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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 28

Session of  
1999

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INTRODUCED BY MARSICO, GANNON, CLARK, NAILOR, DeLUCA, COY,  
KENNEY, SAYLOR, STABACK, BROWNE, PHILLIPS, BARRAR, HERMAN,  
READSHAW, GEIST, RUBLEY, BATTISTO, TRUE, WILT, E. Z. TAYLOR,  
FAIRCHILD, STERN, ZUG, ROSS, PIPPY, McNAUGHTON, YOUNGBLOOD,  
GEORGE, FARGO, GIGLIOTTI, CORRIGAN, BAKER, M. COHEN, BELARDI,  
HARHAI, DALLY, SEYFERT, L. I. COHEN, J. TAYLOR, GLADECK,  
BENNINGHOFF, BUNT, ALLEN, TRELLO, WASHINGTON, EGOLF,  
ARMSTRONG, McILHINNEY, BASTIAN AND SCHRODER, JANUARY 20, 1999

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SENATOR GREENLEAF, JUDICIARY, IN SENATE, AS AMENDED,  
DECEMBER 7, 1999

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AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, further providing for harassment and  
3 stalking, ~~for deceptive business practices and~~; PROVIDING FOR <—  
4 REIMBURSEMENT TO COMMONWEALTH FOR BUSINESS RELOCATION;  
5 FURTHER PROVIDING for drug trafficking sentencing and  
6 penalties; and providing for ~~reimbursement to Commonwealth~~ <—  
7 ~~for business relocation~~. SPLIT SENTENCES. <—

8 The General Assembly of the Commonwealth of Pennsylvania

9 hereby enacts as follows:

10 Section 1. Section 2709(c)(1) of Title 18 of the  
11 Pennsylvania Consolidated Statutes is amended to read:

12 § 2709. Harassment and stalking.

13 \* \* \*

14 (c) Grading.--

15 (1) An offense under subsection (a) shall be graded as  
16 follows:

1           (i) Except as provided in subparagraph (ii), the  
2           offense shall constitute a summary offense.

3           (ii) An offense under subsection (a)(3) if the  
4           defendant is or, during the past five years, was engaged  
5           in civil litigation with the victim shall constitute a  
6           felony of the third degree.

7           \* \* \*

8           ~~Section 2. Section 4107(a) of Title 18 is amended by adding~~ <—  
9           ~~a paragraph to read:~~

10          ~~§ 4107. Deceptive or fraudulent business practices.~~

11          ~~(a) Offense defined. A person commits an offense if, in the~~  
12          ~~course of business, he:~~

13                 ~~\* \* \*~~

14                 ~~(7.1) signs a contract with a consumer for services,~~  
15                 ~~receives any payment under the contract and fails to perform~~  
16                 ~~the services required by the written contract;~~

17                 ~~\* \* \*~~

18          Section 3 2. Title 18 is amended by adding a section to <—  
19          read:

20          § 4120. Reimbursement to Commonwealth for business relocation.

21          (a) Offense defined.--A person or business entity that  
22          receives Commonwealth funding for the creation of employment  
23          commits a misdemeanor of the first degree if that person or  
24          entity fails to repay the Commonwealth the full amount of the  
25          funding 60 days prior to relocation of any unit of the person's  
26          or entity's operation, in whole or in part, outside of this  
27          Commonwealth within a period of five years from receipt of the  
28          funding.

29          (b) Enforcement.--The Attorney General shall enforce the  
30          provisions of this section and shall take such actions as may be

1 necessary to ascertain and investigate alleged violations of  
2 this section and to impose fines.

3 Section 4 3. Section ~~7508(a)~~ 7508(C) of Title 18 is amended <—  
4 AND SUBSECTION (A) IS AMENDED by adding a paragraph to read: <—  
5 § 7508. Drug trafficking sentencing and penalties.

6 (a) General rule.--Notwithstanding any other provisions of  
7 this or any other act to the contrary, the following provisions  
8 shall apply:

9 \* \* \*

10 (7) A person who is convicted of violating section  
11 13(a)(14), (30) or (37) of The Controlled Substance, Drug,  
12 Device and Cosmetic Act where the controlled substance or a  
13 mixture containing it is heroin shall, upon conviction, be  
14 sentenced as set forth in this paragraph:

15 (i) when the aggregate weight of the compound or  
16 mixture containing the heroin involved is at least 1.0  
17 gram but less than ~~5.0~~ 10 grams the sentence shall be a <—  
18 mandatory minimum term of two years in prison and a fine  
19 of \$5,000 or such larger amount as is sufficient to  
20 exhaust the assets utilized in and the proceeds from the  
21 illegal activity; however, if at the time of sentencing  
22 the defendant has been convicted of another drug  
23 trafficking offense: a mandatory minimum term of three  
24 years in prison and \$10,000 or such larger amount as is  
25 sufficient to exhaust the assets utilized in and the  
26 proceeds from the illegal activity;

27 (ii) when the aggregate weight of the compound or  
28 mixture containing the heroin involved is at least ~~5.0~~ 10 <—  
29 grams but less than ~~50~~ 100 grams; a mandatory minimum <—  
30 term of three years in prison and a fine of \$15,000 or

1 such larger amount as is sufficient to exhaust the assets  
2 utilized in and the proceeds from the illegal activity;  
3 however, if at the time of sentencing the defendant has  
4 been convicted of another drug trafficking offense: a  
5 mandatory minimum term of five years in prison and  
6 \$30,000 or such larger amount as is sufficient to exhaust  
7 the assets utilized in and the proceeds from the illegal  
8 activity; and

9 (iii) when the aggregate weight of the compound or  
10 mixture containing the heroin involved is ~~50~~ 100 grams or ←  
11 greater: a mandatory minimum term of five years in prison  
12 and a fine of \$25,000 or such larger amount as is  
13 sufficient to exhaust the assets utilized in and the  
14 proceeds from the illegal activity; however, if at the  
15 time of sentencing the defendant has been convicted of  
16 another drug trafficking offense: a mandatory minimum  
17 term of seven years in prison and \$50,000 or such larger  
18 amount as is sufficient to exhaust the assets utilized in  
19 and the proceeds from the illegal activity.

20 \* \* \*

21 (C) MANDATORY SENTENCING.--[THERE] EXCEPT AS PROVIDED IN ←  
22 SECTION 7508.1 (RELATING TO SPLIT SENTENCES), THERE SHALL BE NO  
23 AUTHORITY IN ANY COURT TO IMPOSE ON AN OFFENDER TO WHICH THIS  
24 SECTION IS APPLICABLE A LESSER SENTENCE THAN PROVIDED FOR HEREIN  
25 OR TO PLACE THE OFFENDER ON PROBATION, PAROLE, WORK RELEASE OR  
26 PRERELEASE OR TO SUSPEND SENTENCE. NOTHING IN THIS SECTION SHALL  
27 PREVENT THE SENTENCING COURT FROM IMPOSING A SENTENCE GREATER  
28 THAN PROVIDED HEREIN. SENTENCING GUIDELINES PROMULGATED BY THE  
29 PENNSYLVANIA COMMISSION ON SENTENCING SHALL NOT SUPERSEDE THE  
30 MANDATORY SENTENCES PROVIDED HEREIN. DISPOSITION UNDER SECTION

1 17 OR 18 OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC  
2 ACT SHALL NOT BE AVAILABLE TO A DEFENDANT TO WHICH THIS SECTION  
3 APPLIES.

4 \* \* \*

5 SECTION 4. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ:  
6 § 7508.1. SPLIT SENTENCES.

7 (A) PETITION.--IN ANY CASE SUBJECT TO THE MANDATORY  
8 SENTENCING PROVISIONS OF SECTION 7508 (RELATING TO DRUG  
9 TRAFFICKING SENTENCING AND PENALTIES), THE ATTORNEY FOR THE  
10 COMMONWEALTH MAY PETITION THE COURT TO APPLY TO THE CASE THE  
11 SPLIT SENTENCING PROVISIONS OF THIS SECTION. WHILE THE COURT MAY  
12 RECOMMEND THE CASE TO THE ATTORNEY FOR THE COMMONWEALTH AS  
13 APPROPRIATE FOR CONSIDERATION UNDER THIS SECTION, THE DECISION  
14 TO PETITION OR NOT TO PETITION FOR THE APPLICATION TO THE CASE  
15 OF THE SPLIT SENTENCING PROVISIONS SHALL BE AT THE SOLE  
16 DISCRETION OF THE ATTORNEY FOR THE COMMONWEALTH AND SHALL NOT BE  
17 SUBJECT TO APPEAL.

18 (B) COURT HEARING.--AFTER A PUBLIC HEARING IN OPEN COURT IN  
19 THE PRESENCE OF THE DEFENDANT, THE DEFENDANT'S ATTORNEY AND THE  
20 ATTORNEY FOR THE COMMONWEALTH, THE COURT MAY, BUT SHALL NOT BE  
21 REQUIRED TO, APPLY TO THE CASE THE SPLIT SENTENCING PROVISIONS  
22 OF THIS SECTION IF THE COURT FINDS THAT ALL OF THE FOLLOWING  
23 HAVE BEEN ESTABLISHED:

24 (1) THE DEFENDANT HAS BEEN ASSESSED BY A CERTIFIED  
25 ADDICTION COUNSELOR, PSYCHIATRIST WITH A CERTIFICATE IN  
26 ADDICTION PSYCHIATRY, MEDICAL DOCTOR CERTIFIED IN ADDICTION  
27 TREATMENT BY THE AMERICAN SOCIETY OF ADDICTION MEDICINE OR  
28 PSYCHOLOGIST SPECIALIZING IN ADDICTION TREATMENT, USING THE  
29 PENNSYLVANIA PLACEMENT CRITERIA OR OTHER CRITERIA DESIGNATED  
30 BY THE BUREAU OF DRUG AND ALCOHOL PROGRAMS OF THE DEPARTMENT

1 OF HEALTH AND HAS BEEN DETERMINED TO BE ADDICTED TO DRUGS OR  
2 ALCOHOL. THE ASSESSOR MUST HAVE AT LEAST THREE YEARS  
3 EXPERIENCE IN TREATING AND ASSESSING DRUG-ADDICTED OR  
4 ALCOHOL-ADDICTED CRIMINAL OFFENDERS.

5 (2) THE DEFENDANT'S DRUG TRAFFICKING WAS CAUSED BY OR  
6 RESULTED FROM THE DEFENDANT'S DRUG OR ALCOHOL ADDICTION.

7 (3) THE CIRCUMSTANCES SURROUNDING THE DRUG TRAFFICKING  
8 OFFENSE INVOLVED NO VIOLENCE.

9 (4) THE DEFENDANT DID NOT DELIVER OR CAUSE TO BE  
10 DELIVERED CONTROLLED SUBSTANCES TO ANYONE UNDER 18 YEARS OF  
11 AGE.

12 (5) A TREATMENT PLAN HAS BEEN DEVELOPED THAT IS  
13 CLINICALLY APPROPRIATE AND CONSISTENT WITH THE ASSESSMENT  
14 CONDUCTED PURSUANT TO PARAGRAPH (1).

15 (6) AN INTENSIVE PAROLE SUPERVISION PLAN HAS BEEN  
16 DEVELOPED THAT IS CONSISTENT WITH PUBLIC SAFETY AND THE DRUG  
17 AND ALCOHOL TREATMENT PLAN.

18 (C) AGREEMENT TO THE SENTENCE.--IF THE COURT APPLIES TO THE  
19 CASE THE SPLIT-SENTENCING PROVISIONS OF THIS SECTION, THE COURT  
20 SHALL INDICATE ON THE RECORD THE SPECIFIC TERM OF IMPRISONMENT  
21 UNDER SECTION 7508 THAT OTHERWISE WOULD HAVE BEEN APPLICABLE.  
22 THE COURT SHALL INFORM THE PARTIES OF ITS INTENDED JUDGMENT OF  
23 SENTENCE, WHICH SHALL BE A COMBINATION OF IMPRISONMENT,  
24 TREATMENT IN ACCORDANCE WITH THE TREATMENT PLAN AND INTENSIVE  
25 PAROLE SUPERVISION IN ACCORDANCE WITH THE INTENSIVE PAROLE  
26 SUPERVISION PLAN. IF EITHER THE DEFENDANT OR THE ATTORNEY FOR  
27 THE COMMONWEALTH OBJECTS TO THE INTENDED SENTENCE, THE SPLIT  
28 SENTENCE SHALL BE IMMEDIATELY WITHDRAWN.

29 (D) PAROLE.--NO DEFENDANT SENTENCED UNDER THIS SECTION SHALL  
30 BE ELIGIBLE FOR PAROLE PRIOR TO THE EXPIRATION OF THE MINIMUM

1 TERM OF IMPRISONMENT IMPOSED UNDER THE SPLIT SENTENCE. PAROLE  
2 SHALL BE CONDITIONED UPON THE DEFENDANT'S PARTICIPATION AND  
3 COOPERATION WITH CLINICALLY APPROPRIATE DRUG AND ALCOHOL  
4 TREATMENT IN ACCORDANCE WITH THE TREATMENT PLAN, AND COOPERATION  
5 WITH THE CONDITIONS OF THE INTENSIVE PAROLE SUPERVISION PLAN.  
6 ALL TREATMENT SHALL OCCUR IN NONPROFIT FACILITIES LICENSED BY  
7 THE DEPARTMENT OF HEALTH TO PROVIDE DRUG AND ALCOHOL TREATMENT  
8 SERVICES, AND DESIGNATED BY THE DEPARTMENT OF HEALTH TO HAVE  
9 SUFFICIENT EXPERIENCE AND EXPERTISE IN TREATING DRUG-ADDICTED OR  
10 ALCOHOL-ADDICTED CRIMINAL OFFENDERS.

11 (E) PAROLE VIOLATIONS.--IF THE DEFENDANT HAS BEEN FOUND TO  
12 HAVE VIOLATED ANY CONDITIONS OF THE INTENSIVE PAROLE, THE  
13 DEFENDANT SHALL BE RECOMMITTED TO SERVE A TERM OF IMPRISONMENT  
14 THAT, WHEN COMBINED WITH THE INITIAL TERM OF IMPRISONMENT,  
15 EQUALS OR EXCEEDS THE MANDATORY MINIMUM SENTENCE INDICATED  
16 PURSUANT TO SUBSECTION (C).

17 Section 5. This act shall take effect in 60 days.