

Veto No. 1992-9

HB 713

December 18, 1992

To the Honorable, the House of Representatives
of the Commonwealth of Pennsylvania:

I hereby publicly proclaim, and file with the Secretary of the Commonwealth, my disapproval of House Bill 713, Printer's No.4255, entitled "An act amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for a prohibited offensive weapons exemption for liquor control enforcement officers; prohibiting the possession of a firearm or other dangerous weapon in a court facility; further providing for use of force in protecting property, for competency of witnesses, for sentencing for first degree murder and for sentencing for offenses committed with firearms; and providing for sentencing for robbery of cars."

House Bill 713 contains a number of significant revisions to the Crimes Code and the sentencing laws of the Commonwealth. Among those changes are several provisions which attempt to respond to the recent criminal trend of "car-jacking" and to impose mandatory minimum prison terms for those convicted of the offense. Under this bill, any person who commits robbery where the property taken was an occupied motor vehicle will receive a mandatory minimum prison sentence of at least five years. If an occupant of the motor vehicle was physically injured, in any way, the defendant will receive an additional five years in prison. Only after serving the minimum ten-year term will the person be eligible for parole.

These mandatory minimum terms would apply to all grades of robbery. Currently, the lowest degree of robbery is that committed "by force however slight." This offense carries a maximum of just seven years. It is unclear whether the General Assembly intended to increase the maximum term, as well as the minimum, where the offense involved an occupied motor vehicle. Current law requires that the minimum term of imprisonment cannot exceed one-half of the maximum term provided for the offense. House Bill 713 would create a conflict with current law that would be resolved by the courts in one of at least three possible ways. A court could conclude that the General Assembly intended to increase the maximum term to at least twice the new minimum. In that event, the maximum term for some robbery offenses would go from seven to ten years and even up to 20 years in those cases where someone is injured. Another possibility is that a court would find no clear legislative intent to increase the maximum term. In that event, the court would choose whether to apply the new minimum term, and to ignore the rule against minimums exceeding one-half the maximum, or vice versa.

House Bill 713 also creates a separate five-year mandatory minimum term if the car-jacker visibly possessed a firearm during the commission of the offense. Since the bill does not establish a separate crime, but only a separate

penalty where the offense was committed with a firearm, it would appear that the five-year minimum terms are cumulative. In other words, a person who commits car-jacking will get a minimum of five years for the basic offense, plus five years if someone was injured even slightly, plus five years for displaying a firearm. And, again, depending upon how the bill is interpreted, that person could receive a maximum of thirty years in prison for a crime that at the low end currently carries a maximum of just seven years.

I believe this result is completely disproportionate to the sentencing scheme that exists in statute as well as through the guidelines of the Pennsylvania Commission on Sentencing. Without question, car-jacking has become a very serious threat to the safety of motorists, especially in urban areas of the Commonwealth. On the other hand, there is no evidence to suggest that a penalty of this magnitude will deter would-be car-jackers any more than the current penalties applicable to felony robbery. Current law already mandates a State prison term of at least five years for most robberies committed with a firearm, regardless of whether the property taken was a car. The current definitions of robbery and kidnapping are sufficient to convict any defendant who might have been prosecuted under this bill if it became law.

Another major flaw in House Bill 713 is that it would actually remove the authority for mandatory sentences for robbery committed with a firearm under existing law, *unless* the offense involved a motor vehicle. While I doubt whether the General Assembly intended to limit the scope of the firearm mandatory sentence to car-jackers only and to lessen the penalty for all other armed robberies, the language used in House Bill 713 clearly leads to those results.

House Bill 713 also amends the Crimes Code to permit the use of deadly force against car-jackers. Current law provides a legal justification for the use of deadly force to protect oneself against death, serious bodily injury, kidnapping or rape. Deadly force is also justifiable in some situations where there has been an unlawful entry into one's home, usually a burglar. House Bill 713 substantially expands the law in the area to permit the use of deadly force whenever a motorist believes he is about to become the victim of a car-jacking. There is no requirement that the perpetrator threaten any injury to the motorist, *only* that the motorist needs to use deadly force to keep the car-jacker from taking his car.

I am persuaded by the letter I received from State Police Commissioner Glenn Walp requesting my veto of House Bill 713. Commissioner Walp correctly points out that the provision on use of deadly force is so ambiguous and subjective that it would likely result in unnecessary injuries and deaths. For that reason, and because of all the defects in the mandatory sentencing provisions discussed above, I am withholding my signature from this bill.

Unfortunately, there are a number of other provisions in House Bill 713 to which I have no objection and which I will sign if enacted by the General Assembly. These include new criminal penalties for possession of firearms in court facilities, allowing liquor control enforcement officers to carry black-

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jacks with appropriate training and allowing persons with criminal records to testify in criminal proceedings.

ROBERT P. CASEY