

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2819 Session of  
2022

INTRODUCED BY FARRY, TOMLINSON, THOMAS, POLINCHOCK, PENNYCUICK  
AND JOZWIAK, OCTOBER 6, 2022

REFERRED TO COMMITTEE ON JUDICIARY, OCTOBER 6, 2022

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, in sentencing, providing  
3 for sentences for persons not to possess, use, manufacture,  
4 control, sell or transfer firearms.

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

7 Section 1. Title 42 of the Pennsylvania Consolidated  
8 Statutes is amended by adding a section to read:

9 § 9720.9. Sentences for persons not to possess, use,  
10 manufacture, control, sell or transfer firearms.

11 (a) Mandatory sentence.--The following apply:

12 (1) A person convicted of 18 Pa.C.S. § 6105 (relating to  
13 persons not to possess, use, manufacture, control, sell or  
14 transfer firearms) for violating an offense under 18 Pa.C.S.  
15 § 6105(b), shall be sentenced to a mandatory term of  
16 imprisonment of at least 11 months.

17 (2) The mandatory term of imprisonment under paragraph  
18 (1) does not apply if the felony conviction of 18 Pa.C.S. §  
19 6105 was because the person was subject to 18 Pa.C.S. §

1 6105(c)(3).

2 (3) Notwithstanding another provision of this title or  
3 other statute, a person convicted of violating 18 Pa.C.S. §  
4 6105 and the offense is graded as a felony shall be sentenced  
5 to a minimum sentence of at least five years of total  
6 confinement, if during the commission of the current offense  
7 the person had previously been convicted of 18 Pa.C.S. §  
8 6105. Upon a second conviction for 18 Pa.C.S. § 6105, the  
9 court shall give the person oral and written notice of the  
10 penalties under this section for a third conviction for a  
11 crime of violence. Failure to provide the notice does not  
12 render the offender ineligible to be sentenced under  
13 paragraph (4).

14 (4) During the commission of the current offense, if the  
15 person had previously been convicted of two or more  
16 violations of 18 Pa.C.S. § 6105 arising from separate  
17 criminal actions, the person shall be sentenced to a minimum  
18 sentence of at least 15 years of total confinement,  
19 notwithstanding another provision of this title or other  
20 statute. Proof the offender received notice of or otherwise  
21 knew or should have known of the penalties under this  
22 paragraph is not required.

23 (b) Mandatory maximum.--An offender sentenced to a mandatory  
24 minimum sentence under this section shall be sentenced to a  
25 maximum sentence equal to twice the mandatory minimum sentence,  
26 notwithstanding 18 Pa.C.S. § 1103 (relating to sentence of  
27 imprisonment for felony) or another provision of this title or  
28 other statute.

29 (c) Eligibility for parole.--Parole under this section may  
30 not be granted until the minimum term of imprisonment is served.

1 (d) Application of mandatory minimum penalty.--The following  
2 apply:

3 (1) For a provision of this section requiring imposition  
4 of a mandatory minimum sentence based on a fact that is not  
5 an element of the underlying offense or a prior conviction,  
6 the enhancing element must be:

7 (i) proven beyond a reasonable doubt at trial on the  
8 underlying offense; and

9 (ii) submitted to the fact-finder for deliberation  
10 together with the underlying offense.

11 If the fact-finder finds the defendant guilty of the  
12 underlying offense, the fact-finder shall decide whether an  
13 enhancing element has been proven.

14 (2) For another provision of this section requiring  
15 imposition of a mandatory minimum sentence, the following  
16 apply:

17 (i) the enhancing element may not be an element of  
18 the crime; and

19 (ii) notice of the crime to the defendant is not  
20 required prior to conviction, however, reasonable notice  
21 of the Commonwealth's intention to proceed under this  
22 section shall be provided after conviction and before  
23 sentencing.

24 (3) The following apply:

25 (i) The applicability of this section shall be  
26 determined at sentencing.

27 (ii) Prior to imposing sentence on an offender under  
28 this section, the sentencing court shall have a complete  
29 record of the previous convictions of the offender,  
30 copies of the record shall be furnished to the offender.

1           (iii) If the offender or Commonwealth contests the  
2 accuracy of the record under subparagraph (ii), the court  
3 shall schedule a hearing and direct the offender and  
4 Commonwealth to submit evidence regarding the previous  
5 convictions of the offender.

6           (iv) For a hearing under subparagraph (iii), the  
7 court shall determine the previous convictions of the  
8 offender by a preponderance of the evidence. If the court  
9 finds this section is applicable, the court shall impose  
10 a sentence in accordance with this section. If a previous  
11 conviction is vacated and an acquittal or final discharge  
12 entered after imposition of sentence under this section,  
13 the offender may petition the sentencing court for  
14 reconsideration of the sentence if this section would  
15 have been inapplicable except for the vacated conviction.

16       (e) Appeal by Commonwealth.--If a sentencing court fails to  
17 apply this section where applicable, including if the fact-  
18 finder found an enhancing element and a sentencing court imposes  
19 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 the sentence imposed in  
22 violation of this section, the appellate court shall vacate the  
23 sentence and remand the case to the sentencing court for  
24 imposition of a sentence in accordance with this section.

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