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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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SENATE BILL

No. 541 Session of  
2021

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INTRODUCED BY REGAN, PHILLIPS-HILL, MARTIN, HUTCHINSON,  
LANGERHOLC, SCAVELLO, MENSCH, J. WARD, ARGALL, YAW, STEFANO,  
BROOKS AND TARTAGLIONE, APRIL 9, 2021

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REFERRED TO JUDICIARY, APRIL 9, 2021

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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(b) and (d) of Title 18 of the  
7 Pennsylvania Consolidated Statutes are amended and subsection  
8 (a) is amended by adding a paragraph 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 \* \* \*

14 (9) A person who is convicted of violating section 13(a)  
15 (14), (30) or (37) of The Controlled Substance, Drug, Device  
16 and Cosmetic Act where the controlled substance or a mixture  
17 containing the controlled substance is fentanyl or a fentanyl  
18 derivative, compound or analogue as set forth in section 4(1)

1 (ii) (23) or (2) (ii) (6) of The Controlled Substance, Drug,  
2 Device and Cosmetic Act shall, upon conviction, be sentenced  
3 to a mandatory minimum term of imprisonment and a fine as set  
4 forth in this paragraph:

5 (i) when the aggregate weight of the compound or  
6 mixture containing the fentanyl or fentanyl derivative,  
7 compound or analogue involved is less than 1.0 gram; two  
8 years in prison and a fine of \$5,000 or such larger  
9 amount as is sufficient to exhaust the assets utilized in  
10 and the proceeds from the illegal activity; however, if  
11 at the time of sentencing the defendant has been  
12 convicted of another drug trafficking offense: 36 months  
13 in prison and a fine of \$10,000 or such larger amount as  
14 is sufficient to exhaust the assets utilized in and the  
15 proceeds from the illegal activity;

16 (ii) when the aggregate weight of the compound or  
17 mixture containing the fentanyl or fentanyl derivative,  
18 compound or analogue involved is at least 1.0 gram but  
19 less than ten grams; three years in prison and a fine of  
20 \$15,000 or such larger amount as is sufficient to exhaust  
21 the assets utilized in and the proceeds from the illegal  
22 activity; however, if at the time of sentencing the  
23 defendant has been convicted of another drug trafficking  
24 offense: 48 months in prison and a fine of \$30,000 or  
25 such larger amount as is sufficient to exhaust the assets  
26 utilized in and the proceeds from the illegal activity;

27 (iii) when the aggregate weight of the compound or  
28 mixture containing the fentanyl or fentanyl derivative,  
29 compound or analogue involved is at least ten grams but  
30 less than 50 grams; 54 months in prison and a fine of

1 \$25,000 or such larger amount as is sufficient to exhaust  
2 the assets utilized in and the proceeds from the illegal  
3 activity; however, if at the time of sentencing the  
4 defendant has been convicted of another drug trafficking  
5 offense: 66 months in prison and a fine of \$50,000 or  
6 such larger amount as is sufficient to exhaust the assets  
7 utilized in and the proceeds from the illegal activity;

8 (iv) when the aggregate weight of the compound or  
9 mixture containing the fentanyl or fentanyl derivative,  
10 compound or analogue involved is at least 50 grams but  
11 less than 100 grams; 78 months in prison and a fine of  
12 \$25,000 or such larger amount as is sufficient to exhaust  
13 the assets utilized in and the proceeds from the illegal  
14 activity; however, if at the time of sentencing the  
15 defendant has been convicted of another drug trafficking  
16 offense: 90 months in prison and a fine of \$50,000 or  
17 such larger amount as is sufficient to exhaust the assets  
18 utilized in and the proceeds from the illegal activity;  
19 or

20 (v) when the aggregate weight of the compound or  
21 mixture containing the fentanyl or fentanyl derivative,  
22 compound or analogue involved is at least 100 grams; 96  
23 months in prison and a fine of \$25,000 or such larger  
24 amount as is sufficient to exhaust the assets utilized in  
25 and the proceeds from the illegal activity; however, if  
26 at the time of sentencing the defendant has been  
27 convicted of another drug trafficking offense: 108 months  
28 in prison and a fine of \$50,000 or such larger amount as  
29 is sufficient to exhaust the assets utilized in and the  
30 proceeds from the illegal activity.

1 \* \* \*

2 (b) [Proof of sentencing.--Provisions of this section shall  
3 not be an element of the crime. Notice of the applicability of  
4 this section to the defendant shall not be required prior to  
5 conviction, but reasonable notice of the Commonwealth's  
6 intention to proceed under this section shall be provided after  
7 conviction and before sentencing. The applicability of this  
8 section shall be determined at sentencing. The court shall  
9 consider evidence presented at trial, shall afford the  
10 Commonwealth and the defendant an opportunity to present  
11 necessary additional evidence and shall determine, by a  
12 preponderance of the evidence, if this section is applicable.]

13 Application of mandatory minimum penalty.--With the exception of  
14 prior convictions, any provision of this section that requires  
15 imposition of a mandatory minimum sentence shall constitute an  
16 element enhancing the underlying offense. Any enhancing element  
17 must be proven beyond a reasonable doubt at trial on the  
18 underlying offense and must be submitted to the finder of fact  
19 for deliberation together with the underlying offense. If the  
20 finder of fact finds the defendant guilty of the underlying  
21 offense, the finder of fact shall then also decide whether any  
22 enhancing element has been proven.

23 \* \* \*

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

1 If the finder of fact has found any enhancing element and a  
2 sentencing court imposes a sentence below the mandatory minimum  
3 sentence, the Commonwealth shall have the right to appellate  
4 review of the sentence. If the appellate court finds that the  
5 mandatory sentencing provision was applicable, the court shall  
6 vacate the sentence and remand the case for resentencing in  
7 accordance with that provision.

8 \* \* \*

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