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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**HOUSE BILL**

**No. 1606** Session of  
2007

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INTRODUCED BY JAMES, VITALI, THOMAS, CREIGHTON, CURRY, JOSEPHS,  
KIRKLAND, LEACH, R. MILLER, MYERS, OLIVER, PARKER, WATERS,  
WILLIAMS AND YOUNGBLOOD, JUNE 21, 2007

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REFERRED TO COMMITTEE ON JUDICIARY, JUNE 21, 2007

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AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, deleting mandatory minimum penalties  
3 relating to contraband and drug trafficking.

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

6 Section 1. Section 5123(a.1) of Title 18 of the Pennsylvania  
7 Consolidated Statutes is amended to read:

8 § 5123. Contraband.

9 \* \* \*

10 [(a.1) Mandatory minimum penalty.--Any person convicted of a  
11 violation of subsection (a) shall be sentenced to a minimum  
12 sentence of at least two years of total confinement,  
13 notwithstanding any other provision of this title or any other  
14 statute to the contrary. Nothing in this subsection shall  
15 prevent the sentencing court from imposing a sentence greater  
16 than that provided in this subsection, up to the maximum penalty  
17 prescribed by this title for a felony of the second degree.  
18 There shall be no authority in any court to impose on an

1 offender to which this subsection is applicable any lesser  
2 sentence than provided for in subsection (a) or to place such  
3 offender on probation or to suspend sentence. Sentencing  
4 guidelines promulgated by the Pennsylvania Commission on  
5 Sentencing shall not supersede the mandatory sentences provided  
6 in this subsection. If a sentencing court refuses to apply this  
7 subsection where applicable, the Commonwealth shall have the  
8 right to appellate review of the action of the sentencing court.  
9 The appellate court shall vacate the sentence and remand the  
10 case to the sentencing court for imposition of a sentence in  
11 accordance with this subsection if it finds that the sentence  
12 was imposed in violation of this subsection.]

13 \* \* \*

14 Section 2. Sections 6314, 6317 and 7508 of Title 18 are  
15 repealed:

16 [§ 6314. Sentencing and penalties for trafficking drugs to  
17 minors.

18 (a) General rule.--A person over 18 years of age who is  
19 convicted in any court of this Commonwealth of a violation of  
20 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,  
21 No.64), known as The Controlled Substance, Drug, Device and  
22 Cosmetic Act, shall, if the delivery or possession with intent  
23 to deliver of the controlled substance was to a minor, be  
24 sentenced to a minimum sentence of at least one year total  
25 confinement, notwithstanding any other provision of this title  
26 or other statute to the contrary.

27 (b) Additional penalties.--In addition to the mandatory  
28 minimum sentence set forth in subsection (a), the person shall  
29 be sentenced to an additional minimum sentence of at least two  
30 years total confinement, notwithstanding any other provision of

1 this title or other statute to the contrary, if the person did  
2 any of the following:

3 (1) Committed the offense with the intent to promote the  
4 habitual use of the controlled substance.

5 (2) Intended to engage the minor in the trafficking,  
6 transportation, delivery, manufacturing, sale or conveyance.

7 (3) Committed the offense within 1,000 feet of the real  
8 property on which is located a public, private or parochial  
9 school or a college or university.

10 (4) Committed the offense on a school bus or within 500  
11 feet of a school bus stop.

12 (c) Proof at sentencing.--The provisions of this section  
13 shall not be an element of the crime. Notice of the  
14 applicability of this section to the defendant shall not be  
15 required prior to conviction, but reasonable notice of the  
16 Commonwealth's intention to proceed under this section shall be  
17 provided after conviction and before sentencing. The  
18 applicability of this section shall be determined at sentencing.  
19 The court shall consider evidence presented at trial, shall  
20 afford the Commonwealth and the defendant an opportunity to  
21 present necessary additional evidence, and shall determine, by a  
22 preponderance of the evidence, if this section is applicable.

23 (d) Authority of court in sentencing.--There shall be no  
24 authority for a court to impose on a defendant to which this  
25 section is applicable a lesser sentence than provided for in  
26 subsection (a), to place the defendant on probation or to  
27 suspend sentence. Nothing in this section shall prevent the  
28 sentencing court from imposing a sentence greater than that  
29 provided in this section. Sentencing guidelines promulgated by  
30 the Pennsylvania Commission on Sentencing shall not supersede

1 the mandatory sentences provided in this section. Disposition  
2 under section 17 or 18 of The Controlled Substance, Drug, Device  
3 and Cosmetic Act shall not be available to a defendant to which  
4 this section applies.

5 (e) Appeal by Commonwealth.--If a sentencing court refuses  
6 to apply this section where applicable, the Commonwealth shall  
7 have the right to appellate review of the action of the  
8 sentencing court. The appellate court shall vacate the sentence  
9 and remand the case to the sentencing court for imposition of a  
10 sentence in accordance with this section if it finds that the  
11 sentence was imposed in violation of this section.

12 (f) Forfeiture.--Assets against which a forfeiture petition  
13 has been filed and is pending or against which the Commonwealth  
14 has indicated an intention to file a forfeiture petition shall  
15 not be subject to a fine under this section.

16 (g) Definition.--As used in this section, the term "minor"  
17 means an individual under 18 years of age.

18 § 6317. Drug-free school zones.

19 (a) General rule.--A person 18 years of age or older who is  
20 convicted in any court of this Commonwealth of a violation of  
21 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,  
22 No.64), known as The Controlled Substance, Drug, Device and  
23 Cosmetic Act, shall, if the delivery or possession with intent  
24 to deliver of the controlled substance occurred within 1,000  
25 feet of the real property on which is located a public, private  
26 or parochial school or a college or university or within 250  
27 feet of the real property on which is located a recreation  
28 center or playground or on a school bus, be sentenced to a  
29 minimum sentence of at least two years of total confinement,  
30 notwithstanding any other provision of this title, The

1 Controlled Substance, Drug, Device and Cosmetic Act or other  
2 statute to the contrary. The maximum term of imprisonment shall  
3 be four years for any offense:

4 (1) subject to this section; and

5 (2) for which The Controlled Substance, Drug, Device and  
6 Cosmetic Act provides for a maximum term of imprisonment of  
7 less than four years.

8 If the sentencing court finds that the delivery or possession  
9 with intent to deliver was to an individual under 18 years of  
10 age, then this section shall not be applicable and the offense  
11 shall be subject to section 6314 (relating to sentencing and  
12 penalties for trafficking drugs to minors).

13 (b) Proof at sentencing.--The provisions of this section  
14 shall not be an element of the crime. Notice of the  
15 applicability of this section to the defendant shall not be  
16 required prior to conviction, but reasonable notice of the  
17 Commonwealth's intention to proceed under this section shall be  
18 provided after conviction and before sentencing. The  
19 applicability of this section shall be determined at sentencing.  
20 The court shall consider evidence presented at trial, shall  
21 afford the Commonwealth and the defendant an opportunity to  
22 present necessary additional evidence and shall determine by a  
23 preponderance of the evidence if this section is applicable.

24 (c) Authority of court in sentencing.--There shall be no  
25 authority for a court to impose on a defendant to which this  
26 section is applicable a lesser sentence than provided for in  
27 subsection (a), to place the defendant on probation or to  
28 suspend sentence. Nothing in this section shall prevent the  
29 sentencing court from imposing a sentence greater than that  
30 provided in this section. Sentencing guidelines promulgated by

1 the Pennsylvania Commission on Sentencing shall not supersede  
2 the mandatory sentences provided in this section. Disposition  
3 under section 17 or 18 of The Controlled Substance, Drug, Device  
4 and Cosmetic Act shall not be available to a defendant to which  
5 this section applies.

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

13 § 7508. Drug trafficking sentencing and penalties.

14 (a) General rule.--Notwithstanding any other provisions of  
15 this or any other act to the contrary, the following provisions  
16 shall apply:

17 (1) A person who is convicted of violating section  
18 13(a)(14), (30) or (37) of the act of April 14, 1972  
19 (P.L.233, No.64), known as The Controlled Substance, Drug,  
20 Device and Cosmetic Act, where the controlled substance is  
21 marijuana shall, upon conviction, be sentenced to a mandatory  
22 minimum term of imprisonment and a fine as set forth in this  
23 subsection:

24 (i) when the amount of marijuana involved is at  
25 least two pounds, but less than ten pounds, or at least  
26 ten live plants but less than 21 live plants; one year in  
27 prison and a fine of \$5,000 or such larger amount as is  
28 sufficient to exhaust the assets utilized in and the  
29 proceeds from the illegal activity; however, if at the  
30 time of sentencing the defendant has been convicted of

1 another drug trafficking offense: two years in prison and  
2 a fine of \$10,000 or such larger amount as is sufficient  
3 to exhaust the assets utilized in and the proceeds from  
4 the illegal activity;

5 (ii) when the amount of marijuana involved is at  
6 least ten pounds, but less than 50 pounds, or at least 21  
7 live plants but less than 51 live plants; three years in  
8 prison and a fine of \$15,000 or such larger amount as is  
9 sufficient to exhaust the assets utilized in and the  
10 proceeds from the illegal activity; however, if at the  
11 time of sentencing the defendant has been convicted of  
12 another drug trafficking offense: four years in prison  
13 and a fine of \$30,000 or such larger amount as is  
14 sufficient to exhaust the assets utilized in and the  
15 proceeds from the illegal activity; and

16 (iii) when the amount of marijuana involved is at  
17 least 50 pounds, or at least 51 live plants; five years  
18 in prison and a fine of \$50,000 or such larger amount as  
19 is sufficient to exhaust the assets utilized in and the  
20 proceeds from the illegal activity.

21 (2) A person who is convicted of violating section  
22 13(a)(14), (30) or (37) of The Controlled Substance, Drug,  
23 Device and Cosmetic Act where the controlled substance or a  
24 mixture containing it is classified in Schedule I or Schedule  
25 II under section 4 of that act and is a narcotic drug shall,  
26 upon conviction, be sentenced to a mandatory minimum term of  
27 imprisonment and a fine as set forth in this subsection:

28 (i) when the aggregate weight of the compound or  
29 mixture containing the substance involved is at least 2.0  
30 grams and less than ten grams; two years in prison and a

1 fine of \$5,000 or such larger amount as is sufficient to  
2 exhaust the assets utilized in and the proceeds from the  
3 illegal activity; however, if at the time of sentencing  
4 the defendant has been convicted of another drug  
5 trafficking offense: three years in prison and \$10,000 or  
6 such larger amount as is sufficient to exhaust the assets  
7 utilized in and the proceeds from the illegal activity;

8 (ii) when the aggregate weight of the compound or  
9 mixture containing the substance involved is at least ten  
10 grams and less than 100 grams; three years in prison and  
11 a fine of \$15,000 or such larger amount as is sufficient  
12 to exhaust the assets utilized in and the proceeds from  
13 the illegal activity; however, if at the time of  
14 sentencing the defendant has been convicted of another  
15 drug trafficking offense: five years in prison and  
16 \$30,000 or such larger amount as is sufficient to exhaust  
17 the assets utilized in and the proceeds from the illegal  
18 activity; and

19 (iii) when the aggregate weight of the compound or  
20 mixture containing the substance involved is at least 100  
21 grams; five years in prison and a fine of \$25,000 or such  
22 larger amount as is sufficient to exhaust the assets  
23 utilized in and the proceeds from the illegal activity;  
24 however, if at the time of sentencing the defendant has  
25 been convicted of another drug trafficking offense: seven  
26 years in prison and \$50,000 or such larger amount as is  
27 sufficient to exhaust the assets utilized in and the  
28 proceeds from the illegal activity.

29 (3) A person who is convicted of violating section  
30 13(a)(14), (30) or (37) of The Controlled Substance, Drug,



1 Device and Cosmetic Act where the controlled substance is  
2 coca leaves or is any salt, compound, derivative or  
3 preparation of coca leaves or is any salt, compound,  
4 derivative or preparation which is chemically equivalent or  
5 identical with any of these substances or is any mixture  
6 containing any of these substances except decocainized coca  
7 leaves or extracts of coca leaves which (extracts) do not  
8 contain cocaine or ecgonine shall, upon conviction, be  
9 sentenced to a mandatory minimum term of imprisonment and a  
10 fine as set forth in this subsection:

11 (i) when the aggregate weight of the compound or  
12 mixture containing the substance involved is at least 2.0  
13 grams and less than ten grams; one year in prison and a  
14 fine of \$5,000 or such larger amount as is sufficient to  
15 exhaust the assets utilized in and the proceeds from the  
16 illegal activity; however, if at the time of sentencing  
17 the defendant has been convicted of another drug  
18 trafficking offense: three years in prison and \$10,000 or  
19 such larger amount as is sufficient to exhaust the assets  
20 utilized in and the proceeds from the illegal activity;

21 (ii) when the aggregate weight of the compound or  
22 mixture containing the substance involved is at least ten  
23 grams and less than 100 grams; three years in prison and  
24 a fine of \$15,000 or such larger amount as is sufficient  
25 to exhaust the assets utilized in and the proceeds from  
26 the illegal activity; however, if at the time of  
27 sentencing the defendant has been convicted of another  
28 drug trafficking offense: five years in prison and  
29 \$30,000 or such larger amount as is sufficient to exhaust  
30 the assets utilized in and the proceeds from the illegal

1 activity; and

2 (iii) when the aggregate weight of the compound or  
3 mixture of the substance involved is at least 100 grams;  
4 four years in prison and a fine of \$25,000 or such larger  
5 amount as is sufficient to exhaust the assets utilized in  
6 and the proceeds from the illegal activity; however, if  
7 at the time of sentencing the defendant has been  
8 convicted of another drug trafficking offense: seven  
9 years in prison and \$50,000 or such larger amount as is  
10 sufficient to exhaust the assets utilized in and the  
11 proceeds from the illegal activity.

12 (4) A person who is convicted of violating section  
13 13(a)(14), (30) or (37) of The Controlled Substance, Drug,  
14 Device and Cosmetic Act where the controlled substance is  
15 methamphetamine or phencyclidine or is a salt, isomer or salt  
16 of an isomer of methamphetamine or phencyclidine or is a  
17 mixture containing methamphetamine or phencyclidine,  
18 containing a salt of methamphetamine or phencyclidine,  
19 containing an isomer of methamphetamine or phencyclidine,  
20 containing a salt of an isomer of methamphetamine or  
21 phencyclidine shall, upon conviction, be sentenced to a  
22 mandatory minimum term of imprisonment and a fine as set  
23 forth in this subsection:

24 (i) when the aggregate weight of the compound or  
25 mixture containing the substance involved is at least  
26 five grams and less than ten grams; three years in prison  
27 and a fine of \$15,000 or such larger amount as is  
28 sufficient to exhaust the assets utilized in and the  
29 proceeds from the illegal activity; however, if at the  
30 time of sentencing the defendant has been convicted of

1 another drug trafficking offense: five years in prison  
2 and \$30,000 or such larger amount as is sufficient to  
3 exhaust the assets utilized in and the proceeds from the  
4 illegal activity;

5 (ii) when the aggregate weight of the compound or  
6 mixture containing the substance involved is at least ten  
7 grams and less than 100 grams; four years in prison and a  
8 fine of \$25,000 or such larger amount as is sufficient to  
9 exhaust the assets utilized in and the proceeds from the  
10 illegal activity; however, if at the time of sentencing  
11 the defendant has been convicted of another drug  
12 trafficking offense: seven years in prison and \$50,000 or  
13 such larger amount as is sufficient to exhaust the assets  
14 utilized in and the proceeds from the illegal activity;  
15 and

16 (iii) when the aggregate weight of the compound or  
17 mixture containing the substance involved is at least 100  
18 grams; five years in prison and a fine of \$50,000 or such  
19 larger amount as is sufficient to exhaust the assets  
20 utilized in and the proceeds from the illegal activity;  
21 however, if at the time of sentencing the defendant has  
22 been convicted of another drug trafficking offense: eight  
23 years in prison and \$50,000 or such larger amount as is  
24 sufficient to exhaust the assets utilized in and the  
25 proceeds from the illegal activity.

26 (5) A person who is convicted of violating section  
27 13(a)(14), (30) or (37) of The Controlled Substance, Drug,  
28 Device and Cosmetic Act, and who, in the course of the  
29 offense, manufactures, delivers, brings into this  
30 Commonwealth or possesses with intent to manufacture or

1 deliver amphetamine or any salt, optical isomer, or salt of  
2 an optical isomer, or a mixture containing any such  
3 substances shall, when the aggregate weight of the compound  
4 or mixture containing the substance involved is at least five  
5 grams, be sentenced to two and one-half years in prison and a  
6 fine of \$15,000 or such larger amount as is sufficient to  
7 exhaust the assets utilized in and the proceeds from the  
8 illegal activity; however, if at the time of sentencing the  
9 defendant has been convicted of another drug trafficking  
10 offense: be sentenced to five years in prison and \$30,000 or  
11 such larger amount as is sufficient to exhaust the assets  
12 utilized in and the proceeds from the illegal activity.

13 (6) A person who is convicted of violating section  
14 13(a)(14), (30) or (37) of The Controlled Substance, Drug,  
15 Device and Cosmetic Act where the controlled substance is  
16 methaqualone shall, upon conviction, be sentenced to a  
17 mandatory minimum term of imprisonment and a fine as set  
18 forth in this subsection:

19 (i) when the aggregate weight of the compound or  
20 mixture containing the substance involved is at least 50  
21 tablets, capsules, caplets or other dosage units, or 25  
22 grams and less than 200 tablets, capsules, caplets or  
23 other dosage units, or 100 grams; one year in prison and  
24 a fine of \$2,500 or such larger amount as is sufficient  
25 to exhaust the assets utilized in and the proceeds from  
26 the illegal activity; however, if at the time of  
27 sentencing the defendant has been convicted of another  
28 drug trafficking offense: three years in prison and  
29 \$5,000 or such larger amount as is sufficient to exhaust  
30 the assets utilized in and the proceeds from the illegal

1 activity; and

2 (ii) when the aggregate weight of the compound or  
3 mixture containing the substance involved is at least 200  
4 tablets, capsules, caplets or other dosage units, or more  
5 than 100 grams; two and one-half years in prison and a  
6 fine of \$15,000 or such larger amount as is sufficient to  
7 exhaust the assets utilized in and the proceeds from the  
8 illegal activity; however, if at the time of sentencing  
9 the defendant has been convicted of another drug  
10 trafficking offense: five years in prison and \$30,000 or  
11 such larger amount as is sufficient to exhaust the assets  
12 utilized in and the proceeds from the illegal activity.

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

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

30 (ii) when the aggregate weight of the compound or

1 mixture containing the heroin involved is at least 5.0  
2 grams but less than 50 grams: a mandatory minimum term of  
3 three years in prison and a fine of \$15,000 or such  
4 larger amount as is sufficient to exhaust the assets  
5 utilized in and the proceeds from the illegal activity;  
6 however, if at the time of sentencing the defendant has  
7 been convicted of another drug trafficking offense: a  
8 mandatory minimum term of five years in prison and  
9 \$30,000 or such larger amount as is sufficient to exhaust  
10 the assets utilized in and the proceeds from the illegal  
11 activity; and

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

23 (8) A person who is convicted of violating section  
24 13(a)(12), (14) or (30) of The Controlled Substance, Drug,  
25 Device and Cosmetic Act where the controlled substance or a  
26 mixture containing it is 3,4-methylenedioxyamphetamine (MDA);  
27 3,4-methylenedioxymethamphetamine (MDMA); 5-methoxy-3,4-  
28 methylenedioxyamphetamine (MMDA); 3,4-methylenedioxy-N-  
29 ethylamphetamine; N-hydroxy-3,4-methylenedioxyamphetamine; or  
30 their salts, isomers and salts of isomers, whenever the

1 existence of such salts, isomers and salts of isomers is  
2 possible within the specific chemical designation, shall,  
3 upon conviction, be sentenced as set forth in this paragraph:

4 (i) When the aggregate weight of the compound or  
5 mixture containing the substance involved is at least 50  
6 tablets, capsules, caplets or other dosage units, or 15  
7 grams and less than 100 tablets, capsules, caplets or  
8 other dosage units, or less than 30 grams, the person is  
9 guilty of a felony and, upon conviction thereof, shall be  
10 sentenced to imprisonment not exceeding five years or to  
11 pay a fine not exceeding \$15,000, or both.

12 (ii) When the aggregate weight of the compound or  
13 mixture containing the substance involved is at least 100  
14 tablets, capsules, caplets or other dosage units, or 30  
15 grams and less than 1,000 tablets, capsules, caplets or  
16 other dosage units, or less than 300 grams, the person is  
17 guilty of a felony and, upon conviction thereof, shall be  
18 sentenced to imprisonment not exceeding ten years or to  
19 pay a fine not exceeding \$100,000, or both.

20 (iii) When the aggregate weight of the compound or  
21 mixture containing the substance involved is at least  
22 1,000 tablets, capsules, caplets or other dosage units,  
23 or 300 grams, the person is guilty of a felony and, upon  
24 conviction thereof, shall be sentenced to imprisonment  
25 not exceeding 15 years or to pay a fine not exceeding  
26 \$250,000, or both.

27 (a.1) Previous conviction.--For purposes of this section, it  
28 shall be deemed that a defendant has been convicted of another  
29 drug trafficking offense when the defendant has been convicted  
30 of another offense under section 13(a)(14), (30) or (37) of The

1 Controlled Substance, Drug, Device and Cosmetic Act, or of a  
2 similar offense under any statute of any state or the United  
3 States, whether or not judgment of sentence has been imposed  
4 concerning that offense.

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

16 (c) Mandatory sentencing.--There shall be no authority in  
17 any court to impose on an offender to which this section is  
18 applicable a lesser sentence than provided for herein or to  
19 place the offender on probation, parole, work release or  
20 prerelease or to suspend sentence. Nothing in this section shall  
21 prevent the sentencing court from imposing a sentence greater  
22 than provided herein. Sentencing guidelines promulgated by the  
23 Pennsylvania Commission on Sentencing shall not supersede the  
24 mandatory sentences provided herein. Disposition under section  
25 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic  
26 Act shall not be available to a defendant to which this section  
27 applies.

28 (d) Appellate review.--If a sentencing court refuses to  
29 apply this section where applicable, the Commonwealth shall have  
30 the right to appellate review of the action of the sentencing



1 court. The appellate court shall vacate the sentence and remand  
2 the case to the sentencing court for imposition of a sentence in  
3 accordance with this section if it finds that the sentence was  
4 imposed in violation of this section.

5 (e) Forfeiture.--Assets against which a forfeiture petition  
6 has been filed and is pending or against which the Commonwealth  
7 has indicated an intention to file a forfeiture petition shall  
8 not be subject to a fine. Nothing in this section shall prevent  
9 a fine from being imposed on assets which have been subject to  
10 an unsuccessful forfeiture petition.

11 (f) Growing plants.--When the controlled substance is  
12 marijuana in the form of growing plants and the number of plants  
13 is nine or less, weighing may be accomplished by law enforcement  
14 officials utilizing any certified scale convenient to the place  
15 of arrest for the purpose of determining the weight of the  
16 growing marijuana plant. The aggregate weight of the plant is to  
17 include the whole plant including the root system if possible.  
18 The weight is not to include any substance not a part of the  
19 growing plant.]

20 Section 3. The amendment or repeal of 18 Pa.C.S. §§  
21 5123(a.1), 6314, 6317 and 7508 shall apply to sentences imposed  
22 on or after the effective date of this act.

23 Section 4. This act shall take effect in 60 days.