

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 788 Session of 2023

INTRODUCED BY FARRY, PENNYCUICK, STEFANO AND BREWSTER,  
JUNE 14, 2023

REFERRED TO JUDICIARY, JUNE 14, 2023

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.--

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.--

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

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

8 (ii) submitted to the fact-finder for deliberation  
9 together with the underlying offense. If the fact-finder  
10 finds the defendant guilty of the underlying offense, the  
11 fact-finder shall decide whether an enhancing element has  
12 been proven.

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

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

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

23 (3) The following apply:

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

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

30 (iii) If the offender or Commonwealth contests the

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

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

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

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