

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 749 Session of 2009

INTRODUCED BY BOYD, BAKER, BARRAR, BELFANTI, BEYER, BRENNAN, BROWN, CAUSER, CIVERA, CONKLIN, CREIGHTON, CUTLER, DALLY, DeLUCA, EVERETT, FABRIZIO, FAIRCHILD, FLECK, GEIST, GIBBONS, GILLESPIE, GINGRICH, GROVE, HARHAI, HARKINS, HESS, HICKERNELL, KAUFFMAN, M. KELLER, KIRKLAND, KORTZ, KOTIK, MAJOR, MANN, MICCARELLI, MILLARD, MOUL, MURPHY, MYERS, PEIFER, PETRARCA, PICKETT, RAPP, READSHAW, REED, REICHLEY, ROCK, ROHRER, SAYLOR, SCAVELLO, SIPTROTH, K. SMITH, SOLOBAY, STABACK, STERN, SWANGER, TRUE, VULAKOVICH, WALKO, WANSACZ AND WATSON, MARCH 5, 2009

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 5, 2009

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
 2 Consolidated Statutes, further providing for drug-free school
 3 zones.

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

6 Section 1. Section 6317 heading, (a) and (b) of Title 18 of
 7 the Pennsylvania Consolidated Statutes are amended and the
 8 section is amended by adding a subsection to read:

9 § 6317. Drug-free [school] zones.

10 (a) General rule.--A person 18 years of age or older who is
 11 convicted in any court of this Commonwealth of a violation of
 12 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,
 13 No.64), known as The Controlled Substance, Drug, Device and
 14 Cosmetic Act, shall, if the delivery or possession with intent

1 to deliver of the controlled substance occurred within 1,000
2 feet of the real property on which is located a public, private
3 or parochial school or a college or university or within 250
4 feet of [the real property on which is located a recreation
5 center or playground or on a school bus,] a drug-free zone shall
6 be sentenced to a minimum sentence of at least two years of
7 total confinement, notwithstanding any other provision of this
8 title, The Controlled Substance, Drug, Device and Cosmetic Act
9 or other statute to the contrary. The maximum term of
10 imprisonment shall be four years for any offense:

11 (1) subject to this section; and

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

15 If the [sentencing court finds] allegation is that the delivery
16 or possession with intent to deliver was to an individual under
17 18 years of age, then this section shall not be applicable and
18 the offense shall be subject to section 6314 (relating to
19 sentencing and penalties for trafficking drugs to minors).

20 [(b) Proof at sentencing.--The provisions of this section
21 shall not be an element of the crime. Notice of the
22 applicability of this section to the defendant shall not be
23 required prior to conviction, but reasonable notice of the
24 Commonwealth's intention to proceed under this section shall be
25 provided after conviction and before sentencing. The
26 applicability of this section shall be determined at sentencing.
27 The court shall consider evidence presented at trial, shall
28 afford the Commonwealth and the defendant an opportunity to
29 present necessary additional evidence and shall determine by a
30 preponderance of the evidence if this section is applicable.]

1 * * *

2 (e) Definitions.--As used in this section, the following
3 words and phrases shall have the meanings given to them in this
4 subsection:

5 "Drug-free zone." The term shall include any of the
6 following:

7 (1) Real property on which is located a college,
8 university or public, private or parochial school.

9 (2) A community recreation center or playground.

10 (3) A school bus.

11 (4) A shopping center consisting of three or more retail
12 stores connected under a common roof and regularly open to
13 the public.

14 (5) A skating rink.

15 (6) A community swimming pool.

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