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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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HOUSE BILL

No. 233 Session of  
2013

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INTRODUCED BY DELUCA, D. COSTA, STEPHENS, SWANGER, BARRAR,  
FABRIZIO, KORTZ AND READSHAW, JANUARY 22, 2013

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REFERRED TO COMMITTEE ON JUDICIARY, JANUARY 22, 2013

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AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the  
2 Pennsylvania Consolidated Statutes, further providing for  
3 sentences for offenses committed with firearms.

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

6 Section 1. Section 9712 of Title 42 of the Pennsylvania  
7 Consolidated Statutes is amended to read:

8 § 9712. Sentences for offenses committed with firearms.

9 (a) Mandatory sentence.--Except as provided under section  
10 9716 (relating to two or more mandatory minimum sentences  
11 applicable), any person who is convicted in any court of this  
12 Commonwealth of a crime of violence as defined in section  
13 9714(g) (relating to sentences for second and subsequent  
14 offenses), shall, if the person visibly possessed a firearm or a  
15 replica of a firearm, whether or not the firearm or replica was  
16 loaded or functional, that placed the victim in reasonable fear  
17 of death or serious bodily injury, during the commission of the  
18 offense, be sentenced to a minimum sentence of at least five

1 years of total confinement notwithstanding any other provision  
2 of this title or other statute to the contrary. Such persons  
3 shall not be eligible for parole, probation, work release or  
4 furlough. The mandatory sentence imposed under this subsection  
5 shall be imposed consecutively to any other sentence imposed by  
6 the court.

7 (b) Proof at sentencing.--Provisions of this section shall  
8 not be an element of the crime and notice thereof to the  
9 defendant shall not be required prior to conviction, but  
10 reasonable notice of the Commonwealth's intention to proceed  
11 under this section shall be provided after conviction and before  
12 sentencing. The applicability of this section shall be  
13 determined at sentencing. The court shall consider any evidence  
14 presented at trial and shall afford the Commonwealth and the  
15 defendant an opportunity to present any necessary additional  
16 evidence and shall determine, by a preponderance of the  
17 evidence, if this section is applicable.

18 (c) Authority of court in sentencing.--There shall be no  
19 authority in any court to impose on an offender to which this  
20 section is applicable any lesser sentence than provided for in  
21 subsection (a) [or], to place such offender on probation [or],  
22 to suspend sentence or to impose the mandatory sentence  
23 concurrent to any other sentence. Nothing in this section shall  
24 prevent the sentencing court from imposing a sentence greater  
25 than that provided in this section. Sentencing guidelines  
26 promulgated by the Pennsylvania Commission on Sentencing shall  
27 not supersede the mandatory sentences provided in this section.

28 (d) Appeal by Commonwealth.--If a sentencing court refuses  
29 to apply this section where applicable, the Commonwealth shall  
30 have the right to appellate review of the action of the

1 sentencing court. The appellate court shall vacate the sentence  
2 and remand the case to the sentencing court for imposition of a  
3 sentence in accordance with this section if it finds that the  
4 sentence was imposed in violation of this section.

5 (e) Definitions.--As used in this section, the following  
6 words and phrases shall have the meanings given to them in this  
7 subsection:

8 "Firearm." Any weapon, including a starter gun, which will  
9 or is designed to or may readily be converted to expel a  
10 projectile by the action of an explosive or the expansion of gas  
11 therein.

12 "Replica of a firearm." An item that can reasonably be  
13 perceived to be a firearm.

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