

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 897 Session of 2019

INTRODUCED BY REGAN, MASTRIANO, PHILLIPS-HILL, LANGERHOLC,
MARTIN, HUTCHINSON, MENSCH AND BREWSTER, OCTOBER 15, 2019

REFERRED TO JUDICIARY, OCTOBER 15, 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 certain drug offenses committed
4 with firearms.

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

7 Section 1. Section 9712.1(c) and (e) of Title 42 of the
8 Pennsylvania Consolidated Statutes are amended to read:

9 § 9712.1. Sentences for certain drug offenses committed with
10 firearms.

11 * * *

12 (c) [Proof at sentencing.--Provisions of this section shall
13 not be an element of the crime, and notice thereof to the
14 defendant shall not be required prior to conviction, but
15 reasonable notice of the Commonwealth's intention to proceed
16 under this section shall be provided after conviction and before
17 sentencing. The applicability of this section shall be
18 determined at sentencing. The court shall consider any evidence
19 presented at trial and shall afford the Commonwealth and the

1 defendant an opportunity to present any necessary additional
2 evidence and shall determine, by a preponderance of the
3 evidence, if this section is applicable.] Application of
4 mandatory minimum penalty.--Any provision of this section that
5 requires imposition of a mandatory minimum sentence shall
6 constitute an element enhancing the underlying offense. Any
7 enhancing element must be proven beyond a reasonable doubt at
8 trial on the underlying offense and must be submitted to the
9 fact-finder for deliberation together with the underlying
10 offense. If the fact-finder finds the defendant guilty of the
11 underlying offense, the fact-finder shall then also decide
12 whether any enhancing element has been proven.

13 * * *

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

28 * * *

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