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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 741 Session of  
2017

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INTRODUCED BY STEPHENS, MCGINNIS, BARRAR, MILLARD, BAKER,  
QUIGLEY, D. COSTA, MARSICO AND WHEELAND, MARCH 7, 2017

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REFERRED TO COMMITTEE ON JUDICIARY, MARCH 7, 2017

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AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and  
2 Judicial Procedure) of the Pennsylvania Consolidated  
3 Statutes, in minors, further providing for sentencing and  
4 penalties for trafficking drugs to minors and for drug-free  
5 school zones; in other offenses, further providing for drug  
6 trafficking sentencing and penalties; and, in sentencing,  
7 further providing for sentences for offenses committed with  
8 firearms, for sentences for certain drug offenses committed  
9 with firearms, for sentences for offenses committed on public  
10 transportation, for sentences for offenses against elderly  
11 persons, for sentences for offenses against infant persons,  
12 for sentence for failure to comply with registration of  
13 sexual offenders and for sentences for offenses committed  
14 while impersonating a law enforcement officer.

15 The General Assembly of the Commonwealth of Pennsylvania  
16 hereby enacts as follows:

17 Section 1. Sections 6314, 6317 and 7508(a), (b) and (d) of  
18 Title 18 of the Pennsylvania Consolidated Statutes are amended  
19 to read:

20 § 6314. Sentencing and penalties for trafficking drugs to  
21 minors.

22 (a) General rule.--A person over 18 years of age who is  
23 convicted in any court of this Commonwealth of a violation of  
24 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,

1 No.64), known as The Controlled Substance, Drug, Device and  
2 Cosmetic Act, shall, if the delivery or possession with intent  
3 to deliver of the controlled substance was to a minor, be  
4 sentenced to a minimum sentence of at least one year total  
5 confinement, notwithstanding any other provision of this title  
6 or other statute to the contrary.

7 (b) Additional penalties.--In addition to the mandatory  
8 minimum sentence set forth in subsection (a), the person shall  
9 be sentenced to an additional minimum sentence of at least two  
10 years total confinement, notwithstanding any other provision of  
11 this title or other statute to the contrary, if the person did  
12 any of the following:

13 (1) Committed the offense with the intent to promote the  
14 habitual use of the controlled substance.

15 (2) Intended to engage the minor in the trafficking,  
16 transportation, delivery, manufacturing, sale or conveyance.

17 (3) Committed the offense within 1,000 feet of the real  
18 property on which is located a public, private or parochial  
19 school or a college or university.

20 (4) Committed the offense on a school bus or within 500  
21 feet of a school bus stop.

22 (c) [Proof at sentencing.--The provisions of this section  
23 shall not be an element of the crime. Notice of the  
24 applicability of this section to the defendant shall not be  
25 required prior to conviction, but reasonable notice of the  
26 Commonwealth's intention to proceed under this section shall be  
27 provided after conviction and before sentencing. The  
28 applicability of this section shall be determined at sentencing.  
29 The court shall consider evidence presented at trial, shall  
30 afford the Commonwealth and the defendant an opportunity to

1 present necessary additional evidence, and shall determine, by a  
2 preponderance of the evidence, if this section is applicable.]  
3 Application of mandatory minimum penalty.--Any provision of this  
4 section that requires imposition of a mandatory minimum sentence  
5 shall constitute an element enhancing the underlying offense.  
6 Any enhancing element must be proven beyond a reasonable doubt  
7 at trial on the underlying offense and must be submitted to the  
8 fact-finder for deliberation together with the underlying  
9 offense. If the fact-finder finds the defendant guilty of the  
10 underlying offense, the fact-finder shall then also decide  
11 whether any enhancing element has been proven.

12 (d) Authority of court in sentencing.--There shall be no  
13 authority for a court to impose on a defendant to which this  
14 section is applicable a lesser sentence than provided for in  
15 [subsection (a)] subsections (a) and (b), to place the defendant  
16 on probation or to suspend sentence. Nothing in this section  
17 shall prevent the sentencing court from imposing a sentence  
18 greater than that provided in this section. Sentencing  
19 guidelines promulgated by the Pennsylvania Commission on  
20 Sentencing shall not supersede the mandatory sentences provided  
21 in this section. Disposition under section 17 or 18 of The  
22 Controlled Substance, Drug, Device and Cosmetic Act shall not be  
23 available to a defendant to which this section applies.

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

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

8 (f) Forfeiture.--Assets against which a forfeiture petition  
9 has been filed and is pending or against which the Commonwealth  
10 has indicated an intention to file a forfeiture petition shall  
11 not be subject to a fine under this section.

12 (g) Definition.--As used in this section, the term "minor"  
13 means an individual under 18 years of age.

14 § 6317. Drug-free school zones.

15 (a) General rule.--A person 18 years of age or older who is  
16 convicted in any court of this Commonwealth of a violation of  
17 section 13(a)(14) or (30) of the act of April 14, 1972 (P.L.233,  
18 No.64), known as The Controlled Substance, Drug, Device and  
19 Cosmetic Act, shall, if the delivery or possession with intent  
20 to deliver of the controlled substance occurred within 1,000  
21 feet of the real property on which is located a public, private  
22 or parochial school or a college or university or within 250  
23 feet of the real property on which is located a recreation  
24 center or playground or on a school bus, be sentenced to a  
25 minimum sentence of at least two years of total confinement,  
26 notwithstanding any other provision of this title, The  
27 Controlled Substance, Drug, Device and Cosmetic Act or other  
28 statute to the contrary. The maximum term of imprisonment shall  
29 be four years for any offense:

30 (1) subject to this section; and

1           (2) for which The Controlled Substance, Drug, Device and  
2       Cosmetic Act provides for a maximum term of imprisonment of  
3       less than four years.

4       If the sentencing court finds that the delivery or possession  
5       with intent to deliver was to an individual under 18 years of  
6       age, then this section shall not be applicable and the offense  
7       shall be subject to section 6314 (relating to sentencing and  
8       penalties for trafficking drugs to minors).

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

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

29      (c) Authority of court in sentencing.--There shall be no  
30      authority for a court to impose on a defendant to which this

1 section is applicable a lesser sentence than provided for in  
2 subsection (a), to place the defendant on probation or to  
3 suspend sentence. Nothing in this section shall prevent the  
4 sentencing court from imposing a sentence greater than that  
5 provided in this section. Sentencing guidelines promulgated by  
6 the Pennsylvania Commission on Sentencing shall not supersede  
7 the mandatory sentences provided in this section. Disposition  
8 under section 17 or 18 of The Controlled Substance, Drug, Device  
9 and Cosmetic Act shall not be available to a defendant to which  
10 this section applies.

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

25 § 7508. Drug trafficking sentencing and penalties.

26 (a) General rule.--Notwithstanding any other provisions of  
27 this or any other act to the contrary, the following provisions  
28 shall apply:

29 (1) A person who is convicted of violating section 13(a)  
30 (14), (30) or (37) of the act of April 14, 1972 (P.L.233,

1 No.64), known as The Controlled Substance, Drug, Device and  
2 Cosmetic Act, where the controlled substance is marijuana  
3 shall, upon conviction, be sentenced to a mandatory minimum  
4 term of imprisonment and a fine as set forth in this  
5 subsection:

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

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

28 (iii) when the amount of marijuana involved is at  
29 least 50 pounds, or at least 51 live plants; [five] three  
30 years in prison and a fine of \$50,000 or such larger

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

8 (2) A person who is convicted of violating section 13(a)  
9 (14), (30) or (37) of The Controlled Substance, Drug, Device  
10 and Cosmetic Act where the controlled substance or a mixture  
11 containing it is classified in Schedule I or Schedule II  
12 under section 4 of that act and is a narcotic drug shall,  
13 upon conviction, be sentenced to a mandatory minimum term of  
14 imprisonment and a fine as set forth in this subsection:

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

25 (ii) when the aggregate weight of the compound or  
26 mixture containing the substance involved is at least ten  
27 grams and less than 100 grams; three years in prison and  
28 a fine of \$15,000 or such larger amount as is sufficient  
29 to exhaust the assets utilized in and the proceeds from  
30 the illegal activity; however, if at the time of

1 sentencing the defendant has been convicted of another  
2 drug trafficking offense: five years in prison and  
3 \$30,000 or such larger amount as is sufficient to exhaust  
4 the assets utilized in and the proceeds from the illegal  
5 activity; and

6 (iii) when the aggregate weight of the compound or  
7 mixture containing the substance involved is at least 100  
8 grams; five years in prison and a fine of \$25,000 or such  
9 larger amount as is sufficient to exhaust the assets  
10 utilized in and the proceeds from the illegal activity;  
11 however, if at the time of sentencing the defendant has  
12 been convicted of another drug trafficking offense: seven  
13 years in prison and \$50,000 or such larger amount as is  
14 sufficient to exhaust the assets utilized in and the  
15 proceeds from the illegal activity.

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

28 (i) when the aggregate weight of the compound or  
29 mixture containing the substance involved is at least  
30 [2.0] 5.0 grams and less than [ten] 25 grams; one year in

1 prison and a fine of \$5,000 or such larger amount as is  
2 sufficient to exhaust the assets utilized in and the  
3 proceeds from the illegal activity; however, if at the  
4 time of sentencing the defendant has been convicted of  
5 another drug trafficking offense: [three] two years in  
6 prison and \$10,000 or such larger amount as is sufficient  
7 to exhaust the assets utilized in and the proceeds from  
8 the illegal activity;

9 (ii) when the aggregate weight of the compound or  
10 mixture containing the substance involved is at least  
11 [ten] 25 grams and less than 100 grams; [three] two years  
12 in prison and a fine of \$15,000 or such larger amount as  
13 is 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: [five] four years in  
17 prison and \$30,000 or such larger amount as is sufficient  
18 to exhaust the assets utilized in and the proceeds from  
19 the illegal activity; and

20 (iii) when the aggregate weight of the compound or  
21 mixture of the substance involved is at least 100 grams;  
22 four years in prison and a fine of \$25,000 or such larger  
23 amount as is sufficient to exhaust the assets utilized in  
24 and the proceeds from the illegal activity; however, if  
25 at the time of sentencing the defendant has been  
26 convicted of another drug trafficking offense: [seven]  
27 eight years in prison and \$50,000 or such larger amount  
28 as is sufficient to exhaust the assets utilized in and  
29 the proceeds from the illegal activity.

30 (4) A person who is convicted of violating section 13(a)

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

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

23 (ii) when the aggregate weight of the compound or  
24 mixture containing the substance involved is at least ten  
25 grams and less than 100 grams; four years in prison and a  
26 fine of \$25,000 or such larger amount as is sufficient to  
27 exhaust the assets utilized in and the proceeds from the  
28 illegal activity; however, if at the time of sentencing  
29 the defendant has been convicted of another drug  
30 trafficking offense: seven years in prison and \$50,000 or

1 such larger amount as is sufficient to exhaust the assets  
2 utilized in and the proceeds from the illegal activity;  
3 and

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

14 [(5) A person who is convicted of violating section  
15 13(a)(14), (30) or (37) of The Controlled Substance, Drug,  
16 Device and Cosmetic Act, and who, in the course of the  
17 offense, manufactures, delivers, brings into this  
18 Commonwealth or possesses with intent to manufacture or  
19 deliver amphetamine or any salt, optical isomer, or salt of  
20 an optical isomer, or a mixture containing any such  
21 substances shall, when the aggregate weight of the compound  
22 or mixture containing the substance involved is at least five  
23 grams, be sentenced to two and one-half years in prison and a  
24 fine of \$15,000 or such larger amount as is sufficient to  
25 exhaust the assets utilized in and the proceeds from the  
26 illegal activity; however, if at the time of sentencing the  
27 defendant has been convicted of another drug trafficking  
28 offense: be sentenced to five years in prison and \$30,000 or  
29 such larger amount as is sufficient to exhaust the assets  
30 utilized in and the proceeds from the illegal activity.

1           (6) 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           methaqualone shall, upon conviction, be sentenced to a  
5           mandatory minimum term of imprisonment and a fine as set  
6           forth in this subsection:

7                   (i) when the aggregate weight of the compound or  
8                   mixture containing the substance involved is at least 50  
9                   tablets, capsules, caplets or other dosage units, or 25  
10                  grams and less than 200 tablets, capsules, caplets or  
11                  other dosage units, or 100 grams; one year in prison and  
12                  a fine of \$2,500 or such larger amount as is sufficient  
13                  to exhaust the assets utilized in and the proceeds from  
14                  the illegal activity; however, if at the time of  
15                  sentencing the defendant has been convicted of another  
16                  drug trafficking offense: three years in prison and  
17                  \$5,000 or such larger amount as is sufficient to exhaust  
18                  the assets utilized in and the proceeds from the illegal  
19                  activity; and

20                   (ii) when the aggregate weight of the compound or  
21                   mixture containing the substance involved is at least 200  
22                   tablets, capsules, caplets or other dosage units, or more  
23                   than 100 grams; two and one-half years in prison and a  
24                   fine of \$15,000 or such larger amount as is sufficient to  
25                   exhaust the assets utilized in and the proceeds from the  
26                   illegal activity; however, if at the time of sentencing  
27                   the defendant has been convicted of another drug  
28                   trafficking offense: five years in prison and \$30,000 or  
29                   such larger amount as is sufficient to exhaust the assets  
30                   utilized in and the proceeds from the illegal activity.]

1           (7) 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 or a mixture  
4           containing it is heroin shall, upon conviction, be sentenced  
5           as set forth in this paragraph:

6           (i) when the aggregate weight of the compound or  
7           mixture containing the heroin involved is at least 1.0  
8           gram but less than 5.0 grams the sentence shall be a  
9           mandatory minimum term of two years in prison and a fine  
10          of \$5,000 or such larger amount as is sufficient to  
11          exhaust the assets utilized in and the proceeds from the  
12          illegal activity; however, if at the time of sentencing  
13          the defendant has been convicted of another drug  
14          trafficking offense: a mandatory minimum term of three  
15          years in prison and \$10,000 or such larger amount as is  
16          sufficient to exhaust the assets utilized in and the  
17          proceeds from the illegal activity;

18          (ii) when the aggregate weight of the compound or  
19          mixture containing the heroin involved is at least 5.0  
20          grams but less than 50 grams: a mandatory minimum term of  
21          three years in prison and a fine of \$15,000 or such  
22          larger amount as is sufficient to exhaust the assets  
23          utilized in and the proceeds from the illegal activity;  
24          however, if at the time of sentencing the defendant has  
25          been convicted of another drug trafficking offense: a  
26          mandatory minimum term of five years in prison and  
27          \$30,000 or such larger amount as is sufficient to exhaust  
28          the assets utilized in and the proceeds from the illegal  
29          activity; and

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

1 mixture containing the heroin involved is 50 grams or  
2 greater: a mandatory minimum term of five years in prison  
3 and a fine of \$25,000 or such larger amount as is  
4 sufficient to exhaust the assets utilized in and the  
5 proceeds from the illegal activity; however, if at the  
6 time of sentencing the defendant has been convicted of  
7 another drug trafficking offense: a mandatory minimum  
8 term of seven years in prison and \$50,000 or such larger  
9 amount as is sufficient to exhaust the assets utilized in  
10 and the proceeds from the illegal activity.

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

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

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

1 mixture containing the substance involved is at least 100  
2 tablets, capsules, caplets or other dosage units, or 30  
3 grams and less than 1,000 tablets, capsules, caplets or  
4 other dosage units, or less than 300 grams, the person is  
5 guilty of a felony and, upon conviction thereof, shall be  
6 sentenced to imprisonment not exceeding ten years or to  
7 pay a fine not exceeding \$100,000, or both.

8 (iii) When the aggregate weight of the compound or  
9 mixture containing the substance involved is at least  
10 1,000 tablets, capsules, caplets or other dosage units,  
11 or 300 grams, the person is guilty of a felony and, upon  
12 conviction thereof, shall be sentenced to imprisonment  
13 not exceeding 15 years or to pay a fine not exceeding  
14 \$250,000, or both.

15 \* \* \*

16 (b) [Proof of sentencing.--Provisions of this section shall  
17 not be an element of the crime. Notice of the applicability of  
18 this section to the defendant shall not be required prior to  
19 conviction, but reasonable notice of the Commonwealth's  
20 intention to proceed under this section shall be provided after  
21 conviction and before sentencing. The applicability of this  
22 section shall be determined at sentencing. The court shall  
23 consider evidence presented at trial, shall afford the  
24 Commonwealth and the defendant an opportunity to present  
25 necessary additional evidence and shall determine, by a  
26 preponderance of the evidence, if this section is applicable.]  
27 Application of mandatory minimum penalty.--With the exception of  
28 prior convictions, any provision of this section that requires  
29 imposition of a mandatory minimum sentence shall constitute an  
30 element enhancing the underlying offense. Any enhancing element

1 must be proven beyond a reasonable doubt at trial on the  
2 underlying offense and must be submitted to the fact-finder for  
3 deliberation together with the underlying offense. If the fact-  
4 finder finds the defendant guilty of the underlying offense, the  
5 fact-finder shall then also decide whether any enhancing element  
6 has been proven.

7 \* \* \*

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

22 \* \* \*

23 Section 2. Sections 9712(b) and (d), 9712.1(c) and (e) and  
24 9713(c) and (e) of Title 42 are amended to read:

25 § 9712. Sentences for offenses committed with firearms.

26 \* \* \*

27 (b) [Proof at sentencing.--Provisions of this section shall  
28 not be an element of the crime and notice thereof to the  
29 defendant shall not be required prior to conviction, but  
30 reasonable notice of the Commonwealth's intention to proceed

1 under this section shall be provided after conviction and before  
2 sentencing. The applicability of this section shall be  
3 determined at sentencing. The court shall consider any evidence  
4 presented at trial and shall afford the Commonwealth and the  
5 defendant an opportunity to present any necessary additional  
6 evidence and shall determine, by a preponderance of the  
7 evidence, if this section is applicable.] Application of  
8 mandatory minimum penalty.--Any provision of this section that  
9 requires imposition of a mandatory minimum sentence shall  
10 constitute an element enhancing the underlying offense. Any  
11 enhancing element must be proven beyond a reasonable doubt at  
12 trial on the underlying offense and must be submitted to the  
13 fact-finder for deliberation together with the underlying  
14 offense. If the fact-finder finds the defendant guilty of the  
15 underlying offense, the fact-finder shall then also decide  
16 whether any enhancing element has been proven.

17 \* \* \*

18 (d) 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 fact-  
25 finder has found any enhancing element and a sentencing court  
26 imposes a sentence below the mandatory minimum sentence, the  
27 Commonwealth shall have the right to appellate review of the  
28 sentence. If the appellate court finds that the mandatory  
29 sentencing provision was applicable, the court shall vacate the  
30 sentence and remand the case for resentencing in accordance with

1 that provision.

2 \* \* \*

3 § 9712.1. Sentences for certain drug offenses committed with  
4 firearms.

5 \* \* \*

6 (c) [Proof at sentencing.--Provisions of this section shall  
7 not be an element of the crime, and notice thereof to the  
8 defendant shall not be required prior to conviction, but  
9 reasonable notice of the Commonwealth's intention to proceed  
10 under this section shall be provided after conviction and before  
11 sentencing. The applicability of this section shall be  
12 determined at sentencing. The court shall consider any evidence  
13 presented at trial and shall afford the Commonwealth and the  
14 defendant an opportunity to present any necessary additional  
15 evidence and shall determine, by a preponderance of the  
16 evidence, if this section is applicable.] Application of  
17 mandatory minimum penalty.--Any provision of this section that  
18 requires imposition of a mandatory minimum sentence shall  
19 constitute an element enhancing the underlying offense. Any  
20 enhancing element must be proven beyond a reasonable doubt at  
21 trial on the underlying offense and must be submitted to the  
22 fact-finder for deliberation together with the underlying  
23 offense. If the fact-finder finds the defendant guilty of the  
24 underlying offense, the fact-finder shall then also decide  
25 whether any enhancing element has been proven.

26 \* \* \*

27 (e) Appeal by Commonwealth.--[If a sentencing court refuses  
28 to apply this section where applicable, the Commonwealth shall  
29 have the right to appellate review of the action of the  
30 sentencing court. The appellate court shall vacate the sentence

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

11 \* \* \*

12 § 9713. Sentences for offenses committed on public  
13 transportation.

14 \* \* \*

15 (c) [Proof at sentencing.--Provisions of this section shall  
16 not be an element of the crime and notice thereof to the  
17 defendant shall not be required prior to conviction, but  
18 reasonable notice of the Commonwealth's intention to proceed  
19 under this section shall be provided after conviction and before  
20 sentencing. The applicability of this section shall be  
21 determined at sentencing. The court shall consider any evidence  
22 presented at trial and shall afford the Commonwealth and the  
23 defendant an opportunity to present any necessary additional  
24 evidence and shall determine, by a preponderance of the  
25 evidence, if this section is applicable.] Application of  
26 mandatory minimum penalty.--Any provision of this section that  
27 requires imposition of a mandatory minimum sentence constitutes  
28 an element enhancing the underlying offense. An enhancing  
29 element must be proven beyond a reasonable doubt at trial on the  
30 underlying offense and must be submitted to the fact-finder for

1 deliberation together with the underlying offense. If the fact-  
2 finder determines the defendant is guilty of the underlying  
3 offense, the fact-finder shall then decide whether an enhancing  
4 element has been proven.

5 \* \* \*

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

20 Section 3. Section 9717 of Title 42 is amended by adding  
21 subsections to read:

22 § 9717. Sentences for offenses against elderly persons.

23 \* \* \*

24 (c) Application of mandatory minimum penalty.--Any provision  
25 of this section that requires imposition of a mandatory minimum  
26 sentence shall constitute an element enhancing the underlying  
27 offense. An enhancing element must be proven beyond a reasonable  
28 doubt at trial on the underlying offense and must be submitted  
29 to the fact-finder for deliberation together with the underlying  
30 offense. If the fact-finder determines the defendant is guilty

1 of the underlying offense, the fact-finder shall then decide  
2 whether an enhancing element has been proven.

3 (d) Appeal by Commonwealth.--If the fact-finder has found an  
4 enhancing element and a sentencing court imposes a sentence  
5 below the mandatory minimum sentence, the Commonwealth has the  
6 right to appellate review of the sentence. If the appellate  
7 court finds that the mandatory sentencing provision was  
8 applicable, the court must vacate the sentence and remand the  
9 case for resentencing in accordance with that provision.

10 Section 4. Sections 9718(c) and (e), 9718.4 and 9719(b) and  
11 (d) of Title 42 are amended to read:

12 § 9718. Sentences for offenses against infant persons.

13 \* \* \*

14 (c) [Proof at sentencing.--The provisions of this section  
15 shall not be an element of the crime, and notice of the  
16 provisions of this section to the defendant shall not be  
17 required prior to conviction, but reasonable notice of the  
18 Commonwealth's intention to proceed under this section shall be  
19 provided after conviction and before sentencing. The  
20 applicability of this section shall be determined at sentencing.  
21 The court shall consider any evidence presented at trial and  
22 shall afford the Commonwealth and the defendant an opportunity  
23 to present any necessary additional evidence and shall  
24 determine, by a preponderance of the evidence, if this section  
25 is applicable.] Application of mandatory minimum penalty.--Any  
26 provision of this section that requires imposition of a  
27 mandatory minimum sentence constitutes an element enhancing the  
28 underlying offense. An enhancing element must be proven beyond a  
29 reasonable doubt at trial on the underlying offense and must be  
30 submitted to the fact-finder for deliberation together with the

1 underlying offense. If the fact-finder determines the defendant  
2 is guilty of the underlying offense, the fact-finder shall then  
3 decide whether an enhancing element has been proven.

4 \* \* \*

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  
12 fact-finder has found an enhancing element and a sentencing  
13 court imposes a sentence below the mandatory minimum sentence,  
14 the Commonwealth has the right to appellate review of the  
15 sentence. If the appellate court finds that the mandatory  
16 sentencing provision was applicable, the court must vacate the  
17 sentence and remand the case for resentencing in accordance with  
18 that provision.

19 § 9718.4. Sentence for failure to comply with registration of  
20 sexual offenders.

21 (a) Mandatory sentence.--Mandatory sentencing shall be as  
22 follows:

23 (1) Sentencing upon conviction for a first offense shall  
24 be as follows:

25 (i) Not less than two years for an individual who:

26 (A) is subject to section 9799.13 (relating to  
27 applicability) and must register for a period of 15  
28 years under section 9799.15 (relating to period of  
29 registration) or a similar provision from another  
30 jurisdiction; and

1 (B) violated 18 Pa.C.S. § 4915.1(a)(1) or (2)  
2 (relating to failure to comply with registration  
3 requirements).

4 (ii) Not less than three years for an individual  
5 who:

6 (A) is subject to section 9799.13 and must  
7 register for a period of 15 years under section  
8 9799.15 or a similar provision from another  
9 jurisdiction; and

10 (B) violated 18 Pa.C.S. § 4915.1(a)(3).

11 (iii) Not less than three years for an individual  
12 who:

13 (A) is subject to section 9799.13 and must  
14 register for a period of 25 years or life under  
15 section 9799.15 or a similar provision from another  
16 jurisdiction; and

17 (B) violated 18 Pa.C.S. § 4915.1(a)(1) or (2).

18 (iv) Not less than five years for an individual who:

19 (A) is subject to section 9799.13 and must  
20 register for a period of 25 years or life under  
21 section 9799.15 or a similar provision from another  
22 jurisdiction; and

23 (B) violated 18 Pa.C.S. § 4915.1(a)(3).

24 (2) Sentencing upon conviction for a second or  
25 subsequent offense shall be as follows:

26 (i) Not less than five years for an individual who:

27 (A) is subject to section 9799.13 and must  
28 register for a period of 15 or 25 years or life under  
29 section 9799.15 or a similar provision from another  
30 jurisdiction; and

1 (B) violated 18 Pa.C.S. § 4915.1(a)(1) or (2).

2 (ii) Not less than seven years for an individual

3 who:

4 (A) is subject to section 9799.13 and must  
5 register for a period of 15 or 25 years or life under  
6 section 9799.15 or a similar provision from another  
7 jurisdiction; and

8 (B) violated 18 Pa.C.S. § 4915.1(a)(3).

9 (a.1) Transients and mandatory sentence.--Mandatory  
10 sentencing shall be as follows:

11 (1) Sentencing upon conviction for a first offense shall  
12 be as follows:

13 (i) Not less than two years for an individual who:

14 (A) is subject to section 9799.13 and must  
15 register for a period of 15 years under section  
16 9799.15 or a similar provision from another  
17 jurisdiction [and is a transient]; and

18 (B) violated 18 Pa.C.S. § 4915.1(a.1)(1) or (2).

19 (ii) Not less than three years for an individual

20 who:

21 (A) is subject to section 9799.13 and must  
22 register for a period of 15 years under section  
23 9799.15 or a similar provision from another  
24 jurisdiction [and is transient]; and

25 (B) violated 18 Pa.C.S. § 4915.1(a.1)(3).

26 (iii) Not less than three years for an individual

27 who:

28 (A) is subject to section 9799.13 and must  
29 register for a period of 25 years or life under  
30 section 9799.15 or a similar provision from another

1 jurisdiction [and is transient]; and

2 (B) violated 18 Pa.C.S. § 4915.1(a.1)(1) or (2).

3 (iv) Not less than five years for an individual who:

4 (A) is subject to section 9799.13 and must  
5 register for a period of 25 years or life under  
6 section 9799.15 or a similar provision from another  
7 jurisdiction [and is a transient]; and

8 (B) violated 18 Pa.C.S. § 4915.1(a.1)(3).

9 (2) Sentencing upon conviction for a second or  
10 subsequent offense shall be as follows:

11 (i) Not less than five years for an individual who:

12 (A) is subject to section 9799.13 and must  
13 register for a period of 15 or 25 years or life under  
14 section 9799.15 or a similar provision from another  
15 jurisdiction [and is transient]; and

16 (B) violated 18 Pa.C.S. § 4915.1(a.1)(1) or (2).

17 (ii) Not less than seven years for an individual

18 who:

19 (A) is subject to section 9799.13 and must  
20 register for a period of 15 or 25 years or life under  
21 section 9799.15 or a similar provision from another  
22 jurisdiction [and is a transient]; and

23 (B) violated 18 Pa.C.S. § 4915.1(a.1)(3).

24 [(b) Proof at sentencing.--The provisions of this section  
25 shall 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 court shall consider any evidence

1 presented at trial and shall afford the Commonwealth and the  
2 defendant an opportunity to present any necessary additional  
3 evidence and shall determine by a preponderance of the evidence  
4 if this section is applicable.]

5 (b.1) Application of mandatory minimum penalty.--Any  
6 provision of this section that requires imposition of a  
7 mandatory minimum sentence shall constitute an element enhancing  
8 the underlying offense. Any enhancing element must be proven  
9 beyond a reasonable doubt at trial on the underlying offense and  
10 must be submitted to the fact-finder for deliberation together  
11 with the underlying offense. If the fact-finder finds the  
12 defendant guilty of the underlying offense, the fact-finder  
13 shall then also decide whether any enhancing element has been  
14 proven.

15 (c) Authority of court in sentencing.--There shall be no  
16 authority in any court to impose on an offender to which this  
17 section is applicable any lesser sentence than provided for in  
18 subsection (a) or (a.1) or to place such offender on probation  
19 or to suspend sentence. Nothing in this section shall prevent  
20 the sentencing court from imposing a sentence greater than that  
21 provided in this section. Sentencing guidelines promulgated by  
22 the Pennsylvania Commission on Sentencing shall not supersede  
23 the mandatory sentences provided in this section.

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

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

8 § 9719. Sentences for offenses committed while impersonating a  
9 law enforcement officer.

10 \* \* \*

11 (b) [Proof at sentencing.--Provisions of this section shall  
12 not be an element of the crime and notice thereof to the  
13 defendant shall not be required prior to conviction, but  
14 reasonable notice of the Commonwealth's intention to proceed  
15 under this section shall be provided after conviction and before  
16 sentencing. The applicability of this section shall be  
17 determined at sentencing. The sentencing court shall consider  
18 evidence presented at trial and shall afford the Commonwealth  
19 and the defendant an opportunity to present necessary additional  
20 evidence and shall determine, by a preponderance of the  
21 evidence, if this section is applicable.] Application of  
22 mandatory minimum penalty.--With the exception of prior  
23 convictions, any provision of this section that requires  
24 imposition of a mandatory minimum sentence constitutes an  
25 element enhancing the underlying offense. An enhancing element  
26 must be proven beyond a reasonable doubt at trial on the  
27 underlying offense and must be submitted to the fact-finder for  
28 deliberation together with the underlying offense. If the fact-  
29 finder determines the defendant is guilty of the underlying  
30 offense, the fact-finder will then decide whether an enhancing

1 element has been proven.

2 \* \* \*

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

17 \* \* \*

18 Section 5. This act shall take effect in 60 days.