

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 348 Session of 2017

INTRODUCED BY DeLUCA, TAYLOR, GODSHALL, MILLARD, BARRAR, D. COSTA AND READSHAW, FEBRUARY 3, 2017

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, JANUARY 23, 2018

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

6 Section 1. Section ~~9712~~ 9712(A) of Title 42 of the
7 Pennsylvania Consolidated Statutes is amended to read:

<--

8 § 9712. Sentences for offenses committed with firearms.

9 (a) Mandatory sentence.--Except as provided under section
10 9716 (relating to two or more mandatory minimum sentences
11 applicable), any person who is convicted in any court of this
12 Commonwealth of a crime of violence as defined in section
13 9714(g) (relating to sentences for second and subsequent
14 offenses), shall, if the person visibly possessed a firearm or a
15 replica of a firearm, whether or not the firearm or replica was
16 loaded or functional, that placed the victim in reasonable fear
17 of death or serious bodily injury, during the commission of the
18 offense, be sentenced to a minimum sentence of at least five

1 years of total confinement notwithstanding any other provision
2 of this title or other statute to the contrary. Such persons
3 shall not be eligible for parole, probation, work release or
4 furlough. The mandatory sentence imposed under this subsection
5 shall be imposed consecutively to any other sentence imposed by
6 the court.

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

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

28 ~~(d) Appeal by Commonwealth. If a sentencing court refuses~~
29 ~~to apply this section where applicable, the Commonwealth shall~~
30 ~~have the right to appellate review of the action of the~~

1 ~~sentencing court. The appellate court shall vacate the sentence~~
2 ~~and remand the case to the sentencing court for imposition of a~~
3 ~~sentence in accordance with this section if it finds that the~~
4 ~~sentence was imposed in violation of this section.~~

5 ~~(c) Definitions. As used in this section, the following~~
6 ~~words and phrases shall have the meanings given to them in this~~
7 ~~subsection:~~

8 ~~"Firearm." Any weapon, including a starter gun, which will~~
9 ~~or is designed to or may readily be converted to expel a~~
10 ~~projectile by the action of an explosive or the expansion of gas~~
11 ~~therein.~~

12 ~~"Replica of a firearm." An item that can reasonably be~~
13 ~~perceived to be a firearm.~~

14 * * *

<--

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