## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL No. 348 Session of 2017

INTRODUCED BY DELUCA, GAINEY, TAYLOR, GODSHALL, MILLARD, BARRAR, D. COSTA AND READSHAW, FEBRUARY 3, 2017

REFERRED TO COMMITTEE ON JUDICIARY, FEBRUARY 3, 2017

## AN ACT

1 2 3	Amending Title 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, in sentencing, further providing for 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 sentenceExcept 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

years of total confinement notwithstanding any other provision of this title or other statute to the contrary. Such persons shall not be eligible for parole, probation, work release or furlough. <u>The mandatory sentence imposed under this subsection</u> <u>shall be imposed consecutively to any other sentence imposed by</u> <u>the court.</u>

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 reasonable notice of the Commonwealth's intention to proceed 10 under this section shall be provided after conviction and before 11 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 evidence, if this section is applicable. 17

18 (c) Authority of court in sentencing. -- There shall be no authority in any court to impose on an offender to which this 19 20 section is applicable any lesser sentence than provided for in subsection (a) [or], to place such offender on probation [or], 21 to suspend sentence or to impose the mandatory sentence 22 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 promulgated by the Pennsylvania Commission on Sentencing shall 26 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

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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.