
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 1002 Session of
1987

INTRODUCED BY PICCOLA, HAGARTY, COLAFELLA, MANMILLER, SIRIANNI,
BIRMELIN, CHADWICK, HALUSKA, FOX, LASHINGER, MRKONIC, NOYE,
ARTY, VROON, MERRY, TRELLO, FARMER, ANGSTADT, LaGROTTA,
NAHILL, FARGO, DISTLER, SCHEETZ, CIVERA, GLADECK, BUSH,
GEIST, BUNT, E. Z. TAYLOR, MORRIS, SAURMAN, RAYMOND, JOHNSON,
FISCHER, PETRONE, SEMMEL, GODSHALL, CORNELL, J. TAYLOR,
BLACK, SERAFINI, LEH, DeLUCA AND BARLEY, APRIL 7, 1987

REFERRED TO COMMITTEE ON JUDICIARY, APRIL 7, 1987

AN ACT

1 Amending the act of April 14, 1972 (P.L.233, No.64), entitled
2 "An act relating to the manufacture, sale and possession of
3 controlled substances, other drugs, devices and cosmetics;
4 conferring powers on the courts and the secretary and
5 Department of Health, and a newly created Pennsylvania Drug,
6 Device and Cosmetic Board; establishing schedules of
7 controlled substances; providing penalties; requiring
8 registration of persons engaged in the drug trade and for the
9 revocation or suspension of certain licenses and
10 registrations; and repealing an act," further providing for
11 prohibited acts and penalties.

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

14 Section 1. Section 13(f) of the act of April 14, 1972
15 (P.L.233, No.64), known as The Controlled Substance, Drug,
16 Device and Cosmetic Act, amended December 14, 1984 (P.L.988,
17 No.200), is amended and the section is amended by adding
18 subsections to read:

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

20 (f) Any person who violates clause (12), (14) or (30) of

1 subsection (a) with respect to:

2 (1) A controlled substance or counterfeit substance
3 classified in Schedule I or II which is a narcotic drug, is
4 guilty of a felony and upon conviction thereof shall be
5 sentenced to [imprisonment not exceeding fifteen years, or to
6 pay] a minimum of three years of imprisonment without probation,
7 parole or work release and to a maximum of fifteen years, except
8 that in appropriate cases, the sentence shall be determined
9 under subsection (n) of this section. Sentences under this
10 clause may include the imposition of a fine not exceeding two
11 hundred fifty thousand dollars (\$250,000), or both or such
12 larger amount as is sufficient to exhaust the assets utilized in
13 and the profits obtained from the illegal activity.

14 (1.1) Phencyclidine; methamphetamine, including its salts,
15 isomers and salts of isomers; coca leaves and any salt,
16 compound, derivative or preparation of coca leaves; any salt,
17 compound, derivative or preparation of the preceding which is
18 chemically equivalent or identical with any of these substances,
19 except decocanized coca leaves or extracts of coca leaves, which
20 extracts do not contain cocaine or ecgonine[; and marihuana in a
21 quantity in excess of one thousand (1,000) pounds,] is guilty of
22 a felony and upon conviction thereof shall be sentenced to a
23 minimum of three years of imprisonment [not exceeding ten years,
24 or to pay] without probation, parole, or work release and to a
25 maximum of ten years of imprisonment, except that in appropriate
26 cases, the sentence shall be determined under subsection (n) of
27 this section. Sentences under this clause may include the
28 imposition of a fine not exceeding one hundred thousand dollars
29 (\$100,000), or both, or such larger amount as is sufficient to
30 exhaust the assets utilized in and the profits obtained from the

1 illegal manufacture or distribution of these substances.

2 (1.2) Marihuana in a quantity in excess of one thousand
3 (1,000) pounds, is guilty of a felony and upon conviction
4 thereof shall be sentenced to at least three years of
5 imprisonment without probation, parole, or work release and to a
6 maximum of ten years of imprisonment. Sentences under this
7 clause may include the imposition of a fine not exceeding one
8 hundred thousand dollars (\$100,000) or such larger amount as is
9 sufficient to exhaust the assets utilized in, and the profits
10 obtained from, the illegal activity.

11 (2) Any other controlled substance or counterfeit substance
12 classified in Schedule I, II, or III, is guilty of a felony and
13 upon conviction thereof shall be sentenced to imprisonment not
14 exceeding five years, or to pay a fine not exceeding fifteen
15 thousand dollars (\$15,000), or both.

16 (3) A controlled substance or counterfeit substance
17 classified in Schedule IV, is guilty of a felony and upon
18 conviction thereof shall be sentenced to imprisonment not
19 exceeding three years, or to pay a fine not exceeding ten
20 thousand dollars (\$10,000), or both.

21 (4) A controlled substance or counterfeit substance
22 classified in Schedule V, is guilty of a misdemeanor and upon
23 conviction thereof shall be sentenced to imprisonment not
24 exceeding one year, or to pay a fine not exceeding five thousand
25 dollars (\$5,000), or both.

26 * * *

27 (m) (1) With respect to the sentences prescribed in clauses
28 (1), (1.1) and (1.2) of subsection (f), there shall be no
29 authority in a court to impose on an offender to which the
30 clause applies a lesser sentence than the mandatory minimum

1 sentence set forth in the subclause. Sentencing guidelines
2 promulgated by the Pennsylvania Commission on Sentencing shall
3 not supersede the mandatory sentences set forth in the
4 subclause.

5 (2) If a sentencing court refuses to apply the provisions of
6 clauses (1) through (1.2) of subsection (f), the Commonwealth
7 shall have the right to appellate review of the action of the
8 sentencing court. The appellate court shall vacate the sentence
9 and remand the case to the sentencing court for imposition of a
10 sentence in accordance with the appropriate clause of subsection
11 (f) if it finds that the sentence was imposed in violation of
12 this subsection.

13 (n) A person who is convicted of a violation of clause (12),
14 (14) or (30) of subsection (a) involving a large quantity of a
15 controlled substance or counterfeit substance listed in clause
16 (1) or (1.1) of subsection (f) shall be subject to sentence
17 under this subsection.

18 (1) Sentencing procedure in jury trials shall be as follows:

19 (i) After a verdict of guilty is recorded and before the
20 jury is discharged, the court shall conduct a separate
21 sentencing hearing in which the jury shall determine whether or
22 not the defendant shall be sentenced to death. If the jury
23 determines that the defendant shall not be sentenced to death,
24 the court shall impose a sentence of no less than fifteen years'
25 imprisonment without probation, parole or work release, and may
26 impose a maximum of life imprisonment.

27 (ii) In the sentencing hearing, evidence may be presented as
28 to any matter that the court deems relevant and admissible on
29 the question of the sentence to be imposed and shall include
30 matters relating to any of the aggravating or mitigating

1 circumstances specified in clauses (3) and (4). Evidence of
2 aggravating circumstances shall be limited to those
3 circumstances specified in clause (3).

4 (2) Sentencing procedure in nonjury trials and guilty pleas
5 shall be as follows:

6 (i) If the defendant has waived a jury trial or pleaded
7 guilty, the sentencing proceeding shall be conducted before a
8 jury impaneled for that purpose unless waived by the defendant
9 with the consent of the Commonwealth, in which case the trial
10 judge shall hear the evidence and determine the penalty in the
11 same manner as would a jury.

12 (ii) Before the jury retires to consider the sentencing
13 verdict, the court shall instruct the jury on the following
14 matters:

15 (A) Aggravating circumstances specified in clause (3) as to
16 which there is some evidence.

17 (B) Mitigating circumstances specified in clause (4) as to
18 which there is some evidence.

19 (C) Aggravating circumstances must be proved by the
20 Commonwealth beyond a reasonable doubt; mitigating circumstances
21 must be proved by the defendant by a preponderance of the
22 evidence.

23 (D) Other matters that may be just and proper under the
24 circumstances.

25 (iii) The verdict must be a sentence of death if the jury
26 unanimously finds at least one aggravating circumstance
27 specified in clause (3) and no mitigating circumstance or if the
28 jury unanimously finds one or more aggravating circumstances
29 which outweigh any mitigating circumstances. The defendant shall
30 not be sentenced to death in all other cases.

1 (iv) The court may, in its discretion, discharge the jury if
2 it is of the opinion that further deliberation will not result
3 in a unanimous agreement as to the sentence, in which case the
4 court shall sentence the defendant as provided in subclause (i)
5 of this clause.

6 (3) Aggravating circumstances shall be as follows:

7 (i) The defendant engaged in a continuing criminal
8 enterprise involving the manufacture, delivery or possession
9 with intent to manufacture or deliver a large quantity of any
10 substance listed in clause (1) or (1.1) of subsection (f). For
11 the purpose of this subclause, a person is engaged in a
12 continuing criminal enterprise if the violation is a part of a
13 continuing series of violations involving large quantities of
14 any substance listed in clause (1) or (1.1) of subsection (f):

15 (A) which are undertaken by the defendant in concert with
16 five or more persons with respect to whom the person occupies a
17 position of organizer, a supervisory position or any other
18 position of management in the criminal enterprise; and

19 (B) from which the defendant obtains substantial income or
20 resources.

21 (ii) The defendant's crime or criminal enterprise was a link
22 in a chain of distribution which provided, to a specified person
23 who died of an overdose of a controlled substance listed in
24 clause (1) or (1.1) of subsection (f), the dosage which caused
25 the death.

26 (iii) The defendant intended, or knew with substantial
27 certainty, that the controlled substance distributed,
28 manufactured or possessed with the intention to distribute would
29 ultimately be used, ingested or redistributed by persons under
30 eighteen (18) years of age.

1 (iv) The defendant has a significant history of felony
2 convictions involving violations of clause (12), (14) or (30) of
3 subsection (a).

4 (v) The defendant is not and was not a habitual user of any
5 of the controlled substances listed in clauses (1) and (1.1) of
6 subsection (f).

7 (4) Mitigating circumstances shall include the following:

8 (i) The defendant has no significant history of prior
9 criminal convictions.

10 (ii) The defendant was under the influence of extreme mental
11 or emotional disturbance.

12 (iii) The capacity of the defendant to appreciate the
13 criminality of his conduct or to conform his conduct to the
14 requirements of law was substantially impaired.

15 (iv) The age of the defendant at the time of the crime.

16 (v) The defendant acted under extreme duress, although not
17 such duress as would constitute a defense to prosecution under
18 18 Pa.C.S. § 309 (relating to duress), or acted under the
19 substantial domination of another person.

20 (vi) Any other evidence of mitigation concerning the
21 character and record of the defendant and the circumstances of
22 the defense.

23 (5) Sentencing verdict by the jury shall be as follows:

24 (i) After hearing all the evidence and receiving
25 instructions from the court, the jury shall deliberate and
26 render a sentencing verdict. In rendering the verdict, if the
27 sentence is death, the jury shall set forth in such form as
28 designated by the court the findings upon which the sentence is
29 based.

30 (ii) Based upon these findings, the jury shall set forth in

1 writing whether or not the sentence is death.

2 (6) If the jury agrees upon a sentencing verdict, it shall
3 be received and recorded by the court. If the sentence
4 determined by the jury is death, the court shall impose the
5 sentence upon the defendant; otherwise, the court shall proceed
6 to sentence the defendant as provided in subclause (i) of clause
7 (1).

8 (7) A sentence of death shall be subject to automatic review
9 by the Supreme Court of Pennsylvania pursuant to its rules.

10 (i) In addition to its authority to correct errors at trial,
11 the Supreme Court shall either affirm the sentence of death or
12 vacate the sentence of death and remand for the imposition of a
13 sentence of imprisonment for fifteen years to life.

14 (ii) The Supreme Court shall affirm the sentence of death
15 unless it determines that:

16 (A) the sentence of death was the product of passion,
17 prejudice or any other arbitrary factor;

18 (B) the evidence fails to support a finding of an
19 aggravating circumstance specified in subclause (iv); or

20 (C) the sentence of death is excessive or disproportionate
21 to the penalty imposed in similar cases considering both the
22 circumstances of the crime and the character and record of the
23 defendant.

24 (8) Where a sentence of death is upheld by the Supreme
25 Court, the prothonotary of the Supreme Court shall transmit to
26 the Governor a full and complete record of the trial, sentencing
27 hearing, imposition of sentence and review by the Supreme Court.

28 (9) As used in this subsection the phrase "large quantity of
29 a controlled substance or counterfeit substance" shall mean,
30 with respect to:

1 (i) narcotic drugs classified in Schedule I or II, one (1)
2 kilogram;
3 (ii) phencyclidine, one (1) kilogram;
4 (iii) methamphetamine, including its salts, isomers and
5 salts of isomers, one (1) kilogram; and
6 (iv) any salt, compound, derivative or preparation of coca
7 leaves and any derivative or preparation equivalent or identical
8 to the preceding except those specifically excepted in clause
9 (1.1) of subsection (f), one (1) kilogram.

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