

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1045 Session of
2007

INTRODUCED BY KITCHEN, WASHINGTON, COSTA, FONTANA, TARTAGLIONE,
O'PAKE, STACK, FERLO AND ERICKSON, AUGUST 2, 2007

REFERRED TO JUDICIARY, AUGUST 2, 2007

AN ACT

1 Amending Titles 42 (Judiciary and Judicial Procedure) and 44
2 (Law and Justice) of the Pennsylvania Consolidated Statutes,
3 providing for definitions of "board" and "department";
4 further providing for composition of the Pennsylvania
5 Commission on Sentencing and for powers and duties; providing
6 for adoption of guidelines for resentencing, adoption of
7 guidelines for parole and adoption of recommitment ranges
8 following revocation of parole by the Pennsylvania Board of
9 Probation and Parole; further providing for publication of
10 guidelines, for sentencing generally, for sentence of total
11 confinement, for sentencing proceeding and place of
12 confinement, for information required upon commitment and
13 subsequent disposition and for referral to State intermediate
14 punishment program; and providing for recidivism risk
15 reduction incentive.

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

18 Section 1. Section 2151.1 of Title 42 of the Pennsylvania
19 Consolidated Statutes is amended by adding definitions to read:
20 § 2151.1. Definitions.

21 The following words and phrases when used in this subchapter
22 shall have the meanings given to them in this section unless the
23 context clearly indicates otherwise:

24 "Board." The Pennsylvania Board of Probation and Parole.

1 * * *

2 "Department." The Department of Corrections of the
3 Commonwealth.

4 Section 2. Section 2152 of Title 42 is amended by adding a
5 subsection to read:

6 § 2152. Composition of commission.

7 * * *

8 (a.1) Ex officio members.--The Secretary of Corrections and
9 the chairman of the board, during their tenure in their
10 respective positions, shall serve as ex officio nonvoting
11 members of the commission.

12 * * *

13 Section 3. Section 2153(a)(7), (9), (10), (11), (12), (13)
14 and (14) of Title 42 are amended to read:

15 § 2153. Powers and duties.

16 (a) General rule.--The commission, pursuant to rules and
17 regulations, shall have the power to:

18 * * *

19 (7) Establish a research and development program within
20 the commission for the purpose of:

21 (i) Serving as a clearinghouse and information
22 center for the collection, preparation and dissemination
23 of appropriate information on Commonwealth sentencing,
24 resentencing and parole practices.

25 (ii) Assisting and serving in a consulting capacity
26 to the board, State courts, departments and agencies in
27 the development, maintenance and coordination of sound
28 sentencing [practices], resentencing and parole
29 practices.

30 * * *

1 (9) Publish data concerning the sentencing and parole
2 processes.

3 (10) Collect systematically and disseminate information
4 concerning parole dispositions and sentences actually
5 imposed.

6 (11) Collect systematically and disseminate information
7 regarding effectiveness of parole dispositions and sentences
8 imposed.

9 (12) Make recommendations to the General Assembly
10 concerning modification or enactment of sentencing, parole
11 and correctional statutes which the commission finds to be
12 necessary and advisable to carry out an effective, humane and
13 rational sentencing, resentencing and parole policy.

14 (13) Establish a plan and timetable to collect and
15 disseminate information relating to incapacitation,
16 recidivism, deterrence and overall effectiveness of sentences
17 and parole dispositions imposed.

18 (14) Establish a program to systematically monitor
19 compliance with the guidelines and with mandatory sentencing
20 laws by:

21 (i) Promulgating forms which document the
22 application of [the] sentencing, resentencing and parole
23 guidelines or mandatory sentencing laws, or both.

24 (ii) Requiring the timely completion and submission
25 of such forms to the commission.

26 * * *

27 Section 4. Title 42 is amended by adding sections to read:

28 § 2154.3. Adoption of guidelines for resentencing.

29 The commission shall adopt guidelines that shall be
30 considered by the court when resentencing an offender following

1 revocation of probation, county intermediate punishment or State
2 intermediate punishment. The guidelines shall take into account
3 factors considered in adopting the sentencing guidelines, the
4 seriousness of the violation and the rehabilitative needs of the
5 defendant.

6 § 2154.4. Adoption of guidelines for parole.

7 (a) Adoption.--The commission shall adopt guidelines that
8 shall be considered by the board and any other paroling entity
9 when exercising its power to parole and reparole all persons
10 sentenced by any court in this Commonwealth to imprisonment in
11 any State or county penitentiary, prison or penal institution.

12 The guidelines shall do all of the following:

13 (1) Give primary consideration to the protection of the
14 public and to victim safety.

15 (2) Provide for due consideration of victim input.

16 (3) Be designed to encourage inmates and parolees to
17 conduct themselves in accordance with conditions and rules of
18 conduct set forth by the department or other prison
19 facilities and the board.

20 (4) Be designed to encourage inmates and parolees to
21 participate in programs that have been demonstrated to be
22 effective in reducing recidivism, including appropriate drug
23 and alcohol treatment programs.

24 (5) Provide for prioritization of incarceration,
25 rehabilitation and other criminal justice resources for
26 offenders posing the greatest risk to public safety.

27 (6) Use validated risk assessment tools, be evidence
28 based and take into account available research relating to
29 the risk of recidivism, minimizing the threat posed to public
30 safety and factors maximizing the success of reentry.

1 (b) Discretionary authority.--Notwithstanding any other
2 provision of law, this section shall not remove the
3 discretionary parole authority of the board and any other
4 paroling entity when exercising its power to parole and
5 reparole.

6 § 2154.5. Adoption of recommitment ranges following revocation
7 of parole by board.

8 (a) Recommitment ranges.--The commission shall adopt
9 recommitment ranges that shall be considered by the board when
10 exercising its power to reparole, commit and recommit for
11 violations of parole any person sentenced by a court in this
12 Commonwealth to imprisonment in any prison or penal institution
13 of this Commonwealth, including State or county penitentiaries,
14 prisons or penal institutions. The recommitment ranges shall
15 take into account the seriousness of the initial conviction
16 offense, the level of seriousness of the violation and the
17 rehabilitative needs of the defendant. At the end of the
18 recommittal period, the parole violator shall be reviewed for
19 parole or repared without further review.

20 (b) Deviation.--In every case in which the board deviates
21 from the recommitment ranges, the board shall provide
22 contemporaneous written reasons, consistent with board
23 procedure, for the deviation from the recommitment ranges.

24 (c) Definitions.--As used in this section, the following
25 words and phrases shall have the meanings given to them in this
26 subsection:

27 "Recommitment range." A range of time within which a parole
28 violator may be recommitted to serve an additional part of the
29 term the parole violator would have been compelled to serve had
30 the parole violator not been paroled.

Section 5. Sections 2155 and 9721(b) of Title 42 are amended
to read:

§ 2155. Publication of guidelines for sentencing[.],
resentencing and recommitment ranges following
revocation.

(a) General rule.--The commission shall:

(1) Prior to adoption, publish in the Pennsylvania
Bulletin all proposed sentencing guidelines, resentencing
guidelines following revocation of probation, county
intermediate punishment and State intermediate punishment and
recommitment ranges following revocation by the board of
paroles granted, and hold public hearings not earlier than 30
days and not later than 60 days thereafter to afford an
opportunity for the following persons and organizations to
testify:

(i) Pennsylvania District Attorneys Association.

(ii) Chiefs of Police Associations.

(iii) Fraternal Order of Police.

(iv) Public Defenders Organization.

(v) Law school faculty members.

(vi) State Board of Probation and Parole.

(vii) [Bureau of Correction] Department of
Corrections.

(viii) Pennsylvania Bar Association.

(ix) Pennsylvania Wardens Association.

(x) Pennsylvania Association on Probation, Parole
and Corrections.

(xi) Pennsylvania Conference of State Trial Judges.

(xii) Any other interested person or organization.

(2) Publish in the Pennsylvania Bulletin sentencing

1 guidelines as adopted by the commission.

2 (b) Rejection by General Assembly.--Subject to gubernatorial
3 review pursuant to section 9 of Article III of the Constitution
4 of Pennsylvania, the General Assembly may by concurrent
5 resolution reject in their entirety any guidelines or
6 recommitment ranges adopted by the commission within 90 days of
7 their publication in the Pennsylvania Bulletin pursuant to
8 subsection (a)(2).

9 (c) Effective date.--Sentencing guidelines, resentencing
10 guidelines following revocation of probation, county
11 intermediate punishment and State intermediate punishment and
12 recommitment ranges following revocation by the board of paroles
13 granted, adopted by the commission shall become effective 90
14 days after publication in the Pennsylvania Bulletin pursuant to
15 subsection (a)(2) unless disapproved pursuant to subsection (b)
16 and shall apply to sentences and resentences and parole
17 decisions made after the effective date of the guidelines. If
18 not disapproved, the commissioners shall conduct training and
19 orientation for trial court judges and board members prior to
20 the effective date of the guidelines.

21 § 9721. Sentencing generally.

22 * * *

23 (b) General standards.--In selecting from the alternatives
24 set forth in subsection (a) the court shall follow the general
25 principle that the sentence imposed should call for confinement
26 that is consistent with the protection of the public, the
27 gravity of the offense as it relates to the impact on the life
28 of the victim and on the community, and the rehabilitative needs
29 of the defendant. The court shall also consider any guidelines
30 for sentencing, resentencing and recommitment adopted by the

1 Pennsylvania Commission on Sentencing and taking effect
2 [pursuant to] under section 2155 (relating to publication of
3 guidelines for sentencing, resentencing and recommitment ranges
4 following revocation). In every case in which the court imposes
5 a sentence for a felony or misdemeanor, the court shall make as
6 a part of the record, and disclose in open court at the time of
7 sentencing, a statement of the reason or reasons for the
8 sentence imposed. In every case where the court imposes a
9 sentence, resentence or recommitment outside the sentencing
10 guidelines adopted by the Pennsylvania Commission on Sentencing
11 [pursuant to section] under sections 2154 (relating to adoption
12 of guidelines for sentencing), 2154.1 (relating to adoption of
13 guidelines for county intermediate punishment), 2154.3 (relating
14 to adoption of guidelines for resentencing) and 2154.4 (relating
15 to adoption of guidelines for parole) and made effective
16 [pursuant to] under section 2155, the court shall provide a
17 contemporaneous written statement of the reason or reasons for
18 the deviation from the guidelines. Failure to comply shall be
19 grounds for vacating the sentence and resentencing the
20 defendant.

21 * * *

22 Section 6. Section 9756 of Title 42 is amended by adding a
23 subsection to read:

24 § 9756. Sentence of total confinement.

25 * * *

26 (b.1) Recidivism risk reduction incentive minimum
27 sentence.--The court shall determine if the defendant is
28 eligible for a recidivism risk reduction incentive minimum
29 sentence under 44 Pa.C.S. Ch. 53 (relating to recidivism risk
30 reduction incentive). If the defendant is eligible, the court

1 shall impose a recidivism risk reduction incentive minimum
2 sentence in addition to a minimum sentence and maximum sentence.

3 * * *

4 Section 7. Section 9762 of Title 42 is amended to read:

5 § 9762. Sentencing proceeding; place of confinement.

6 [All persons sentenced to total or partial confinement for:

7 (1) maximum terms of five or more years shall be
8 committed to the Bureau of Correction for confinement;

9 (2) maximum terms of two years or more but less than
10 five years may be committed to the Bureau of Correction for
11 confinement or may be committed to a county prison within the
12 jurisdiction of the court;

13 (3) maximum terms of less than two years shall be
14 committed to a county prison within the jurisdiction of the
15 court except that as facilities become available on dates and
16 in areas designated by the Governor in proclamations
17 declaring the availability of State correctional facilities,
18 such persons may be committed to the Bureau of Correction for
19 confinement.] (a) Sentences or terms of incarceration

20 imposed before a certain date.--For the three-year period
21 beginning on the effective date of this subsection, all
22 persons sentenced to total or partial confinement for the
23 following terms shall be committed as follows:

24 (1) Maximum terms of five or more years shall be
25 committed to the Department of Corrections for confinement.

26 (2) Maximum terms of two years or more but less than
27 five years may be committed to the Department of Corrections
28 for confinement or may be committed to a county prison within
29 the jurisdiction of the court.

30 (3) Maximum terms of less than two years shall be

1 committed to a county prison within the jurisdiction of the
2 court.

3 (b) Sentences or terms of incarceration imposed after a
4 certain date.--Beginning three years after the effective date of
5 this subsection, all persons sentenced to total or partial
6 confinement for the following terms shall be committed as
7 follows:

8 (1) Maximum terms of five or more years shall be
9 committed to the Department of Corrections for confinement.

10 (2) Maximum terms of two years or more but less than
11 five years shall be committed to the Department of
12 Corrections for confinement, except upon a finding of all of
13 the following:

14 (i) The chief administrator of the county prison, or
15 the administrator's designee, has certified that the
16 county prison is available for the commitment of persons
17 sentenced to maximum terms of two or more years but less
18 than five years.

19 (ii) The attorney for the Commonwealth has consented
20 to the confinement of the person in the county prison.

21 (iii) The sentencing court has approved the
22 confinement of the person in the county prison within the
23 jurisdiction of the court.

24 (3) Maximum terms of less than two years shall be
25 committed to a county prison within the jurisdiction of the
26 court.

27 (c) Certification.--The chief administrator of the county
28 prison, or the administrator's designee, may issue a
29 certification under subsection (b)(2)(i) if the county prison
30 population is less than 110% of the rated capacity of the county

1 prison. The chief administrator shall revoke any previously
2 issued certification if the prison population exceed 110% of the
3 rated capacity. The president judge of the court, the district
4 attorney and the chief public defender of the county shall be
5 served with a written copy of any certification or revocation.

6 (d) County restrictive intermediate punishment.--Nothing in
7 this section shall prevent a judge from sentencing an offender
8 to county punishment which does not require confinement within
9 county prison if otherwise authorized by law.

10 (e) Reimbursement.--Beginning three years after the
11 effective date of this subsection:

12 (1) The Department of Corrections shall reimburse to the
13 counties the reasonable cost of confinement of persons
14 committed to a county prison who are participating in an
15 approved work release program. The reimbursement per prisoner
16 shall not exceed the average per-prisoner cost of confinement
17 paid by the Commonwealth for the confinement of prisoners in
18 the Department of Corrections. No more than \$2,500,000 shall
19 be expended annually for this purpose. Reimbursement shall be
20 made on a pro rata basis if the total dollar amount of
21 eligible confinement costs exceeds \$2,500,000.

22 (2) County prisons may require reimbursements from other
23 county prisons or the Department of Corrections for inmates
24 voluntarily accepted for incarceration at mutually agreeable
25 rates. The Department of Corrections shall maintain a list of
26 those counties willing to accept voluntary placement of out-
27 of-county inmates.

28 (f) Aggregation.--For purposes of this section, the
29 sentences or terms of incarceration shall mean the entire
30 continuous term of incarceration to which a person is subject,

1 notwithstanding whether the sentence is the result of any of the
2 following:

3 (1) One or more sentences.

4 (2) Sentences imposed for violations of probation or
5 intermediate punishment.

6 (3) Sentences to be served upon recommitment for
7 violations of parole.

8 (4) Any other manner of sentence.

9 (g) Date of imposition.--For purposes of this section, if a
10 person is subject to multiple sentences or terms of
11 incarceration or any combination of sentences or terms, the date
12 of the last sentence imposed or the date of recommitment,
13 whichever is later, shall determine the place of incarceration
14 and whether reimbursement is required.

15 (h) Transfer of prisoners.--Nothing in this section shall
16 prohibit the transfer of prisoners otherwise authorized by law
17 or prevent a judge from changing the place of confinement
18 between State and county facilities to the extent that the judge
19 would have such discretion at the time of imposition of sentence
20 or recommitment.

21 Section 8. Section 9764 of Title 42, amended December 1,
22 2004 (P.L.778, No.233), is amended to read:

23 § 9764. Information required upon commitment and subsequent
24 disposition.

25 (a) General rule.--Upon commitment of an [offender] inmate
26 to the custody of the Department of Corrections, the sheriff or
27 transporting official shall provide to the institution's records
28 officer or duty officer, in addition to the court commitment
29 order, the following information:

30 (1) Record of adjustment in the county correctional

1 facility, including, but not limited to, misconducts and
2 escape history.

3 (2) Any current medical or psychological condition
4 requiring treatment, including, but not limited to, suicide
5 attempts.

6 (3) [Any medical admission testing performed by the
7 county and the results of those tests, including, but not
8 limited to, hepatitis, HIV/AIDS, tuberculosis or other
9 infectious disease testing. Any release of medical
10 information relating to HIV/AIDS shall be in accordance with
11 the act of November 29, 1990 (P.L.585, No.148), known as the
12 Confidentiality of HIV-Related Information Act.] All medical
13 records of the county correctional institution relating to
14 the inmate to the extent that those records may be disclosed
15 under Federal and State law. The records shall include
16 admission testing performed by the county and the results of
17 those tests and any testing related to hepatitis, HIV/AIDS,
18 tuberculosis or other infectious disease testing.

19 (4) Notice of current or previously administered
20 medications.

21 (5) A 48-hour supply of current medications.

22 (6) A written statement by the county correctional
23 institution relating to any sentencing credit to which the
24 inmate may be entitled.

25 (7) A written statement by the county correctional
26 institution setting forth all of the following:

27 (i) The dates on which the inmate was incarcerated.

28 (ii) The charges pending against the inmate with the
29 offense tracking number.

30 (iii) The date on which the inmate was released on

1 bail, if any, and a copy of the bail order.

2 (8) Information provided to the county correctional
3 institution by the court under subsection (b).

4 (b) Additional information.--Within ten days from the date
5 sentence is imposed, the court shall provide to the county
6 correctional facility the following information pertaining to
7 the [offender] inmate:

8 (1) A copy of the presentence investigation report.
9 Where a presentence investigation report was not ordered by
10 the court, the official version of the crime for which the
11 [offender] inmate was convicted or a copy of the guilty plea
12 transcript or preliminary hearing transcript.

13 (2) The criminal complaint or affidavit of probable
14 cause accompanying the arrest warrant.

15 [(3) Where available, the police report summarizing the
16 facts of the crime.]

17 (4) A copy of the completed guideline sentence form
18 [issued by the Pennsylvania Commission on Sentencing].

19 (5) All of the following:

20 (i) A written, sealed sentencing order from the
21 county.

22 (ii) The sentencing colloquy sealed by the court.

23 (iii) Court commitment orders.

24 (iv) The completed Department of Correction's Court
25 Commitment State or County Correctional Institution Form
26 (DC 300B).

27 (v) Any detainers filed against the inmate of which
28 the county has notice.

29 (c) [Transfer of offender.--Where an offender is transferred
30 from a county correctional facility to a State correctional

1 facility for any reason, the information specified in subsection
2 (b) shall be transmitted to the State correctional facility
3 within 20 calendar days from the date on which the offender is
4 transferred.] Transmittal of additional inmate documentation.--
5 If a document provided by the court under subsection (b) is
6 received by the county correctional institution after the inmate
7 is transferred to the custody of the Department of Corrections,
8 the document shall be transmitted to the Department of
9 Corrections within 20 calendar days of its receipt.

10 (c.1) Implementation.--

11 (1) The Department of Corrections may refuse to accept
12 custody of an inmate for whom the sheriff or transporting
13 official does not provide the information under subsection
14 (a) under the following circumstances:

15 (i) The county correctional facility has a pattern
16 or practice of not providing the information mandated
17 under this section.

18 (ii) The Department of Corrections has previously
19 notified the chief administrator of the county
20 correctional facility, the county commissioners, the
21 county sheriff and the president judge of the county of
22 the specific deficiencies that constitute a pattern or
23 practice.

24 (iii) The Department of Corrections has provided the
25 county with a reasonable period of time to provide the
26 documentation.

27 (iv) The Department of Corrections has notified the
28 officials designated under subparagraph (ii) of the
29 intent to refuse to accept inmates without documentation
30 as of a specified date that shall be no sooner than 30

1 days after the service of the notification.

2 (2) In cases of a refusal to accept custody of an inmate
3 under this subsection, the sheriff or transporting official
4 shall return the inmate to the sending county correctional
5 institution, which shall accept custody of the inmate. The
6 inmate may be recommitted to the custody of the Department of
7 Corrections upon provision of the documentation required
8 under subsection (a).

9 (c.2) Electronic transfer of information.--The county or
10 other government officials required to provide documentation
11 under this section may provide the documentation in electronic
12 form. The Department of Corrections may establish guidelines
13 relating to the type of electronic documentation that will be
14 accepted. The Department of Correction's electronic
15 documentation requirements shall reasonably accommodate the
16 county practices and seek to reduce the requirement of paper
17 transfers. The Department of Corrections, in its discretion, may
18 require actual sealed court orders to the extent that they
19 relate to the commitment, term of sentence, or other matter that
20 may affect the fact or duration of confinement. This subsection
21 shall not be construed to require the county to develop new
22 information systems or data collection instruments.

23 (d) Transfer to county facility.--Upon transfer of an inmate
24 from a State correctional institution to a county correctional
25 facility, the Department of Corrections shall provide to the
26 county facility, unless the facility prior to the time of
27 transfer agrees to accept the inmate without the information,
28 the record of the inmate's institutional adjustment, including,
29 but not limited to, misconducts and/or escape history, and
30 written notice of any current medical or psychological condition

1 requiring treatment, including, but not limited to, suicide
2 attempts, notice of current or previously ordered medication and
3 a 48-hour supply of current medication.

4 (e) Release by Department of Corrections.--Prior to the
5 release of an inmate from the Department of Corrections to State
6 parole supervision, the Department of Corrections shall provide
7 to the Board of Probation and Parole the information contained
8 in subsections (a)(1) and (2) and (b).

9 (f) Release from county correctional facility to State
10 probation or parole.--

11 (1) Prior to the release of an inmate from a county
12 correctional facility to State probation or parole
13 supervision, the facility shall provide to the Board of
14 Probation and Parole the information contained in subsections
15 (a)(1) through (4) and (b).

16 (2) Prior to the release of an inmate from a county
17 correctional facility to State probation or parole
18 supervision, the facility shall provide to the inmate his
19 current medications as prescribed and any customary and
20 necessary medical supplies as determined by the prescribing
21 physician.

22 (g) Release from county correctional facility to county
23 probation or parole.--

24 (1) Prior to the release of an inmate from a county
25 correctional facility to county probation or parole
26 supervision, the facility shall provide to the county
27 probation department the information contained in subsections
28 (a)(1) through (4) and (b).

29 (2) Prior to the release of an inmate from a county
30 correctional facility to county probation or parole

1 supervision, the facility shall provide to the inmate his
2 current medications as prescribed and any customary and
3 necessary medical supplies as determined by the prescribing
4 physician.

5 (h) Record of inmate moneys.--Prior to the release of an
6 inmate from the Department of Corrections to State parole
7 supervision, the department shall provide to the Board of
8 Probation and Parole a record of any moneys paid by the inmate
9 and any balance remaining towards satisfaction of restitution or
10 any other court-ordered financial obligations. Prior to the
11 release of an inmate from a county correctional facility to
12 State parole supervision, the county correctional facility shall
13 provide to the Board of Probation and Parole a record of any
14 moneys paid by the inmate and any balance remaining towards the
15 satisfaction of restitution or any other court-ordered financial
16 obligations. Prior to the release of an inmate from a county
17 correctional facility to county parole supervision, the facility
18 shall provide to the county probation department or other agent
19 designated by the county commissioners of the county with the
20 approval of the president judge of the county a record of any
21 moneys paid by the inmate and any remaining balance towards the
22 satisfaction of restitution and any other court-ordered
23 financial obligations.

24 (i) Continuing payments.--The Board of Probation and Parole
25 shall require as a condition of parole that any inmate released
26 to their supervision shall make continuing payments on
27 restitution or any other court-ordered financial obligations.
28 The sentencing court shall require as a condition of county
29 parole that any inmate released to the supervision of the county
30 probation department shall make continuing payments of

1 restitution or any other court-ordered financial obligations.

2 (j) Release after maximum sentence.--Upon release of an
3 inmate from the Department of Corrections at the expiration of
4 his maximum sentence, the Department of Corrections shall
5 transmit to the county probation department or other agent
6 designated by the county commissioners of the county with the
7 approval of the president judge of the county in which the
8 inmate was convicted a record of any moneys paid by the inmate
9 and any outstanding amounts owed by the inmate towards
10 satisfaction of restitution or any other court-ordered financial
11 obligations.

12 (k) Procedures.--The Department of Corrections and the
13 Pennsylvania Board of Probation and Parole shall develop
14 procedures to implement the provisions of this section.

15 (l) Application.--This section shall apply to offenders
16 transferred to or released from a State or county correctional
17 facility after the effective date of this section.

18 Section 9. Section 9904 of Title 42, added November 19, 2004
19 (P.L.855, No.112), is amended by adding a subsection to read:
20 § 9904. Referral to State intermediate punishment program.

21 * * *

22 (d.1) Resentencing.--The department may make a written
23 request to the sentencing court that an offender who is
24 otherwise eligible but has not been referred for evaluation or
25 originally sentenced to State intermediate punishment be
26 sentenced to State intermediate punishment. The court may
27 resentence the offender to State intermediate punishment if all
28 of the following apply:

29 (1) The department has recommended placement in a drug
30 offender treatment program.

1 (2) The attorney for the Commonwealth and the offender
2 have agreed to the placement and modification of sentence.

3 (3) The court makes the findings set forth under
4 subsection (d).

5 (4) The resentencing has occurred within 180 days of the
6 date of the defendant's admission to the custody of the
7 department.

8 (5) The court has otherwise complied with all other
9 requirements for the imposition of sentence.

10 * * *

11 Section 10. Title 44 is amended by adding a part to read:

12 PART III

13 INCARCERATION

14 Chapter

15 51. Preliminary Provisions (Reserved)

16 53. Recidivism Risk Reduction Incentive

17 CHAPTER 51

18 PRELIMINARY PROVISIONS

19 (Reserved)

20 CHAPTER 53

21 RECIDIVISM RISK REDUCTION INCENTIVE

22 Sec.

23 5301. Scope of chapter.

24 5302. Purpose.

25 5303. Definitions.

26 5304. Recidivism risk reduction incentive programs.

27 5305. Sentencing.

28 5306. Recidivism risk reduction incentive minimum.

29 5307. Authority of board.

30 5308. Written guidelines and regulations.

1 5309. Evaluation.

2 5310. Reports.

3 5311. Construction.

4 5312. Applicability.

5 § 5301. Scope of chapter.

6 This chapter relates to recidivism risk reduction incentive.

7 § 5302. Purpose.

8 This chapter seeks to create a program that ensures

9 appropriate punishment for persons who commit crimes, encourages

10 prisoner participation in evidence-based programs that reduce

11 the risks of future crime and ensures the openness and

12 accountability of the criminal justice process while ensuring

13 fairness to crime victims.

14 § 5303. Definitions.

15 The following words and phrases when used in this chapter

16 shall have the meanings given to them in this section unless the

17 context clearly indicates otherwise:

18 "Board." The Pennsylvania Board of Probation and Parole.

19 "Commission." The Pennsylvania Commission on Sentencing.

20 "Court." The trial judge exercising sentencing jurisdiction

21 over an eligible offender under this chapter or the president

22 judge or the president judge's designee if the original trial

23 judge is no longer serving as a judge of the sentencing court.

24 "Defendant." An individual charged with a criminal offense.

25 "Department." The Department of Corrections of the

26 Commonwealth.

27 "Eligible offender." A defendant or prisoner convicted of a

28 criminal offense who will be committed to the custody of the

29 department and who meets all of the following:

30 (1) Does not demonstrate a history of present or past

1 violent behavior.

2 (2) Has not been subject to a sentence the calculation
3 of which includes an enhancement for the use of a deadly
4 weapon as defined under law or the sentencing guidelines
5 promulgated by the Pennsylvania Commission on Sentencing.

6 (3) Has not been found guilty or previously convicted or
7 adjudicated delinquent for or an attempt or conspiracy to
8 commit a personal injury crime as defined under section 103
9 of the act of November 24, 1998 (P.L.882, No.111), known as
10 the Crime Victims Act.

11 (4) Has not been found guilty or previously convicted or
12 adjudicated delinquent for violating any of the following
13 provisions or an equivalent offense under the laws of the
14 United States or one of its territories or possessions,
15 another state, the District of Columbia, the Commonwealth of
16 Puerto Rico or a foreign nation:

17 (i) 18 Pa.C.S. § 4302 (relating to incest).

18 (ii) 18 Pa.C.S. § 5901 (relating to open lewdness).

19 (iii) 18 Pa.C.S. § 6312 (relating to sexual abuse of
20 children).

21 (iv) 18 Pa.C.S. § 6318 (relating to unlawful contact
22 with minor).

23 (v) 18 Pa.C.S. § 6320 (relating to sexual
24 exploitation of children).

25 (vi) 18 Pa.C.S. Ch. 76 Subch. C (relating to
26 Internet child pornography).

27 (vii) Any offense listed under 42 Pa.C.S. § 9795.1
28 (relating to registration).

29 (5) Is not awaiting trial or sentencing for additional
30 criminal charges, if a conviction or sentence on the

additional charges would cause the defendant to become
ineligible under this definition.

"Program plan." An individualized plan recommended by the
department that contains approved treatment and other approved
programs designed to reduce recidivism risk of a specific
prisoner.

§ 5304. Recidivism risk reduction incentive programs.

(a) Authorization.--Subject to the provisions of this
chapter, the department is authorized to create or otherwise
designate treatment or other programs as recidivism risk
reduction incentive programs.

(b) Intent.--This chapter is intended to encourage eligible
offenders committed to the custody of the department to
participate in and successfully complete evidence-based programs
under this chapter that reduce the likelihood of recidivism and
improve public safety.

(c) Program requirements.--In accordance with the provisions
of this chapter, the department may designate a treatment
program or other program as a recidivism risk reduction
incentive program if there is appropriate scientific research
that demonstrates that the proposed program would likely reduce
overall recidivism rates or serious crime rates of program
participants. A recidivism risk reduction incentive program
designed to provide treatment in the form of a therapeutic
community for drug abuse or addiction shall meet the
requirements of an institutional therapeutic community as
defined under 42 Pa.C.S. § 9903 (relating to definitions).

(d) Consultation.--The department shall consult with
appropriate research and technical assistance organizations,
such as the National Institute of Justice, the National

Institute of Corrections and the American Correctional Association concerning evidence-based programs that reduce recidivism risks of prisoners and the scientific research relating to those programs.

(e) Program approval process.--

(1) The department shall publish, in a manner reasonably calculated to inform, a detailed description of the program, the types of offenders who will be eligible to participate in the program, the name and citation of research reports that demonstrate the effectiveness of the proposed program and the name and address of a department contact person responsible for receiving public comments. On the same date as publication, the department shall also deliver a copy of the list to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives.

(2) Upon consideration of the public comments and the expiration of at least 60 days from the date of publication required under paragraph (1), the department may designate any program published as approved for inclusion in the recidivism risk reduction incentive program.

§ 5305. Sentencing.

(a) Generally.--At the time of sentencing, the court shall make a determination whether the defendant is an eligible offender.

(b) Waiver of eligibility requirements.--The prosecuting attorney, in the prosecuting attorney's sole discretion, may advise the court that the Commonwealth has elected to waive the eligibility requirements of this chapter.

(c) Recidivism risk reduction incentive minimum sentence.-- If the court determines that the defendant is an eligible

1 offender or the prosecuting attorney has waived the eligibility
2 requirements under subsection (b), the court shall enter a
3 sentencing order that does all of the following:

4 (1) Imposes the minimum and maximum sentences as
5 required under 42 Pa.C.S. § 9752 (relating to sentencing
6 proceeding generally).

7 (2) Imposes the recidivism risk reduction incentive
8 minimum sentence. The recidivism risk reduction incentive
9 minimum shall be equal to three-fourths of the minimum
10 sentence imposed when the minimum sentence is three years or
11 less. The recidivism risk reduction incentive minimum shall
12 be equal to five-sixths of the minimum sentence if the
13 minimum sentence is greater than three years. For purposes of
14 these calculations, partial days shall be rounded to the
15 nearest whole day. In determining the recidivism risk
16 reduction incentive minimum sentence, the aggregation
17 provisions of 42 Pa.C.S. §§ 9757 (relating to consecutive
18 sentences of total confinement for multiple offenses) and
19 9762(d) (relating to sentencing proceeding; place of
20 confinement) shall apply.

21 (3) Complies with all other applicable sentencing
22 provisions, including provisions relating to victim
23 notification and the opportunity to be heard.

24 § 5306. Recidivism risk reduction incentive minimum.

25 (a) Generally.--The board or its designee shall parole a
26 prisoner who has been sentenced to a recidivism risk reduction
27 incentive minimum sentence at the expiration of that recidivism
28 risk reduction incentive minimum sentence upon a determination
29 that all of the following apply:

30 (1) The department certified that it has conducted an

1 appropriate assessment of the treatment needs and risks of
2 the prisoner using nationally recognized assessment tools
3 that have been normed and validated.

4 (2) The department has certified that it developed a
5 program plan based on the assessment conducted under
6 paragraph (1) that is designed to reduce the risk of
7 recidivism through the use of recidivism risk reduction
8 incentive programs authorized and approved under this chapter
9 that are appropriate for that particular prisoner.

10 (3) The department advised the prisoner that the
11 prisoner is required to successfully complete the program
12 plan.

13 (4) The prisoner has successfully completed all required
14 recidivism risk reduction incentive programs or other
15 programs designated in the program plan.

16 (5) The prisoner has maintained a good conduct record
17 following the imposition of the recidivism risk reduction
18 incentive minimum sentence.

19 (6) The reentry plan for the prisoner is adequate.

20 (7) Individual conditions and requirements for parole
21 have been established.

22 (8) Notice and opportunity to be heard was provided by
23 the board to the sentencing court and the prosecuting
24 attorney in a manner consistent with section 21(b.2) of the
25 act of August 6, 1941 (P.L.861, No.323), referred to as the
26 Pennsylvania Board of Probation and Parole Law.

27 (9) The department has certified that the prisoner
28 continues to be an eligible offender. In the event that a
29 recidivism risk reduction minimum sentence was imposed
30 pursuant to the prosecutor's waiver of eligibility

requirements, the department has not received information that the prisoner has a history of present or past violent behavior and the prosecuting attorney was unaware of that information at the time of sentencing.

(10) There is no reasonable indication that the prisoner poses a risk to public safety.

(b) Funding.--The department shall make all reasonable efforts to seek appropriate funding and resources in order to implement the recidivism risk reduction program.

(c) Program content.--Nothing in this section shall do any of the following:

(1) Require the department to include recidivism risk reduction programs in an individual program plan where the risk assessment indicates that such a program is unlikely to reduce recidivism for that particular prisoner.

(2) Prohibit the department from including appropriate community works or public service projects as part of the program plan.

(3) Prohibit the department from making modifications to the program plan at any time in order to ensure appropriate treatment and recidivism risk reduction incentive program placement.

(d) Adjudication.--Nothing in this section shall be interpreted as granting a right to be paroled to any person, and any decision by the board and its designees or the department, under this section, shall not be considered an adjudication under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 5307. Authority of board.

1 If a prisoner has been sentenced by a court to a recidivism
2 risk reduction incentive minimum sentence and the prisoner is
3 not paroled under this chapter, the board shall have exclusive
4 authority to grant parole. Except as otherwise provided under
5 this chapter, the board shall retain its power and authority to
6 parole, commit and reparole prisoners committed to the
7 department.

8 § 5308. Written guidelines and regulations.

9 The department, upon consultation with the board, shall
10 develop written interim guidelines to assist in the
11 implementation of the provisions of this chapter. The interim
12 guidelines shall not be subject to the requirements of the act
13 of June 25, 1982 (P.L.633, No.181), known as the Regulatory
14 Review Act, and shall be effective for a period of two years
15 after publication in the Pennsylvania Bulletin. The interim
16 guidelines shall be replaced by regulations promulgated by the
17 department consistent with the Regulatory Review Act on or
18 before the date of expiration of the interim guidelines.

19 § 5309. Evaluation.

20 The department, the board and the commission shall monitor
21 and evaluate the recidivism risk reduction incentive programs.
22 Evaluations under this section should be scientifically rigorous
23 and seek to determine the effectiveness of the programs,
24 including whether specific recidivism risk reduction incentive
25 programs have reduced the recidivism rates of the program
26 participants as compared to previously incarcerated and
27 similarly situated prisoners. The department, the board and the
28 commission shall make evaluations conducted under this section
29 and underlying data available to the public. The publicly
30 available data and evaluations shall comply with generally

accepted practices of the research community, including expectations relating to subject privacy and identifying information.

§ 5310. Reports.

(a) Recidivism risk reduction.--The department, the board and the commission shall monitor and evaluate the recidivism risk reduction incentive programs to ensure that the goals and objectives of this chapter are met. Reports to the General Assembly shall be as follows:

(1) In odd-numbered years, the department shall present a report of its evaluation to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives no later than February 1. The report shall include all of the following:

(i) The number of offenders determined by the department to be eligible offenders under this chapter and the offenses for which the offenders were committed to the custody of the department.

(ii) The number of prisoners committed to the custody of the department who were subject to a recidivism risk reduction incentive minimum sentence.

(iii) The number of prisoners paroled at the recidivism risk reduction incentive minimum date.

(iv) Any potential changes that would make the program more effective.

(v) The six-month, one-year, three-year and five-year recidivism rates for prisoners released at the recidivism risk reduction incentive minimum sentence.

(vi) Any other information the department deems relevant.

1 (2) In even-numbered years, the commission shall present
2 a report of its evaluation to the Judiciary Committee of the
3 Senate and the Judiciary Committee of the House of
4 Representatives no later than February 1. The report shall
5 include all of the following:

6 (i) Whether the goals of this chapter could be
7 achieved through amendments to parole or sentencing
8 guidelines.

9 (ii) The various options for parole or sentencing
10 guidelines under subparagraph (i).

11 (iii) The status of any proposed or implemented
12 guidelines designed to implement the provisions of this
13 chapter.

14 (iv) Any potential changes to the program that would
15 be likely to reduce the risk of recidivism of prisoners
16 and improve public safety.

17 (v) Any other information the commission deems
18 relevant.

19 (b) Educational plan.--The Pennsylvania Commission on Crime
20 and Delinquency shall publish a report of a proposed educational
21 program plan within one year of the effective date of this
22 section. The proposed educational program plan shall be
23 developed in consultation with the department, commission,
24 board, the Pennsylvania District Attorneys Association, the
25 Victim Advocate and representatives of the judiciary and the
26 criminal defense bar and other criminal justice stakeholders.
27 The plan shall seek to provide cost-effective training or
28 information through electronic means, publications or continuing
29 educational programs that address the following topics:

30 (1) The treatment programs available through the board

1 and the department.

2 (2) The availability of programs and eligibility
3 requirements that can reduce recidivism risk including State
4 intermediate punishment, the motivational boot camp and
5 recidivism risk reduction incentives programs.

6 (3) The calculation of sentencing credit and practices
7 that could inadvertently prevent an inmate from receiving
8 sentence credit.

9 (4) Recent statutory changes relating to sentencing,
10 place of confinement, medical releases, transfer of inmates
11 and parole.

12 § 5311. Construction.

13 Notwithstanding any other provision of law, this chapter
14 shall not be construed to do any of the following:

15 (1) Confer any legal right upon any individual,
16 including an individual participating in or seeking to
17 participate in a recidivism risk reduction incentive program,
18 to do any of the following:

19 (i) Participate in a recidivism risk reduction
20 incentive program.

21 (ii) Continue participation in a recidivism risk
22 reduction incentive program.

23 (iii) Modify the contents of the recidivism risk
24 reduction incentive program.

25 (iv) File any cause of action in any Federal or
26 State court challenging the department's determination
27 that a participant be suspended or expelled from or that
28 a participant has successfully completed or failed to
29 successfully complete any recidivism risk reduction
30 incentive program.

1 (2) Confer any legal right on any individual to be
2 released on parole under this act.

3 (3) Enlarge or limit the right of a participant to
4 appeal the participant's sentence.

5 § 5312. Applicability.

6 This chapter shall apply to persons incarcerated under the
7 supervision of the department.

8 Section 11. This act shall take effect in 60 days.