
THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1587 Session of
2021

INTRODUCED BY A. BROWN, KAUFFMAN, KINSEY, ISAACSON, T. DAVIS,
STEPHENS, ORTITAY, PISCIOTTANO, BURNS, ROWE, HEFFLEY,
R. BROWN, PARKER, MARKOSEK, McNEILL, MALAGARI, FITZGERALD,
DALEY, GROVE, ECKER, SAYLOR, YOUNG, BERNSTINE, WHITE, IRVIN
AND C. WILLIAMS, JUNE 10, 2021

REFERRED TO COMMITTEE ON JUDICIARY, JUNE 10, 2021

AN ACT

1 Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and
2 Judicial Procedure) of the Pennsylvania Consolidated
3 Statutes, in assault, providing for arrests of previously
4 convicted persons possessing firearms in a subsequent
5 offense; and, in sentencing, providing for sentences for
6 previously convicted persons possessing firearms in a
7 subsequent offense.

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

10 Section 1. Title 18 of the Pennsylvania Consolidated
11 Statutes is amended by adding a section to read:

12 § 2711.1. Arrests of previously convicted persons possessing
13 firearms in a subsequent offense.

14 (a) General rule.--An arresting officer may not release a
15 person from custody prior to taking the person to appear before
16 the issuing authority if:

17 (1) the person is arrested for committing any
18 misdemeanor or felony offense while knowingly in physical
19 possession or control of a firearm, whether visible,

1 concealed about the person or within the person's reach,
2 during the commission of the offense; and

3 (2) prior to the arrest, the person was convicted of an
4 offense enumerated under section 6105(b) (relating to persons
5 not to possess, use, manufacture, control, sell or transfer
6 firearms) or adjudicated delinquent by a court as a result of
7 conduct which, if committed by an adult, would constitute an
8 offense under section 6105(b) within the prior five years,
9 excluding time spent confined to a State or county
10 correctional institution or juvenile detention center.

11 (b) Minimum requirements.--Notwithstanding 42 Pa.C.S. § 5702
12 (relating to bail to be governed by general rules) or any other
13 provision of rule or law, in determining whether to admit the
14 person to bail, the issuing authority may not permit the release
15 of a person subject to subsection (a) on the person's own
16 recognizance, under an unsecured monetary condition of release,
17 or on a deposit bail program administered by the county where
18 the offense occurred.

19 (c) Public safety to be assured.--Notwithstanding 42 Pa.C.S.
20 § 5702 or any other provision of rule or law, the issuing
21 authority shall consider whether a person subject to subsection
22 (a) poses a threat of danger to any person and the community,
23 including the following:

24 (1) A finding by the issuing authority that there is
25 reasonable suspicion to believe that a person subject to
26 subsection (a) committed any of the following offenses while
27 knowingly in physical possession or control of a firearm,
28 whether visible, concealed about the person or within the
29 person's reach, shall be considered evident proof and great
30 presumption that no condition or combination of conditions

1 other than imprisonment will reasonably assure the safety of
2 any person and the community:

3 (i) A crime of violence, as defined in 42 Pa.C.S. §
4 9714(g) (relating to sentences for second and subsequent
5 offenses).

6 (ii) An offense under sections 2701(a)(2) (relating
7 to simple assault), 4952 (relating to intimidation of
8 witnesses or victims), 4953 (relating to retaliation
9 against witness, victim or party), 4953.1 (relating to
10 retaliation against prosecutor or judicial official) or
11 4958 (relating to intimidation, retaliation or
12 obstruction in child abuse cases).

13 (iii) Any other offense resulting in death or
14 serious bodily injury, as defined in section 2301
15 (relating to definitions).

16 (2) A finding by the issuing authority that there is
17 reasonable suspicion to believe that a person subject to
18 subsection (a) committed a violation of a specific term of
19 the person's probation, parole or bail for a previous
20 offense, by knowingly being in physical possession or control
21 of a firearm, whether visible, concealed about the person or
22 within the person's reach, shall be considered evident proof
23 and great presumption that no condition or combination of
24 conditions other than imprisonment will reasonably assure the
25 safety of any person and the community.

26 (3) Notwithstanding a finding by the issuing authority
27 of evident proof under paragraph (1) or (2) that no condition
28 or combination of conditions other than imprisonment will
29 reasonably assure the safety of any person and the community,
30 the issuing authority may admit a person subject to

1 subsection (a) to bail if, based on the totality of the
2 circumstances, the issuing authority concludes by a
3 preponderance of the evidence that the person does not pose a
4 threat of danger to any person and the community.

5 (d) Construction.--Nothing in this section shall be
6 construed to:

7 (1) Modify the presumption of innocence.

8 (2) Eliminate or limit the ability of a person to seek a
9 bail review hearing before the issuing authority or a court
10 of competent jurisdiction in accordance with any other
11 provision of law or rule of procedure.

12 Section 2. Title 42 is amended by adding a section to read:

13 § 9712.2. Sentences for previously convicted persons possessing
14 firearms in a subsequent offense.

15 (a) Illegal possession of firearm following previous
16 conviction.--A person shall be sentenced to a minimum sentence
17 of total confinement as set forth in subsection (b),
18 notwithstanding any other provision of this title or other
19 statute to the contrary, if:

20 (1) the person is convicted under 18 Pa.C.S. § 6105(a)
21 (1) (relating to persons not to possess, use, manufacture,
22 control, sell or transfer firearms); and

23 (2) prior to this conviction, the person was convicted
24 of:

25 (i) an offense under 18 Pa.C.S. § 6105(a)(1) within
26 the prior five years, excluding time spent confined to a
27 State or county correctional institution; or

28 (ii) an offense enumerated under 18 Pa.C.S. §
29 6105(b) within the prior five years, excluding time spent
30 confined to a State or county correctional institution.

1 (b) Minimum sentence for illegal possession of firearm
2 following a previous conviction.--

3 (1) A person who previously has been convicted under 18
4 Pa.C.S. § 6105(a)(1) or an offense enumerated under 18
5 Pa.C.S. § 6105(b) shall be sentenced to no less than two
6 years' imprisonment.

7 (2) A person who previously has been convicted under 18
8 Pa.C.S. § 6105(a)(1) and an offense enumerated under 18
9 Pa.C.S. § 6105(b) shall be sentenced to no less than five
10 years' imprisonment.

11 (3) A person who previously has been convicted under 18
12 Pa.C.S. § 6105(a)(1) two or more times shall be sentenced to
13 no less than five years' imprisonment.

14 (4) A person who previously has been convicted under 18
15 Pa.C.S. § 6105(a)(1) two or more times and an offense
16 enumerated under 18 Pa.C.S. § 6105(b) shall be sentenced to
17 no less than 10 years' imprisonment.

18 (c) Possession of illegal firearm during subsequent
19 offense.--A person shall be sentenced to a minimum sentence of
20 total confinement as set forth in subsection (d),
21 notwithstanding any other provision of this title or other
22 statute to the contrary, if the person was knowingly in physical
23 possession or control of a firearm, whether visible, concealed
24 about the person or within the person's reach, during the
25 commission of the offense, and the following:

26 (1) the person is convicted of an offense set forth in
27 subsection (d); and

28 (2) the person either:

29 (i) previously was convicted of an offense
30 enumerated under 18 Pa.C.S. § 6105(b) within the prior

1 five years, excluding time spent confined to a State or
2 county correctional institution; or

3 (ii) committed the offense while on probation,
4 parole or bail.

5 (d) Minimum sentence for possession of illegal firearm
6 during subsequent offense.--

7 (1) For a crime of violence, as defined in section
8 9714(g) (relating to sentences for second and subsequent
9 offenses), or 18 Pa.C.S. §§ 2701(a)(2) (relating to simple
10 assault), 4952 (relating to intimidation of witnesses or
11 victims), 4953 (relating to retaliation against witness,
12 victim or party), 4953.1 (relating to retaliation against
13 prosecutor or judicial official) or 4958 (relating to
14 intimidation, retaliation or obstruction in child abuse
15 cases), no less than 10 years' imprisonment.

16 (2) For any other crime resulting in death or serious
17 bodily injury, as defined in 18 Pa.C.S. § 2301 (relating to
18 definitions), no less than one-half of the statutory maximum
19 term of imprisonment applicable to the offense for which
20 sentence is being imposed or two years' imprisonment,
21 whichever is higher.

22 (e) Early release.--A person sentenced under this section
23 may not be eligible for parole, probation, work release,
24 furlough or other form of release prior to the expiration of the
25 person's mandatory sentence.

26 (f) Application of mandatory minimum penalty.--

27 (1) For any provision of this section that requires
28 imposition of a mandatory minimum sentence based on a fact
29 that is not an element of the underlying offense or a prior
30 conviction, the enhancing element must be proven beyond a

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

6 (2) For any other provision of this section that
7 requires imposition of a mandatory minimum sentence, the
8 enhancing element may not be an element of the crime and
9 notice thereof to the defendant may not be required prior to
10 conviction, but reasonable notice of the Commonwealth's
11 intention to proceed under this section shall be provided
12 after conviction and before sentencing.

13 (3) The applicability of this section shall be
14 determined at sentencing. The sentencing court, prior to
15 imposing sentence on an offender under this section, shall
16 have a complete record of the previous convictions of the
17 offender, copies of which shall be furnished to the offender.
18 If the offender or the Commonwealth contests the accuracy of
19 the record, the court shall schedule a hearing and direct the
20 offender and the Commonwealth to submit evidence regarding
21 the previous convictions of the offender. The court shall
22 determine, by a preponderance of the evidence, the previous
23 convictions of the offender and, if this section is
24 applicable, shall impose sentence in accordance with this
25 section. If a previous conviction is vacated and an acquittal
26 or final discharge entered subsequent to imposition of
27 sentence under this section, the offender shall have the
28 right to petition the sentencing court for reconsideration of
29 the sentence if this section would not have been applicable
30 except for the conviction which was vacated.

1 (g) Appeal by Commonwealth.--If a sentencing court fails to
2 apply this section where applicable, including if the fact-
3 finder has found an enhancing element and a sentencing court
4 imposes a sentence below the mandatory minimum sentence, the
5 Commonwealth shall have the right to appellate review of the
6 sentence. The appellate court shall vacate the sentence and
7 remand the case to the sentencing court for imposition of a
8 sentence in accordance with this section if the court finds that
9 the sentence was imposed in violation of this section.

10 Section 3. This act shall expire four years after the
11 effective date of this section, except with respect to any
12 matters still pending in a court of competent jurisdiction, on
13 appeal or subject to post-conviction review in a Federal or
14 State court.

15 Section 4. This act shall take effect immediately.