

File



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RONALD D. CASTILLE
DISTRICT ATTORNEY

April 17, 1989

Honorable Thomas R. Caltagirone
House of Representatives
Room 614D, Main Capitol Building
Harrisburg, PA 17120

Re: Amendments to Drug-Mandatory Sentencing Act

Dear Representative Caltagirone:

I am writing to seek introduction of the enclosed legisla-
tion, which makes important refinements in Pennsylvania's new
drug mandatory sentencing law.

The enclosed proposals contain the following changes:

- 1) The "subsequent offense" language is clarified so that any prior drug trafficking offense is sufficient to invoke the higher "subsequent offense" penalties;
- 2) Where an offense is subject to mandatory minimum sentences under both Section 6314 and Section 7508, it is clarified that those sentences should be consecutive;
- 3) A new, separate table for crack is provided. The quantity thresholds are half the amounts provided for in the cocaine tables (our experts inform us that one gram of crack is equivalent to two grams of ordinary cocaine mixtures) and the penalties are drawn from the table for methamphetamine, which presently is the toughest penalty table in section 7508; and
- 4) A second or subsequent drug-trafficking offense not otherwise subject to mandatory sentencing would be subject to a one-year mandatory sentence, regardless of the amount or category of the substance.

These are important and necessary changes which have arisen out of our past nine month's application of the drug mandatory

sentencing statute. We will be seeking a supporting resolution the Pennsylvania District Attorneys Association at this summer's annual meeting.

Finally, these refinements are not comprehensive. Two other important amendments, which my office strongly support, have already been introduced and therefore are not included here:

- Applying three-year mandatories to all drug trafficking with 1,000 feet of a school, not just trafficking to juveniles.

- Increasing three-year mandatory minimum to ten-year mandatory minimum for using juveniles to deal drugs. Additionally, the present unworkable requirement that the defendant must also actually deliver to a minor or actually deliver possess with intent to deliver to a minor, should be removed.

Once you determine who will be prime-sponsoring this legislation, I would appreciate your staff letting Gary Tennis know well in advance of actual introduction, so that we can seek Senate sponsorship by the other party. Thanks for any help you can provide in obtaining the enactment of this legislation.

Sincerely yours,


RONALD D. CASTILLE
District Attorney

/mm

Enclosure

cc: William Andring, Majority Counsel, House Judiciary Committee
Mary R. Woolley, Minority Counsel, House Judiciary Committee



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AMENDMENTS TO DRUG OFFENSE MANDATORY SENTENCING STATUTE

Section 1.

18 Pa.C.S.A. §6314. Sentencing [and penalties] for trafficking drugs to minors.

(a) General rule.--A person over 18 years of age who is convicted in any court of this Commonwealth of a violation of section 13(a)(14) or (30) of the act of April 14, 1972 (P.L. 233, No. 64), know as The Controlled Substance, Drug, Device and Cosmetic Act, shall, if the delivery or possession with intent to deliver of the controlled substance was to a minor, be sentenced to a minimum sentence of at least one year total confinement, notwithstanding any other provision of this title or other statute to the contrary.

(b) Additional penalties.--In addition to the mandatory minimum sentence set forth in subsection (a), the person shall be sentenced to an additional minimum sentence of at least two years total confinement, notwithstanding any other provision of this title or other statute to the contrary, if the person did any of the following:

(1) Committed the offense with the intent to promote the habitual use of the controlled substance.

(2) Intended to engage the minor in the trafficking, transportation, delivery, manufacturing, or sale of the controlled substance. [or conveyance.]

(3) Committed the offense within 1,000 feet of the real property on which is located a public, private or parochial school or a college or university.

(c) Proof at sentencing.--[The] No provisions of this section shall [not] be an element of the crime. Notice of the applicability of this section 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 court shall consider evidence presented at trial: shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence: and shall determine, by a preponderance of the evidence, if this section is applicable.

(d) [Authority of court in sentencing]Mandatory sentencing.--There shall be no authority for a court or other governmental entity, individual, or employee to impose on a defendant to which this section is applicable a lesser sentence than provided for [in subsection (a),] herein, or to place the defendant on probation, parole, house arrest, work release or pre-release 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] herein. Disposition under section 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a defendant to which this section applies.

(e) Appeal by Commonwealth.--If a sentencing court refuses 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 imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(f) Sentencing offender subject to Section 7508: Where an offender is subject to the mandatory-minimum sentencing provisions of both this section and Section 7508 for the same offense, the mandatory-minimum sentence shall be the sum of the terms of imprisonment specified by both sections. Notwithstanding 42 Pa.C.S.A. 9756(b), this sum may exceed one-half of the maximum allowable sentence for the underlying offense. Under such circumstances, the maximum sentence imposed shall be the maximum allowable sentence for the underlying offense. Where the mandatory-minimum sentence under this subsection would exceed the maximum allowable sentence for the underlying offense, the maximum allowable sentence shall be imposed as both the minimum and maximum sentence.

(g) [(f)] Forfeiture.--Assets against which a forfeiture petition has been filed and is pending or against which the

Commonwealth has indicated an intention to file a forfeiture petition shall not be subject to a fine under this section.

(h) ~~[(g)]~~ Definition.--As used in this section, the term "minor" means an individual under 18 years of age.

* * *

18 Pa.C.S.A. §7508. Drug trafficking sentencing and penalties.

(a) General rule.--Notwithstanding any other provisions of this or any other act to the contrary, the following provisions shall apply:

(1) A person who is convicted of violating section 13(a)(14) or (30) of the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act, where the controlled substance is marijuana shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) [upon the first conviction] when the amount of marijuana involved is at least two pounds, but less than ten pounds: one year in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:]

However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense:

two years in prison and a fine of \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity:

(ii) [upon the first conviction] when the amount of marijuana involved is at least ten pounds, but less than 50 pounds: two and one-half [three] years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:] However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: four years in prison and a fine of \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

(iii) [upon conviction] when the amount of marijuana involved is at least 50 pounds: two and one-half [five] years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: five years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(2) A person who is convicted of violating section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance or a mixture containing it is classified in Schedule I or Schedule II under section 104 of that act and is a narcotic drug shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) [upon the first conviction] when the amount of the substance or mixture involved is at least 2.0 grams and less than ten grams: two years in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:]

However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense:

three years in prison and \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity:

(ii) [upon first conviction] when the amount of the substance or mixture involved is at least ten grams and less than 100 grams: three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:]

However, if at the time of sentencing the defendant has

been convicted of another drug-trafficking offense:
five years in prison and \$30,000 or such larger amount
as is sufficient to exhaust the assets utilized in and
the proceeds from the illegal activity: and

(iii) [upon the first conviction] when the amount
of the substance or mixture involved is at least 100
grams: five years in prison and a fine of \$25,000 or
such larger amount as is sufficient to exhaust the
assets utilized in and the proceeds from the illegal
activity; [and, upon conviction for another offense
subject to sentencing under this section:] However, if
at the time of sentencing the defendant has been
convicted of another drug-trafficking offense: seven
years in prison and \$50,000 or such larger amount as is
sufficient to exhaust the assets utilized in and the
proceeds from the illegal activity[: and].

(3) A person who is convicted of violating section
13(a)(14) or (30) of The Controlled Substance, Drug, Device
and Cosmetic Act where the controlled substance is coca
leaves or is any salt, compound, derivative or preparation
of coca leaves or is any salt, compound, derivative or
preparation which is chemically equivalent or identical
[with] to any of these substances or is any mixture
containing any of these substances except decocainized coca
leaves or extracts of coca leaves which (extracts) do not
contain cocaine or ecgonine shall, upon conviction, be

sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) [upon the first conviction] when the amount of the substance or mixture involved is at least 2.0 grams and less than ten grams: one year in prison and a fine of \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:]

However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense:

three years in prison and \$10,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity:

(ii) [upon the first conviction] when the amount of the substance or mixture involved is at least ten grams and less than 100 grams: three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:] However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity: and

(iii) [upon the first conviction] when the amount of the substance or mixture involved is at least 100 grams: four years in prison and a fine of \$25,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:] However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: seven years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity[: and].

(4) A person who is convicted of violating section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance is methamphetamine or is a salt, isomer or salt of an isomer of methamphetamine or is phencyclidine or is a mixture containing methamphetamine, containing a salt of methamphetamine, containing an isomer of methamphetamine, containing a salt of an isomer of methamphetamine or containing phencyclidine shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) [upon the first conviction] when the amount of the substance or mixture involved is at least five grams and less than ten grams: three years in prison and a fine of \$15,000 or such larger amount as is

sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:] However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity:

(ii) [upon the first conviction] when the amount of the substance or mixture involved is at least ten grams and less than 100 grams: four years in prison and a fine of \$25,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:] However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: seven years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity: and

(iii) [upon the first conviction] when the amount of the substance or mixture involved is at least 100 grams: five years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal

activity; [and, upon conviction for another offense subject to sentencing under this section:] However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: eight years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(5) A person who is convicted of violating section 13(a)(14) or (30) of the Controlled Substance, Drug, Device and Cosmetic Act, [and who, in the course of the offense, manufactures, delivers, brings into this Commonwealth or possesses with intent to manufacture or deliver] where the controlled substance is amphetamine or any salt, optical isomer, or salt of an optical isomer, or a mixture containing any such substances shall, [upon the first conviction] when the amount of the substance or mixture involved is at least five grams: be sentenced to two and one-half years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for a subsequent offense under this section:] However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: be sentenced to five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(6) A person who is convicted of violating section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance is methaqualone shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) [upon the first conviction] when the amount of the substance involved is at least 50 tablets, capsules, caplets or other dosage units, or the equivalent quantity, and less than 200 tablets, capsules, caplets or other dosage units, or the equivalent quantity: one year in prison and a fine of \$2,500 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:]

However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense:

three years in prison and \$5,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity:

(ii) [upon the first conviction] when the amount of the substance involved is at least 200 tablets, capsules, caplets or other dosage units, or the equivalent quantity: two and one-half years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the

proceeds from the illegal activity; [and, upon conviction for another offense subject to sentencing under this section:] However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity[:].

(7) A person who is convicted of violating section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act where the controlled substance or mixture contains a non-water soluble concentrated cocaine base, created by removing hydrochloric acid, salts and chemical adulterates, otherwise known as "crack", shall, upon conviction, be sentenced to a mandatory minimum term of imprisonment and a fine as set forth in this subsection:

(i) when the amount of the substance or mixture involved is at least one gram and less than five grams: three years in prison and a fine of \$15,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: five years in prison and \$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity:

(ii) when the amount of the substance involved is at least five grams and less than 50 grams: four years in prison and a fine of \$25,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: seven years in prison and \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity: and

(iii) when the amount of the substance involved is at least 50 grams: five years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; However, if at the time of sentencing the defendant has been convicted of another drug-trafficking offense: eight years in prison and a fine of \$50,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity.

(8) A person who is convicted of violating section 13(a)(14) or (30) of The Controlled Substance, Drug, Device and Cosmetic Act shall upon conviction be sentenced to a minimum sentence of at least one year imprisonment and a fine of at least \$5,000, where the offense is not otherwise subject to a mandatory minimum term of imprisonment and fine under section 6314 or this section, and where at the time of

the commission of the current offense the defendant has been convicted of another drug-trafficking offense.

(b) Previous conviction. For purposes of this section, it shall be deemed that a defendant "has been convicted of another drug-trafficking offense" when the defendant has been convicted of another offense under Section 13(a)(14) or (30) of the Act of April 14, 1972 (P.L. 233 No. 64) known as the Controlled Substance, Drug, Device and Cosmetic Act or of a similar offense under any statute of any state or the United States, whether or not judgment of sentence has been imposed or litigation is pending concerning that offense.

(c) [(b)] Proof [of] at sentencing.--[Provisions] No provisions of this section shall [not] be an element of the crime. Notice of the applicability of this section 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 court shall consider evidence presented at trial: shall afford the Commonwealth and the defendant an opportunity to present necessary additional evidence: and shall determine, by a preponderance of the evidence, if this section is applicable.

(d) [(c)] Mandatory sentencing.--There shall be no authority in any court or other governmental entity, individual or employee to impose on an offender to which this section is applicable a lesser sentence than provided for herein or to place

the offender on probation, parole, house arrest, work release or prerelease or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than provided herein. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided herein. Disposition under section 17 or 18 of The Controlled Substance, Drug, Device and Cosmetic Act shall not be available to a defendant to which this section applies.

(e) [(d)] [Appellate review] Appeal by Commonwealth.--If a sentencing court refuses 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 imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

(f) Sentencing offender subject to Section 6314: Where an offender is subject to the mandatory-minimum sentencing provisions of both this section and Section 6314 for the same offense, the mandatory-minimum sentence shall be the sum of the terms of imprisonment specified by both sections.

Notwithstanding 42 Pa.C.S.A. §9756(b), this sum may exceed one-half of the maximum allowable sentence for the underlying offense. Under such circumstances, the maximum sentence imposed shall be the maximum allowable sentence for the underlying offense. Where the mandatory-minimum sentence under this subsection would exceed the maximum allowable sentence for the

underlying offense, the maximum allowable sentence shall be imposed as both the minimum and maximum sentence.

(g) [(e)] Forfeiture.-- Assets against which a forfeiture petition has been filed and is pending or against which the Commonwealth has indicated an intention to file a forfeiture petition shall not be subject to a fine.

PRISON CONSTRUCTION BOND PROPOSAL

I am planning to contact Senate Majority Leader F. Joseph Loeper, House Majority Leader Robert W. O'Donnell, Senate Minority Leader Robert J. Mellow, and House Minority Leader Matthew J. Ryan to propose a solution to the prison overcrowding crisis which threatens to weaken Pennsylvania's criminal justice system. As you know, our state prison system is 135% over capacity, and law enforcement in Philadelphia and Allegheny Counties is already being undermined by federal court prison caps. Other large counties in the state will be facing similar prison problems.

The state of Oklahoma recently has responded to an equally grave prison-overcrowding problem by approving a $\frac{1}{2}\%$ additional sales tax, designated to fund prison construction (legislation enclosed). When the prison capacity demand is fully met, the extra sales tax will cease. Along the same lines, California recently approved an \$817,000,000 prison construction bond issue, with a portion of that amount designated for county prison construction ("New Prison Construction Bond Act of 1988" enclosed).

I would propose that Pennsylvania take a like approach, and allow the electorate to vote on a referendum for a temporary 1% additional sales tax for prison construction. Part of the funds generated could be designated for state prison construction while the remaining funds could be offered to the counties as 50% matching funds for county prison construction. The matching

funds probably would best be administered by the Pennsylvania Commission on Crime and Delinquency.

I am not wedded to the exact specifics of this proposal and I, of course, recognize that a great deal of research needs to be done as to the impact of this proposal. Some specific issues that need to be addressed are: 1) the amount of money that would be raised; 2) the impact such a tax would have on commerce; 3) the cost of increasing prison capacity to meet both present and estimated future demand; 4) the cost of needed state prison construction relative to the cost of needed county prison construction (to determine what proportion of the funds should go to each); 5) the proportion of state prisoners that safely could be housed in lower cost minimum-security cells.

Obviously, a District Attorney's Office is not equipped to thoroughly address these issues, nor do we have the expertise and resources to flesh out this admittedly bare bones proposal. However, the concept of having the citizenry decide if they want to pay out of their own pockets to strengthen what presently is the weakest link in the criminal justice system, is a reasonable one.

I hope you will support the concept of such a bipartisan referendum, and I am eager to provide any assistance that I or my office can in further developing this idea. Thank you for your consideration of this proposal.

AMENDMENT TO OPERATING BUDGET BILL'S
APPROPRIATION FOR DEPARTMENT OF COMMUNITY AFFAIRS

Section _____. Department of Community Affairs...The following amounts are appropriated to the Department of Community Affairs:

* * *

<u>For distribution to District Attorneys for funding nonprofit community-based organizations that are actively confronting the drug problem and are providing educational, health care, housing and community development services. The Department shall distribute the funds in accordance with the following formula: 1st Class Counties: \$2,000,000; 2nd Class Counties: \$1,500,000. The remaining counties shall receive funding at the level of one dollar per inhabitant as indicated in the official 1980 census: \$8,725,600. No District Attorney shall expend more than 10% of the amount received for administrative expenses.</u>	<u>\$12,225,600</u>
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