THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 396

Session of 2011

INTRODUCED BY O'NEILL, CLYMER, EVERETT, FARRY, GRELL, GROVE, HARKINS, MILLER, MOUL, PEIFER, PYLE, SCAVELLO, TALLMAN, J. TAYLOR, VEREB, HESS, GILLESPIE AND FABRIZIO, FEBRUARY 2, 2011

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 2, 2011

AN ACT

- 1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
- 2 Consolidated Statutes, further providing for drug delivery
- 3 resulting in death.
- 4 The General Assembly of the Commonwealth of Pennsylvania
- 5 hereby enacts as follows:
- 6 Section 1. Section 2506 of Title 18 of the Pennsylvania
- 7 Consolidated Statutes is amended to read:
- 8 § 2506. Drug delivery resulting in death.
- 9 (a) [General rule] Offense defined. -- A person commits
- 10 [murder of the third degree who] a felony of the first degree if
- 11 the person intentionally administers, dispenses, delivers,
- 12 gives, prescribes, sells or distributes any controlled substance
- 13 or counterfeit controlled substance in violation of section
- 14 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233, No.64),
- 15 known as The Controlled Substance, Drug, Device and Cosmetic
- 16 Act, and another person dies as a result of using the substance.
- 17 (b) [Mandatory minimum sentence. -- A person convicted under

- 1 subsection (a) shall be sentenced to a minimum sentence of at
- 2 least five years of total confinement and a fine of \$15,000, or
- 3 such larger amount as is sufficient to exhaust the assets
- 4 utilized in and the proceeds from the illegal activity,
- 5 notwithstanding any other provision of this title or other
- 6 statute to the contrary.] Penalty.--A person convicted under
- 7 <u>subsection (a) shall be sentenced to a term of imprisonment</u>
- 8 which shall be fixed by the court at not more than 40 years.
- 9 [(d) Authority of court in sentencing.--There shall be no
- 10 authority in any court to impose on an offender to which this
- 11 section is applicable a lesser sentence than provided for herein
- 12 or to place the offender on probation, parole, work release or
- 13 prerelease or to suspend sentence. Nothing in this section shall
- 14 prevent the sentencing court from imposing a sentence greater
- 15 than provided herein. Sentencing guidelines promulgated by the
- 16 Pennsylvania Commission on Sentencing shall not supersede the
- 17 mandatory sentences provided herein. Disposition under section
- 18 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic
- 19 Act shall not be available to a defendant to which this section
- 20 applies.
- 21 (e) Appeal by Commonwealth.--If a sentencing court refuses
- 22 to apply subsection (b) where applicable, the Commonwealth shall
- 23 have the right to appellate review of the action of the
- 24 sentencing court. The appellate court shall vacate the sentence
- 25 and remand the case to the sentencing court for imposition of a
- 26 sentence in accordance with subsection (b) if it finds that the
- 27 sentence was imposed in violation of subsection (b).]
- 28 (f) Forfeiture. -- Assets against which a forfeiture petition
- 29 has been filed and is pending or against which the Commonwealth
- 30 has indicated an intention to file a forfeiture petition shall

- 1 not be subject to a fine. Nothing in this section shall prevent
- 2 a fine from being imposed on assets which have been subject to
- 3 an unsuccessful forfeiture petition.
- 4 Section 2. This act shall take effect in 60 days.