

No. 1995-21 (SS1)

AN ACT

HB 93

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for sentencing and for delays in relation to certain juvenile hearings.

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

Section 1. Section 1103 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 1103. Sentence of imprisonment for felony.

[A] *Except as provided in 42 Pa.C.S. § 9714 (relating to sentences for second and subsequent offenses), a person who has been convicted of a felony may be sentenced to imprisonment as follows:*

(1) In the case of a felony of the first degree, for a term which shall be fixed by the court at not more than 20 years.

(2) In the case of a felony of the second degree, for a term which shall be fixed by the court at not more than ten years.

(3) In the case of a felony of the third degree, for a term which shall be fixed by the court at not more than seven years.

Section 2. Section 6335(f) of Title 42 is amended to read:

§ 6335. Release or holding of hearing.

* * *

(f) **Limitations on release.**—The child shall not be released from detention or shelter care under authority of subsection (a) if the failure to hold a hearing within ten days after the filing of the petition is the result of delay caused by the child. Delay [~~shall be deemed to be~~] caused by the child [~~if it results from any one of the following~~] *shall include, but not be limited to:*

(1) [~~The~~] *Delay caused by the unavailability of the child or his attorney.*

(2) [~~Any~~] *Delay caused by any continuance granted at the request of the child or his attorney.*

(3) *Delay caused by the unavailability of a witness resulting from conduct by or on behalf of the child.*

At the conclusion of any court proceeding in which the scheduled hearing is not held, the court shall state on the record whether the failure to hold the hearing resulted from delay caused by the child. *Where the court determines that failure to hold a hearing is the result of delay caused by the child, the child may continue to be held in detention or shelter care. However, the*

additional period of detention shall not exceed ten days, provided that such detention may be continued by the court for successive ten-day intervals.

Section 3. Section 9712(a) of Title 42, amended June 13, 1995 (1st Sp.Sess., P.L.1024, No.17), is amended to read:

§ 9712. Sentences for offenses committed with firearms.

(a) Mandatory sentence.—[Any] *Except as provided under section 9716 (relating to two or more mandatory minimum sentences applicable), any person who is convicted in any court of this Commonwealth of [murder of the third degree, voluntary manslaughter, rape, involuntary deviate sexual intercourse, robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) (relating to aggravated assault) or kidnapping, or who is convicted of attempt to commit any of these crimes] a crime of violence as defined in section 9714(g) (relating to sentences for second and subsequent offenses), shall, if the person visibly possessed a firearm or a replica of a firearm, whether or not the firearm or replica was loaded or functional, that placed the victim in reasonable fear of death or serious bodily injury, during the commission of the offense, be sentenced to a minimum sentence of at least five years of total confinement notwithstanding any other provision of this title or other statute to the contrary. Such persons shall not be eligible for parole, probation, work release or furlough.*

* * *

Section 4. Sections 9713(a) and 9714 of Title 42 are amended to read:
§ 9713. Sentences for offenses committed on public transportation.

(a) Mandatory sentence.—[Any] *Except as provided under section 9716 (relating to two or more mandatory minimum sentences applicable), any person who is convicted in any court of this Commonwealth of [murder of the third degree, voluntary manslaughter, rape, involuntary deviate sexual intercourse, robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), arson as defined in 18 Pa.C.S. § 3301(a) (relating to arson and related offenses), kidnapping or aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) (relating to aggravated assault), or who is convicted of attempt to commit any of these crimes] a crime of violence as defined in section 9714(g) (relating to sentences for second and subsequent offenses), shall be sentenced to a minimum sentence of at least five years of total confinement if the crime occurs in or near public transportation as defined in subsection (b), notwithstanding any other provision of this title or other statute to the contrary.*

* * *

§ 9714. Sentences for second and subsequent offenses.

(a) Mandatory sentence.—

(1) Any person who is convicted in any court of this Commonwealth of [murder of the third degree, voluntary manslaughter, rape, involuntary deviate sexual intercourse, arson as defined in 18 Pa.C.S. § 3301(a) (relating to arson and related offenses), kidnapping or

robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), or attempt to commit any of these crimes, or who is convicted of aggravated assault in which the offender intentionally, knowingly or recklessly causes serious bodily injury to another under circumstances manifesting extreme indifference to the value of human life,] *a crime of violence* shall, if [they have previously been convicted of] *at the time of the commission of the current offense the person had previously been convicted of a crime of violence [as specified in subsection (b)] and has not rebutted the presumption of high risk dangerous offender as provided in subsection (c)*, be sentenced to a minimum sentence of at least [five] *ten* years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. *If at the time of the commission of the current offense the person has previously been convicted of a crime of violence and has rebutted the presumption of high risk dangerous offender as provided in subsection (c), the person shall be sentenced to a minimum sentence of at least five years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon a second conviction for a crime of violence, the court shall give the person oral and written notice of the penalties under this section for a third conviction for a crime of violence. Failure to provide such notice shall not render the offender ineligible to be sentenced under paragraph (2).*

(2) *Where the person had at the time of the commission of the current offense previously been convicted of two or more such crimes of violence arising from separate criminal transactions, the person shall be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Proof that the offender received notice of or otherwise knew or should have known of the penalties under this paragraph shall not be required. Upon conviction for a third or subsequent crime of violence the court may, if it determines that 25 years of total confinement is insufficient to protect the public safety, sentence the offender to life imprisonment without parole.*

(a.1) *Mandatory maximum.—An offender sentenced to a mandatory minimum sentence under this section shall be sentenced to a maximum sentence equal to twice the mandatory minimum sentence, notwithstanding 18 Pa.C.S. § 1103 (relating to sentence of imprisonment for felony) or any other provision of this title or other statute to the contrary.*

(b) [Prior convictions for crimes of violence] *Presumption of high risk dangerous offender.—For the purposes of subsection (a), an offender shall be presumed to be a high risk dangerous offender and shall be deemed to have prior convictions for crimes of violence if both of the following conditions hold:*

(1) The offender was previously convicted [in this Commonwealth or any other state or the District of Columbia or in any Federal court of

murder, voluntary manslaughter, rape, involuntary deviate sexual intercourse, robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii), arson as defined in 18 Pa.C.S. § 3301(a), kidnapping or aggravated assault in which the offender intentionally, knowingly or recklessly causes serious bodily injury to another under circumstances manifesting extreme indifference to the value of human life, an equivalent crime under the laws of the Commonwealth in effect prior to the effective date of Title 18 (relating to crimes and offenses) or an equivalent crime in another jurisdiction] *of a crime of violence*. The previous conviction need not be for the same crime as the instant offense for this section to be applicable.

(2) The previous conviction occurred within seven years of the date of the commission of the instant offense, except that any time during which the offender was incarcerated in any penitentiary, prison or other place of detention *or on probation or parole* shall not be considered in computing the relevant seven-year period. Convictions for other offenses arising from the same criminal [episode] *transaction* as the instant offense shall not be considered previous convictions for the purpose of this section. For purposes of this section previous conviction shall include any conviction, whether or not judgment of sentence has been imposed or litigation is pending concerning that conviction.

(c) High risk dangerous offender.—

(1) In addition to any other provision of this section, a court shall hold a hearing for an offender presumed to be a high risk dangerous offender pursuant to the provisions of subsection (b). The court shall schedule a hearing and receive such evidence from the offender as may be relevant to whether the presumption shall apply. If the offender presents evidence in opposition to the presumption, the attorney for the Commonwealth may present evidence in support of the presumption.

(2) In determining whether the offender is a high risk dangerous offender, the court shall consider, but not be limited to, such factors as:

- (i) Age of the offender.*
- (ii) Age of the victim.*
- (iii) Use of illegal drugs or alcohol by the offender.*
- (iv) Offender's prior criminal record.*
- (v) Whether the offense involved multiple victims.*
- (vi) Offender's failure to complete a prior sentence.*
- (vii) Any mental illness or mental disability of the offender.*
- (viii) If the offense included attempted or actual sexual contact with the victim and was part of a demonstrated pattern of abuse.*
- (ix) If the offense included a display of unusual cruelty by the offender during the commission of the crime.*
- (x) The nature and circumstances of the current offense.*
- (xi) The use of a deadly weapon as defined in 18 Pa.C.S. § 2301 (relating to definitions) during the commission of the current offense.*

(xii) The impact of the current offense on the victim and the extent of injury caused to the victim as a result of the current offense.

(3) In determining whether the offender is a high risk dangerous offender, the court may order a psychiatric or psychological examination of the offender.

(4) If the court determines that the offender is a high risk dangerous offender, the court shall state on the sentencing order that the offender has been determined to be a high risk dangerous offender and that the ten-year mandatory minimum sentence under this section shall apply.

(5) If the court determines that the offender has rebutted by clear and convincing evidence the presumption that he is a high risk dangerous offender, the court shall state on the sentencing order that the defendant has not been determined to be a high risk dangerous offender and that the ten-year mandatory minimum sentence under this section shall not apply.

[(c)] (d) Proof at sentencing.—Provisions of this section shall not be an element of the crime and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The sentencing court, prior to imposing sentence on an offender under subsection (a), shall have a complete record of the previous convictions of the offender, copies of which shall be furnished to the offender. If the offender or the attorney for the Commonwealth contests the accuracy of the record, the court shall schedule a hearing and direct the offender and the attorney for the Commonwealth to submit evidence regarding the previous convictions of the offender. The court shall then determine, by a preponderance of the evidence, the previous convictions of the offender and, if this section is applicable, shall impose sentence in accordance with this section. Should a previous conviction be vacated and an acquittal or final discharge entered subsequent to imposition of sentence under this section, the offender shall have the right to petition the sentencing court for reconsideration of sentence if this section would not have been applicable except for the conviction which was vacated.

[(d)] (e) Authority of court in sentencing.—There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in **[subsection (a)] subsections (a) and (a.1)** or to place such offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

[(e)] (f) Appeal by Commonwealth.—If a sentencing court shall refuse to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for the

imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(g) Definition.—As used in this section, the term “crime of violence” means murder of the third degree, voluntary manslaughter, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), rape, involuntary deviate sexual intercourse, arson as defined in 18 Pa.C.S. § 3301(a) (relating to arson and related offenses), kidnapping, burglary of a structure adapted for overnight accommodation in which at the time of the offense any person is present, robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), or robbery of a motor vehicle, or criminal attempt, criminal conspiracy or criminal solicitation to commit murder or any of the offenses listed above, or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction.

Section 5. Within 180 days of the effective date of this act, the Pennsylvania Commission on Sentencing shall, for the purpose of advising the General Assembly concerning future prison construction expenditures, publish projected increases in the State prison population resulting from implementation of this act.

Section 6. The amendment of 42 Pa.C.S. §§ 9712(a), 9713(a) and 9714 shall apply to all offenses committed on or after the effective date of this act.

Section 7. This act shall take effect in 60 days.

APPROVED—The 11th day of October, A.D. 1995.

THOMAS J. RIDGE