

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1062 Session of 2015

INTRODUCED BY RAFFERTY, SABATINA, EICHELBERGER, FONTANA, YUDICHAK, COSTA, TARTAGLIONE, WOZNIAK, BOSCOLA, AUMENT, MENSCH, HUGHES, FARNESE AND BROWNE, NOVEMBER 13, 2015

AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES, SEPTEMBER 28, 2016

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in burglary and other criminal intrusions, further
4 providing for burglary; IN MINORS, FURTHER PROVIDING FOR <--
5 SENTENCING AND PENALTIES FOR TRAFFICKING DRUGS TO MINORS AND
6 FOR DRUG-FREE SCHOOL ZONES; IN OTHER OFFENSES, FURTHER
7 PROVIDING FOR DRUG TRAFFICKING SENTENCING AND PENALTIES; AND,
8 IN SENTENCING, FURTHER PROVIDING FOR SENTENCES FOR OFFENSES
9 COMMITTED WITH FIREARMS, FOR SENTENCES FOR CERTAIN DRUG
10 OFFENSES COMMITTED WITH FIREARMS, FOR SENTENCES FOR OFFENSES
11 COMMITTED ON PUBLIC TRANSPORTATION, FOR SENTENCES FOR
12 OFFENSES AGAINST ELDERLY PERSONS, FOR SENTENCES FOR OFFENSES
13 AGAINST INFANT PERSONS, FOR SENTENCE FOR FAILURE TO COMPLY
14 WITH REGISTRATION OF SEXUAL OFFENDERS, FOR SENTENCES FOR
15 OFFENSES COMMITTED WHILE IMPERSONATING A LAW ENFORCEMENT
16 OFFICER and, in sentencing, providing for sentencing for <--
17 burglary.

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

20 Section 1. Section 3502(a)(1) of Title 18 of the
21 Pennsylvania Consolidated Statutes is amended and the section is
22 amended by adding a subsection to read:

23 § 3502. Burglary.

24 (a) Offense defined.--A person commits the offense of

1 burglary if, with the intent to commit a crime therein, the  
2 person:

3 (1) (i) enters a building or occupied structure, or  
4 separately secured or occupied portion thereof, that is  
5 adapted for overnight accommodations in which at the time  
6 of the offense any person is present and the person  
7 commits, attempts or threatens to commit a bodily injury  
8 crime therein;

9 (II) ENTERS A BUILDING OR OCCUPIED STRUCTURE, OR <--  
10 SEPARATELY SECURED OR OCCUPIED PORTION THEREOF, THAT IS  
11 ADAPTED FOR OVERNIGHT ACCOMMODATIONS IN WHICH AT THE TIME  
12 OF THE OFFENSE ANY MINOR IS PRESENT;

13 ~~(ii)~~ (III) enters a building or occupied structure, <--  
14 or separately secured or occupied portion thereof that is  
15 adapted for overnight accommodations in which at the time  
16 of the offense any person is present;

17 \* \* \*

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

21 "Bodily injury crime." As follows:

22 (1) An act, attempt or threat to commit an act which  
23 would constitute a misdemeanor or felony under the following:

24 Chapter 25 (relating to criminal homicide).

25 Chapter 27 (relating to assault).

26 Chapter 29 (relating to kidnapping).

27 Chapter 31 (relating to sexual offenses).

28 Section 3301 (relating to arson and related  
29 offenses).

30 Chapter 37 (relating to robbery).

1           Chapter 49 Subch. B (relating to victim and witness  
2           intimidation).

3           (2) The term includes violations of any protective order  
4           issued as a result of an act related to domestic violence.

5           SECTION 2. SECTIONS 6314, 6317 AND 7508(A), (B) AND (D) OF <--  
6 TITLE 18 ARE AMENDED TO READ:

7           § 6314. SENTENCING AND PENALTIES FOR TRAFFICKING DRUGS TO  
8                           MINORS.

9           (A) GENERAL RULE.--A PERSON OVER 18 YEARS OF AGE WHO IS  
10 CONVICTED IN ANY COURT OF THIS COMMONWEALTH OF A VIOLATION OF  
11 SECTION 13(A) (14) OR (30) OF THE ACT OF APRIL 14, 1972 (P.L.233,  
12 NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND  
13 COSMETIC ACT, SHALL, IF THE DELIVERY OR POSSESSION WITH INTENT  
14 TO DELIVER OF THE CONTROLLED SUBSTANCE WAS TO A MINOR, BE  
15 SENTENCED TO A MINIMUM SENTENCE OF AT LEAST ONE YEAR TOTAL  
16 CONFINEMENT, NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE  
17 OR OTHER STATUTE TO THE CONTRARY.

18           (B) ADDITIONAL PENALTIES.--IN ADDITION TO THE MANDATORY  
19 MINIMUM SENTENCE SET FORTH IN SUBSECTION (A), THE PERSON SHALL  
20 BE SENTENCED TO AN ADDITIONAL MINIMUM SENTENCE OF AT LEAST TWO  
21 YEARS TOTAL CONFINEMENT, NOTWITHSTANDING ANY OTHER PROVISION OF  
22 THIS TITLE OR OTHER STATUTE TO THE CONTRARY, IF THE PERSON DID  
23 ANY OF THE FOLLOWING:

24                   (1) COMMITTED THE OFFENSE WITH THE INTENT TO PROMOTE THE  
25                   HABITUAL USE OF THE CONTROLLED SUBSTANCE.

26                   (2) INTENDED TO ENGAGE THE MINOR IN THE TRAFFICKING,  
27                   TRANSPORTATION, DELIVERY, MANUFACTURING, SALE OR CONVEYANCE.

28                   (3) COMMITTED THE OFFENSE WITHIN 1,000 FEET OF THE REAL  
29                   PROPERTY ON WHICH IS LOCATED A PUBLIC, PRIVATE OR PAROCHIAL  
30                   SCHOOL OR A COLLEGE OR UNIVERSITY.

1           (4) COMMITTED THE OFFENSE ON A SCHOOL BUS OR WITHIN 500  
2 FEET OF A SCHOOL BUS STOP.

3           (C) [PROOF AT SENTENCING.--THE PROVISIONS OF THIS SECTION  
4 SHALL NOT BE AN ELEMENT OF THE CRIME. NOTICE OF THE  
5 APPLICABILITY OF THIS SECTION TO THE DEFENDANT SHALL NOT BE  
6 REQUIRED PRIOR TO CONVICTION, BUT REASONABLE NOTICE OF THE  
7 COMMONWEALTH'S INTENTION TO PROCEED UNDER THIS SECTION SHALL BE  
8 PROVIDED AFTER CONVICTION AND BEFORE SENTENCING. THE  
9 APPLICABILITY OF THIS SECTION SHALL BE DETERMINED AT SENTENCING.  
10 THE COURT SHALL CONSIDER EVIDENCE PRESENTED AT TRIAL, SHALL  
11 AFFORD THE COMMONWEALTH AND THE DEFENDANT AN OPPORTUNITY TO  
12 PRESENT NECESSARY ADDITIONAL EVIDENCE, AND SHALL DETERMINE, BY A  
13 PREPONDERANCE OF THE EVIDENCE, IF THIS SECTION IS APPLICABLE.]  
14 APPLICATION OF MANDATORY MINIMUM PENALTY.--ANY PROVISION OF THIS  
15 SECTION THAT REQUIRES IMPOSITION OF A MANDATORY MINIMUM SENTENCE  
16 SHALL CONSTITUTE AN ELEMENT ENHANCING THE UNDERLYING OFFENSE.  
17 ANY ENHANCING ELEMENT MUST BE PROVEN BEYOND A REASONABLE DOUBT  
18 AT TRIAL ON THE UNDERLYING OFFENSE AND MUST BE SUBMITTED TO THE  
19 FACT-FINDER FOR DELIBERATION TOGETHER WITH THE UNDERLYING  
20 OFFENSE. IF THE FACT-FINDER FINDS THE DEFENDANT GUILTY OF THE  
21 UNDERLYING OFFENSE, THE FACT-FINDER SHALL THEN ALSO DECIDE  
22 WHETHER ANY ENHANCING ELEMENT HAS BEEN PROVEN.

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)] SUBSECTIONS (A) AND (B), TO PLACE THE DEFENDANT  
27 ON PROBATION OR TO SUSPEND SENTENCE. NOTHING IN THIS SECTION  
28 SHALL PREVENT THE SENTENCING COURT FROM IMPOSING A SENTENCE  
29 GREATER THAN THAT PROVIDED IN THIS SECTION. SENTENCING  
30 GUIDELINES PROMULGATED BY THE PENNSYLVANIA COMMISSION ON

1 SENTENCING SHALL NOT SUPERSEDE THE MANDATORY SENTENCES PROVIDED  
2 IN THIS SECTION. DISPOSITION UNDER SECTION 17 OR 18 OF THE  
3 CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT SHALL NOT BE  
4 AVAILABLE TO A DEFENDANT TO WHICH 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.] IF THE FACT-  
12 FINDER HAS FOUND ANY ENHANCING ELEMENT AND A SENTENCING COURT  
13 IMPOSES A SENTENCE BELOW THE MANDATORY MINIMUM SENTENCE, THE  
14 COMMONWEALTH SHALL HAVE THE RIGHT TO APPELLATE REVIEW OF THE  
15 SENTENCE. IF THE APPELLATE COURT FINDS THAT THE MANDATORY  
16 SENTENCING PROVISION WAS APPLICABLE, THE COURT SHALL VACATE THE  
17 SENTENCE AND REMAND FOR RESENTENCING IN ACCORDANCE WITH THAT  
18 PROVISION.

19 (F) FORFEITURE.--ASSETS AGAINST WHICH A FORFEITURE PETITION  
20 HAS BEEN FILED AND IS PENDING OR AGAINST WHICH THE COMMONWEALTH  
21 HAS INDICATED AN INTENTION TO FILE A FORFEITURE PETITION SHALL  
22 NOT BE SUBJECT TO A FINE UNDER THIS SECTION.

23 (G) DEFINITION.--AS USED IN THIS SECTION, THE TERM "MINOR"  
24 MEANS AN INDIVIDUAL UNDER 18 YEARS OF AGE.

25 § 6317. DRUG-FREE SCHOOL ZONES.

26 (A) GENERAL RULE.--A PERSON 18 YEARS OF AGE OR OLDER WHO IS  
27 CONVICTED IN ANY COURT OF THIS COMMONWEALTH OF A VIOLATION OF  
28 SECTION 13(A) (14) OR (30) OF THE ACT OF APRIL 14, 1972 (P.L.233,  
29 NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND  
30 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, BE SENTENCED TO A  
6 MINIMUM SENTENCE OF AT LEAST TWO YEARS OF TOTAL CONFINEMENT,  
7 NOTWITHSTANDING ANY OTHER PROVISION OF THIS TITLE, THE  
8 CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC ACT OR OTHER  
9 STATUTE TO THE CONTRARY. THE MAXIMUM TERM OF IMPRISONMENT SHALL  
10 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 THAT THE DELIVERY OR POSSESSION  
16 WITH INTENT TO DELIVER WAS TO AN INDIVIDUAL UNDER 18 YEARS OF  
17 AGE, THEN THIS SECTION SHALL NOT BE APPLICABLE AND THE OFFENSE  
18 SHALL BE SUBJECT TO SECTION 6314 (RELATING TO SENTENCING AND  
19 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 APPLICATION OF MANDATORY MINIMUM PENALTY.--ANY PROVISION OF THIS  
2 SECTION THAT REQUIRES IMPOSITION OF A MANDATORY MINIMUM SENTENCE  
3 SHALL CONSTITUTE AN ELEMENT ENHANCING THE UNDERLYING OFFENSE.  
4 ANY ENHANCING ELEMENT MUST BE PROVEN BEYOND A REASONABLE DOUBT  
5 AT TRIAL ON THE UNDERLYING OFFENSE AND MUST BE SUBMITTED TO THE  
6 FACT-FINDER FOR DELIBERATION TOGETHER WITH THE UNDERLYING  
7 OFFENSE. IF THE FACT-FINDER FINDS THE DEFENDANT GUILTY OF THE  
8 UNDERLYING OFFENSE, THE FACT-FINDER SHALL THEN ALSO DECIDE  
9 WHETHER ANY ENHANCING ELEMENT HAS BEEN PROVEN.

10 (C) AUTHORITY OF COURT IN SENTENCING.--THERE SHALL BE NO  
11 AUTHORITY FOR A COURT TO IMPOSE ON A DEFENDANT TO WHICH THIS  
12 SECTION IS APPLICABLE A LESSER SENTENCE THAN PROVIDED FOR IN  
13 SUBSECTION (A), TO PLACE THE DEFENDANT ON PROBATION OR TO  
14 SUSPEND SENTENCE. NOTHING IN THIS SECTION SHALL PREVENT THE  
15 SENTENCING COURT FROM IMPOSING A SENTENCE GREATER THAN THAT  
16 PROVIDED IN THIS SECTION. SENTENCING GUIDELINES PROMULGATED BY  
17 THE PENNSYLVANIA COMMISSION ON SENTENCING SHALL NOT SUPERSEDE  
18 THE MANDATORY SENTENCES PROVIDED IN THIS SECTION. DISPOSITION  
19 UNDER SECTION 17 OR 18 OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE  
20 AND COSMETIC ACT SHALL NOT BE AVAILABLE TO A DEFENDANT TO WHICH  
21 THIS SECTION APPLIES.

22 (D) APPEAL BY COMMONWEALTH.--[IF A SENTENCING COURT REFUSES  
23 TO APPLY THIS SECTION 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 THIS SECTION IF IT FINDS THAT THE  
28 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.] IF THE FACT-  
29 FINDER HAS FOUND ANY ENHANCING ELEMENT AND A SENTENCING COURT  
30 IMPOSES A SENTENCE BELOW THE MANDATORY MINIMUM SENTENCE, THE

1 COMMONWEALTH SHALL HAVE THE RIGHT TO APPELLATE REVIEW OF THE  
2 SENTENCE. IF THE APPELLATE COURT FINDS THAT THE MANDATORY  
3 SENTENCING PROVISION WAS APPLICABLE, THE COURT SHALL VACATE THE  
4 SENTENCE AND REMAND FOR RESENTENCING IN ACCORDANCE WITH THAT  
5 PROVISION.

6 § 7508. DRUG TRAFFICKING SENTENCING AND PENALTIES.

7 (A) GENERAL RULE.--NOTWITHSTANDING ANY OTHER PROVISIONS OF  
8 THIS OR ANY OTHER ACT TO THE CONTRARY, THE FOLLOWING PROVISIONS  
9 SHALL APPLY:

10 (1) A PERSON WHO IS CONVICTED OF VIOLATING SECTION 13(A)  
11 (14), (30) OR (37) OF THE ACT OF APRIL 14, 1972 (P.L.233,  
12 NO.64), KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND  
13 COSMETIC ACT, WHERE THE CONTROLLED SUBSTANCE IS MARIJUANA  
14 SHALL, UPON CONVICTION, BE SENTENCED TO A MANDATORY MINIMUM  
15 TERM OF IMPRISONMENT AND A FINE AS SET FORTH IN THIS  
16 SUBSECTION:

17 (I) WHEN THE AMOUNT OF MARIJUANA INVOLVED IS AT  
18 LEAST TWO POUNDS, BUT LESS THAN TEN POUNDS, OR AT LEAST  
19 TEN LIVE PLANTS BUT LESS THAN 21 LIVE PLANTS[; ONE YEAR  
20 IN PRISON AND A FINE OF \$5,000 OR SUCH LARGER AMOUNT AS  
21 IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND THE  
22 PROCEEDS FROM THE ILLEGAL ACTIVITY; HOWEVER], AND IF AT  
23 THE TIME OF SENTENCING THE DEFENDANT HAS BEEN CONVICTED  
24 OF ANOTHER DRUG TRAFFICKING OFFENSE: [TWO YEARS] ONE YEAR  
25 IN PRISON AND A FINE OF \$10,000 OR SUCH LARGER AMOUNT AS  
26 IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND THE  
27 PROCEEDS FROM THE ILLEGAL ACTIVITY;

28 (II) WHEN THE AMOUNT OF MARIJUANA INVOLVED IS AT  
29 LEAST TEN POUNDS, BUT LESS THAN 50 POUNDS, OR AT LEAST 21  
30 LIVE PLANTS BUT LESS THAN 51 LIVE PLANTS; [THREE YEARS]



1           ONE YEAR IN PRISON AND A FINE OF \$15,000 OR SUCH LARGER  
2           AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN  
3           AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY; HOWEVER, IF  
4           AT THE TIME OF SENTENCING THE DEFENDANT HAS BEEN  
5           CONVICTED OF ANOTHER DRUG TRAFFICKING OFFENSE: [FOUR] TWO  
6           YEARS IN PRISON AND A FINE OF \$30,000 OR SUCH LARGER  
7           AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN  
8           AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY; AND

9           (III) WHEN THE AMOUNT OF MARIJUANA INVOLVED IS AT  
10          LEAST 50 POUNDS, OR AT LEAST 51 LIVE PLANTS; [FIVE] THREE  
11          YEARS IN PRISON AND A FINE OF \$50,000 OR SUCH LARGER  
12          AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN  
13          AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY[.]; HOWEVER,  
14          IF AT THE TIME OF SENTENCING THE DEFENDANT HAS BEEN  
15          CONVICTED OF ANOTHER DRUG TRAFFICKING OFFENSE: FIVE YEARS  
16          IN PRISON AND A FINE OF \$50,000 OR SUCH LARGER AMOUNT AS  
17          IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND THE  
18          PROCEEDS FROM THE ILLEGAL ACTIVITY.

19          (2) A PERSON WHO IS CONVICTED OF VIOLATING SECTION 13(A)  
20          (14), (30) OR (37) OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE  
21          AND COSMETIC ACT WHERE THE CONTROLLED SUBSTANCE OR A MIXTURE  
22          CONTAINING IT IS CLASSIFIED IN SCHEDULE I OR SCHEDULE II  
23          UNDER SECTION 4 OF THAT ACT AND IS A NARCOTIC DRUG SHALL,  
24          UPON CONVICTION, BE SENTENCED TO A MANDATORY MINIMUM TERM OF  
25          IMPRISONMENT AND A FINE AS SET FORTH IN THIS SUBSECTION:

26          (I) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
27          MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST 2.0  
28          GRAMS AND LESS THAN TEN GRAMS; TWO YEARS IN PRISON AND A  
29          FINE OF \$5,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT TO  
30          EXHAUST THE ASSETS UTILIZED IN AND THE PROCEEDS FROM THE

1 ILLEGAL ACTIVITY; HOWEVER, IF AT THE TIME OF SENTENCING  
2 THE DEFENDANT HAS BEEN CONVICTED OF ANOTHER DRUG  
3 TRAFFICKING OFFENSE: THREE YEARS IN PRISON AND \$10,000 OR  
4 SUCH LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS  
5 UTILIZED IN AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY;

6 (II) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
7 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST TEN  
8 GRAMS AND LESS THAN 100 GRAMS; THREE YEARS IN PRISON AND  
9 A FINE OF \$15,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT  
10 TO EXHAUST THE ASSETS UTILIZED IN AND THE PROCEEDS FROM  
11 THE ILLEGAL ACTIVITY; HOWEVER, IF AT THE TIME OF  
12 SENTENCING THE DEFENDANT HAS BEEN CONVICTED OF ANOTHER  
13 DRUG TRAFFICKING OFFENSE: FIVE YEARS IN PRISON AND  
14 \$30,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST  
15 THE ASSETS UTILIZED IN AND THE PROCEEDS FROM THE ILLEGAL  
16 ACTIVITY; AND

17 (III) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
18 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST 100  
19 GRAMS; FIVE YEARS IN PRISON AND A FINE OF \$25,000 OR SUCH  
20 LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS  
21 UTILIZED IN AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY;  
22 HOWEVER, IF AT THE TIME OF SENTENCING THE DEFENDANT HAS  
23 BEEN CONVICTED OF ANOTHER DRUG TRAFFICKING OFFENSE: SEVEN  
24 YEARS IN PRISON AND \$50,000 OR SUCH LARGER AMOUNT AS IS  
25 SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND THE  
26 PROCEEDS FROM THE ILLEGAL ACTIVITY.

27 (3) A PERSON WHO IS CONVICTED OF VIOLATING SECTION 13(A)  
28 (14), (30) OR (37) OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE  
29 AND COSMETIC ACT WHERE THE CONTROLLED SUBSTANCE IS COCA  
30 LEAVES OR IS ANY SALT, COMPOUND, DERIVATIVE OR PREPARATION OF

1 COCA LEAVES OR IS ANY SALT, COMPOUND, DERIVATIVE OR  
2 PREPARATION WHICH IS CHEMICALLY EQUIVALENT OR IDENTICAL WITH  
3 ANY OF THESE SUBSTANCES OR IS ANY MIXTURE CONTAINING ANY OF  
4 THESE SUBSTANCES EXCEPT DECOCAINIZED COCA LEAVES OR EXTRACTS  
5 OF COCA LEAVES WHICH (EXTRACTS) DO NOT CONTAIN COCAINE OR  
6 ECGONINE SHALL, UPON CONVICTION, BE SENTENCED TO A MANDATORY  
7 MINIMUM TERM OF IMPRISONMENT AND A FINE AS SET FORTH IN THIS  
8 SUBSECTION:

9 (I) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
10 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST  
11 [2.0] 5.0 GRAMS AND LESS THAN [TEN] 25 GRAMS; ONE YEAR IN  
12 PRISON AND A FINE OF \$5,000 OR SUCH LARGER AMOUNT AS IS  
13 SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND THE  
14 PROCEEDS FROM THE ILLEGAL ACTIVITY; HOWEVER, IF AT THE  
15 TIME OF SENTENCING THE DEFENDANT HAS BEEN CONVICTED OF  
16 ANOTHER DRUG TRAFFICKING OFFENSE: [THREE] TWO YEARS IN  
17 PRISON AND \$10,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT  
18 TO EXHAUST THE ASSETS UTILIZED IN AND THE PROCEEDS FROM  
19 THE ILLEGAL ACTIVITY;

20 (II) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
21 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST  
22 [TEN] 25 GRAMS AND LESS THAN 100 GRAMS; [THREE] TWO YEARS  
23 IN PRISON AND A FINE OF \$15,000 OR SUCH LARGER AMOUNT AS  
24 IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND THE  
25 PROCEEDS FROM THE ILLEGAL ACTIVITY; HOWEVER, IF AT THE  
26 TIME OF SENTENCING THE DEFENDANT HAS BEEN CONVICTED OF  
27 ANOTHER DRUG TRAFFICKING OFFENSE: [FIVE] FOUR YEARS IN  
28 PRISON AND \$30,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT  
29 TO EXHAUST THE ASSETS UTILIZED IN AND THE PROCEEDS FROM  
30 THE ILLEGAL ACTIVITY; AND

1 (III) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
2 MIXTURE OF THE SUBSTANCE INVOLVED IS AT LEAST 100 GRAMS;  
3 FOUR YEARS IN PRISON AND A FINE OF \$25,000 OR SUCH LARGER  
4 AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN  
5 AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY; HOWEVER, IF  
6 AT THE TIME OF SENTENCING THE DEFENDANT HAS BEEN  
7 CONVICTED OF ANOTHER DRUG TRAFFICKING OFFENSE: [SEVEN]  
8 EIGHT YEARS IN PRISON AND \$50,000 OR SUCH LARGER AMOUNT  
9 AS IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND  
10 THE PROCEEDS FROM THE ILLEGAL ACTIVITY.

11 (4) A PERSON WHO IS CONVICTED OF VIOLATING SECTION 13(A)  
12 (14), (30) OR (37) OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE  
13 AND COSMETIC ACT WHERE THE CONTROLLED SUBSTANCE IS  
14 METHAMPHETAMINE OR PHENCYCLIDINE OR IS A SALT, ISOMER OR SALT  
15 OF AN ISOMER OF METHAMPHETAMINE OR PHENCYCLIDINE OR IS A  
16 MIXTURE CONTAINING METHAMPHETAMINE OR PHENCYCLIDINE,  
17 CONTAINING A SALT OF METHAMPHETAMINE OR PHENCYCLIDINE,  
18 CONTAINING AN ISOMER OF METHAMPHETAMINE OR PHENCYCLIDINE,  
19 CONTAINING A SALT OF AN ISOMER OF METHAMPHETAMINE OR  
20 PHENCYCLIDINE SHALL, UPON CONVICTION, BE SENTENCED TO A  
21 MANDATORY MINIMUM TERM OF IMPRISONMENT AND A FINE AS SET  
22 FORTH IN THIS SUBSECTION:

23 (I) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
24 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST  
25 FIVE GRAMS AND LESS THAN TEN GRAMS; THREE YEARS IN PRISON  
26 AND A FINE OF \$15,000 OR SUCH LARGER AMOUNT AS IS  
27 SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND THE  
28 PROCEEDS FROM THE ILLEGAL ACTIVITY; HOWEVER, IF AT THE  
29 TIME OF SENTENCING THE DEFENDANT HAS BEEN CONVICTED OF  
30 ANOTHER DRUG TRAFFICKING OFFENSE: FIVE YEARS IN PRISON

1 AND \$30,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT TO  
2 EXHAUST THE ASSETS UTILIZED IN AND THE PROCEEDS FROM THE  
3 ILLEGAL ACTIVITY;

4 (II) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
5 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST TEN  
6 GRAMS AND LESS THAN 100 GRAMS; FOUR YEARS IN PRISON AND A  
7 FINE OF \$25,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT TO  
8 EXHAUST THE ASSETS UTILIZED IN AND THE PROCEEDS FROM THE  
9 ILLEGAL ACTIVITY; HOWEVER, IF AT THE TIME OF SENTENCING  
10 THE DEFENDANT HAS BEEN CONVICTED OF ANOTHER DRUG  
11 TRAFFICKING OFFENSE: SEVEN YEARS IN PRISON AND \$50,000 OR  
12 SUCH LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS  
13 UTILIZED IN AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY;  
14 AND

15 (III) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
16 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST 100  
17 GRAMS; FIVE YEARS IN PRISON AND A FINE OF \$50,000 OR SUCH  
18 LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS  
19 UTILIZED IN AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY;  
20 HOWEVER, IF AT THE TIME OF SENTENCING THE DEFENDANT HAS  
21 BEEN CONVICTED OF ANOTHER DRUG TRAFFICKING OFFENSE: EIGHT  
22 YEARS IN PRISON AND \$50,000 OR SUCH LARGER AMOUNT AS IS  
23 SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND THE  
24 PROCEEDS FROM THE ILLEGAL ACTIVITY.

25 [(5) A PERSON WHO IS CONVICTED OF VIOLATING SECTION  
26 13(A)(14), (30) OR (37) OF THE CONTROLLED SUBSTANCE, DRUG,  
27 DEVICE AND COSMETIC ACT, AND WHO, IN THE COURSE OF THE  
28 OFFENSE, MANUFACTURES, DELIVERS, BRINGS INTO THIS  
29 COMMONWEALTH OR POSSESSES WITH INTENT TO MANUFACTURE OR  
30 DELIVER AMPHETAMINE OR ANY SALT, OPTICAL ISOMER, OR SALT OF

1 AN OPTICAL ISOMER, OR A MIXTURE CONTAINING ANY SUCH  
2 SUBSTANCES SHALL, WHEN THE AGGREGATE WEIGHT OF THE COMPOUND  
3 OR MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST FIVE  
4 GRAMS, BE SENTENCED TO TWO AND ONE-HALF YEARS IN PRISON AND A  
5 FINE OF \$15,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT TO  
6 EXHAUST THE ASSETS UTILIZED IN AND THE PROCEEDS FROM THE  
7 ILLEGAL ACTIVITY; HOWEVER, IF AT THE TIME OF SENTENCING THE  
8 DEFENDANT HAS BEEN CONVICTED OF ANOTHER DRUG TRAFFICKING  
9 OFFENSE: BE SENTENCED TO FIVE YEARS IN PRISON AND \$30,000 OR  
10 SUCH LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS  
11 UTILIZED IN AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY.

12 (6) A PERSON WHO IS CONVICTED OF VIOLATING SECTION 13(A)  
13 (14), (30) OR (37) OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE  
14 AND COSMETIC ACT WHERE THE CONTROLLED SUBSTANCE IS  
15 METHAQUALONE SHALL, UPON CONVICTION, BE SENTENCED TO A  
16 MANDATORY MINIMUM TERM OF IMPRISONMENT AND A FINE AS SET  
17 FORTH IN THIS SUBSECTION:

18 (I) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
19 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST 50  
20 TABLETS, CAPSULES, CAPLETS OR OTHER DOSAGE UNITS, OR 25  
21 GRAMS AND LESS THAN 200 TABLETS, CAPSULES, CAPLETS OR  
22 OTHER DOSAGE UNITS, OR 100 GRAMS; ONE YEAR IN PRISON AND  
23 A FINE OF \$2,500 OR SUCH LARGER AMOUNT AS IS SUFFICIENT  
24 TO EXHAUST THE ASSETS UTILIZED IN AND THE PROCEEDS FROM  
25 THE ILLEGAL ACTIVITY; HOWEVER, IF AT THE TIME OF  
26 SENTENCING THE DEFENDANT HAS BEEN CONVICTED OF ANOTHER  
27 DRUG TRAFFICKING OFFENSE: THREE YEARS IN PRISON AND  
28 \$5,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST  
29 THE ASSETS UTILIZED IN AND THE PROCEEDS FROM THE ILLEGAL  
30 ACTIVITY; AND

1 (II) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
2 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST 200  
3 TABLETS, CAPSULES, CAPLETS OR OTHER DOSAGE UNITS, OR MORE  
4 THAN 100 GRAMS; TWO AND ONE-HALF YEARS IN PRISON AND A  
5 FINE OF \$15,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT TO  
6 EXHAUST THE ASSETS UTILIZED IN AND THE PROCEEDS FROM THE  
7 ILLEGAL ACTIVITY; HOWEVER, IF AT THE TIME OF SENTENCING  
8 THE DEFENDANT HAS BEEN CONVICTED OF ANOTHER DRUG  
9 TRAFFICKING OFFENSE: FIVE YEARS IN PRISON AND \$30,000 OR  
10 SUCH LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS  
11 UTILIZED IN AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY.]

12 (7) A PERSON WHO IS CONVICTED OF VIOLATING SECTION 13(A)  
13 (14), (30) OR (37) OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE  
14 AND COSMETIC ACT WHERE THE CONTROLLED SUBSTANCE OR A MIXTURE  
15 CONTAINING IT IS HEROIN SHALL, UPON CONVICTION, BE SENTENCED  
16 AS SET FORTH IN THIS PARAGRAPH:

17 (I) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
18 MIXTURE CONTAINING THE HEROIN INVOLVED IS AT LEAST 1.0  
19 GRAM BUT LESS THAN 5.0 GRAMS THE SENTENCE SHALL BE A  
20 MANDATORY MINIMUM TERM OF TWO YEARS IN PRISON AND A FINE  
21 OF \$5,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT TO  
22 EXHAUST THE ASSETS UTILIZED IN AND THE PROCEEDS FROM THE  
23 ILLEGAL ACTIVITY; HOWEVER, IF AT THE TIME OF SENTENCING  
24 THE DEFENDANT HAS BEEN CONVICTED OF ANOTHER DRUG  
25 TRAFFICKING OFFENSE: A MANDATORY MINIMUM TERM OF THREE  
26 YEARS IN PRISON AND \$10,000 OR SUCH LARGER AMOUNT AS IS  
27 SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND THE  
28 PROCEEDS FROM THE ILLEGAL ACTIVITY;

29 (II) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
30 MIXTURE CONTAINING THE HEROIN INVOLVED IS AT LEAST 5.0

1 GRAMS BUT LESS THAN 50 GRAMS: A MANDATORY MINIMUM TERM OF  
2 THREE YEARS IN PRISON AND A FINE OF \$15,000 OR SUCH  
3 LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS  
4 UTILIZED IN AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY;  
5 HOWEVER, IF AT THE TIME OF SENTENCING THE DEFENDANT HAS  
6 BEEN CONVICTED OF ANOTHER DRUG TRAFFICKING OFFENSE: A  
7 MANDATORY MINIMUM TERM OF FIVE YEARS IN PRISON AND  
8 \$30,000 OR SUCH LARGER AMOUNT AS IS SUFFICIENT TO EXHAUST  
9 THE ASSETS UTILIZED IN AND THE PROCEEDS FROM THE ILLEGAL  
10 ACTIVITY; AND

11 (III) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
12 MIXTURE CONTAINING THE HEROIN INVOLVED IS 50 GRAMS OR  
13 GREATER: A MANDATORY MINIMUM TERM OF FIVE YEARS IN PRISON  
14 AND A FINE OF \$25,000 OR SUCH LARGER AMOUNT AS IS  
15 SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN AND THE  
16 PROCEEDS FROM THE ILLEGAL ACTIVITY; HOWEVER, IF AT THE  
17 TIME OF SENTENCING THE DEFENDANT HAS BEEN CONVICTED OF  
18 ANOTHER DRUG TRAFFICKING OFFENSE: A MANDATORY MINIMUM  
19 TERM OF SEVEN YEARS IN PRISON AND \$50,000 OR SUCH LARGER  
20 AMOUNT AS IS SUFFICIENT TO EXHAUST THE ASSETS UTILIZED IN  
21 AND THE PROCEEDS FROM THE ILLEGAL ACTIVITY.

22 (8) A PERSON WHO IS CONVICTED OF VIOLATING SECTION 13(A)  
23 (12), (14) OR (30) OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE  
24 AND COSMETIC ACT WHERE THE CONTROLLED SUBSTANCE OR A MIXTURE  
25 CONTAINING IT IS 3,4-METHYLENEDIOXYAMPHETAMINE (MDA); 3,4-  
26 METHYLENEDIOXYMETHAMPHETAMINE (MDMA); 5-METHOXY-3,4-  
27 METHYLENEDIOXYAMPHETAMINE (MMDA); 3,4-METHYLENEDIOXY-N-  
28 ETHYLAMPHETAMINE; N-HYDROXY-3,4-METHYLENEDIOXYAMPHETAMINE; OR  
29 THEIR SALTS, ISOMERS AND SALTS OF ISOMERS, WHENEVER THE  
30 EXISTENCE OF SUCH SALTS, ISOMERS AND SALTS OF ISOMERS IS



1 POSSIBLE WITHIN THE SPECIFIC CHEMICAL DESIGNATION, SHALL,  
2 UPON CONVICTION, BE SENTENCED AS SET FORTH IN THIS PARAGRAPH:

3 (I) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
4 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST 50  
5 TABLETS, CAPSULES, CAPLETS OR OTHER DOSAGE UNITS, OR 15  
6 GRAMS AND LESS THAN 100 TABLETS, CAPSULES, CAPLETS OR  
7 OTHER DOSAGE UNITS, OR LESS THAN 30 GRAMS, THE PERSON IS  
8 GUILTY OF A FELONY AND, UPON CONVICTION THEREOF, SHALL BE  
9 SENTENCED TO IMPRISONMENT NOT EXCEEDING FIVE YEARS OR TO  
10 PAY A FINE NOT EXCEEDING \$15,000, OR BOTH.

11 (II) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
12 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST 100  
13 TABLETS, CAPSULES, CAPLETS OR OTHER DOSAGE UNITS, OR 30  
14 GRAMS AND LESS THAN 1,000 TABLETS, CAPSULES, CAPLETS OR  
15 OTHER DOSAGE UNITS, OR LESS THAN 300 GRAMS, THE PERSON IS  
16 GUILTY OF A FELONY AND, UPON CONVICTION THEREOF, SHALL BE  
17 SENTENCED TO IMPRISONMENT NOT EXCEEDING TEN YEARS OR TO  
18 PAY A FINE NOT EXCEEDING \$100,000, OR BOTH.

19 (III) WHEN THE AGGREGATE WEIGHT OF THE COMPOUND OR  
20 MIXTURE CONTAINING THE SUBSTANCE INVOLVED IS AT LEAST  
21 1,000 TABLETS, CAPSULES, CAPLETS OR OTHER DOSAGE UNITS,  
22 OR 300 GRAMS, THE PERSON IS GUILTY OF A FELONY AND, UPON  
23 CONVICTION THEREOF, SHALL BE SENTENCED TO IMPRISONMENT  
24 NOT EXCEEDING 15 YEARS OR TO PAY A FINE NOT EXCEEDING  
25 \$250,000, OR BOTH.

26 \* \* \*

27 (B) [PROOF OF SENTENCING.--PROVISIONS OF THIS SECTION SHALL  
28 NOT BE AN ELEMENT OF THE CRIME. NOTICE OF THE APPLICABILITY OF  
29 THIS SECTION TO THE DEFENDANT SHALL NOT BE REQUIRED PRIOR TO  
30 CONVICTION, BUT REASONABLE NOTICE OF THE COMMONWEALTH'S

1 INTENTION TO PROCEED UNDER THIS SECTION SHALL BE PROVIDED AFTER  
2 CONVICTION AND BEFORE SENTENCING. THE APPLICABILITY OF THIS  
3 SECTION SHALL BE DETERMINED AT SENTENCING. THE COURT SHALL  
4 CONSIDER EVIDENCE PRESENTED AT TRIAL, SHALL AFFORD THE  
5 COMMONWEALTH AND THE DEFENDANT AN OPPORTUNITY TO PRESENT  
6 NECESSARY ADDITIONAL EVIDENCE AND SHALL DETERMINE, BY A  
7 PREPONDERANCE OF THE EVIDENCE, IF THIS SECTION IS APPLICABLE.]  
8 APPLICATION OF MANDATORY MINIMUM PENALTY.--WITH THE EXCEPTION OF  
9 PRIOR CONVICTIONS, ANY PROVISION OF THIS SECTION THAT REQUIRES  
10 IMPOSITION OF A MANDATORY MINIMUM SENTENCE SHALL CONSTITUTE AN  
11 ELEMENT ENHANCING THE UNDERLYING OFFENSE. ANY ENHANCING ELEMENT  
12 MUST BE PROVEN BEYOND A REASONABLE DOUBT AT TRIAL ON THE  
13 UNDERLYING OFFENSE AND MUST BE SUBMITTED TO THE FACT-FINDER FOR  
14 DELIBERATION TOGETHER WITH THE UNDERLYING OFFENSE. IF THE FACT-  
15 FINDER FINDS THE DEFENDANT GUILTY OF THE UNDERLYING OFFENSE, THE  
16 FACT-FINDER SHALL THEN ALSO DECIDE WHETHER ANY ENHANCING ELEMENT  
17 HAS BEEN PROVEN.

18 \* \* \*

19 (D) [APPELLATE REVIEW.--IF A SENTENCING COURT REFUSES TO  
20 APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL HAVE  
21 THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE SENTENCING  
22 COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE AND REMAND  
23 THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A SENTENCE IN  
24 ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE SENTENCE WAS  
25 IMPOSED IN VIOLATION OF THIS SECTION.] APPEAL BY THE  
26 COMMONWEALTH.--IF THE FACT-FINDER HAS FOUND ANY ENHANCING  
27 ELEMENT AND A SENTENCING COURT IMPOSES A SENTENCE BELOW THE  
28 MANDATORY MINIMUM SENTENCE, THE COMMONWEALTH SHALL HAVE THE  
29 RIGHT TO APPELLATE REVIEW OF THE SENTENCE. IF THE APPELLATE  
30 COURT FINDS THAT THE MANDATORY SENTENCING PROVISION WAS

1 APPLICABLE, THE COURT SHALL VACATE THE SENTENCE AND REMAND FOR  
2 RESENTENCING IN ACCORDANCE WITH THAT PROVISION.

3 \* \* \*

4 SECTION 3. SECTIONS 9712(B) AND (D), 9712.1(C) AND (E) AND  
5 9713(C) AND (E) OF TITLE 42 ARE AMENDED TO READ:

6 § 9712. SENTENCES FOR OFFENSES COMMITTED WITH FIREARMS.

7 \* \* \*

8 (B) [PROOF AT SENTENCING.--PROVISIONS OF THIS SECTION SHALL  
9 NOT BE AN ELEMENT OF THE CRIME AND NOTICE THEREOF TO THE  
10 DEFENDANT SHALL NOT BE REQUIRED PRIOR TO CONVICTION, BUT  
11 REASONABLE NOTICE OF THE COMMONWEALTH'S INTENTION TO PROCEED  
12 UNDER THIS SECTION SHALL BE PROVIDED AFTER CONVICTION AND BEFORE  
13 SENTENCING. THE APPLICABILITY OF THIS SECTION SHALL BE  
14 DETERMINED AT SENTENCING. THE COURT SHALL CONSIDER ANY EVIDENCE  
15 PRESENTED AT TRIAL AND SHALL AFFORD THE COMMONWEALTH AND THE  
16 DEFENDANT AN OPPORTUNITY TO PRESENT ANY NECESSARY ADDITIONAL  
17 EVIDENCE AND SHALL DETERMINE, BY A PREPONDERANCE OF THE  
18 EVIDENCE, IF THIS SECTION IS APPLICABLE.] APPLICATION OF  
19 MANDATORY MINIMUM PENALTY.--ANY PROVISION OF THIS SECTION THAT  
20 REQUIRES IMPOSITION OF A MANDATORY MINIMUM SENTENCE SHALL  
21 CONSTITUTE AN ELEMENT ENHANCING THE UNDERLYING OFFENSE. ANY  
22 ENHANCING ELEMENT MUST BE PROVEN BEYOND A REASONABLE DOUBT AT  
23 TRIAL ON THE UNDERLYING OFFENSE AND MUST BE SUBMITTED TO THE  
24 FACT-FINDER FOR DELIBERATION TOGETHER WITH THE UNDERLYING  
25 OFFENSE. IF THE FACT-FINDER FINDS THE DEFENDANT GUILTY OF THE  
26 UNDERLYING OFFENSE, THE FACT-FINDER SHALL THEN ALSO DECIDE  
27 WHETHER ANY ENHANCING ELEMENT HAS BEEN PROVEN.

28 \* \* \*

29 (D) APPEAL BY COMMONWEALTH.--[IF A SENTENCING COURT REFUSES  
30 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL

1 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE  
2 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE  
3 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A  
4 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE  
5 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.] IF THE FACT-  
6 FINDER HAS FOUND ANY ENHANCING ELEMENT AND A SENTENCING COURT  
7 IMPOSES A SENTENCE BELOW THE MANDATORY MINIMUM SENTENCE, THE  
8 COMMONWEALTH SHALL HAVE THE RIGHT TO APPELLATE REVIEW OF THE  
9 SENTENCE. IF THE APPELLATE COURT FINDS THAT THE MANDATORY  
10 SENTENCING PROVISION WAS APPLICABLE, THE COURT SHALL VACATE THE  
11 SENTENCE AND REMAND FOR RESENTENCING IN ACCORDANCE WITH THAT  
12 PROVISION.

13 \* \* \*

14 § 9712.1. SENTENCES FOR CERTAIN DRUG OFFENSES COMMITTED WITH  
15 FIREARMS.

16 \* \* \*

17 (C) [PROOF AT SENTENCING.--PROVISIONS OF THIS SECTION SHALL  
18 NOT BE AN ELEMENT OF THE CRIME, AND NOTICE THEREOF TO THE  
19 DEFENDANT SHALL NOT BE REQUIRED PRIOR TO CONVICTION, BUT  
20 REASONABLE NOTICE OF THE COMMONWEALTH'S INTENTION TO PROCEED  
21 UNDER THIS SECTION SHALL BE PROVIDED AFTER CONVICTION AND BEFORE  
22 SENTENCING. THE APPLICABILITY OF THIS SECTION SHALL BE  
23 DETERMINED AT SENTENCING. THE COURT SHALL CONSIDER ANY EVIDENCE  
24 PRESENTED AT TRIAL AND SHALL AFFORD THE COMMONWEALTH AND THE  
25 DEFENDANT AN OPPORTUNITY TO PRESENT ANY NECESSARY ADDITIONAL  
26 EVIDENCE AND SHALL DETERMINE, BY A PREPONDERANCE OF THE  
27 EVIDENCE, IF THIS SECTION IS APPLICABLE.] APPLICATION OF  
28 MANDATORY MINIMUM PENALTY.--ANY PROVISION OF THIS SECTION THAT  
29 REQUIRES IMPOSITION OF A MANDATORY MINIMUM SENTENCE SHALL  
30 CONSTITUTE AN ELEMENT ENHANCING THE UNDERLYING OFFENSE. ANY

1 ENHANCING ELEMENT MUST BE PROVEN BEYOND A REASONABLE DOUBT AT  
2 TRIAL ON THE UNDERLYING OFFENSE AND MUST BE SUBMITTED TO THE  
3 FACT-FINDER FOR DELIBERATION TOGETHER WITH THE UNDERLYING  
4 OFFENSE. IF THE FACT-FINDER FINDS THE DEFENDANT GUILTY OF THE  
5 UNDERLYING OFFENSE, THE FACT-FINDER SHALL THEN ALSO DECIDE  
6 WHETHER ANY ENHANCING ELEMENT HAS BEEN PROVEN.

7 \* \* \*

8 (E) APPEAL BY COMMONWEALTH.--[IF A SENTENCING COURT REFUSES  
9 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL  
10 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE  
11 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE  
12 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A  
13 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE  
14 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.] IF THE FACT-  
15 FINDER HAS FOUND ANY ENHANCING ELEMENT AND A SENTENCING COURT  
16 IMPOSES A SENTENCE BELOW THE MANDATORY MINIMUM SENTENCE, THE  
17 COMMONWEALTH SHALL HAVE THE RIGHT TO APPELLATE REVIEW OF THE  
18 SENTENCE. IF THE APPELLATE COURT FINDS THAT THE MANDATORY  
19 SENTENCING PROVISION WAS APPLICABLE, THE COURT SHALL VACATE THE  
20 SENTENCE AND REMAND FOR RESENTENCING IN ACCORDANCE WITH THAT  
21 PROVISION.

22 \* \* \*

23 § 9713. SENTENCES FOR OFFENSES COMMITTED ON PUBLIC  
24 TRANSPORTATION.

25 \* \* \*

26 (C) [PROOF AT SENTENCING.--PROVISIONS OF THIS SECTION SHALL  
27 NOT BE AN ELEMENT OF THE CRIME AND NOTICE THEREOF TO THE  
28 DEFENDANT SHALL NOT BE REQUIRED PRIOR TO CONVICTION, BUT  
29 REASONABLE NOTICE OF THE COMMONWEALTH'S INTENTION TO PROCEED  
30 UNDER THIS SECTION SHALL BE PROVIDED AFTER CONVICTION AND BEFORE

1 SENTENCING. THE APPLICABILITY OF THIS SECTION SHALL BE  
2 DETERMINED AT SENTENCING. THE COURT SHALL CONSIDER ANY EVIDENCE  
3 PRESENTED AT TRIAL AND SHALL AFFORD THE COMMONWEALTH AND THE  
4 DEFENDANT AN OPPORTUNITY TO PRESENT ANY NECESSARY ADDITIONAL  
5 EVIDENCE AND SHALL DETERMINE, BY A PREPONDERANCE OF THE  
6 EVIDENCE, IF THIS SECTION IS APPLICABLE.] APPLICATION OF  
7 MANDATORY MINIMUM PENALTY.--ANY PROVISION OF THIS SECTION THAT  
8 REQUIRES IMPOSITION OF A MANDATORY MINIMUM SENTENCE CONSTITUTES  
9 AN ELEMENT ENHANCING THE UNDERLYING OFFENSE. AN ENHANCING  
10 ELEMENT MUST BE PROVEN BEYOND A REASONABLE DOUBT AT TRIAL ON THE  
11 UNDERLYING OFFENSE AND MUST BE SUBMITTED TO THE FINDER OF FACT  
12 FOR DELIBERATION TOGETHER WITH THE UNDERLYING OFFENSE. IF THE  
13 FINDER OF FACT DETERMINES THE DEFENDANT IS GUILTY OF THE  
14 UNDERLYING OFFENSE, THE FINDER OF FACT WILL THEN DECIDE WHETHER  
15 AN ENHANCING ELEMENT HAS BEEN 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 SECTION 4. SECTION 9717 OF TITLE 42 IS AMENDED BY ADDING  
2 SUBSECTIONS TO READ:

3 § 9717. SENTENCES FOR OFFENSES AGAINST ELDERLY PERSONS.

4 \* \* \*

5 (C) APPLICATION OF MANDATORY MINIMUM PENALTY.--ANY PROVISION  
6 OF THIS SECTION THAT REQUIRES IMPOSITION OF A MANDATORY MINIMUM  
7 SENTENCE SHALL CONSTITUTE AN ELEMENT ENHANCING THE UNDERLYING  
8 OFFENSE. AN ENHANCING ELEMENT MUST BE PROVEN BEYOND A REASONABLE  
9 DOUBT AT TRIAL ON THE UNDERLYING OFFENSE AND MUST BE SUBMITTED  
10 TO THE FINDER OF FACT FOR DELIBERATION TOGETHER WITH THE  
11 UNDERLYING OFFENSE. IF THE FINDER OF FACT DETERMINES THE  
12 DEFENDANT IS GUILTY OF THE UNDERLYING OFFENSE, THE FINDER OF  
13 FACT SHALL THEN DECIDE WHETHER AN ENHANCING ELEMENT HAS BEEN  
14 PROVEN.

15 (D) APPEAL BY COMMONWEALTH.--IF THE FINDER OF FACT HAS FOUND  
16 AN ENHANCING ELEMENT AND A SENTENCING COURT IMPOSES A SENTENCE  
17 BELOW THE MANDATORY MINIMUM SENTENCE, THE COMMONWEALTH HAS THE  
18 RIGHT TO APPELLATE REVIEW OF THE SENTENCE. IF THE APPELLATE  
19 COURT FINDS THAT THE MANDATORY SENTENCING PROVISION WAS  
20 APPLICABLE, THE COURT MUST VACATE THE SENTENCE AND REMAND FOR  
21 RESENTENCING IN ACCORDANCE WITH THAT PROVISION.

22 SECTION 5. SECTIONS 9718(C) AND (E), 9718.4 AND 9719(B) AND  
23 (D) OF TITLE 42 ARE AMENDED TO READ:

24 § 9718. SENTENCES FOR OFFENSES AGAINST INFANT PERSONS.

25 \* \* \*

26 (C) [PROOF AT SENTENCING.--THE PROVISIONS OF THIS SECTION  
27 SHALL NOT BE AN ELEMENT OF THE CRIME, AND NOTICE OF THE  
28 PROVISIONS OF THIS SECTION TO THE DEFENDANT SHALL NOT BE  
29 REQUIRED PRIOR TO CONVICTION, BUT REASONABLE NOTICE OF THE  
30 COMMONWEALTH'S INTENTION TO PROCEED UNDER THIS SECTION SHALL BE

1 PROVIDED AFTER CONVICTION AND BEFORE SENTENCING. THE  
2 APPLICABILITY OF THIS SECTION SHALL BE DETERMINED AT SENTENCING.  
3 THE COURT SHALL CONSIDER ANY EVIDENCE PRESENTED AT TRIAL AND  
4 SHALL AFFORD THE COMMONWEALTH AND THE DEFENDANT AN OPPORTUNITY  
5 TO PRESENT ANY NECESSARY ADDITIONAL EVIDENCE AND SHALL  
6 DETERMINE, BY A PREPONDERANCE OF THE EVIDENCE, IF THIS SECTION  
7 IS APPLICABLE.] APPLICATION OF MANDATORY MINIMUM PENALTY.--ANY  
8 PROVISION OF THIS SECTION THAT REQUIRES IMPOSITION OF A  
9 MANDATORY MINIMUM SENTENCE CONSTITUTES AN ELEMENT ENHANCING THE  
10 UNDERLYING OFFENSE. AN ENHANCING ELEMENT MUST BE PROVEN BEYOND A  
11 REASONABLE DOUBT AT TRIAL ON THE UNDERLYING OFFENSE AND MUST BE  
12 SUBMITTED TO THE FINDER OF FACT FOR DELIBERATION TOGETHER WITH  
13 THE UNDERLYING OFFENSE. IF THE FINDER OF FACT DETERMINES THE  
14 DEFENDANT IS GUILTY OF THE UNDERLYING OFFENSE, THE FINDER OF  
15 FACT WILL THEN DECIDE WHETHER AN ENHANCING ELEMENT HAS BEEN  
16 PROVEN.

17 \* \* \*

18 (E) APPEAL BY COMMONWEALTH.--[IF A SENTENCING COURT REFUSES  
19 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL  
20 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE  
21 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE  
22 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A  
23 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE  
24 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.] IF THE  
25 FINDER OF FACT HAS FOUND AN ENHANCING ELEMENT AND A SENTENCING  
26 COURT IMPOSES A SENTENCE BELOW THE MANDATORY MINIMUM SENTENCE,  
27 THE COMMONWEALTH HAS THE RIGHT TO APPELLATE REVIEW OF THE  
28 SENTENCE. IF THE APPELLATE COURT FINDS THAT THE MANDATORY  
29 SENTENCING PROVISION WAS APPLICABLE, THE COURT MUST VACATE THE  
30 SENTENCE AND REMAND FOR RESENTENCING IN ACCORDANCE WITH THAT



1 PROVISION.

2 § 9718.4. SENTENCE FOR FAILURE TO COMPLY WITH REGISTRATION OF  
3 SEXUAL OFFENDERS.

4 (A) MANDATORY SENTENCE.--MANDATORY SENTENCING SHALL BE AS  
5 FOLLOWS:

6 (1) SENTENCING UPON CONVICTION FOR A FIRST OFFENSE SHALL  
7 BE AS FOLLOWS:

8 (I) NOT LESS THAN TWO YEARS FOR AN INDIVIDUAL WHO:

9 (A) IS SUBJECT TO SECTION 9799.13 (RELATING TO  
10 APPLICABILITY) AND MUST REGISTER FOR A PERIOD OF 15  
11 YEARS UNDER SECTION 9799.15 (RELATING TO PERIOD OF  
12 REGISTRATION) OR A SIMILAR PROVISION FROM ANOTHER  
13 JURISDICTION; AND

14 (B) VIOLATED 18 PA.C.S. § 4915.1(A)(1) OR (2)  
15 (RELATING TO FAILURE TO COMPLY WITH REGISTRATION  
16 REQUIREMENTS).

17 (II) NOT LESS THAN THREE YEARS FOR AN INDIVIDUAL  
18 WHO:

19 (A) IS SUBJECT TO SECTION 9799.13 AND MUST  
20 REGISTER FOR A PERIOD OF 15 YEARS UNDER SECTION  
21 9799.15 OR A SIMILAR PROVISION FROM ANOTHER  
22 JURISDICTION; AND

23 (B) VIOLATED 18 PA.C.S. § 4915.1(A)(3).

24 (III) NOT LESS THAN THREE YEARS FOR AN INDIVIDUAL  
25 WHO:

26 (A) IS SUBJECT TO SECTION 9799.13 AND MUST  
27 REGISTER FOR A PERIOD OF 25 YEARS OR LIFE UNDER  
28 SECTION 9799.15 OR A SIMILAR PROVISION FROM ANOTHER  
29 JURISDICTION; AND

30 (B) VIOLATED 18 PA.C.S. § 4915.1(A)(1) OR (2).

1 (IV) NOT LESS THAN FIVE YEARS FOR AN INDIVIDUAL WHO:

2 (A) IS SUBJECT TO SECTION 9799.13 AND MUST  
3 REGISTER FOR A PERIOD OF 25 YEARS OR LIFE UNDER  
4 SECTION 9799.15 OR A SIMILAR PROVISION FROM ANOTHER  
5 JURISDICTION; AND

6 (B) VIOLATED 18 PA.C.S. § 4915.1(A)(3).

7 (2) SENTENCING UPON CONVICTION FOR A SECOND OR  
8 SUBSEQUENT OFFENSE SHALL BE AS FOLLOWS:

9 (I) NOT LESS THAN FIVE YEARS FOR AN INDIVIDUAL WHO:

10 (A) IS SUBJECT TO SECTION 9799.13 AND MUST  
11 REGISTER FOR A PERIOD OF 15 OR 25 YEARS OR LIFE UNDER  
12 SECTION 9799.15 OR A SIMILAR PROVISION FROM ANOTHER  
13 JURISDICTION; AND

14 (B) VIOLATED 18 PA.C.S. § 4915.1(A)(1) OR (2).

15 (II) NOT LESS THAN SEVEN YEARS FOR AN INDIVIDUAL

16 WHO:

17 (A) IS SUBJECT TO SECTION 9799.13 AND MUST  
18 REGISTER FOR A PERIOD OF 15 OR 25 YEARS OR LIFE UNDER  
19 SECTION 9799.15 OR A SIMILAR PROVISION FROM ANOTHER  
20 JURISDICTION; AND

21 (B) VIOLATED 18 PA.C.S. § 4915.1(A)(3).

22 (A.1) TRANSIENTS AND MANDATORY SENTENCE.--MANDATORY  
23 SENTENCING SHALL BE AS FOLLOWS:

24 (1) SENTENCING UPON CONVICTION FOR A FIRST OFFENSE SHALL  
25 BE AS FOLLOWS:

26 (I) NOT LESS THAN TWO YEARS FOR AN INDIVIDUAL WHO:

27 (A) IS SUBJECT TO SECTION 9799.13 AND MUST  
28 REGISTER FOR A PERIOD OF 15 YEARS UNDER SECTION  
29 9799.15 OR A SIMILAR PROVISION FROM ANOTHER  
30 JURISDICTION [AND IS A TRANSIENT]; AND

1 (B) VIOLATED 18 PA.C.S. § 4915.1(A.1)(1) OR (2).

2 (II) NOT LESS THAN THREE YEARS FOR AN INDIVIDUAL

3 WHO:

4 (A) IS SUBJECT TO SECTION 9799.13 AND MUST

5 REGISTER FOR A PERIOD OF 15 YEARS UNDER SECTION

6 9799.15 OR A SIMILAR PROVISION FROM ANOTHER

7 JURISDICTION [AND IS TRANSIENT]; AND

8 (B) VIOLATED 18 PA.C.S. § 4915.1(A.1)(3).

9 (III) NOT LESS THAN THREE YEARS FOR AN INDIVIDUAL

10 WHO:

11 (A) IS SUBJECT TO SECTION 9799.13 AND MUST

12 REGISTER FOR A PERIOD OF 25 YEARS OR LIFE UNDER

13 SECTION 9799.15 OR A SIMILAR PROVISION FROM ANOTHER

14 JURISDICTION [AND IS TRANSIENT]; AND

15 (B) VIOLATED 18 PA.C.S. § 4915.1(A.1)(1) OR (2).

16 (IV) NOT LESS THAN FIVE YEARS FOR AN INDIVIDUAL WHO:

17 (A) IS SUBJECT TO SECTION 9799.13 AND MUST

18 REGISTER FOR A PERIOD OF 25 YEARS OR LIFE UNDER

19 SECTION 9799.15 OR A SIMILAR PROVISION FROM ANOTHER

20 JURISDICTION [AND IS A TRANSIENT]; AND

21 (B) VIOLATED 18 PA.C.S. § 4915.1(A.1)(3).

22 (2) SENTENCING UPON CONVICTION FOR A SECOND OR

23 SUBSEQUENT OFFENSE SHALL BE AS FOLLOWS:

24 (I) NOT LESS THAN FIVE YEARS FOR AN INDIVIDUAL WHO:

25 (A) IS SUBJECT TO SECTION 9799.13 AND MUST

26 REGISTER FOR A PERIOD OF 15 OR 25 YEARS OR LIFE UNDER

27 SECTION 9799.15 OR A SIMILAR PROVISION FROM ANOTHER

28 JURISDICTION [AND IS TRANSIENT]; AND

29 (B) VIOLATED 18 PA.C.S. § 4915.1(A.1)(1) OR (2).

30 (II) NOT LESS THAN SEVEN YEARS FOR AN INDIVIDUAL

1 WHO:

2 (A) IS SUBJECT TO SECTION 9799.13 AND MUST  
3 REGISTER FOR A PERIOD OF 15 OR 25 YEARS OR LIFE UNDER  
4 SECTION 9799.15 OR A SIMILAR PROVISION FROM ANOTHER  
5 JURISDICTION [AND IS A TRANSIENT]; AND

6 (B) VIOLATED 18 PA.C.S. § 4915.1(A.1)(3).

7 [(B) PROOF AT SENTENCING.--THE PROVISIONS OF THIS SECTION  
8 SHALL NOT BE AN ELEMENT OF THE CRIME, AND NOTICE THEREOF TO THE  
9 DEFENDANT SHALL NOT BE REQUIRED PRIOR TO CONVICTION, BUT  
10 REASONABLE NOTICE OF THE COMMONWEALTH'S INTENTION TO PROCEED  
11 UNDER THIS SECTION SHALL BE PROVIDED AFTER CONVICTION AND BEFORE  
12 SENTENCING. THE APPLICABILITY OF THIS SECTION SHALL BE  
13 DETERMINED AT SENTENCING. THE COURT SHALL CONSIDER ANY EVIDENCE  
14 PRESENTED AT TRIAL AND SHALL AFFORD THE COMMONWEALTH AND THE  
15 DEFENDANT AN OPPORTUNITY TO PRESENT ANY NECESSARY ADDITIONAL  
16 EVIDENCE AND SHALL DETERMINE BY A PREPONDERANCE OF THE EVIDENCE  
17 IF THIS SECTION IS APPLICABLE.]

18 (B.1) APPLICATION OF MANDATORY MINIMUM PENALTY.--ANY  
19 PROVISION OF THIS SECTION THAT REQUIRES IMPOSITION OF A  
20 MANDATORY MINIMUM SENTENCE SHALL CONSTITUTE AN ELEMENT ENHANCING  
21 THE UNDERLYING OFFENSE. ANY ENHANCING ELEMENT MUST BE PROVEN  
22 BEYOND A REASONABLE DOUBT AT TRIAL ON THE UNDERLYING OFFENSE AND  
23 MUST BE SUBMITTED TO THE FACT-FINDER FOR DELIBERATION TOGETHER  
24 WITH THE UNDERLYING OFFENSE. IF THE FACT-FINDER FINDS THE  
25 DEFENDANT GUILTY OF THE UNDERLYING OFFENSE, THE FACT-FINDER  
26 SHALL THEN ALSO DECIDE WHETHER ANY ENHANCING ELEMENT HAS BEEN  
27 PROVEN.

28 (C) AUTHORITY OF COURT IN SENTENCING.--THERE SHALL BE NO  
29 AUTHORITY IN ANY COURT TO IMPOSE ON AN OFFENDER TO WHICH THIS  
30 SECTION IS APPLICABLE ANY LESSER SENTENCE THAN PROVIDED FOR IN

1 SUBSECTION (A) OR (A.1) OR TO PLACE SUCH OFFENDER ON PROBATION  
2 OR TO SUSPEND SENTENCE. NOTHING IN THIS SECTION SHALL PREVENT  
3 THE SENTENCING COURT FROM IMPOSING A SENTENCE GREATER THAN THAT  
4 PROVIDED IN THIS SECTION. SENTENCING GUIDELINES PROMULGATED BY  
5 THE PENNSYLVANIA COMMISSION ON SENTENCING SHALL NOT SUPERSEDE  
6 THE MANDATORY SENTENCES PROVIDED IN THIS SECTION.

7 (D) APPEAL BY COMMONWEALTH.--[IF A SENTENCING COURT REFUSES  
8 TO APPLY THIS SECTION WHERE APPLICABLE, THE COMMONWEALTH SHALL  
9 HAVE THE RIGHT TO APPELLATE REVIEW OF THE ACTION OF THE  
10 SENTENCING COURT. THE APPELLATE COURT SHALL VACATE THE SENTENCE  
11 AND REMAND THE CASE TO THE SENTENCING COURT FOR IMPOSITION OF A  
12 SENTENCE IN ACCORDANCE WITH THIS SECTION IF IT FINDS THAT THE  
13 SENTENCE WAS IMPOSED IN VIOLATION OF THIS SECTION.] IF THE FACT-  
14 FINDER HAS FOUND ANY ENHANCING ELEMENT AND A SENTENCING COURT  
15 IMPOSES A SENTENCE BELOW THE MANDATORY MINIMUM SENTENCE, THE  
16 COMMONWEALTH SHALL HAVE THE RIGHT TO APPELLATE REVIEW OF THE  
17 SENTENCE. IF THE APPELLATE COURT FINDS THAT THE MANDATORY  
18 SENTENCING PROVISION WAS APPLICABLE, THE COURT SHALL VACATE THE  
19 SENTENCE AND REMAND FOR RESENTENCING IN ACCORDANCE WITH THAT  
20 PROVISION.

21 § 9719. SENTENCES FOR OFFENSES COMMITTED WHILE IMPERSONATING A  
22 LAW ENFORCEMENT OFFICER.

23 \* \* \*

24 (B) [PROOF AT SENTENCING.--PROVISIONS OF THIS SECTION SHALL  
25 NOT BE AN ELEMENT OF THE CRIME AND NOTICE THEREOF TO THE  
26 DEFENDANT SHALL NOT BE REQUIRED PRIOR TO CONVICTION, BUT  
27 REASONABLE NOTICE OF THE COMMONWEALTH'S INTENTION TO PROCEED  
28 UNDER THIS SECTION SHALL BE PROVIDED AFTER CONVICTION AND BEFORE  
29 SENTENCING. THE APPLICABILITY OF THIS SECTION SHALL BE  
30 DETERMINED AT SENTENCING. THE SENTENCING COURT SHALL CONSIDER

1 EVIDENCE PRESENTED AT TRIAL AND SHALL AFFORD THE COMMONWEALTH  
2 AND THE DEFENDANT AN OPPORTUNITY TO PRESENT NECESSARY ADDITIONAL  
3 EVIDENCE AND SHALL DETERMINE, BY A PREPONDERANCE OF THE  
4 EVIDENCE, IF THIS SECTION IS APPLICABLE.] APPLICATION OF  
5 MANDATORY MINIMUM PENALTY.--WITH THE EXCEPTION OF PRIOR  
6 CONVICTIONS, ANY PROVISION OF THIS SECTION THAT REQUIRES  
7 IMPOSITION OF A MANDATORY MINIMUM SENTENCE CONSTITUTES AN  
8 ELEMENT ENHANCING THE UNDERLYING OFFENSE. AN ENHANCING ELEMENT  
9 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 (D) 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 \* \* \*

1 Section 2 6. Title 42 is amended by adding a section to <--

2 read:

3 § 9720.7. Sentencing for burglary.

4 The Pennsylvania Commission on Sentencing, in accordance with

5 section 2154 (relating to adoption of guidelines for

6 sentencing), shall provide for a sentence enhancement within its

7 guidelines for an offense under 18 Pa.C.S. § 3502(a)(1)(i) AND <--

8 (II) (relating to burglary).

9 Section 3 7. This act shall take effect in 60 days. <--