
21 deliver amphetamine or any salt, optical isomer, or salt of
22 an optical isomer, or a mixture containing any such
23 substances shall, when the aggregate weight of the compound
24 or mixture containing the substance involved is at least five
25 grams, be sentenced to two and one-half years in prison and a
26 fine of \$15,000 or such larger amount as is sufficient to
27 exhaust the assets utilized in and the proceeds from the
28 illegal activity; however, if at the time of sentencing the
29 defendant has been convicted of another drug trafficking
30 offense: be sentenced to five years in prison and \$30,000 or

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

3 (6) 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 methaqualone shall, upon conviction, be sentenced to a
7 mandatory minimum term of imprisonment and a fine as set
8 forth in this subsection:

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

22 (ii) when the aggregate weight of the compound or
23 mixture containing the substance involved is at least 200
24 tablets, capsules, caplets or other dosage units, or more
25 than 100 grams; two and one-half years in prison and a
26 fine of \$15,000 or such larger amount as is sufficient to
27 exhaust the assets utilized in and the proceeds from the
28 illegal activity; however, if at the time of sentencing
29 the defendant has been convicted of another drug
30 trafficking offense: five years in prison and \$30,000 or

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

3 (7) 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 or a mixture
6 containing it is heroin shall, upon conviction, be sentenced
7 as set forth in this paragraph:

8 (i) when the aggregate weight of the compound or
9 mixture containing the heroin involved is at least 1.0
10 gram but less than 5.0 grams the sentence shall be a
11 mandatory minimum term of two years in prison and a fine
12 of \$5,000 or such larger amount as is sufficient to
13 exhaust the assets utilized in and the proceeds from the
14 illegal activity; however, if at the time of sentencing
15 the defendant has been convicted of another drug
16 trafficking offense: a mandatory minimum term of three
17 years in prison and \$10,000 or such larger amount as is
18 sufficient to exhaust the assets utilized in and the
19 proceeds from the illegal activity;

20 (ii) when the aggregate weight of the compound or
21 mixture containing the heroin involved is at least 5.0
22 grams but less than 50 grams: a mandatory minimum term of
23 three years in prison and a fine of \$15,000 or such
24 larger amount as is sufficient to exhaust the assets
25 utilized in and the proceeds from the illegal activity;
26 however, if at the time of sentencing the defendant has
27 been convicted of another drug trafficking offense: a
28 mandatory minimum term of five years in prison and
29 \$30,000 or such larger amount as is sufficient to exhaust
30 the assets utilized in and the proceeds from the illegal

1 activity; and

2 (iii) when the aggregate weight of the compound or
3 mixture containing the heroin involved is 50 grams or
4 greater: a mandatory minimum term of five years in prison
5 and a fine of \$25,000 or such larger amount as is
6 sufficient to exhaust the assets utilized in and the
7 proceeds from the illegal activity; however, if at the
8 time of sentencing the defendant has been convicted of
9 another drug trafficking offense: a mandatory minimum
10 term of seven years in prison and \$50,000 or such larger
11 amount as is sufficient to exhaust the assets utilized in
12 and the proceeds from the illegal activity.

13 (8) A person who is convicted of violating section 13(a)
14 (12), (14) or (30) of The Controlled Substance, Drug, Device
15 and Cosmetic Act where the controlled substance or a mixture
16 containing it is 3,4-methylenedioxyamphetamine (MDA); 3,4-
17 methylenedioxymethamphetamine (MDMA); 5-methoxy-3,4-
18 methylenedioxyamphetamine (MMDA); 3,4-methylenedioxy-N-
19 ethylamphetamine; N-hydroxy-3,4-methylenedioxyamphetamine; or
20 their salts, isomers and salts of isomers, whenever the
21 existence of such salts, isomers and salts of isomers is
22 possible within the specific chemical designation, shall,
23 upon conviction, be sentenced as set forth in this paragraph:

24 (i) When the aggregate weight of the compound or
25 mixture containing the substance involved is at least 50
26 tablets, capsules, caplets or other dosage units, or 15
27 grams and less than 100 tablets, capsules, caplets or
28 other dosage units, or less than 30 grams, the person is
29 guilty of a felony and, upon conviction thereof, shall be
30 sentenced to imprisonment not exceeding five years or to

1 pay a fine not exceeding \$15,000, or both.

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

10 (iii) When the aggregate weight of the compound or
11 mixture containing the substance involved is at least
12 1,000 tablets, capsules, caplets or other dosage units,
13 or 300 grams, the person is guilty of a felony and, upon
14 conviction thereof, shall be sentenced to imprisonment
15 not exceeding 15 years or to pay a fine not exceeding
16 \$250,000, or both.

17 * * *

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

29 Application of mandatory minimum penalty.--With the exception of
30 prior convictions, any provision of this section that requires

1 imposition of a mandatory minimum sentence shall constitute an
2 element enhancing the underlying offense. Any enhancing element
3 must be proven beyond a reasonable doubt at trial on the
4 underlying offense and must be submitted to the fact-finder for
5 deliberation together with the underlying offense. If the fact-
6 finder finds the defendant guilty of the underlying offense, the
7 fact-finder shall then also decide whether any enhancing element
8 has been proven.

9 * * *

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

24 * * *

25 Section 2. Section 9713(c) and (e) of Title 42 are amended
26 to read:

27 § 9713. Sentences for offenses committed on public
28 transportation.

29 * * *

30 (c) [Proof at sentencing.--Provisions of this section shall

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

20 * * *

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

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

5 Section 3. Section 9717 of Title 42 is amended by adding
6 subsections to read:

7 § 9717. Sentences for offenses against elderly persons.

8 * * *

9 (c) Application of mandatory minimum penalty.--Any provision
10 of this section that requires imposition of a mandatory minimum
11 sentence shall constitute an element enhancing the underlying
12 offense. An enhancing element must be proven beyond a reasonable
13 doubt at trial on the underlying offense and must be submitted
14 to the finder of fact for deliberation together with the
15 underlying offense. If the finder of fact determines the
16 defendant is guilty of the underlying offense, the finder of
17 fact shall then decide whether an enhancing element has been
18 proven.

19 (d) Appeal by Commonwealth.--If the finder of fact has found
20 an enhancing element and a sentencing court imposes a sentence
21 below the mandatory minimum sentence, the Commonwealth has the
22 right to appellate review of the sentence. If the appellate
23 court finds that the mandatory sentencing provision was
24 applicable, the court must vacate the sentence and remand for
25 resentencing in accordance with that provision.

26 Section 4. Sections 9718(c) and (e) and 9719(b) and (d) of
27 Title 42 are amended to read:

28 § 9718. Sentences for offenses against infant persons.

29 * * *

30 (c) [Proof at sentencing.--The provisions of this section

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

21 * * *

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

1 the Commonwealth has the right to appellate review of the
2 sentence. If the appellate court finds that the mandatory
3 sentencing provision was applicable, the court must vacate the
4 sentence and remand for resentencing in accordance with that
5 provision.

6 § 9719. Sentences for offenses committed while impersonating a
7 law enforcement officer.

8 * * *

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

30 * * *

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

15 * * *

16 Section 5. This act shall take effect in 60 days.