

---

THE GENERAL ASSEMBLY OF PENNSYLVANIA

---

HOUSE BILL

No. 847 Session of  
2017

---

INTRODUCED BY MURT, BAKER, D. COSTA, HEFFLEY, IRVIN, MILLARD AND  
READSHAW, MARCH 13, 2017

---

REFERRED TO COMMITTEE ON JUDICIARY, MARCH 13, 2017

---

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, in other offenses, further providing  
3 for drug trafficking sentencing and penalties.

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

6 Section 1. Section 7508 of Title 18 of the Pennsylvania  
7 Consolidated Statutes, declared unconstitutional, 114 A.3d 1072  
8 (Pa. Super. Ct. 2015), is reenacted and amended to read:

9 § 7508. Drug trafficking sentencing and penalties.

10 (a) General rule.--Notwithstanding any other provisions of  
11 this or any other act to the contrary, the following provisions  
12 shall apply:

13 (1) A person who is convicted of violating section 13(a)  
14 (14), (30) or (37) of the act of April 14, 1972 (P.L.233,  
15 No.64), known as The Controlled Substance, Drug, Device and  
16 Cosmetic Act, where the controlled substance is marijuana  
17 shall, upon conviction, be sentenced to a mandatory minimum  
18 term of imprisonment and a fine as set forth in this

1 subsection:

2 (i) when the amount of marijuana involved is at  
3 least two pounds, but less than ten pounds, or at least  
4 ten live plants but less than 21 live plants; one year in  
5 prison and a fine of \$5,000 or such larger amount as is  
6 sufficient to exhaust the assets utilized in and the  
7 proceeds from the illegal activity; however, if at the  
8 time of sentencing the defendant has been convicted of  
9 another drug trafficking offense: two years in prison and  
10 a fine of \$10,000 or such larger amount as is sufficient  
11 to exhaust the assets utilized in and the proceeds from  
12 the illegal activity;

13 (ii) when the amount of marijuana involved is at  
14 least ten pounds, but less than 50 pounds, or at least 21  
15 live plants but less than 51 live plants; three years in  
16 prison and a fine of \$15,000 or such larger amount as is  
17 sufficient to exhaust the assets utilized in and the  
18 proceeds from the illegal activity; however, if at the  
19 time of sentencing the defendant has been convicted of  
20 another drug trafficking offense: four years in prison  
21 and a fine of \$30,000 or such larger amount as is  
22 sufficient to exhaust the assets utilized in and the  
23 proceeds from the illegal activity; and

24 (iii) when the amount of marijuana involved is at  
25 least 50 pounds, or at least 51 live plants; five years  
26 in prison and a fine of \$50,000 or such larger amount as  
27 is sufficient to exhaust the assets utilized in and the  
28 proceeds from the illegal activity.

29 (2) A person who is convicted of violating section 13(a)  
30 (14), (30) or (37) of The Controlled Substance, Drug, Device

1 and Cosmetic Act where the controlled substance or a mixture  
2 containing it is classified in Schedule I or Schedule II  
3 under section 4 of that act and is a narcotic drug shall,  
4 upon conviction, be sentenced to a mandatory minimum term of  
5 imprisonment and a fine as set forth in this subsection:

6 (i) when the aggregate weight of the compound or  
7 mixture containing the substance involved is at least 2.0  
8 grams and less than ten grams; two years in prison and a  
9 fine of \$5,000 or such larger amount as is sufficient to  
10 exhaust the assets utilized in and the proceeds from the  
11 illegal activity; however, if at the time of sentencing  
12 the defendant has been convicted of another drug  
13 trafficking offense: three years in prison and \$10,000 or  
14 such larger amount as is sufficient to exhaust the assets  
15 utilized in and the proceeds from the illegal activity;

16 (ii) when the aggregate weight of the compound or  
17 mixture containing the substance involved is at least ten  
18 grams and less than 100 grams; three years in prison and  
19 a fine of \$15,000 or such larger amount as is sufficient  
20 to exhaust the assets utilized in and the proceeds from  
21 the illegal activity; however, if at the time of  
22 sentencing the defendant has been convicted of another  
23 drug trafficking offense: five years in prison and  
24 \$30,000 or such larger amount as is sufficient to exhaust  
25 the assets utilized in and the proceeds from the illegal  
26 activity; and

27 (iii) when the aggregate weight of the compound or  
28 mixture containing the substance involved is at least 100  
29 grams; five years in prison and a fine of \$25,000 or such  
30 larger amount as is sufficient to exhaust the assets

1 utilized in and the proceeds from the illegal activity;  
2 however, if at the time of sentencing the defendant has  
3 been convicted of another drug trafficking offense: seven  
4 years in prison and \$50,000 or such larger amount as is  
5 sufficient to exhaust the assets utilized in and the  
6 proceeds from the illegal activity.

7 (3) A person who is convicted of violating section 13(a)  
8 (14), (30) or (37) of The Controlled Substance, Drug, Device  
9 and Cosmetic Act where the controlled substance is coca  
10 leaves or is any salt, compound, derivative or preparation of  
11 coca leaves or is any salt, compound, derivative or  
12 preparation which is chemically equivalent or identical with  
13 any of these substances or is any mixture containing any of  
14 these substances except decocainized coca leaves or extracts  
15 of coca leaves which (extracts) do not contain cocaine or  
16 ecgonine shall, upon conviction, be sentenced to a mandatory  
17 minimum term of imprisonment and a fine as set forth in this  
18 subsection:

19 (i) when the aggregate weight of the compound or  
20 mixture containing the substance involved is at least 2.0  
21 grams and less than ten grams; one year in prison and a  
22 fine of \$5,000 or such larger amount as is sufficient to  
23 exhaust the assets utilized in and the proceeds from the  
24 illegal activity; however, if at the time of sentencing  
25 the defendant has been convicted of another drug  
26 trafficking offense: three years in prison and \$10,000 or  
27 such larger amount as is sufficient to exhaust the assets  
28 utilized in and the proceeds from the illegal activity;

29 (ii) when the aggregate weight of the compound or  
30 mixture containing the substance involved is at least ten

1 grams and less than 100 grams; three years in prison and  
2 a fine of \$15,000 or such larger amount as is sufficient  
3 to exhaust the assets utilized in and the proceeds from  
4 the illegal activity; however, if at the time of  
5 sentencing the defendant has been convicted of another  
6 drug trafficking offense: five years in prison and  
7 \$30,000 or such larger amount as is sufficient to exhaust  
8 the assets utilized in and the proceeds from the illegal  
9 activity; [and]

10 (iii) when the aggregate weight of the compound or  
11 mixture of the substance involved is at least 100 grams[;  
12 four] and less than 500 grams; five years in prison and a  
13 fine of [\$25,000] \$30,000 or such larger amount as is  
14 sufficient to exhaust the assets utilized in and the  
15 proceeds from the illegal activity; however, if at the  
16 time of sentencing the defendant has been convicted of  
17 another drug trafficking offense: seven years in prison  
18 and \$50,000 or such larger amount as is sufficient to  
19 exhaust the assets utilized in and the proceeds from the  
20 illegal activity[.]; and

21 (iv) when the aggregate weight of the compound or  
22 mixture of the substance involved is 500 grams or  
23 greater; ten years in prison and a fine of \$50,000 or  
24 such larger amount as is sufficient to exhaust the assets  
25 utilized in and the proceeds from the illegal activity;  
26 however, if at the time of sentencing the defendant has  
27 been convicted of another drug trafficking offense: 13  
28 years in prison and \$60,000 or such larger amount as is  
29 sufficient to exhaust the assets utilized in and the  
30 proceeds from the illegal activity.

1           (4) A person who is convicted of violating section 13(a)  
2           (14), (30) or (37) of The Controlled Substance, Drug, Device  
3           and Cosmetic Act where the controlled substance is  
4           methamphetamine or phencyclidine or is a salt, isomer or salt  
5           of an isomer of methamphetamine or phencyclidine or is a  
6           mixture containing methamphetamine or phencyclidine,  
7           containing a salt of methamphetamine or phencyclidine,  
8           containing an isomer of methamphetamine or phencyclidine,  
9           containing a salt of an isomer of methamphetamine or  
10          phencyclidine shall, upon conviction, be sentenced to a  
11          mandatory minimum term of imprisonment and a fine as set  
12          forth in this subsection:

13                 (i) when the aggregate weight of the compound or  
14                 mixture containing the substance involved is at least  
15                 five grams and less than ten grams; three years in prison  
16                 and a fine of \$15,000 or such larger amount as is  
17                 sufficient to exhaust the assets utilized in and the  
18                 proceeds from the illegal activity; however, if at the  
19                 time of sentencing the defendant has been convicted of  
20                 another drug trafficking offense: five years in prison  
21                 and \$30,000 or such larger amount as is sufficient to  
22                 exhaust the assets utilized in and the proceeds from the  
23                 illegal activity;

24                 (ii) when the aggregate weight of the compound or  
25                 mixture containing the substance involved is at least ten  
26                 grams and less than 100 grams; [four] five years in  
27                 prison and a fine of \$25,000 or such larger amount as is  
28                 sufficient to exhaust the assets utilized in and the  
29                 proceeds from the illegal activity; however, if at the  
30                 time of sentencing the defendant has been convicted of

1 another drug trafficking offense: seven years in prison  
2 and \$50,000 or such larger amount as is sufficient to  
3 exhaust the assets utilized in and the proceeds from the  
4 illegal activity; [and]

5 (iii) when the aggregate weight of the compound or  
6 mixture containing the substance involved is at least 100  
7 grams[; five] and less than 500 grams; seven years in  
8 prison and a fine of \$50,000 or such larger amount as is  
9 sufficient to exhaust the assets utilized in and the  
10 proceeds from the illegal activity; however, if at the  
11 time of sentencing the defendant has been convicted of  
12 another drug trafficking offense: [eight] ten years in  
13 prison and [~~\$50,000~~] \$60,000 or such larger amount as is  
14 sufficient to exhaust the assets utilized in and the  
15 proceeds from the illegal activity[.]; and

16 (iv) when the aggregate weight of the compound or  
17 mixture of the substance involved is 500 grams or  
18 greater; ten years in prison and a fine of \$60,000 or  
19 such larger amount as is sufficient to exhaust the assets  
20 utilized in and the proceeds from the illegal activity;  
21 however, if at the time of sentencing the defendant has  
22 been convicted of another drug trafficking offense: 13  
23 years in prison and \$70,000 or such larger amount as is  
24 sufficient to exhaust the assets utilized in and the  
25 proceeds from the illegal activity.

26 (5) A person who is convicted of violating section 13(a)  
27 (14), (30) or (37) of The Controlled Substance, Drug, Device  
28 and Cosmetic Act, and who, in the course of the offense,  
29 manufactures, delivers, brings into this Commonwealth or  
30 possesses with intent to manufacture or deliver amphetamine

1 or any salt, optical isomer, or salt of an optical isomer, or  
2 a mixture containing any such substances shall, when the  
3 aggregate weight of the compound or mixture containing the  
4 substance involved is at least five grams, be sentenced to  
5 two and one-half years in prison and a fine of \$15,000 or  
6 such larger amount as is sufficient to exhaust the assets  
7 utilized in and the proceeds from the illegal activity;  
8 however, if at the time of sentencing the defendant has been  
9 convicted of another drug trafficking offense: be sentenced  
10 to five years in prison and \$30,000 or such larger amount as  
11 is sufficient to exhaust the assets utilized in and the  
12 proceeds from the illegal activity.

13 (6) A person who is convicted of violating section 13(a)  
14 (14), (30) or (37) of The Controlled Substance, Drug, Device  
15 and Cosmetic Act where the controlled substance is  
16 methaqualone shall, upon conviction, be sentenced to a  
17 mandatory minimum term of imprisonment and a fine as set  
18 forth in this subsection:

19 (i) when the aggregate weight of the compound or  
20 mixture containing the substance involved is at least 50  
21 tablets, capsules, caplets or other dosage units, or 25  
22 grams and less than 200 tablets, capsules, caplets or  
23 other dosage units, or 100 grams; one year in prison and  
24 a fine of \$2,500 or such larger amount as is sufficient  
25 to exhaust the assets utilized in and the proceeds from  
26 the illegal activity; however, if at the time of  
27 sentencing the defendant has been convicted of another  
28 drug trafficking offense: three years in prison and  
29 \$5,000 or such larger amount as is sufficient to exhaust  
30 the assets utilized in and the proceeds from the illegal



1 activity; and

2 (ii) when the aggregate weight of the compound or  
3 mixture containing the substance involved is at least 200  
4 tablets, capsules, caplets or other dosage units, or more  
5 than 100 grams; two and one-half years in prison and a  
6 fine of \$15,000 or such larger amount as is sufficient to  
7 exhaust the assets utilized in and the proceeds from the  
8 illegal activity; however, if at the time of sentencing  
9 the defendant has been convicted of another drug  
10 trafficking offense: five years in prison and \$30,000 or  
11 such larger amount as is sufficient to exhaust the assets  
12 utilized in and the proceeds from the illegal activity.

13 (7) A person who is convicted of violating section 13(a)  
14 (14), (30) or (37) of The Controlled Substance, Drug, Device  
15 and Cosmetic Act where the controlled substance or a mixture  
16 containing it is heroin shall, upon conviction, be sentenced  
17 as set forth in this paragraph:

18 (i) when the aggregate weight of the compound or  
19 mixture containing the heroin involved is at least 1.0  
20 gram but less than 5.0 grams the sentence shall be a  
21 mandatory minimum term of two years in prison and a fine  
22 of \$5,000 or such larger amount as is sufficient to  
23 exhaust the assets utilized in and the proceeds from the  
24 illegal activity; however, if at the time of sentencing  
25 the defendant has been convicted of another drug  
26 trafficking offense: a mandatory minimum term of three  
27 years in prison and \$10,000 or such larger amount as is  
28 sufficient to exhaust the assets utilized in and the  
29 proceeds from the illegal activity;

30 (ii) when the aggregate weight of the compound or

1 mixture containing the heroin involved is at least 5.0  
2 grams but less than 50 grams: a mandatory minimum term of  
3 [three] five years in prison 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 however, if at the time of sentencing the defendant has  
7 been convicted of another drug trafficking offense: a  
8 mandatory minimum term of [five] seven years in prison  
9 and \$30,000 or such larger amount as is sufficient to  
10 exhaust the assets utilized in and the proceeds from the  
11 illegal activity; [and]

12 (iii) when the aggregate weight of the compound or  
13 mixture containing the heroin involved is [50 grams or  
14 greater] at least 50 grams but less than 100 grams: a  
15 mandatory minimum term of [five] seven years in prison  
16 and a fine of [\$25,000] \$30,000 or such larger amount as  
17 is sufficient to exhaust the assets utilized in and the  
18 proceeds from the illegal activity; however, if at the  
19 time of sentencing the defendant has been convicted of  
20 another drug trafficking offense: a mandatory minimum  
21 term of [seven] ten years in prison and \$50,000 or such  
22 larger amount as is sufficient to exhaust the assets  
23 utilized in and the proceeds from the illegal  
24 activity[.]; and

25 (iv) when the aggregate weight of the compound or  
26 mixture containing the heroin is 100 grams or greater:  
27 ten years in prison and a fine of \$50,000 or such larger  
28 amount as is sufficient to exhaust the assets utilized in  
29 and the proceeds from the illegal activity; however, if  
30 at the time of sentencing the defendant has been

1 convicted of another drug trafficking offense: 13 years  
2 in prison and \$60,000 or such larger amount as is  
3 sufficient to exhaust the assets utilized in and the  
4 proceeds from the illegal activity.

5 (8) A person who is convicted of violating section 13(a)  
6 (12), (14) or (30) of The Controlled Substance, Drug, Device  
7 and Cosmetic Act where the controlled substance or a mixture  
8 containing it is 3,4-methylenedioxyamphetamine (MDA); 3,4-  
9 methylenedioxymethamphetamine (MDMA); 5-methoxy-3,4-  
10 methylenedioxyamphetamine (MMDA); 3,4-methylenedioxy-N-  
11 ethylamphetamine; N-hydroxy-3,4-methylenedioxyamphetamine; or  
12 their salts, isomers and salts of isomers, whenever the  
13 existence of such salts, isomers and salts of isomers is  
14 possible within the specific chemical designation, shall,  
15 upon conviction, be sentenced as set forth in this paragraph:

16 (i) When the aggregate weight of the compound or  
17 mixture containing the substance involved is at least 50  
18 tablets, capsules, caplets or other dosage units, or 15  
19 grams and less than 100 tablets, capsules, caplets or  
20 other dosage units, or less than 30 grams, the person is  
21 guilty of a felony and, upon conviction thereof, shall be  
22 sentenced to imprisonment not exceeding five years or to  
23 pay a fine not exceeding \$15,000, or both.

24 (ii) When the aggregate weight of the compound or  
25 mixture containing the substance involved is at least 100  
26 tablets, capsules, caplets or other dosage units, or 30  
27 grams and less than 1,000 tablets, capsules, caplets or  
28 other dosage units, or less than 300 grams, the person is  
29 guilty of a felony and, upon conviction thereof, shall be  
30 sentenced to imprisonment not exceeding ten years or to

1 pay a fine not exceeding \$100,000, or both.

2 (iii) When the aggregate weight of the compound or  
3 mixture containing the substance involved is at least  
4 1,000 tablets, capsules, caplets or other dosage units,  
5 or 300 grams, the person is guilty of a felony and, upon  
6 conviction thereof, shall be sentenced to imprisonment  
7 not exceeding 15 years or to pay a fine not exceeding  
8 \$250,000, or both.

9 (a.1) Previous conviction.--For purposes of this section, it  
10 shall be deemed that a defendant has been convicted of another  
11 drug trafficking offense when the defendant has been convicted  
12 of another offense under section 13(a)(14), (30) or (37) of The  
13 Controlled Substance, Drug, Device and Cosmetic Act, or of a  
14 similar offense under any statute of any state or the United  
15 States, whether or not judgment of sentence has been imposed  
16 concerning that offense.

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

28 Application of mandatory minimum penalty.--Any provision of this  
29 section that requires imposition of a mandatory minimum sentence  
30 shall constitute an element enhancing the underlying offense.

1 Any enhancing element must be proven beyond a reasonable doubt  
2 at 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 (c) Mandatory sentencing.--There shall be no authority in  
8 any court to impose on an offender to which this section is  
9 applicable a lesser sentence than provided for herein or to  
10 place the offender on probation, parole or work release or to  
11 suspend sentence. Nothing in this section shall prevent the  
12 sentencing court from imposing a sentence greater than provided  
13 herein. Sentencing guidelines promulgated by the Pennsylvania  
14 Commission on Sentencing shall not supersede the mandatory  
15 sentences provided herein. Disposition under section 17 or 18 of  
16 The Controlled Substance, Drug, Device and Cosmetic Act shall  
17 not be available to a defendant to which this section applies.

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

1 (e) Forfeiture.--Assets against which a forfeiture petition  
2 has been filed and is pending or against which the Commonwealth  
3 has indicated an intention to file a forfeiture petition shall  
4 not be subject to a fine. Nothing in this section shall prevent  
5 a fine from being imposed on assets which have been subject to  
6 an unsuccessful forfeiture petition.

7 (f) Growing plants.--When the controlled substance is  
8 marijuana in the form of growing plants and the number of plants  
9 is nine or less, weighing may be accomplished by law enforcement  
10 officials utilizing any certified scale convenient to the place  
11 of arrest for the purpose of determining the weight of the  
12 growing marijuana plant. The aggregate weight of the plant is to  
13 include the whole plant including the root system if possible.  
14 The weight is not to include any substance not a part of the  
15 growing plant.

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