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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 1601 Session of  
2015

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INTRODUCED BY VEREB, MARSICO, BAKER, D. COSTA, GROVE, A. HARRIS,  
KAUFFMAN, MAHONEY, McNEILL, MILLARD AND HARHART,  
OCTOBER 5, 2015

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REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 5, 2015

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in sentencing authority,  
3 further providing for sentences for offenses committed on  
4 public transportation, for sentences for offenses against  
5 elderly persons, for sentences for offenses against infant  
6 persons and for sentences for offenses committed while  
7 impersonating a law enforcement officer.

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

10 Section 1. Section 9713(c) and (e) Title 42 of the  
11 Pennsylvania Consolidated Statutes are amended to read:

12 § 9713. Sentences for offenses committed on public  
13 transportation.

14 \* \* \*

15 (c) [Proof at sentencing.--Provisions of this section shall  
16 not be an element of the crime and notice thereof to the  
17 defendant shall not be required prior to conviction, but  
18 reasonable notice of the Commonwealth's intention to proceed  
19 under this section shall be provided after conviction and before  
20 sentencing. The applicability of this section shall be

1 determined at sentencing. The court shall consider any evidence  
2 presented at trial and shall afford the Commonwealth and the  
3 defendant an opportunity to present any necessary additional  
4 evidence and shall determine, by a preponderance of the  
5 evidence, if this section is applicable.] Application of  
6 mandatory minimum penalty.--Any provision of this section that  
7 requires imposition of a mandatory minimum sentence constitutes  
8 an element enhancing the underlying offense. An enhancing  
9 element must be proven beyond a reasonable doubt at trial on the  
10 underlying offense and must be submitted to the finder of fact  
11 for deliberation together with the underlying offense. If the  
12 finder of fact determines the defendant is guilty of the  
13 underlying offense, the finder of fact will then decide whether  
14 an enhancing element has been proven.

15 \* \* \*

16 (e) Appeal by Commonwealth.--[If a sentencing court refuses  
17 to apply this section where applicable, the Commonwealth shall  
18 have the right to appellate review of the action of the  
19 sentencing court. The appellate court shall vacate the sentence  
20 and remand the case to the sentencing court for imposition of a  
21 sentence in accordance with this section if it finds that the  
22 sentence was imposed in violation of this section.] If the  
23 finder of fact has found an enhancing element and a sentencing  
24 court imposes a sentence below the mandatory minimum sentence,  
25 the Commonwealth has the right to appellate review of the  
26 sentence. If the appellate court finds that the mandatory  
27 sentencing provision was applicable, the court must vacate the  
28 sentence and remand for resentencing in accordance with that  
29 provision.

30 Section 2. Section 9717 of Title 42 is amended by adding

1 subsections to read:

2 § 9717. Sentences for offenses against elderly persons.

3 \* \* \*

4 (c) Application of mandatory minimum penalty.--Any provision  
5 of this section that requires imposition of a mandatory minimum  
6 sentence shall constitute an element enhancing the underlying  
7 offense. An enhancing element must be proven beyond a reasonable  
8 doubt at trial on the underlying offense and must be submitted  
9 to the finder of fact for deliberation together with the  
10 underlying offense. If the finder of fact determines the  
11 defendant is guilty of the underlying offense, the finder of  
12 fact shall then decide whether an enhancing element has been  
13 proven.

14 (d) Appeal by Commonwealth.--If the finder of fact has found  
15 an enhancing element and a sentencing court imposes a sentence  
16 below the mandatory minimum sentence, the Commonwealth has the  
17 right to appellate review of the sentence. If the appellate  
18 court finds that the mandatory sentencing provision was  
19 applicable, the court must vacate the sentence and remand for  
20 resentencing in accordance with that provision.

21 Section 3. Sections 9718(c) and (e) and 9719(b) and (d) of  
22 Title 42 are amended to read:

23 § 9718. Sentences for offenses against infant persons.

24 \* \* \*

25 (c) [Proof at sentencing.--The provisions of this section  
26 shall not be an element of the crime, and notice of the  
27 provisions of this section to the defendant shall not be  
28 required prior to conviction, but reasonable notice of the  
29 Commonwealth's intention to proceed under this section shall be  
30 provided after conviction and before sentencing. The

1 applicability of this section shall be determined at sentencing.  
2 The court shall consider any evidence presented at trial and  
3 shall afford the Commonwealth and the defendant an opportunity  
4 to present any necessary additional evidence and shall  
5 determine, by a preponderance of the evidence, if this section  
6 is applicable.] Application of mandatory minimum penalty.--Any  
7 provision of this section that requires imposition of a  
8 mandatory minimum sentence constitutes an element enhancing the  
9 underlying offense. An enhancing element must be proven beyond a  
10 reasonable doubt at trial on the underlying offense and must be  
11 submitted to the finder of fact for deliberation together with  
12 the underlying offense. If the finder of fact determines the  
13 defendant is guilty of the underlying offense, the finder of  
14 fact will then decide whether an enhancing element has been  
15 proven.

16 \* \* \*

17 (e) Appeal by Commonwealth.--[If a sentencing court refuses  
18 to apply this section where applicable, the Commonwealth shall  
19 have the right to appellate review of the action of the  
20 sentencing court. The appellate court shall vacate the sentence  
21 and remand the case to the sentencing court for imposition of a  
22 sentence in accordance with this section if it finds that the  
23 sentence was imposed in violation of this section.] If the  
24 finder of fact has found an enhancing element and a sentencing  
25 court imposes a sentence below the mandatory minimum sentence,  
26 the Commonwealth has the right to appellate review of the  
27 sentence. If the appellate court finds that the mandatory  
28 sentencing provision was applicable, the court must vacate the  
29 sentence and remand for resentencing in accordance with that  
30 provision.

1 § 9719. Sentences for offenses committed while impersonating a  
2 law enforcement officer.

3 \* \* \*

4 (b) [Proof at sentencing.--Provisions of this section shall  
5 not be an element of the crime and notice thereof to the  
6 defendant shall not be required prior to conviction, but  
7 reasonable notice of the Commonwealth's intention to proceed  
8 under this section shall be provided after conviction and before  
9 sentencing. The applicability of this section shall be  
10 determined at sentencing. The sentencing court shall consider  
11 evidence presented at trial and shall afford the Commonwealth  
12 and the defendant an opportunity to present necessary additional  
13 evidence and shall determine, by a preponderance of the  
14 evidence, if this section is applicable.] Application of  
15 mandatory minimum penalty.--With the exception of prior  
16 convictions, any provision of this section that requires  
17 imposition of a mandatory minimum sentence constitutes an  
18 element enhancing the underlying offense. An enhancing element  
19 must be proven beyond a reasonable doubt at trial on the  
20 underlying offense and must be submitted to the finder of fact  
21 for deliberation together with the underlying offense. If the  
22 finder of fact determines the defendant is guilty of the  
23 underlying offense, the finder of fact will then decide whether  
24 an enhancing element has been proven.

25 \* \* \*

26 (d) Appeal by Commonwealth.--[If a sentencing court refuses  
27 to apply this section where applicable, the Commonwealth shall  
28 have the right to appellate review of the action of the  
29 sentencing court. The appellate court shall vacate the sentence  
30 and remand the case to the sentencing court for imposition of a

1 sentence in accordance with this section if it finds that the  
2 sentence was imposed in violation of this section.] If the  
3 finder of fact has found an enhancing element and a sentencing  
4 court imposes a sentence below the mandatory minimum sentence,  
5 the Commonwealth has the right to appellate review of the  
6 sentence. If the appellate court finds that the mandatory  
7 sentencing provision was applicable, the court must vacate the  
8 sentence and remand for resentencing in accordance with that  
9 provision.

10 \* \* \*

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