

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 713 Session of
1991

INTRODUCED BY TANGRETTI, MAYERNIK, HERMAN, MARKOSEK, MARSICO,
JOHNSON, GEIST, NAILOR, ITKIN, KUKOVICH, FAIRCHILD, SCHEETZ,
CAPPABIANCA, FLEAGLE, E. Z. TAYLOR, BATTISTO, NOYE, CARLSON,
PESCI, ROBINSON, SCHULER, M. N. WRIGHT, MELIO, JOSEPHS,
DALEY, COY, VEON, TRELLO, KOSINSKI, HAGARTY, GIGLIOTTI,
KRUSZEWSKI, BELARDI, OLASZ, MIHALICH, STURLA, SAURMAN,
STABACK, STAIRS, PRESTON, CIVERA, FARGO, MICHLOVIC, STISH,
KING AND TELEK, MARCH 13, 1991

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, NOVEMBER 24, 1992

AN ACT

1 Amending ~~Title 18 (Crimes and Offenses)~~ TITLES 18 (CRIMES AND <—
2 OFFENSES) AND 42 (JUDICIARY AND JUDICIAL PROCEDURE) of the
3 Pennsylvania Consolidated Statutes, further providing for a
4 prohibited offensive weapons exemption for liquor control
5 enforcement officers; ~~and~~ prohibiting the possession of a <—
6 firearm or other dangerous weapon in a court facility; <—
7 FURTHER PROVIDING FOR USE OF FORCE IN PROTECTING PROPERTY,
8 FOR COMPETENCY OF WITNESSES, FOR SENTENCING FOR FIRST DEGREE <—
9 MURDER AND FOR SENTENCING FOR OFFENSES COMMITTED WITH
10 FIREARMS; AND PROVIDING FOR SENTENCING FOR ROBBERY OF CARS.

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

13 ~~Section 1. Section 908(d) of Title 18 of the Pennsylvania~~ <—
14 ~~Consolidated Statutes is amended by adding a paragraph to read:~~

15 SECTION 1. SECTION 507(C)(4) OF TITLE 18 OF THE PENNSYLVANIA <—
16 CONSOLIDATED STATUTES IS AMENDED BY ADDING A SUBPARAGRAPH TO
17 READ:

18 § 507. USE OF FORCE FOR THE PROTECTION OF PROPERTY.

1 * * *

2 (C) LIMITATIONS ON JUSTIFIABLE USE OF FORCE.--

3 * * *

4 (4) * * *

5 (III) THE USE OF DEADLY FORCE IS JUSTIFIABLE UNDER
6 THIS SECTION IF:

7 (A) THERE IS AN UNLAWFUL ENTRY OR THREATENED
8 ENTRY INTO A MOTOR VEHICLE OCCUPIED BY THE ACTOR;

9 (B) THE ENTRY OR THREATENED ENTRY IS EFFECTED BY
10 FORCE OR THE THREAT OF FORCE; AND

11 (C) THE ACTOR NEITHER BELIEVES NOR HAS REASON TO
12 BELIEVE THAT FORCE LESS THAN DEADLY FORCE WOULD BE
13 ADEQUATE TO TERMINATE THE ENTRY OR THREATENED ENTRY.

14 * * *

15 SECTION 2. SECTION 908(D) OF TITLE 18 IS AMENDED BY ADDING A
16 PARAGRAPH TO READ:

17 § 908. Prohibited offensive weapons.

18 * * *

19 (d) Exemptions.--The use and possession of blackjacks by the
20 following persons in the course of their duties are exempt from
21 this section:

22 (1) Police officers, as defined by and who meet the
23 requirements of the act of June 18, 1974 (P.L.359, No.120),
24 referred to as the Municipal Police Education and Training
25 Law.

26 (2) Police officers of first class cities who have
27 successfully completed training which is substantially
28 equivalent to the program under the Municipal Police
29 Education and Training Law.

30 (3) Pennsylvania State Police officers.

1 (4) Sheriffs and deputy sheriffs of the various counties
2 who have satisfactorily met the requirements of the Municipal
3 Police Education and Training Law.

4 (5) Police officers employed by the Commonwealth who
5 have satisfactorily met the requirements of the Municipal
6 Police Education and Training Law.

7 (6) Deputy sheriffs with adequate training as determined
8 by the Pennsylvania Commission on Crime and Delinquency.

9 (7) Liquor Control Board agents who have satisfactorily
10 met the requirements of the Municipal Police Education and
11 Training Law.

12 (8) Liquor control enforcement officers who have
13 successfully completed the Liquor Control Enforcement
14 Training Program as provided by the Pennsylvania State
15 Police.

16 Section 2 3. Title 18 is amended by adding a section to
17 read:

18 § 913. Possession of firearm or other dangerous weapon in court
19 facility.

20 (a) Offense defined.--A person commits an offense if he:

21 (1) knowingly possesses a firearm or other dangerous
22 weapon in a court facility or knowingly causes a firearm or
23 other dangerous weapon to be present in a court facility; or

24 (2) knowingly possesses a firearm or other dangerous
25 weapon in a court facility with the intent that the firearm
26 or other dangerous weapon be used in the commission of a
27 crime or knowingly causes a firearm or other dangerous weapon
28 to be present in a court facility with the intent that the
29 firearm or other dangerous weapon be used in the commission
30 of a crime.

1 (b) Grading.--

2 (1) Except as otherwise provided in paragraph (3), an
3 offense under subsection (a)(1) is a misdemeanor of the third
4 degree.

5 (2) An offense under subsection (a)(2) is a misdemeanor
6 of the first degree.

7 (3) An offense under subsection (a)(1) is a summary
8 offense if the person was carrying a firearm pursuant to
9 section 6106(b) (relating to firearms not to be carried
10 without license) or section 6109 (relating to licenses) and
11 failed to check the firearm under subsection (e) prior to
12 entering the court facility.

13 (c) Exceptions.--Subsection (a) shall not apply:

14 (1) To the lawful performance of official duties by an
15 officer, agent or employee of the United States, the
16 Commonwealth or a political subdivision who is authorized by
17 law to engage in or supervise the prevention, detection,
18 investigation or prosecution of any violation of law.

19 (2) To the lawful performance of official duties by a
20 court official.

21 (3) To the carrying of rifles and shotguns by
22 instructors and participants in a course of instruction
23 provided by the Pennsylvania Game Commission under 34 Pa.C.S.
24 § 2704 (relating to eligibility for license).

25 (d) Posting of notice.--Notice of the provisions of
26 subsection (a) shall be posted conspicuously at each public
27 entrance to each courthouse or other building containing a court
28 facility and each court facility, and no person shall be
29 convicted of an offense under subsection (a) with respect to a
30 court facility if the notice was not so posted at the courthouse

1 or other building containing a court facility and at the court
2 facility, unless the person had actual notice of the provisions
3 of subsection (a).

4 (e) Facilities for checking firearms.--Each county shall
5 make available at or near the main entrance to the courthouse,
6 lockers or similar facilities for the temporary checking of
7 firearms by persons lawfully carrying firearms.

8 (f) Definitions.--As used in this section, the following
9 words and phrases shall have the meanings given to them in this
10 subsection:

11 "Court facility." The courtroom of a court of record; a
12 courtroom of a community court; the courtroom of a district
13 justice; a courtroom of the Philadelphia Municipal Court; a
14 courtroom of the Pittsburgh Magistrates Court; a courtroom of
15 the Traffic Court of Philadelphia; judge's chambers; witness
16 room; jury deliberation rooms; attorney conference rooms;
17 prisoner holding cells; offices of court clerks, the district
18 attorney, the sheriff and probation and parole officers; and any
19 adjoining corridors.

20 "Dangerous weapon." A bomb, grenade, blackjack, sandbag,
21 metal knuckles, dagger, knife, razor or cutting instrument, the
22 blade of which is exposed in an automatic way by switch, push-
23 button, spring mechanism, or otherwise, or other implement for
24 the infliction of serious bodily injury which serves no common
25 lawful purpose.

26 "Firearm." Any weapon, including a starter gun, which will
27 or is designed to expel a projectile or projectiles by the
28 action of an explosion, expansion of gas or escape of gas. Such
29 term shall not include any device designed or used exclusively
30 for the firing of stud cartridges, explosive rivets or similar

1 industrial ammunition.

2 ~~Section 3. This act shall take effect in 60 days.~~ <—

3 SECTION 4. SECTION 5912 OF TITLE 42 IS AMENDED TO READ: <—

4 § 5912. [DISQUALIFICATION BY PERJURY.

5 IN A CRIMINAL PROCEEDING, A PERSON WHO HAS BEEN CONVICTED IN
6 A COURT OF THIS COMMONWEALTH OF PERJURY, WHICH TERM IS HEREBY
7 DECLARED TO INCLUDE SUBORNATION OF OR SOLICITATION TO COMMIT
8 PERJURY, SHALL NOT BE A COMPETENT WITNESS FOR ANY PURPOSE,
9 ALTHOUGH HIS SENTENCE MAY HAVE BEEN FULLY COMPLIED WITH, UNLESS
10 THE JUDGMENT OF CONVICTION BE JUDICIALLY SET ASIDE OR REVERSED,
11 OR UNLESS THE PROCEEDING IS ONE TO PUNISH OR PREVENT INJURY OR
12 VIOLENCE ATTEMPTED, DONE, OR THREATENED TO HIS PERSON OR
13 PROPERTY; IN WHICH CASES HE SHALL BE COMPETENT TO TESTIFY.]

14 EFFECT OF PRIOR CONVICTIONS.

15 NO PERSON SHALL BE DEEMED INCOMPETENT OR OTHERWISE
16 DISQUALIFIED AS A WITNESS IN ANY CRIMINAL PROCEEDING BY REASON
17 OF THE PERSON'S HAVING BEEN CONVICTED OF ANY CRIME, BUT SUCH
18 CONVICTION MAY BE SHOWN FOR THE PURPOSE OF AFFECTING THE
19 PERSON'S CREDIBILITY.

20 SECTION 4 5. SECTION 9711(D) OF TITLE 42 IS AMENDED BY <—
21 ADDING A PARAGRAPH TO READ:

22 § 9711. SENTENCING PROCEDURE FOR MURDER OF THE FIRST DEGREE.

23 * * *

24 (D) AGGRAVATING CIRCUMSTANCES.--AGGRAVATING CIRCUMSTANCES
25 SHALL BE LIMITED TO THE FOLLOWING:

26 * * *

27 (17) THE DEFENDANT COMMITTED THE KILLING OR WAS LIABLE
28 FOR THE KILLING UNDER 18 PA.C.S. § 306 IN THE COURSE OF
29 COMMITTING AN OFFENSE UNDER 18 PA.C.S. § 3701 (RELATING TO
30 ROBBERY) IN WHICH THE PROPERTY TAKEN WAS A MOTOR VEHICLE

1 OCCUPIED BY ANOTHER PERSON.

2 * * *

3 SECTION ~~5~~ 6. SECTION 9712(A) OF TITLE 42 IS AMENDED TO READ: <—
4 § 9712. SENTENCES FOR OFFENSES COMMITTED WITH FIREARMS.

5 (A) MANDATORY SENTENCE.--ANY PERSON WHO IS CONVICTED IN ANY
6 COURT OF THIS COMMONWEALTH OF MURDER OF THE THIRD DEGREE,
7 VOLUNTARY MANSLAUGHTER, RAPE, INVOLUNTARY DEVIATE SEXUAL
8 INTERCOURSE, ROBBERY AS DEFINED IN 18 PA.C.S. § 3701(A)(1)(I),
9 (II) [OR (III)], (III), (IV) OR (V) (RELATING TO ROBBERY), IN
10 WHICH THE PROPERTY TAKEN WAS A MOTOR VEHICLE, AGGRAVATED ASSAULT
11 AS DEFINED IN 18 PA.C.S. § 2702(A)(1) (RELATING TO AGGRAVATED
12 ASSAULT) OR KIDNAPPING, OR WHO IS CONVICTED OF ATTEMPT TO COMMIT
13 ANY OF THESE CRIMES, SHALL, IF THE PERSON VISIBLY POSSESSED A
14 FIREARM DURING THE COMMISSION OF THE OFFENSE, BE SENTENCED TO A
15 MINIMUM SENTENCE OF AT LEAST FIVE YEARS OF TOTAL CONFINEMENT
16 NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE OR OTHER
17 STATUTE TO THE CONTRARY.

18 * * *

19 SECTION ~~6~~ 7. TITLE 42 IS AMENDED BY ADDING A SECTION TO <—
20 READ:

21 § 9720. SENTENCES FOR ROBBERY OF MOTOR VEHICLES.

22 (A) MANDATORY SENTENCE.--NOTWITHSTANDING ANY OTHER PROVISION
23 OF THIS TITLE OR OTHER STATUTE TO THE CONTRARY:

24 (1) ANY PERSON WHO IS CONVICTED IN ANY COURT OF THIS
25 COMMONWEALTH OF AN OFFENSE UNDER 18 PA.C.S. § 3701 (RELATING
26 TO ROBBERY) OR WHO IS CONVICTED OF AN ATTEMPT TO COMMIT THIS
27 OFFENSE SHALL BE SENTENCED TO A MINIMUM SENTENCE OF AT LEAST
28 FIVE YEARS OF TOTAL CONFINEMENT IF THE PROPERTY WHICH WAS
29 TAKEN WAS A MOTOR VEHICLE OCCUPIED BY ANOTHER PERSON.

30 (2) ANY PERSON WHO IS CONVICTED IN ANY COURT OF THIS

1 COMMONWEALTH OF AN OFFENSE UNDER 18 PA.C.S. § 3701 OR WHO IS
2 CONVICTED OF AN ATTEMPT TO COMMIT THIS OFFENSE SHALL BE
3 SENTENCED TO A MINIMUM SENTENCE OF AT LEAST FIVE YEARS OF
4 TOTAL CONFINEMENT, IN ADDITION TO THE PENALTY IMPOSED UNDER
5 PARAGRAPH (1), IF:

6 (I) THE PROPERTY WHICH WAS TAKEN WAS A MOTOR
7 VEHICLE; AND

8 (II) DURING THE COURSE OF COMMITTING THE OFFENSE, AN
9 OCCUPANT OF THE MOTOR VEHICLE WAS PHYSICALLY INJURED.

10 (B) PROOF AT SENTENCING.--PROVISIONS OF THIS SECTION SHALL
11 NOT BE AN ELEMENT OF THE CRIME AND NOTICE OF THE PROVISIONS OF
12 THIS SECTION TO THE DEFENDANT SHALL NOT BE REQUIRED PRIOR TO
13 CONVICTION, BUT REASONABLE NOTICE OF THE COMMONWEALTH'S
14 INTENTION TO PROCEED UNDER THIS SECTION SHALL BE PROVIDED AFTER
15 CONVICTION AND BEFORE SENTENCING. THE APPLICABILITY OF THIS
16 SECTION SHALL BE DETERMINED AT SENTENCING. THE COURT SHALL
17 CONSIDER ANY EVIDENCE PRESENTED AT TRIAL AND SHALL AFFORD THE
18 COMMONWEALTH AND THE DEFENDANT AN OPPORTUNITY TO PRESENT ANY
19 NECESSARY ADDITIONAL EVIDENCE AND SHALL DETERMINE, BY A
20 PREPONDERANCE OF THE EVIDENCE, IF THIS SECTION IS APPLICABLE.

21 (C) AUTHORITY OF COURT IN SENTENCING.--THERE SHALL BE NO
22 AUTHORITY IN ANY COURT TO IMPOSE ON AN OFFENDER TO WHICH THIS
23 SECTION IS APPLICABLE ANY LESSER SENTENCE THAN PROVIDED FOR IN
24 SUBSECTION (A) OR TO PLACE SUCH OFFENDER ON PROBATION OR TO
25 SUSPEND SENTENCE. NOTHING IN THIS SECTION SHALL PREVENT THE
26 SENTENCING COURT FROM IMPOSING A SENTENCE GREATER THAN THAT
27 PROVIDED IN THIS SECTION. SENTENCING GUIDELINES PROMULGATED BY
28 THE PENNSYLVANIA COMMISSION ON SENTENCING SHALL NOT SUPERSEDE
29 THE MANDATORY SENTENCE PROVIDED IN THIS SECTION.

30 (D) APPEAL BY COMMONWEALTH.--IF A SENTENCING COURT REFUSES

1 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL
2 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE
3 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE
4 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A
5 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE
6 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.

7 ~~SECTION 7. THE AMENDMENT OR ADDITION OF 42 PA.C.S. §§~~ <—
8 ~~9711(D)(17), 9712(A) AND 9720 SHALL APPLY TO ACTIONS COMMENCED~~
9 ~~ON OR AFTER THE EFFECTIVE DATE OF THIS ACT.~~

10 SECTION 8. THIS ACT SHALL APPLY AS FOLLOWS: <—

11 (1) THE AMENDMENT OF 42 PA.C.S. § 5912 SHALL APPLY TO
12 ALL CRIMINAL CASES PENDING ON THE EFFECTIVE DATE OF THIS ACT.

13 (2) THE AMENDMENT OR ADDITION OF 42 PA.C.S. §§
14 9711(D)(17), 9712(A) AND 9720 SHALL APPLY TO ACTIONS
15 COMMENCED ON OR AFTER THE EFFECTIVE DATE OF THIS ACT.

16 SECTION & 9. THIS ACT SHALL TAKE EFFECT IN 60 DAYS. <—