
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1851 Session of
2019

INTRODUCED BY STEPHENS, QUINN, BERNSTINE, ROTHMAN, MILLARD,
BURNS, READSHAW, MOUL, SCHWEYER AND DeLUCA,
SEPTEMBER 19, 2019

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 19, 2019

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, in sentencing, further
3 providing for sentences for offenses committed with firearms
4 and for sentences for second and subsequent offenses.

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

7 Section 1. Section 9712(a), (b) and (d) of Title 42 of the
8 Pennsylvania Consolidated Statutes are amended and the section
9 is amended by adding a subsection to read:

10 § 9712. Sentences for offenses committed with firearms.

11 (a) Mandatory sentence.--Except as provided under section
12 9716 (relating to two or more mandatory minimum sentences
13 applicable), any person who is convicted in any court of this
14 Commonwealth of a crime of violence as defined in section
15 9714(g) (relating to sentences for second and subsequent
16 offenses), shall, if the person [visibly] possessed a firearm
17 [or] during the commission of the offense, regardless of whether
18 the firearm was loaded or functional, or the person visibly

1 possessed a replica of a firearm[, whether or not the firearm or
2 replica was loaded or functional,] that placed the victim in
3 reasonable fear of death or serious bodily injury, during the
4 commission of the offense, be sentenced to a minimum sentence of
5 at least five years of total confinement notwithstanding any
6 other provision of this title or other statute to the contrary.
7 Such persons shall not be eligible for parole, probation, work
8 release or furlough.

9 [(b) Proof at sentencing.--Provisions of this section shall
10 not be an element of the crime and notice thereof to the
11 defendant shall not be required prior to conviction, but
12 reasonable notice of the Commonwealth's intention to proceed
13 under this section shall be provided after conviction and before
14 sentencing. The applicability of this section shall be
15 determined at sentencing. The court shall consider any evidence
16 presented at trial and shall afford the Commonwealth and the
17 defendant an opportunity to present any necessary additional
18 evidence and shall determine, by a preponderance of the
19 evidence, if this section is applicable.]

20 (b.1) Application of mandatory minimum penalty.--Any
21 provision of this section that requires imposition of a
22 mandatory minimum sentence shall constitute an element enhancing
23 the underlying offense. Any enhancing element must be proven
24 beyond a reasonable doubt at trial on the underlying offense and
25 must be submitted to the finder of fact for deliberation
26 together with the underlying offense. If the finder of fact
27 finds the defendant guilty of the underlying offense, the finder
28 of fact shall then also decide whether any enhancing element has
29 been proven.

30 * * *

1 (d) Appeal by Commonwealth.--[If a sentencing court refuses
2 to apply this section where applicable, the Commonwealth shall
3 have the right to appellate review of the action of the
4 sentencing court. The appellate court shall vacate the sentence
5 and remand the case to the sentencing court for imposition of a
6 sentence in accordance with this section if it finds that the
7 sentence was imposed in violation of this section.] If the
8 finder of fact has found any enhancing element and a sentencing
9 court imposes a sentence below the mandatory minimum sentence,
10 the Commonwealth shall have the right to appellate review of the
11 sentence. If the appellate court finds that the mandatory
12 sentencing provision was applicable, the court shall vacate the
13 sentence and remand the case for resentencing in accordance with
14 that provision.

15 * * *

16 Section 2. Section 9714(g) of Title 42 is amended to read:
17 § 9714. Sentences for second and subsequent offenses.

18 * * *

19 (g) Definition.--As used in this section, the term "crime of
20 violence" means murder of the third degree, voluntary
21 manslaughter, manslaughter of a law enforcement officer as
22 defined in 18 Pa.C.S. § 2507(c) or (d) (relating to criminal
23 homicide of law enforcement officer), murder of the third degree
24 involving an unborn child as defined in 18 Pa.C.S. § 2604(c)
25 (relating to murder of unborn child), aggravated assault of an
26 unborn child as defined in 18 Pa.C.S. § 2606 (relating to
27 aggravated assault of unborn child), aggravated assault as
28 defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to
29 aggravated assault), assault of law enforcement officer as
30 defined in 18 Pa.C.S. § 2702.1 (relating to assault of law

1 enforcement officer), use of weapons of mass destruction as
2 defined in 18 Pa.C.S. § 2716(b) (relating to weapons of mass
3 destruction), terrorism as defined in 18 Pa.C.S. § 2717(b) (2)
4 (relating to terrorism), trafficking of persons when the offense
5 is graded as a felony of the first degree as provided in 18
6 Pa.C.S. § 3002 (relating to trafficking of persons), rape,
7 involuntary deviate sexual intercourse, aggravated indecent
8 assault, incest, sexual assault, arson endangering persons or
9 aggravated arson as defined in 18 Pa.C.S. § 3301(a) or (a.1)
10 (relating to arson and related offenses), ecoterrorism as
11 classified in 18 Pa.C.S. § 3311(b) (3) (relating to
12 ecoterrorism), kidnapping, burglary as defined in 18 Pa.C.S. §
13 3502(a) (1) (relating to burglary), robbery as defined in 18
14 Pa.C.S. § 3701(a) (1) (i), (ii) or (iii) (relating to robbery), or
15 robbery of a motor vehicle, drug delivery resulting in death as
16 defined in 18 Pa.C.S. § 2506(a) (relating to drug delivery
17 resulting in death), possession, use, manufacture, control, sale
18 or transfer of firearms as defined in 18 Pa.C.S. § 6105(a)
19 (relating to persons not to possess, use, manufacture, control,
20 sell or transfer firearms) by a person convicted of a felony
21 enumerated under 18 Pa.C.S. § 6105(b) or a felony under the act
22 of April 14, 1972 (P.L.233, No.64), known as The Controlled
23 Substance, Drug, Device and Cosmetic Act, or any equivalent
24 Federal statute or equivalent statute of any other state
25 punishable by a term of imprisonment exceeding two years, or
26 criminal attempt, criminal conspiracy or criminal solicitation
27 to commit murder or any of the offenses listed above, or an
28 equivalent crime under the laws of this Commonwealth in effect
29 at the time of the commission of that offense or an equivalent
30 crime in another jurisdiction.

1 Section 3. This act shall take effect in 60 days.