

No. 2011-40

AN ACT

HB 396

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for drug delivery resulting in death and for sentences for second and subsequent offenses.

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

Section 1. Section 2506 of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 2506. Drug delivery resulting in death.

(a) **[General rule] *Offense defined.***—A person commits **[murder of the third degree who] a felony of the first degree if the person intentionally administers, dispenses, delivers, gives, prescribes, sells or distributes any controlled substance or counterfeit controlled substance in violation of 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, and another person dies as a result of using the substance.**

(b) **[Mandatory minimum sentence.**—A person convicted under subsection (a) shall be sentenced to a minimum sentence of at least five years of total confinement 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, notwithstanding any other provision of this title or other statute to the contrary.] ***Penalty.***—A person convicted under subsection (a) shall be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years.

(d) **Authority of court in sentencing.**—There shall be no authority in any court 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, 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) **Appeal by Commonwealth.**—If a sentencing court refuses to apply subsection (b) 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 subsection (b) if it finds that the sentence was imposed in violation of subsection (b).]

(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. Nothing in this section shall prevent a fine from being imposed on assets which have been subject to an unsuccessful forfeiture petition.

Section 2. Section 9714(g) of Title 42 is amended to read:

§ 9714. Sentences for second and subsequent offenses.

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(g) Definition.—As used in this section, the term "crime of violence" means murder of the third degree, voluntary manslaughter, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), rape, involuntary deviate sexual intercourse, aggravated indecent assault, incest, sexual assault, arson as defined in 18 Pa.C.S. § 3301(a) (relating to arson and related offenses), kidnapping, burglary of a structure adapted for overnight accommodation in which at the time of the offense any person is present, robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), or robbery of a motor vehicle, *drug delivery resulting in death as defined in 18 Pa.C.S. § 2506(a) (relating to drug delivery resulting in death)*; or criminal attempt, 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 in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction.

Section 3. This act shall take effect in 60 days.

APPROVED—The 7th day of July, A.D. 2011

TOM CORBETT