

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 168

Session of
1977

INTRODUCED BY MESSRS. GALLEN, RENWICK, O'CONNELL, FRYER, CIMINI, GRIECO, J. L. WRIGHT, D. M. O'BRIEN, WILSON, REED, LEVI, FISCHER, SCHWEDER, CESSAR, KLINGAMAN, E. H. SMITH, NOYE, D. R. WRIGHT, WEIDNER, BURD, S. E. HAYES, PICCOLA, HALVERSON, HOPKINS, ARMSTRONG, TRELLO, ZELLER, GAMBLE, DORR, LEHR, SALVATORE, CALTAGIRONE, BRANDT, VROON, DeVERTER, ZORD, PITTS, MACKOWSKI, POTT, MOEHLMANN AND BELLOMINI, FEBRUARY 8, 1977

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 8, 1977

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes providing for additional penalties for
3 possessing a firearm during the commission of certain
4 offenses and for second and subsequent offenses and providing
5 a penalty for carrying deadly weapons onto certain
6 properties.

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

9 Section 1. Section 907 of Title 18, act of November 25, 1970
10 (P.L.707, No.230), known as the Pennsylvania Consolidated
11 Statutes, is amended and the title is amended by adding sections
12 to read:

13 § 907. Possessing instruments of crime.

14 * * *

15 (d) Possession of a firearm during the commission of certain
16 offenses.--A person commits a felony of the second degree, for
17 which the minimum sentence must be no less than one-half the

1 maximum sentence provided by law for a felony of the second
2 degree, if he possesses a firearm while engaged in or an
3 accomplice to the commission of, an attempt to commit, or flight
4 after committing murder, robbery, rape, or deviate sexual
5 intercourse by force or threat of force, burglary, criminal
6 trespass in a building or occupied structure, kidnapping, or
7 riot. As used in this subsection, "firearm" means an instrument
8 used in the propulsion of shot, shell, bullet or any other
9 object by the action of gunpowder exploded, explosive powder or
10 the expansion of gas therein.

11 § 1107. Sentence for second and subsequent offenses.

12 (a) Second and subsequent offenses.--Whoever, after having
13 been convicted within or without this Commonwealth of any of the
14 felonies, or attempt to commit any of the felonies of murder,
15 voluntary manslaughter, involuntary deviate sexual intercourse,
16 rape, burglary, theft, robbery, arson, aggravated assault,
17 kidnapping, sale of narcotics, or any felony committed or
18 attempted to be committed through the instrumentality of or with
19 the aid of a deadly weapon or gunpowder or other explosive
20 substance or corrosive fluid, may, upon conviction of any of
21 such crimes for a second offense committed within five years
22 after the first offense, or subsequent offense committed within
23 five years after the prior offense, be sentenced to imprisonment
24 for a term, the maximum of which shall not be more than twice
25 the longest term prescribed by law upon a first conviction of
26 the crime in question.

27 (b) Fourth offenders.--Whoever, after having been three
28 times convicted, within or without this Commonwealth, of crimes
29 of the character set forth in subsection (a), or of attempt to
30 commit any such crimes shall, upon conviction of any such crimes

1 for a fourth or subsequent offense, committed within five years
2 after the prior offense, be sentenced, in the discretion of the
3 judge trying the case, to imprisonment in a State penitentiary
4 for the term of his natural life.

5 (c) Convictions for some crime not necessary.--Convictions
6 referred to in subsections (a) and (b) may be for any
7 combination of the crimes enumerated and need not be for the
8 same crime each time.

9 (d) Computation of period between convictions.--In computing
10 the period of time between convictions, as provided in
11 subsections (a) and (b), any portion of a sentence served in
12 total confinement, partial confinement, or under a pre-release
13 plan authorized by law, within or without this Commonwealth,
14 shall not be included in the computation of any of said five-
15 year periods. It is hereby declared that the intent of said
16 subsections is that said five-year periods shall run only during
17 the time any such person shall be at liberty including such time
18 as he shall be on probation or parole.

19 (e) Accusation of previous convictions; procedure.--If at
20 any time before trial or plea on any of the crimes set forth in
21 subsection (a), it shall appear that the accused has previously
22 been convicted of any such crimes under the circumstances set
23 forth in subsection (a) or (b), it shall be the duty of the
24 district attorney of the county in which the trial or plea is to
25 be held to notify the accused prior to trial or plea of the
26 intention to file the petition accusing the said person of such
27 previous conviction. Upon the conviction of the accused in the
28 instant case and prior to sentencing, the district attorney
29 shall proceed to file a petition with the court where the
30 instant conviction took place accusing the said person of such

1 previous conviction and serve a copy of the petition upon the
2 defendant and his counsel. Thereupon, the court shall cause the
3 person to be brought before it and shall inform him of the
4 allegations contained in such petition and of his right to be
5 tried as to the truth thereof according to law and shall require
6 such offender to say whether he is the same person mentioned in
7 the several records as set forth in such petition. Where
8 conviction of the instant offense is by plea of guilty or trial
9 by court, and the defendant does not waive a jury determination
10 of the issue of previous conviction, a jury shall be empaneled
11 for this purpose. Otherwise, the jury which heard the instant
12 case shall also determine the issue of previous conviction,
13 unless waived. If it is found, that he is the same person, or if
14 he acknowledges or confesses in open court, after being duly
15 cautioned as to his rights, that he is the same person, the
16 court may sentence him in accordance with subsection (a) or (b).
17 Such sentence shall be reviewable on appeal, not only as to the
18 alleged legal errors but also as to the justice thereof.

19 (f) Formal indictment and conviction unnecessary.--A person
20 need not be formally indicted and convicted as a previous
21 offender in order to be sentenced under this section.

22 § 6163. Deadly weapons prohibited on certain properties.

23 (a) Offense defined.--It shall be unlawful for any person,
24 including a student, to take a deadly weapon into a school
25 facility or school bus or onto any school property. For the
26 purposes of this section, "deadly weapon" shall have the meaning
27 ascribed to it in section 2301 (relating to definitions).

28 (b) Definition.--School as used in this section means public
29 schools used for classes up to and including grade 12.

30 (c) Applicability.--The provisions of this section shall not

1 apply to peace officers while acting within the course of their
2 employment. A person licensed to carry a deadly weapon, or
3 students while actively engaged in a school-related activity
4 involving the use of a deadly weapon. In no case shall a deadly
5 weapon be in the possession of any student on a school bus at a
6 time when any other student is a passenger unless the weapon is
7 disassembled or carried in a closed container.

8 (d) Exception.--Any portion of school property designated by
9 the school as an area where hunting is permissible shall be
10 exempt from the provisions of this section.

11 (e) Penalty.--Any person violating the provisions of this
12 section shall be guilty of a misdemeanor of the third degree.

13 Section 2. This act shall take effect immediately.