

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2372

 Session of
1976

INTRODUCED BY MESSRS. BERSON, ECKENSBERGER AND DOYLE,
MAY 12, 1976

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 14, 1976

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing additional penalties for
3 certain offenses committed with firearms and for certain
4 multiple offenders and prescribing certain related sentencing
5 procedures.

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

8 Section 1. Title 18, act of November 25, 1970 (P.L.707,
9 No.230), known as the Pennsylvania Consolidated Statutes,
10 amended December 6, 1972 (P.L.1482, No.334), is amended by
11 adding a section to read:

12 § 1313. Additional penalties for certain offenders.

13 (a) Offenses for which additional penalties may be
14 imposed.--

15 (1) Any person who has been convicted of a felony where
16 such person used, carried on his person, ~~or had in his~~ ←
17 ~~possession or under his control a firearm, except as~~
18 ~~authorized by law, during the perpetration, attempted~~
19 perpetration or flight from such felony shall be subject to

1 the penalties provided in subsection (b). Such penalties
2 shall be in addition to any other penalties imposed for the
3 commission of the felony. As used in this section, "firearm"
4 means any firearm, including but not limited to any pistol,
5 revolver, rifle, shotgun, sawed off shotgun, or machine gun,
6 regardless of the length of the barrel, which is operable or
7 readily capable of being made operable.

8 (2) Any person who has been convicted of any of the
9 offenses enumerated in paragraph (3), or who has been
10 convicted of the attempt, solicitation or conspiracy to
11 commit any of those offenses, and who has been previously
12 convicted in this Commonwealth of any of the offenses
13 enumerated in paragraph (3), or who has been convicted of any
14 similar offense in any other jurisdiction, shall be subject
15 to the penalties provided in subsection (b). Such penalties
16 shall be in addition to any other penalties imposed for the
17 commission of the enumerated offenses. The court shall not
18 impose such additional punishment where there has been a
19 determination, whether by jury or the court, that the
20 Commonwealth has failed to prove that the defendant has been
21 previously convicted as required by this section.

22 (3) The crimes for which the additional penalties
23 authorized in paragraph (2) shall be imposed are as follows:

24 (i) Murder.

25 (ii) Voluntary manslaughter.

26 (iii) Kidnapping.

27 (iv) Rape.

28 (v) Robbery.

29 (vi) Arson.

30 (vii) Burglary.

1 (viii) Assault by a life prisoner.

2 (ix) Aggravated assault.

3 (x) Involuntary deviate sexual intercourse.

4 (b) Penalties imposed.--

5 (1) In addition to the penalties authorized for the
6 commission of the felonies enumerated in subsection (a), any
7 person subject to the provisions of subsection (a) shall be
8 sentenced to an additional term of imprisonment of not less
9 than five years nor more than ten years. However, the court
10 may decline to impose such additional punishment where proof
11 is abundant in the record, and the court finds as a matter of
12 record, any of the following:

13 (i) Mitigating mental instability.

14 (ii) Extreme youth.

15 (iii) Fringe participation by the defendant.

16 (iv) Other extraordinary and compelling reasons
17 specifically identified by the court, including but not
18 limited to:

19 (A) A period of at least ten years between
20 commission of the present and prior offense where
21 pertinent.

22 (B) Commission of multiple offenses which are
23 actually one transaction, the offenses having been
24 committed simultaneously or near simultaneously.

25 (2) Any person who on one or more previous occasions has
26 been sentenced to additional penalties pursuant to subsection
27 (a), and who thereafter is convicted again of an offense or
28 offenses to which the additional penalties authorized by
29 subsection (a) could be imposed, shall be sentenced to a term
30 of imprisonment of not less than ten nor more than 30 years

1 in addition to the penalty imposed for the commission of the
2 felony.

3 (c) Appeal by Commonwealth.--The Commonwealth shall have the
4 right to appeal the sentence of any person where the additional
5 penalties authorized by this section are not imposed and when
6 any of the following appealable errors are present:

7 (i) The court fails to make contemporaneous specific
8 findings of facts and conclusions of law on the record as
9 to the mitigating factors enumerated in subsection (b)(1)
10 or as to the absence of a prior conviction as required by
11 subsection (a)(2).

12 (ii) The findings of fact and conclusions of law
13 made by the court amount to an abuse of the discretion
14 granted the court in subsections (a)(2) and (b)(1).

15 (iii) The findings of fact and conclusions of law
16 made by the court are unsupported by evidence in the
17 record.

18 (d) Disposition of defendant after sentencing.--

19 (1) When the additional penalties authorized by this
20 section have been imposed, the sentence thereby imposed shall
21 not be suspended nor shall the execution of such sentence be
22 suspended. The defendant shall not be granted probation nor
23 shall such person be eligible for parole, furlough or receive
24 any reduction in his sentence for good conduct until after
25 the full minimum sentence as provided herein has been served.

26 (2) In no case shall any additional term of imprisonment
27 imposed pursuant to this section run concurrently with any
28 term of imprisonment imposed for the commission of any felony
29 or offense or attempt, solicitation or conspiracy to commit
30 any such felony or offense.

1 (3) In any case where a defendant has been sentenced to
2 the additional imprisonment as provided in this section, such
3 defendant shall not be granted bail unless the court makes of
4 record specific findings setting forth compelling reasons for
5 granting bail appropriate in the case. Such decision with
6 respect to bail shall be appealable by either party.

7 (e) Procedure.--

8 (1) In all cases where the additional penalties
9 authorized by this section may be imposed, the district
10 attorney shall present a petition for such additional
11 punishment and said petition shall not be subject to plea
12 negotiation or dismissal by the district attorney. Such
13 petition for additional punishment shall be presented to the
14 defendant and his counsel prior to trial or plea on the
15 instant case. Said petition shall be filed with the court
16 after conviction on the instant offense and shall accuse the
17 defendant of such previous conviction or convictions as are
18 relevant to the additional penalties authorized herein.

19 (2) The charge to the jury in any felony case where the
20 defendant may be subject to the additional penalties
21 authorized by this section shall omit any reference to the
22 potential additional penal liability that the defendant may
23 be assessed pursuant to this section.

24 (3) Immediately upon a finding of guilty for an offense
25 to which the additional penalties herein authorized are
26 applicable, prior to sentencing, and before the jury is
27 permitted to separate, the court shall advise the defendant
28 of the allegations in the petition. The court shall further
29 advise the defendant of his right to a jury trial solely on
30 the issue of whether or not the defendant is the person named

1 in the records of prior convictions as required by subsection
2 (a)(2).

3 (4) Immediately after the defendant has been so advised,
4 the court or jury shall determine when necessary whether or
5 not the defendant is one and the same person named in the
6 records of prior convictions. When such a determination is
7 not required by this act or immediately after it has been
8 made where required, the court shall forthwith hear any
9 offered evidence relevant to any mitigating circumstances as
10 provided in subsection (b)(1).

11 (5) Immediately upon the conclusion of the taking of the
12 evidence and testimony required in paragraphs (2) and (3),
13 the court shall impose or decline to impose the additional
14 punishments prescribed by this section.

15 Section 2. All acts or parts of acts inconsistent herewith
16 are hereby repealed.

17 Section 3. This act shall take effect immediately and shall
18 apply only to those felonies or records of felonies committed
19 subsequent to its passage.