

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 2556 Session of
2000

INTRODUCED BY FLICK, CLARK, WASHINGTON, HENNESSEY, BELARDI,
CASORIO, EGOLF, FARGO, HARHAI, HERSHEY, HORSEY, MAHER,
MARSICO, MELIO, SATHER, SCHRODER, SHANER, STABACK, STEVENSON,
THOMAS, TIGUE, TULLI, WILLIAMS AND WOJNAROSKI, MAY 17, 2000

REFERRED TO COMMITTEE ON JUDICIARY, MAY 17, 2000

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, providing for sentences
3 for offenses committed while possessing body armor.

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

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

8 § 9719.1. Sentences for offenses committed while possessing
9 body armor.

10 (a) Mandatory sentence.--Except as provided under section
11 9716 (relating to two or more mandatory minimum sentences
12 applicable), any person who is convicted in any court of this
13 Commonwealth of a crime of violence as defined in section
14 9714(g) (relating to sentences for second and subsequent
15 offenses), shall, if the person visibly possessed body armor as
16 defined in 18 Pa.C.S. § 907 (relating to possessing instruments
17 of crime) during the commission of the offense, be sentenced to

a minimum sentence of at least five years of total confinement notwithstanding any other provision of this title or other statute to the contrary. Such person shall not be eligible for parole, probation, work release or furlough.

(b) Proof at sentencing.--Provisions of this section shall not be an element of the crime and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider any evidence presented at trial and shall afford the Commonwealth and the defendant an opportunity to present any necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.

(c) Authority of court in sentencing.--There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection (a) or to place such offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

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

1 sentence was imposed in violation of this section.

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