

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2317 Session of  
1996

INTRODUCED BY WILLIAMS, MANDERINO, L. I. COHEN, ROONEY, DeWEESE,  
TRELLO, TIGUE, BELARDI, BATTISTO AND BELFANTI,  
JANUARY 31, 1996

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 31, 1996

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, providing mandatory  
3 sentences for persons convicted of delivery of certain  
4 controlled substances on public housing property.

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

7 Section 1. Title 42 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a section to read:

9 § 9713.1. Sentencing and penalties for trafficking drugs on  
10 public housing property.

11 (a) General rule.--A person over 18 years of age who is  
12 convicted in any court of this Commonwealth of a violation of  
13 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,  
14 No.64), known as The Controlled Substance, Drug, Device and  
15 Cosmetic Act, shall, if the delivery or possession with intent  
16 to deliver of the controlled substance was made on public  
17 housing property, be sentenced to a minimum sentence of at least  
18 two years total confinement, notwithstanding any other provision

1 of this title or other statute to the contrary.

2 (b) Proof at sentencing.--The provisions of this section  
3 shall not be an element of the crime. Notice of the  
4 applicability of this section to the defendant shall not be  
5 required prior to conviction, but reasonable notice of the  
6 Commonwealth's intention to proceed under this section shall be  
7 provided after conviction and before sentencing. The  
8 applicability of this section shall be determined at sentencing.  
9 The court shall consider evidence presented at trial, shall  
10 afford the Commonwealth and the defendant an opportunity to  
11 present necessary additional evidence, and shall determine, by a  
12 preponderance of the evidence, if this section is applicable.

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

25 (d) Appeal by Commonwealth.--If a sentencing court refuses  
26 to apply this section where applicable, the Commonwealth shall  
27 have the right to appellate review of the action of the  
28 sentencing court. The appellate court shall vacate the sentence  
29 and remand the case to the sentencing court for imposition of a  
30 sentence in accordance with this section if it finds that the

1 sentence was imposed in violation of this section.

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

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