

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2090 Session of
1978

INTRODUCED BY SALVATORE, KATZ, GIAMMARCO, LETTERMAN,
CALTAGIRONE, DeWEESE, GARZIA, MCINTYRE, BROWN, NOYE, GRIECO,
ZORD, HOPKINS, WENGER, KNEPPER, HELFRICK, WAGNER, DORR,
GALLEN, POTT, FISCHER, E. Z. TAYLOR AND MCGINNIS,
MARCH 13, 1978

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 13, 1978

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 penalties for offenses relating to the unlawful manufacture,
12 delivery or possession of any substance containing heroin or
13 cocaine or its derivatives.

14 The General Assembly of the Commonwealth of Pennsylvania
15 hereby enacts as follows:

16 Section 1. Section 13, act of April 14, 1972 (P.L.233,
17 No.64), known as "The Controlled Substance, Drug, Device and
18 Cosmetic Act," is amended by adding a subsection to read:

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

20 (i) The penalties imposed under this section shall not apply
21 to violations for which penalties are imposed under section 13.1
22 except that the court may impose the fine provided in subsection

(f)(1), where applicable, in lieu of a fine authorized by
section 13.1.

Section 2. The act is amended by adding a section to read:

Section 13.1. Manufacture or Delivery of Heroin, Cocaine or
Its Derivatives; Penalties.--(a) Notwithstanding any other
provision of this act, any person who manufactures, delivers or
possesses with intent to manufacture or delivers any substance
consisting of:

(1) Two ounces or more (aggregate weight) of any mixture or
substance containing heroin or cocaine or its derivatives, shall
be guilty of a:

(i) felony and upon conviction thereof shall be sentenced to
imprisonment for a term of not less than ten years and up to and
including life imprisonment and, in addition may be sentenced to
pay a fine not exceeding twenty-five thousand dollars (\$25,000),
if such person at the time of the violation was eighteen years
of age or older and was a drug dependent person;

(ii) felony and upon conviction thereof shall be sentenced
to life imprisonment and, in addition, may be sentenced to pay a
fine not exceeding twenty-five thousand dollars (\$25,000), if
such person at the time of the violation was eighteen years of
age or older and was not a drug dependent person;

(iii) felony and upon conviction thereof shall be sentenced
to imprisonment for a term of not less than five years or more
than ten years and, in addition, may be sentenced to pay a fine
not exceeding fifteen thousand dollars (\$15,000), if such person
at the time of the violation was at least sixteen years of age
but under the age of eighteen years and was a drug dependent
person; or

(iv) felony and upon conviction thereof shall be sentenced

1 to imprisonment for a term of not less than fifteen years or
2 more than thirty years, and in addition, may be sentenced to pay
3 a fine not exceeding twenty-five thousand dollars (\$25,000), if
4 such person at the time of the violation was at least sixteen
5 years of age but under the age of eighteen years and was not a
6 drug dependent person.

7 (2) Less than two ounces but at least one-sixteenth of an
8 ounce (aggregate weight) of any mixture or substance containing
9 heroin or cocaine or its derivatives, shall be guilty of a:

10 (i) felony and upon conviction thereof shall be sentenced to
11 imprisonment for a term of not less than five years or more than
12 ten years and, in addition, may be sentenced to pay a fine not
13 exceeding fifteen thousand dollars (\$15,000), if such person at
14 the time of the violation was eighteen years of age or older and
15 was a drug dependent person;

16 (ii) felony and upon conviction thereof shall be sentenced
17 to imprisonment for a term of not less than ten years or more
18 than twenty years and, in addition, may be sentenced to pay a
19 fine not exceeding twenty-five thousand dollars (\$25,000), if
20 such person at the time of the violation was eighteen years of
21 age or older and was not a drug dependent person;

22 (iii) misdemeanor and upon conviction thereof shall be
23 sentenced to imprisonment for a term of not less than one year
24 or more than five years and, in addition, may be sentenced to
25 pay a fine not exceeding ten thousand dollars (\$10,000), if such
26 person at the time of the violation was at least sixteen years
27 of age but under the age of eighteen years and was a drug
28 dependent person; or

29 (iv) felony and upon conviction thereof shall be sentenced
30 to imprisonment for a term of not less than three years or more

1 than ten years and, in addition, may be sentenced to pay a fine
2 not exceeding fifteen thousand dollars (\$15,000), if such person
3 at the time of the violation was at least sixteen years of age
4 but under the age of eighteen years and was not a drug dependent
5 person.

6 (3) Less than one-sixteenth of an ounce (aggregate weight)
7 of any mixture or substance containing heroin or cocaine or its
8 derivatives shall be guilty of a misdemeanor and upon conviction
9 thereof shall be sentenced to imprisonment for a term of not
10 more than three years and, in addition, may be sentenced to pay
11 a fine not exceeding five thousand dollars (\$5,000).

12 (b) Notwithstanding any other provision of this act or of
13 any other law, any person who attempts or conspires to commit
14 any violation referred to in subsection (a), which is punishable
15 under this section, shall be punished by imprisonment in the
16 same manner and to the same extent as that provided for therein
17 for the violation the commission of which was the object of the
18 attempt or conspiracy.

19 (c) Notwithstanding any other provision of this act or of
20 any other law, any person convicted of any violation referred to
21 in subsection (a) which is punishable pursuant to the provisions
22 of this section and who is awaiting sentence, or who is so
23 convicted and sentenced to a term of confinement or imprisonment
24 and has filed an appeal or a petition for a writ of certiorari,
25 shall be detained in custody pending determination of such
26 appeal or petition.

27 (d) Upon the first appearance before a district justice or
28 judge of any person arrested for a violation referred to in
29 subsection (a) which is punishable pursuant to this section, the
30 district justice or judge shall, notwithstanding any other

1 provision of this act or of any other law, order such person to
2 be examined by a physician (appointed by the district justice or
3 judge) experienced or trained in the field of drug dependency or
4 drug abuse who shall review the accused's record and advise the
5 government attorney whether the person is a drug dependent
6 person. On or before the expiration of three calendar days
7 following the date of such order, such person shall again be
8 brought before a district justice or judge and the results of
9 the examination shall be presented to such district justice or
10 judge. A copy of such results shall be made available to the
11 district attorney and to such person. Upon such subsequent
12 appearance of such person before a district justice or judge,
13 such district justice or judge shall proceed in accordance with
14 applicable laws and procedures. The results of such examination
15 shall not be admissible on the issue of guilt or in any other
16 judicial proceeding, except that the court shall consider such
17 results in connection with the sentencing, in accordance with
18 the provisions of this section, of such person, if such person
19 is convicted of such violation.

20 (e) No person charged with an offense subject to the
21 provisions of this section shall be eligible for parole,
22 probation with or without verdict, disposition in lieu of trial,
23 or suspension of any sentence imposed except as follows:

24 (1) Where the person who is to be sentenced upon conviction
25 of a violation of section 13(a)(30) is a first offender and was
26 a drug dependent person at the time of the offense, the court
27 may, at the request of the defendant and to the extent to which
28 there are available facilities approved by the Governor's
29 Council on Drug and Alcohol Abuse, suspend sentence and place
30 defendant on probation subject to the following conditions:

1 (i) The probation shall be for a specific period of time
2 which shall not be less than the minimum nor more than the
3 maximum term of imprisonment applicable to the particular
4 offense.

5 (ii) The defendant shall undergo treatment in a cooperating
6 inpatient or residential rehabilitation program designated by
7 the court which is operated or monitored and recommended by the
8 Governor's Council on Drug and Alcohol Abuse as provided in
9 section 4(14) of the act of April 14, 1972 (P.L.221, No.63),
10 known as the "Pennsylvania Drug and Alcohol Abuse Control Act,"
11 for a period not exceeding the period of probation.

12 (iii) Following the expiration of treatment under subclause
13 (ii) of this clause, the defendant shall remain on probation
14 until the expiration of the period of probation.

15 (2) Where the person who is sentenced upon conviction of a
16 violation of section 13(a)(30) is a first offender and was at
17 least sixteen years of age but under eighteen years of age and
18 was not a drug dependent person at the time of the offense, he
19 shall be eligible for parole upon expiration of one-third of the
20 minimum term of imprisonment imposed, and he shall remain on
21 parole until the expiration of the minimum term of imprisonment
22 imposed.

23 (f) In any case in which a person is indicted for any such
24 violation punishable pursuant to this section, such person shall
25 not be permitted to plead guilty to a lesser offense in lieu of
26 such violation for which he was so indicted.

27 Section 3. This act shall take effect in 60 days.