

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1850 Session of  
2019

INTRODUCED BY STEPHENS, QUINN, BERNSTINE, ROTHMAN, MILLARD,  
BURNS, READSHAW, MOUL, POLINCHOCK 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 certain drug offenses committed with  
5 firearms.

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

8 Section 1. Sections 9712(b) and (d) and 9712.1(c) and (e) of  
9 Title 42 of the Pennsylvania Consolidated Statutes are amended  
10 to read:

11 § 9712. Sentences for offenses committed with firearms.

12 \* \* \*

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

14 \* \* \*

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

29 \* \* \*

30 § 9712.1. Sentences for certain drug offenses committed with

1 firearms.

2 \* \* \*

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

23 \* \* \*

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 for resentencing in accordance with that  
7 provision.

8 \* \* \*

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