

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2165 Session of
2000

INTRODUCED BY BARD, BUNT, E. Z. TAYLOR, HORSEY, GEIST,
ARMSTRONG, BELARDI, BROWNE, CORRIGAN, FAIRCHILD, FREEMAN,
HARHAI, JADLOWIEC, LYNCH, MARSICO, PETRONE, READSHAW, ROSS,
RUBLEY, SAINATO, SEYFERT, SHANER, STABACK, J. TAYLOR, THOMAS
AND WOGAN, JANUARY 4, 2000

REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 4, 2000

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for drug trafficking
3 sentencing and penalties.

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

6 Section 1. Section 7508(a) of Title 18 of the Pennsylvania
7 Consolidated Statutes is amended by adding a paragraph to read:
8 § 7508. Drug trafficking sentencing and penalties.

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

12 * * *

13 (7) A person who is convicted of violating section
14 13(a)(14), (30) or (37) of The Controlled Substance, Drug,
15 Device and Cosmetic Act while in possession of a firearm
16 shall, upon conviction, be sentenced to a mandatory minimum
17 term of imprisonment of five years. As used in this

1 paragraph, a firearm is any weapon, including a starter gun,
2 which will, or is designed to, expel a projectile or
3 projectiles by the action of an explosion, expansion of gas
4 or escape of gas.

5 * * *

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



BILL SUMMARY

COMMITTEE: Judiciary

DATE: 4/26/00

PRIME SPONSOR: Bard

BILL NO.: HB 2165

PRINTER'S NO.: 2825

A. SUMMARY OF THE BILL:

House Bill 2165, P.N. 2185, amends Title 18 of the Pennsylvania Consolidated Statutes, Section 7508 (relating to Trafficking Sentencing and Penalties), to provide mandatory sentencing for drug trafficking with possession of a firearm.

This legislation amends existing statute by mandating a minimum term of imprisonment of five years for a person who is convicted, while in possession of a firearm, of violating Section 13(a) (14), (30) or (37) of the Act of April 14, 1972 (P.L. 233, No. 64), more commonly known as The Controlled Substance, Drug, Device and Cosmetic Act. Specifically, these sections of 35 P.S. § 780-101 et seq. of The Controlled Substance, Device and Cosmetic Act prohibit:

(1) the administration, dispensing, delivery, gift or prescription of any controlled substance by any practitioner or professional assistant under the practitioner's direction and supervision unless done (i) in good faith in the course of his professional practice; (ii) within the scope of the patient relationship; (iii) in accordance with treatment principles accepted by a responsible segment of the medical profession.

(2) the manufacture or delivery of a controlled substance by a person not registered under this act, or by a practitioner not registered or licensed by the appropriate State board, or any person knowingly creating, delivering, or possessing with intent to deliver, a counterfeit controlled substance.

(3) the possession by any person, other than a registrant, of more than thirty doses labeled as a dispensed prescription a more than three trade packages of any anabolic steroids.

As used in this legislation, a firearm is any weapon, including a starter gun, which will, or is designed to, expel a projectile or projectiles by the action of an explosion, expansion of gas or escape of gas.

This act shall take effect in 60 days.

B. SUMMARY OF RELEVANT EXISTING LAW:

Currently, 18 Pa.C.S. § 7508 provides mandatory minimum sentences and fines for any person who has been convicted of an offense in violation of The Controlled Substance, Drug, Device and Cosmetic Act, section 13(a) (14), (30) or (37). The length of the term of imprisonment and the amount of the fine depends upon the type and amount of controlled substance. For example, if the controlled substance is marijuana and the amount in possession is at least two pounds but less than ten pounds, or at least ten live plants but less than 21 live plants, then the penalty is one year in prison and a fine of \$5,000. If the amount of marijuana in possession is at least ten pounds but less than 50 pounds, or at least 21 live plants but less than 51 live plants, then the mandatory minimum term of imprisonment is three years and the fine is \$15,000. The statute does not provide for mandatory minimum sentences and fines for any person who has been convicted of an offense in violation of The Controlled Substance, Drug, Device and Cosmetic Act while in possession of a firearm.

Furthermore, mandatory minimum sentences are provided in 42 Pa.C.S. § 9712 for offenses with firearms. According to this section, a mandatory minimum sentence of at least five years total confinement applies to any person who is convicted in any court of this Commonwealth of a "crime of violence," as defined in section 9714(g) (relating to Sentences for Second and Subsequent Offenses), while in visible possession of a firearm. The following offenses are crimes of violence under the statute:

- (1) murder of the third degree
- (2) voluntary manslaughter
- (3) aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to Aggravated Assault)
- (4) rape or involuntary deviate sexual intercourse
- (5) arson as defined in 18 Pa.C.S. § 3301(a) (relating to Arson and related Offenses)
- (6) kidnapping
- (7) burglary of a structure adapted for overnight accommodation in which at the time of the offense any person is present
- (8) 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
- (9) 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

While The Controlled Substance, Drug, Device and Cosmetic Act and 42 Pa.C.S. § 9712 provide mandatory sentences, neither of these statutes provide a mandatory minimum term of imprisonment of five years for a person who is convicted of a drug trafficking felony while in possession of a firearm.



Rep. Ellen M. Bard

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153rd Legislative District
Pennsylvania House of Representatives
www.pahousegop.com

Profile/Biography

Elected to the Legislature in 1994, Rep. Ellen Bard is fast stacking up legislative credits. To date, she successfully steered through the legislative process 12 bills that are now law. Her legislative initiatives also created the specialty Drug Abuse Resistance Education (DARE) license plate.

Bard's new laws: 1) stiffen penalties for graffiti crime; 2) authorize county commissioners to lower the intangible personal property tax rate; 3) authorize the creation of auxiliary Boards of Assessment Appeals to help in the review process of county reassessments; 4) create a new criminal offense for use of "date rape drugs"; and 5) reform and standardize local tax collection law to protect taxpayers from "bad apple" tax collectors who defraud the public. The five bills Representative Bard sponsored on behalf of the Local Government Commission: provide for recording of public records and provisions for telephoning price quotations; and streamline the financial reporting process for local governments.

Ellen also sponsored resolutions calling for Holocaust education and an examination of the Commonwealth's preparedness to deal with terroristic activities.

Ellen's leadership qualities have earned her recognition from groups such as the National Federation of Independent Business (NFIB) and the Pennsylvania Tax Collectors' Association, which presented Ellen with its "Legislator of the Year" award in 1996.

A small business owner with a Master's Degree in Management from the Massachusetts Institute of Technology (MIT), Ellen believes in efficient and effective government. A former township commissioner, Ellen applies what she knows about the needs of local government in her role as ranking House member of the Local Government Commission and as a member of the House Local Government Committee. Ellen also serves as the Chairman of the Subcommittee on Recreation of the Tourism and Recreation Development Committee. She is also a member of the Transportation and Liquor Control committees. She has been appointed by House Leadership to serve on the Majority Policy Committee and is also a member of the Fire and Emergency Services Caucus.

Beyond her legislative duties, she founded the environmental organization "Earthright" and the Abington Trails Advisory Committee. The establishment of these organizations and Ellen's membership on the Montgomery County Open Space Preservation Task Force and Montgomery County Lands Trust attest to her commitment to a healthy, clean environment.

Ellen also is intensely concerned about issues affecting the elderly and serves on the Montgomery County Aging and Adult Service Advisory Council, the Manor Junior College's Council of Presidents' Association, the Board of Directors of Citizens and Police Together, and the Penn State Abington Advisory Board.

Ellen, her husband Rob, and their daughter Allison, reside in the Jenkintown section of Abington Township.

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FOR IMMEDIATE RELEASE

August 29, 2000

Bard Bill Cracks Down on Illegal Gun Use

Legislation supported by Attorney General Mike Fisher

HARRISBURG—The House Judiciary Committee's Subcommittee on Courts held a public hearing in Lancaster today on a bill authored by Montgomery County lawmaker Rep. Ellen M. Bard that would help keep firearms out of the hands of criminals.

Under House Bill 2165, a person who is convicted of drug trafficking or drug possession while in possession of a firearm would be sentenced to a mandatory minimum prison term of five years. Bard said her bill, if signed into law, would deter illegal substance users and drug traffickers from carrying weapons and it would reduce the violence associated with illegal drug activity.

"As a society, we must stop gun violence. While we must maintain our right to keep and bear arms, we must also keep guns out of the hands of criminals," Bard said.

"Too often, we read of children and innocent people who are gunned down in the cross-fire of drug transactions.

"Although the vast majority of gun owners in America use firearms responsibly, our citizens must be protected from criminals who use guns to carry out illegal activities. This legislation will put those who deal in drugs on notice; if drug offenders carry a weapon while conducting criminal activities, they will face jail time - no exceptions."

Bard's bill has received the support of Attorney General Mike Fisher, who has made a priority of getting guns out of the hands of criminals. "I support House Bill 2165, which would ensure that dangerous criminals who possess guns serve significant jail sentences," Fisher said. "This bill would give state and local law enforcement officers the same powerful tool that federal law enforcement officers use against armed drug dealers."

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