

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, FABRIZIO, QUINN, KIRKLAND, GEIST, MILNE, D. COSTA AND CALTAGIRONE, FEBRUARY 2, 2011

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, APRIL 12, 2011

AN ACT

1 Amending Title TITLES 18 (Crimes and Offenses) AND 42 (JUDICIARY AND JUDICIAL PROCEDURE) of the Pennsylvania Consolidated Statutes, further providing for drug delivery resulting in death AND FOR SENTENCES FOR SECOND AND SUBSEQUENT OFFENSES.

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

7 Section 1. Section 2506 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

9 § 2506. Drug delivery resulting in death.

10 (a) [General rule] Offense defined.--A person commits [murder of the third degree who] a felony of the first degree if the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of section 13(a) (14) or (30) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, and another person dies as a result of using the substance.

1 (b) [Mandatory minimum sentence.--A person convicted under
2 subsection (a) shall be sentenced to a minimum sentence of at
3 least five years of total confinement and a fine of \$15,000, or
4 such larger amount as is sufficient to exhaust the assets
5 utilized in and the proceeds from the illegal activity,
6 notwithstanding any other provision of this title or other
7 statute to the contrary.] Penalty.--A person convicted under
8 subsection (a) shall be sentenced to a term of imprisonment
9 which shall be fixed by the court at not more than 40 years.

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

22 (e) Appeal by Commonwealth.--If a sentencing court refuses
23 to apply subsection (b) where applicable, the Commonwealth shall
24 have the right to appellate review of the action of the
25 sentencing court. The appellate court shall vacate the sentence
26 and remand the case to the sentencing court for imposition of a
27 sentence in accordance with subsection (b) if it finds that the
28 sentence was imposed in violation of subsection (b).]

29 (f) Forfeiture.--Assets against which a forfeiture petition
30 has been filed and is pending or against which the Commonwealth

1 has indicated an intention to file a forfeiture petition shall
2 not be subject to a fine. Nothing in this section shall prevent
3 a fine from being imposed on assets which have been subject to
4 an unsuccessful forfeiture petition.

5 SECTION 2. SECTION 9714(G) OF TITLE 42 IS AMENDED TO READ: ←
6 § 9714. SENTENCES FOR SECOND AND SUBSEQUENT OFFENSES.

7 * * *

8 (G) DEFINITION.--AS USED IN THIS SECTION, THE TERM "CRIME OF
9 VIOLENCE" MEANS MURDER OF THE THIRD DEGREE, VOLUNTARY
10 MANSLAUGHTER, AGGRAVATED ASSAULT AS DEFINED IN 18 PA.C.S. §
11 2702(A) (1) OR (2) (RELATING TO AGGRAVATED ASSAULT), RAPE,
12 INVOLUNTARY DEVIATE SEXUAL INTERCOURSE, AGGRAVATED INDECENT
13 ASSAULT, INCEST, SEXUAL ASSAULT, ARSON AS DEFINED IN 18 PA.C.S.
14 § 3301(A) (RELATING TO ARSON AND RELATED OFFENSES), KIDNAPPING,
15 BURGLARY OF A STRUCTURE ADAPTED FOR OVERNIGHT ACCOMMODATION IN
16 WHICH AT THE TIME OF THE OFFENSE ANY PERSON IS PRESENT, ROBBERY
17 AS DEFINED IN 18 PA.C.S. § 3701(A) (1) (I), (II) OR (III)
18 (RELATING TO ROBBERY), OR ROBBERY OF A MOTOR VEHICLE, DRUG
19 DELIVERY RESULTING IN DEATH AS DEFINED IN 18 PA.C.S. § 2506(A)
20 (RELATING TO DRUG DELIVERY RESULTING IN DEATH), OR CRIMINAL
21 ATTEMPT, CRIMINAL CONSPIRACY OR CRIMINAL SOLICITATION TO COMMIT
22 MURDER OR ANY OF THE OFFENSES LISTED ABOVE, OR AN EQUIVALENT
23 CRIME UNDER THE LAWS OF THIS COMMONWEALTH IN EFFECT AT THE TIME
24 OF THE COMMISSION OF THAT OFFENSE OR AN EQUIVALENT CRIME IN
25 ANOTHER JURISDICTION.

26 Section ~~2~~ 3. This act shall take effect in 60 days. ←