

AMENDMENTS TO HOUSE BILL NO. 285

Sponsor: SENATOR KILLION

Printer's No. 2221

1 Amend Bill, page 1, lines 1 through 4, by striking out all of
2 said lines and inserting

3 Amending Titles 42 (Judiciary and Judicial Procedure) and 61
4 (Prisons and Parole) of the Pennsylvania Consolidated
5 Statutes, in judicial boards and commissions, further
6 providing for powers and duties, for adoption of guidelines
7 for sentencing, for adoption of guidelines for county
8 intermediate punishment, for adoption of guidelines for
9 State intermediate punishment and for adoption of risk
10 assessment instrument; in sentencing, further providing for
11 sentencing generally, for collection of restitution,
12 reparation, fees, costs, fines and penalties, for order of
13 probation, for sentence of partial confinement, for sentence
14 of total confinement, for sentence of county intermediate
15 punishment, for information required upon commitment and
16 subsequent disposition, for modification or revocation of
17 order of probation, for court-imposed sanctions for offenders
18 violating probation, for modification or revocation of county
19 intermediate punishment sentence and for revocation of State
20 intermediate punishment sentence; in county intermediate
21 punishment, further providing for county intermediate
22 punishment programs and for continued eligibility; in
23 motivational boot camp, further providing for definitions,
24 for selection of inmate participants and for motivational
25 boot camp program; in State intermediate punishment, further
26 providing scope of chapter, for definitions, for referral to
27 State intermediate punishment program, for drug offender
28 treatment program and for reports; in recidivism risk
29 reduction incentive, further providing for definitions, for
30 evaluation and for reports; in Pennsylvania Board of
31 Probation and Parole, further providing for definitions, for
32 advisory committee, for general powers of board, for
33 probation services, for parole power, providing for short
34 sentence parole, further providing for violation of terms of
35 parole and for parole procedure; and making conforming
36 amendments.

37 Amend Bill, page 1, lines 7 and 8, by striking out all of

1 said lines and inserting

2 Section 1. Section 2153(a) of Title 42 of the Pennsylvania
3 Consolidated Statutes is amended by adding a paragraph and the
4 section is amended by adding a subsection to read:

5 § 2153. Powers and duties.

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

8 * * *

9 (16) Report to the General Assembly on:

10 (i) implementation of revisions to the guidelines
11 under sections 2154 (relating to adoption of guidelines
12 for sentencing) and 2154.1 (relating to adoption of
13 guidelines for restrictive conditions);

14 (ii) implementation and outcomes of justice
15 reinvestment funding to county probation;

16 (iii) use of court-imposed sanctions for violating
17 probation under section 9771.1 (relating to court-imposed
18 sanctions for violating probation);

19 (iv) in consultation with the Office of the Budget
20 and the Department of Corrections, the implementation of
21 short sentence parole under 61 Pa.C.S. § 6137.5 (relating
22 to short sentence parole), use of the State drug
23 treatment program under 61 Pa.C.S. Ch. 41 (relating to
24 State drug treatment program) and use of sanctions for
25 technical parole violations under 61 Pa.C.S. § 6138(c)(8)
26 (relating to violation of terms of parole); and

27 (v) evaluations of the effectiveness of various
28 criminal justice interventions and programming, including
29 restrictive conditions of probation, recidivism risk
30 reduction incentive programs, State drug treatment
31 program, State motivational boot camp program, pretrial
32 diversion programs, prisoner treatment programs and
33 prisoner reentry programs. For any evaluations of the
34 effectiveness of programs in reducing recidivism, the
35 commission shall report on:

36 (A) The number of individuals eligible for the
37 program, the number of individuals participating in
38 the program and the number of individuals who
39 successfully completed the program during the period
40 under study.

41 (B) The recidivism rates for participants of the
42 program and for a comparison group of individuals who
43 did not participate in the program.

44 (C) Potential changes in the program that the
45 commission believes would make the program more
46 effective.

47 (D) Any other information the commission deems
48 relevant.

49 * * *

1 (d) Hearings.--The General Assembly shall convene hearings
2 in the appropriate committees to hear and deliberate upon
3 reports under subsection (a) (16).

4 Section 2. Sections 2154 and 2154.1 of Title 42 are amended
5 to read:

6 § 2154. Adoption of guidelines for sentencing.

7 (a) General rule.--The commission shall adopt guidelines for
8 sentencing within the limits established by law which shall be
9 considered by the sentencing court in determining the
10 appropriate sentence for defendants who plead guilty or nolo
11 contendere to, or who were found guilty of, felonies and
12 misdemeanors. In adopting guidelines, the commission shall
13 recommend confinement that is consistent with the protection of
14 the public, the gravity of the offense as it relates to the
15 impact on the life of the victim and the community and the
16 rehabilitative needs of the offender. The guidelines shall
17 address the following retributive factors:

18 (1) Seriousness of the offense, by specifying the range
19 of sentences applicable to crimes of a given degree of
20 gravity[, including incapacitation of serious violent
21 offenders].

22 (2) Criminal history, by specifying a range of sentences
23 of increased severity or intensity of intervention for
24 offenders previously convicted of or adjudicated delinquent
25 for one or more misdemeanor or felony offenses committed
26 prior to the current offense. The commission may exclude or
27 reduce the valuation of less serious offenses and increase
28 the valuation of offenses committed while under supervision
29 or in a temporal or offense pattern.

30 (3) Criminal behavior, by specifying a range of
31 sentences of increased severity or intensity of intervention
32 for offenders [who pose a substantial risk to public safety]
33 with increased culpability, including those who possessed or
34 used a deadly weapon or inflicted substantial harm during the
35 commission of the current conviction offense.

36 (4) Aggravated and mitigated ranges, by specifying
37 variations from the range of sentences applicable on account
38 of aggravating or mitigating circumstances.

39 (5) The impact of any amendments to section 9756
40 (relating to sentence of total confinement).

41 (b) Adjustments.--The guidelines shall include the following
42 risk-related adjustments:

43 (1) Incapacitation of serious violent offenders.

44 (2) Modifications to criminal history to reflect risk to
45 reoffend and substantial risk to public safety to adjust the
46 length of total confinement for more serious criminal
47 history.

48 (3) Recommendations related to the use of county
49 intermediate punishment programs as restrictive conditions of
50 probation, the duration of terms of probation and maximum
51 terms of total and partial confinement and the use of

1 aggregate sentences.

2 (c) Interactive information.--The guidelines shall include
3 interactive information to support decisions with risk,
4 recidivism and cost information.

5 (d) Definitions.--As used in this section, the following
6 words and phrases shall have the meanings given to them in this
7 subsection unless the context clearly indicates otherwise:

8 "Possessed." On a defendant's person or within the
9 defendant's immediate physical control.

10 "Previously convicted of or adjudicated delinquent." Any
11 finding of guilt or adjudication of delinquency, whether or not
12 sentence has been imposed or disposition ordered prior to the
13 commission of the current offense.

14 § 2154.1. Adoption of guidelines for [county intermediate
15 punishment] restrictive conditions.

16 (a) General rule.--The commission shall adopt guidelines to
17 identify offenders who would be eligible and appropriate for
18 [participation in county intermediate punishment programs]
19 restrictive conditions of probation. These guidelines shall be
20 considered by the sentencing court in determining whether to
21 [sentence an offender] impose restrictive conditions pursuant to
22 section 9763 (relating to [sentence of county intermediate
23 punishment] conditions of probation). The guidelines shall[:

24 (1) Use the description of "eligible offender" provided
25 in Chapter 98 (relating to county intermediate punishment).

26 (2) Give] give primary consideration to reducing
27 recidivism for the protection of the public safety.

28 (b) Compliance.--The commission shall certify compliance
29 with any guidelines adopted by the commission for county
30 intermediate punishment or for imposing restrictive conditions
31 of probation and with any related statutory requirements and
32 report the results to the Pennsylvania Commission on Crime and
33 Delinquency.

34 Section 3. Section 2154.2 of Title 42 is repealed:

35 [§ 2154.2. Adoption of guidelines for State intermediate
36 punishment.

37 The commission shall adopt guidelines to identify offenders
38 who would be appropriate for participation in State intermediate
39 punishment programs. These guidelines shall be considered by the
40 attorney for the Commonwealth and the sentencing court in
41 determining whether to commit a defendant for evaluation and
42 whether to sentence an eligible offender pursuant to 61 Pa.C.S.
43 Ch. 41 (relating to State intermediate punishment). The
44 guidelines shall:

45 (1) Use the description of "eligible offender" provided
46 in 61 Pa.C.S. Ch. 41.

47 (2) Give primary consideration to protection of the
48 public safety.]

49 Section 4. Sections 2154.7(d), 9721(a), (a.1) and (b),
50 9728(b)(5), 9754, 9755(d) and (h), 9756(c.1), 9763(a), (b)(14),
51 (16) and (17), (c) and (d), 9764(f), 9771(a) and (b) and 9771.1

of Title 42 are amended to read:

§ 2154.7. Adoption of risk assessment instrument.

* * *

(d) Alternative sentencing.--Subject to the eligibility requirements of each program, the risk assessment instrument may be an aide to help determine:

(1) for persons under supervision, intensity of intervention, use of restrictive conditions and duration of supervision; and

(2) appropriate candidates for alternative sentencing, including the recidivism risk reduction incentive, State [and county intermediate punishment programs] drug treatment program and State motivational boot camps.

* * *

§ 9721. Sentencing generally.

(a) General rule.--In determining the sentence to be imposed the court shall, except as provided in subsection (a.1), consider and select one or more of the following alternatives, and may impose them consecutively or concurrently:

(1) An order of probation.

(2) A determination of guilt without further penalty.

(3) Partial confinement.

(4) Total confinement.

(5) A fine.

[(6) County intermediate punishment.

(7) State intermediate punishment.]

(a.1) Exception.--

(1) Unless specifically authorized under section 9763 (relating to [a sentence of county intermediate punishment] or 61 Pa.C.S. Ch. 41 (relating to State intermediate punishment)] conditions of probation, subsection (a) shall not apply where a mandatory minimum sentence is otherwise provided by law.

(2) [An eligible offender may be sentenced to State intermediate punishment pursuant to subsection (a)(7) and as described in 61 Pa.C.S. Ch. 41 or to] A person may be eligible for the State drug treatment program as described in 61 Pa.C.S. Ch. 41 or State motivational boot camp as described in 61 Pa.C.S. Ch. 39 (relating to motivational boot camp), even if a mandatory minimum sentence would otherwise be provided by law.

(3) An eligible [offender] person may be sentenced to total confinement pursuant to subsection (a)(4) and a recidivism risk reduction incentive minimum sentence pursuant to section 9756(b.1) (relating to sentence of total confinement), even if a mandatory minimum sentence would otherwise be provided by law.

(b) General standards.--In selecting from the alternatives set forth in subsection (a), the court shall follow the general principle that the sentence imposed should call for total confinement that is consistent with section 9725 (relating to

1 total confinement) and the protection of the public, the gravity
2 of the offense as it relates to the impact on the life of the
3 victim and on the community, and the rehabilitative needs of the
4 defendant. The court shall also consider any guidelines for
5 sentencing and resentencing adopted by the Pennsylvania
6 Commission on Sentencing and taking effect under section 2155
7 (relating to publication of guidelines for sentencing,
8 resentencing and parole, risk assessment instrument and
9 recommitment ranges following revocation). In every case in
10 which the court imposes a sentence for a felony or misdemeanor,
11 modifies a sentence, resentsences [an offender] a person
12 following revocation of probation[, county intermediate
13 punishment or State intermediate punishment] or resentsences
14 following remand, the court shall make as a part of the record,
15 and disclose in open court at the time of sentencing, a
16 statement of the reason or reasons for the sentence imposed. In
17 every case where the court imposes a sentence or resentence
18 outside the guidelines adopted by the Pennsylvania Commission on
19 Sentencing under sections 2154 (relating to adoption of
20 guidelines for sentencing), 2154.1 (relating to adoption of
21 guidelines for [county intermediate punishment), 2154.2
22 (relating to adoption of guidelines for State intermediate
23 punishment)] restrictive conditions), 2154.3 (relating to
24 adoption of guidelines for fines), 2154.4 (relating to adoption
25 of guidelines for resentencing) and 2154.5 (relating to adoption
26 of guidelines for parole) and made effective under section 2155,
27 the court shall provide a contemporaneous written statement of
28 the reason or reasons for the deviation from the guidelines to
29 the commission, as established under section 2153(a) (14)
30 (relating to powers and duties). Failure to comply shall be
31 grounds for vacating the sentence or resentence and resentencing
32 the defendant.

33 * * *

34 Amend Bill, page 3, line 13, by striking out all of said line
35 and inserting

36 § 9754. Order of probation.

37 (a) General rule.--In imposing an order of probation the
38 court shall specify at the time of sentencing the length of any
39 term during which the defendant is to be supervised, which term
40 may not exceed the maximum term for which the defendant could be
41 confined, and the authority that shall conduct the supervision.
42 The court shall consider probation guidelines adopted by the
43 Pennsylvania Commission on Sentencing under sections 2154
44 (relating to adoption of guidelines for sentencing) and 2154.1
45 (relating to adoption of guidelines for restrictive conditions).

46 (b) Conditions generally.--The court shall attach [such of
47 the reasonable conditions authorized by subsection (c) of this
48 section as it deems necessary to insure or assist the defendant
49 in leading a law-abiding life.

1 (c) Specific conditions.--The court may as a condition of
2 its order require the defendant:

3 (1) To meet his family responsibilities.

4 (2) To devote himself to a specific occupation or
5 employment.

6 (2.1) To participate in a public or nonprofit community
7 service program unless the defendant was convicted of murder,
8 rape, aggravated assault, arson, theft by extortion,
9 terroristic threats, robbery or kidnapping.

10 (3) To undergo available medical or psychiatric
11 treatment and to enter and remain in a specified institution,
12 when required for that purpose.

13 (4) To pursue a prescribed secular course of study or
14 vocational training.

15 (5) To attend or reside in a facility established for
16 the instruction, recreation, or residence of persons on
17 probation.

18 (6) To refrain from frequenting unlawful or disreputable
19 places or consorting with disreputable persons.

20 (7) To have in his possession no firearm or other
21 dangerous weapon unless granted written permission.

22 (8) To make restitution of the fruits of his crime or to
23 make reparations, in an amount he can afford to pay, for the
24 loss or damage caused thereby.

25 (9) To remain within the jurisdiction of the court and
26 to notify the court or the probation officer of any change in
27 his address or his employment.

28 (10) To report as directed to the court or the probation
29 officer and to permit the probation officer to visit his
30 home.

31 (11) To pay such fine as has been imposed.

32 (12) To participate in drug or alcohol treatment
33 programs.

34 (13) To satisfy any other conditions reasonably related
35 to the rehabilitation of the defendant and not unduly
36 restrictive of his liberty or incompatible with his freedom
37 of conscience.

38 (14) To remain within the premises of his residence
39 during the hours designated by the court.] reasonable
40 conditions authorized by section 9763 (relating to conditions
41 of probation).

42 (d) Sentence following violation of probation.--The sentence
43 to be imposed in the event of the violation of a condition shall
44 not be fixed prior to a finding on the record that a violation
45 has occurred.

46 § 9755. Sentence of partial confinement.

47 * * *

48 (d) Conditions to release.--The court may in addition
49 include in its order such of the conditions as are enumerated in
50 section [9754 (relating to order of probation)] 9763 (relating
51 to conditions of probation) as may be reasonably related to the

1 sentence.

2 * * *

3 (h) Sentence of partial confinement combined with [sentence
4 of county intermediate punishment] probation.--The court may
5 impose a sentence of partial confinement without parole under
6 this subsection only when:

7 (1) the period of partial confinement is followed
8 immediately by [a sentence] restrictive conditions of
9 probation imposed pursuant to section 9763 (relating to
10 [sentence of county intermediate punishment]) conditions of
11 probation) in which case the sentence of partial confinement
12 shall specify the number of days of partial confinement to be
13 served; and

14 (2) the maximum sentence of partial confinement imposed
15 on one or more indictments to run consecutively or
16 concurrently total 90 days or less.

17 § 9756. Sentence of total confinement.

18 * * *

19 (c.1) Sentence of total confinement combined with [sentence
20 of county intermediate punishment] probation.--The court may
21 impose a sentence of imprisonment without parole under this
22 subsection only when:

23 (1) the period of total confinement is followed
24 immediately by [a sentence] restrictive conditions of
25 probation imposed pursuant to section 9763(c) or (d)
26 (relating to [sentence of county intermediate punishment])
27 conditions of probation) in which case the sentence of total
28 confinement shall specify the number of days of total
29 confinement also to be served; and

30 (2) the maximum sentence of total confinement imposed on
31 one or more indictments to run consecutively or concurrently
32 total 90 days or less.

33 * * *

34 § 9763. [Sentence of county intermediate punishment] Conditions
35 of probation.

36 (a) General rule.--In imposing [a sentence of county
37 intermediate punishment] probation, the court shall consider
38 guidelines adopted by the Pennsylvania Commission on Sentencing
39 under section 2154 (relating to adoption of guidelines for
40 sentencing) or 2154.1 (relating to adoption of guidelines for
41 restrictive conditions) and specify at the time of sentencing
42 the conditions of probation, including the length of the term
43 [for which the defendant is to be in a county intermediate
44 punishment program established under Chapter 98 (relating to
45 county intermediate punishment) or a combination of county
46 intermediate punishment programs. The term may not exceed the
47 maximum term for which the defendant could be confined and the
48 program to which the defendant is sentenced. The court may order
49 a defendant to serve a portion of the sentence under section
50 9755 (relating to sentence of partial confinement) or 9756
51 (relating to sentence of total confinement) and to serve a

1 portion in a county intermediate punishment program or a
2 combination of county intermediate punishment programs.] of
3 restrictive conditions under subsection (c) or (d). The term of
4 restrictive conditions under subsection (c) shall be equal to or
5 greater than the mandatory minimum term of imprisonment required
6 by statute.

7 (b) Conditions generally.--The court may attach any of the
8 following conditions upon the defendant as it deems necessary:

9 * * *

10 (14) To participate in drug or alcohol screening and
11 treatment programs, including outpatient [and inpatient]
12 programs.

13 * * *

14 [(16) To remain within the premises of the defendant's
15 residence during the hours designated by the court.

16 (17) To be subject to electronic monitoring.]

17 (c) [Restriction] Restrictive DUI probation conditions.--

18 (1) Any person receiving a penalty imposed pursuant to
19 75 Pa.C.S. § 1543(b) (relating to driving while operating
20 privilege is suspended or revoked), former 75 Pa.C.S. § 3731
21 (relating to driving under influence of alcohol or controlled
22 substance) or 75 Pa.C.S. § 3804 (relating to penalties) for a
23 first, second or third offense under 75 Pa.C.S. Ch. 38
24 (relating to driving after imbibing alcohol or utilizing
25 drugs) may only [be sentenced to county intermediate
26 punishment] have probation imposed after undergoing an
27 assessment under 75 Pa.C.S. § 3814 (relating to drug and
28 alcohol assessments).

29 (2) If the defendant is determined to be in need of drug
30 and alcohol treatment, the defendant may only [be sentenced
31 to county intermediate punishment which] have probation that
32 includes participation in drug and alcohol treatment under 75
33 Pa.C.S. § 3815(c) (relating to mandatory sentencing). The
34 defendant [may only be sentenced to county intermediate
35 punishment in] shall have restrictive DUI probation
36 conditions of:

37 (i) a residential inpatient program or a residential
38 rehabilitative center;

39 (ii) house arrest with electronic surveillance;

40 (iii) a partial confinement program such as work
41 release, work camp and halfway facility; or

42 (iv) any combination of the programs set forth in
43 this paragraph.

44 (3) If the defendant is determined not to be in need of
45 drug and alcohol treatment, the defendant [may only be
46 sentenced to county intermediate punishment in] shall have
47 restrictive DUI probation conditions of:

48 (i) house arrest with electronic surveillance;

49 (ii) partial confinement programs such as work
50 release, work camps and halfway facilities; or

51 (iii) any combination of the programs set forth in

1 this paragraph.

2 (4) If the defendant is determined to be in need of
3 additional treatment under 75 Pa.C.S. § 3814(2), the judge
4 shall impose a minimum sentence as provided by law and a
5 maximum sentence equal to the statutorily available maximum.
6 A sentence to the statutorily available maximum imposed under
7 this subsection may, in the discretion of the sentencing
8 court, be ordered to be served in a county prison,
9 notwithstanding the provisions of section 9762 (relating to
10 sentencing proceeding; place of confinement).

11 (d) [Sentence following violation of condition.--The
12 sentence to be imposed in the event of the violation of a
13 condition under subsection (b) shall not be imposed prior to a
14 finding on the record that a violation has occurred.
15 Notwithstanding any other provision of law requiring notice
16 prior to sentencing, in the event of a violation of a condition
17 under subsection (b), the attorney for the Commonwealth may file
18 notice at any time prior to resentencing of the Commonwealth's
19 intention to proceed under an applicable provision of law
20 requiring a mandatory minimum sentence.] Restrictive conditions
21 of probation.--Probation may include restrictive conditions
22 that:

23 (1) house the person full time or part time, including
24 inpatient treatment; or

25 (2) significantly restrict the person's movement and
26 monitor the person's compliance with the program, including
27 electronic monitoring or home confinement.

28 § 9764. Information required upon commitment and subsequent
29 disposition.

30 * * *

31 (f) Release from county correctional facility to State
32 probation or parole.--

33 (1) Prior to the release of an inmate from a county
34 correctional facility to State probation or parole
35 supervision, the facility shall provide to the Department of
36 Corrections and the Pennsylvania Board of Probation and
37 Parole the information contained in subsections [(a) (1)
38 through (4)] (a) and (b) with the exception of subsection (a)
39 (5).

40 (2) Prior to the release of an inmate from a county
41 correctional facility to State probation or parole
42 supervision, the facility shall provide to the inmate his
43 current medications as prescribed and any customary and
44 necessary medical supplies as determined by the prescribing
45 physician.

46 * * *

47 § 9771. Modification or revocation of order of probation.

48 (a) General rule.--The court [may] has inherent power to at
49 any time terminate continued supervision or lessen [or increase]
50 the conditions upon which an order of probation has been
51 imposed.

(b) Revocation.--The court may increase the conditions, impose a brief sanction under section 9771.1 (relating to court-imposed sanctions for violating probation) or revoke an order of probation upon proof of the violation of specified conditions of the probation. Upon revocation the sentencing alternatives available to the court shall be the same as were available at the time of initial sentencing, due consideration being given to the time spent serving the order of probation. The attorney for the Commonwealth may file notice at any time prior to resentencing of the Commonwealth's intention to proceed under an applicable provision of law requiring a mandatory minimum sentence.

* * *

§ 9771.1. Court-imposed sanctions for [offenders] violating probation.

(a) Program.--Notwithstanding the provisions of section 9771 (relating to modification or revocation of order of probation), the court of common pleas of a judicial district may establish a program to impose swift, predictable and [immediate] brief sanctions on [offenders] persons who violate their probation.

[(b) Coordination with other officials.--The court shall work with probation administrators and officers, jail administrators, prosecutors, public defenders and law enforcement in the judicial district to develop and implement the program.]

(c) Eligibility.--

(1) The court shall determine which offenders are eligible for and admitted into the program. The program shall focus on, but not be limited to, offenders who have committed drug-related crimes.

(2) An offender shall be ineligible for the program if the offender has been convicted or adjudicated delinquent of a crime of violence as defined in section 9714 (relating to sentences for second and subsequent offenses) or of a crime requiring registration under Subchapter H (relating to registration of sexual offenders).

(d) Warning hearing.--

(1) At the time of sentencing, the court shall hold a warning hearing for each participant in the program to clearly communicate program expectations and consequences and to encourage the participant's compliance and success.

(2) The court shall emphasize the expectations that the participant remain drug free and comply with any treatment or services ordered by the court as a condition of the participant's probation.

(3) The court shall put the participant on notice that each probation violation, including missed appointments and positive drug tests, will result in jail time as provided for under subsection (g).

(e) Drug testing.--The program shall require, when applicable, randomized drug testing.]

1 (f) Violation hearing.--If a participant commits a probation
2 violation, the participant shall promptly be arrested, and a
3 hearing shall be held no later than two business days after the
4 arrest date.

5 (g) Sanctions.--

6 (1) The court shall impose a term of imprisonment of up
7 to:

- 8 (i) three days for a first violation;
- 9 (ii) seven days for a second violation;
- 10 (iii) fourteen days for a third violation; and
- 11 (iv) twenty-one days for a fourth or subsequent
12 violation of probation.

13 (2) The court may allow the term of imprisonment to be
14 served on weekends or other nonwork days for employed
15 probationers who have committed a first or second violation.

16 (3) The court may increase the conditions of probation,
17 including additional substance abuse treatment for a
18 participant who has failed one or more drug tests.

19 (h) Exceptions.--If the participant is able to provide a
20 compelling reason for the probation violation, the court may
21 grant an exception to the sanctions authorized under subsection
22 (g).

23 (i) Revocation of probation.--

24 (1) After a third violation, the court may revoke the
25 order of probation.

26 (2) Upon revocation, the sentencing alternatives shall
27 be the same as were available at the time of initial
28 sentencing, due consideration being given to the time spent
29 serving the order of probation.

30 (j) Local rules.--

31 (1) The court may adopt local rules for the
32 administration of this program. Except as provided for under
33 paragraph (2), the local rules may not be inconsistent with
34 this section or any rules adopted by the Supreme Court.

35 (2) The court may adopt local rules that are
36 inconsistent with subsection (g) regarding the terms of
37 imprisonment or other sanctions or conditions provided for
38 under subsection (g).

39 Section 5. Sections 9773 and 9774 of Title 42 are repealed:
40 [§ 9773. Modification or revocation of county intermediate
41 punishment sentence.

42 (a) General rule.--The court may at any time terminate a
43 sentence of county intermediate punishment or increase or
44 decrease the conditions of a sentence pursuant to section 9763
45 (relating to sentence of county intermediate punishment).

46 (b) Revocation.--The court may revoke a sentence of county
47 intermediate punishment upon proof of a violation of specific
48 conditions of the sentence. Upon revocation and subject to
49 section 9763(d), the sentencing alternatives available to the
50 court shall be the same as the alternatives available at the
51 time of initial sentencing. Upon a revocation of county

1 intermediate punishment for any reason specified by law, the
2 attorney for the Commonwealth may file notice, at any time prior
3 to resentencing, of the Commonwealth's intention to proceed
4 under an applicable provision of law requiring a mandatory
5 minimum sentence. Consideration shall be given to the time
6 served in the county intermediate punishment program.

7 (c) Hearing required.--A court shall not revoke or increase
8 the conditions of a sentence of county intermediate punishment
9 without a hearing at which the court shall consider the record
10 of the initial sentencing proceeding as well as the conduct of
11 the defendant while serving a sentence of county intermediate
12 punishment. A hearing is not required to decrease the conditions
13 of the sentence.

14 § 9774. Revocation of State intermediate punishment sentence.

15 (a) General rule.--The court may at any time terminate a
16 sentence of State intermediate punishment pursuant to 61 Pa.C.S.
17 Ch. 41 (relating to State intermediate punishment).

18 (b) Revocation.--The court shall revoke a sentence of State
19 intermediate punishment if after a hearing it determines that
20 the participant was expelled from or failed to complete the
21 program.

22 (c) Proceedings upon revocation.--Upon revocation of a State
23 intermediate punishment sentence, the sentencing alternatives
24 available to the court shall be the same as the alternatives
25 available at the time of initial sentencing. The attorney for
26 the Commonwealth must file notice, at any time prior to
27 resentencing, of the Commonwealth's intention to proceed under
28 an applicable provision of law requiring a mandatory minimum
29 sentence.]

30 Section 6. Sections 9804 and 9810(a) of Title 42 are amended
31 to read:

32 § 9804. County intermediate punishment programs.

33 (a) Description.--County intermediate punishment [program
34 options shall include the following:

35 (1) Restrictive intermediate punishments providing for
36 the strict supervision of the offender, including programs
37 that:

38 (i) house the offender full or part time;

39 (ii) significantly restrict the offender's movement
40 and monitor the offender's compliance with the program;
41 or

42 (iii) involve a combination of programs that meet
43 the standards set forth under subparagraphs (i) and (ii).

44 (2) When utilized in combination with restrictive
45 intermediate punishments, restorative sanctions providing for
46 nonconfinement sentencing options that:

47 (i) Are the least restrictive in terms of the
48 constraint of the offender's liberties.

49 (ii) Do not involve the housing of the offender,
50 either full or part time.

51 (iii) Focus on restoring the victim to pre-offense

status.] programs are restrictive conditions of probation imposed under section 9763(c) or (d) (relating to conditions of probation), which may be subject to guidelines adopted under section 2154.1 (relating to adoption of guidelines for restrictive conditions).

(b) Eligibility.--

(1) (i) [No person other than the eligible offender shall be sentenced to a county intermediate punishment program.] Upon adoption of guidelines for imposing restrictive conditions adopted by the Pennsylvania Commission on Sentencing under section 2154.1, only eligible persons may have restrictive conditions imposed.

(ii) 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] if the victim has been given notice of the prosecuting attorney's intent to waive the eligibility requirements and an opportunity to be heard on the issue.

(iii) The court, after considering victim input, may refuse to accept the prosecuting attorney's waiver of the eligibility requirements.

(2) [The Pennsylvania Commission on Sentencing shall employ the term "eligible offender" to further identify offenders who would be appropriate for participation in county intermediate punishment programs. In developing the guidelines, the commission shall give primary consideration to protection of the public safety.] Only programs that meet the requirements of restrictive conditions of probation under section 9763(c) or (d) and are certified in accordance with section 2154.1(b) shall be eligible for county intermediate punishment program funding.

[(4) (i) Any person receiving a penalty imposed pursuant to 75 Pa.C.S. § 1543(b) (relating to driving while operating privilege is suspended or revoked), 3804 (relating to penalties) or 3808(a)(2) (relating to illegally operating a motor vehicle not equipped with ignition interlock) shall undergo an assessment under 75 Pa.C.S. § 3814 (relating to drug and alcohol assessments).

(ii) If the defendant is determined to be in need of drug and alcohol treatment, a sentence to county intermediate punishment shall include participation in drug and alcohol treatment under 75 Pa.C.S. § 3815(c) (relating to mandatory sentencing). The defendant may only be sentenced to county intermediate punishment in:

(A) a residential inpatient program or a residential rehabilitative center;

(B) house arrest with electronic surveillance;

(C) a partial confinement program such as work release, work camp and halfway facility; or

(D) any combination of the programs set forth in this subparagraph.

(iii) If the defendant is determined not to be in need of drug and alcohol treatment or if the defendant receives a penalty imposed under 30 Pa.C.S. § 5502(c.1) (relating to operating watercraft under influence of alcohol or controlled substance), the defendant may only be sentenced to a county intermediate punishment program in:

(A) house arrest with electronic surveillance;

(B) partial confinement programs such as work release, work camps and halfway facilities; or

(C) any combination of the programs set forth in this paragraph.

(5) A defendant subject to 75 Pa.C.S. § 3804 (relating to penalties) or 30 Pa.C.S. § 5502(c.1) may only be sentenced to county intermediate punishment for a first, second or third offense under 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs) or 30 Pa.C.S. § 5502.]

§ 9810. Continued eligibility.

(a) Evaluation.--In order to remain eligible for [continued grant] county intermediate punishment funding, a county shall comply with commission standards and regulations and participate in an evaluation to determine program effectiveness. The form of the evaluation shall be determined by the commission[.] and shall include certification by the Pennsylvania Commission on Sentencing under section 2154.1(b) (relating to adoption of guidelines for restrictive conditions).

* * *

Section 7. The definition of "eligible inmate" in section 3903 of Title 61 is amended to read:

§ 3903. Definitions.

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

* * *

"Eligible inmate." A person sentenced to a term of confinement under the jurisdiction of the Department of Corrections who is serving a term of confinement, the minimum of which is not more than two years and the maximum of which is five years or less, or an inmate who is serving a term of confinement, the minimum of which is not more than three years where that inmate is within two years of completing his minimum term, and who has not reached 40 years of age at the time he is approved for participation in the motivational boot camp program. The term shall not include any inmate who is subject to a sentence the calculation of which included an enhancement for the use of a deadly weapon as defined pursuant to the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing, any inmate who has been convicted or adjudicated

1 delinquent of any crime requiring registration under 42 Pa.C.S.
2 Ch. 97 Subch. H (relating to registration of sexual offenders)
3 or any inmate with a current conviction or a prior conviction
4 within the past ten years for [any of the following offenses:
5 18 Pa.C.S. § 2502 (relating to murder).
6 18 Pa.C.S. § 2503 (relating to voluntary manslaughter).
7 18 Pa.C.S. § 2506 (relating to drug delivery resulting in
8 death).
9 18 Pa.C.S. § 2901(a) (relating to kidnapping).
10 18 Pa.C.S. § 3301(a)(1)(i) (relating to arson and related
11 offenses).
12 18 Pa.C.S. § 3502 (relating to burglary) in the case of
13 burglary of a structure adapted for overnight accommodation
14 in which at the time of the offense any person is present.
15 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to
16 robbery).
17 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).
18 18 Pa.C.S. § 7508 (a)(1)(iii), (2)(iii), (3)(iii) or (4)
19 (iii) (relating to drug trafficking sentencing and
20 penalties).] drug trafficking as defined in section 4103
21 (relating to definitions) or a crime of violence as defined
22 in 42 Pa.C.S. § 9714(g) (relating to sentences for second or
23 subsequent offenses).

24 * * *

25 Section 8. Sections 3904(b) and 3905(e) of Title 61 are
26 amended to read:

27 § 3904. Selection of inmate participants.

28 * * *

29 (b) Duties of sentencing judge.--The sentencing judge shall
30 employ the sentencing guidelines to identify those defendants
31 who are eligible for participation in a motivational boot camp.
32 The judge shall have the discretion to exclude a defendant from
33 eligibility if the judge determines that the defendant would be
34 inappropriate for placement in a motivational boot camp. The
35 judge shall note on the sentencing order whether the defendant
36 has been [identified as eligible] excluded from eligibility for
37 a motivational boot camp program.

38 * * *

39 § 3905. Motivational boot camp program.

40 * * *

41 [(e) Evaluation.--The department and the commission shall
42 monitor and evaluate the motivational boot camp programs to
43 ensure that the programmatic objectives are met. Both shall
44 present biennial reports of the evaluations to the Judiciary
45 Committee of the Senate and the Judiciary Committee of the House
46 of Representatives no later than February 1 in alternate years.]

47 Section 9. The heading of Chapter 41 of Title 61 is amended
48 to read:

49 CHAPTER 41

50 STATE [INTERMEDIATE PUNISHMENT] DRUG TREATMENT PROGRAM

51 Section 10. Section 4101 of Title 61 is amended to read:

1 § 4101. Scope of chapter.

2 This chapter relates to the State [intermediate punishment]
3 drug treatment program.

4 Section 11. The definitions of "eligible offender" and
5 "participant" in section 4103 of Title 61 are amended and the
6 section is amended by adding a definition to read:

7 § 4103. Definitions.

8 The following words and phrases when used in this chapter
9 shall have the meanings given to them in this section unless the
10 context clearly indicates otherwise:

11 * * *

12 "Drug trafficking." A violation of section 13(a)(14), (30)
13 or (37) of the act of April 14, 1972 (P.L.233, No.64), known as
14 The Controlled Substance, Drug, Device and Cosmetic Act, where
15 the controlled substance is:

16 (1) Marijuana, if the amount of marijuana involved is at
17 least 50 pounds or at least 51 live plants.

18 (2) A narcotic drug classified in Schedule I or Schedule
19 II under section 4 of The Controlled Substance, Drug, Device
20 and Cosmetic Act, if the aggregate weight of the compound or
21 mixture containing the substance involved is at least 100
22 grams.

23 (3) Any of the following, if the aggregate weight of the
24 compound or mixture of the substance involved is at least 100
25 grams:

26 (i) Coca leaves.

27 (ii) A salt, compound, derivative or preparation of
28 coca leaves.

29 (iii) A salt, compound, derivative or preparation
30 which is chemically equivalent or identical with any of
31 the substances under subparagraphs (i) and (ii).

32 (iv) A mixture containing any of the substances
33 under subparagraphs (i) and (ii), except decocainized
34 coca leaves or extracts of coca leaves which do not
35 contain cocaine or ecgonine.

36 (4) Any of the following, if the aggregate weight of the
37 compound or mixture of the substance involved is at least 100
38 grams:

39 (i) Methamphetamine.

40 (ii) Phencyclidine.

41 (iii) A salt, isomer or salt of an isomer of
42 methamphetamine or phencyclidine.

43 (iv) A mixture containing:

44 (A) Methamphetamine or phencyclidine.

45 (B) A salt of methamphetamine or phencyclidine.

46 (C) An isomer of methamphetamine or
47 phencyclidine.

48 (D) A salt of an isomer of methamphetamine or
49 phencyclidine.

50 "Eligible [offender." Subject to 42 Pa.C.S. § 9721(a.1)
51 (relating to sentencing generally), a defendant] person."

1 (1) A person who has not been designated by the
2 sentencing court as ineligible and is a person convicted of a
3 drug-related offense who:

4 [(1)] (i) Has undergone an assessment performed by
5 the Department of Corrections, which assessment has
6 concluded that the [defendant] person is in need of drug
7 and alcohol addiction treatment and would benefit from
8 commitment to [a drug offender] the State drug treatment
9 program and that placement in [a drug offender] the State
10 drug treatment program would be appropriate.

11 [(2)] (ii) Does not demonstrate a history of present
12 or past violent behavior.

13 [(3) Would be placed in the custody of the
14 department if not sentenced to State intermediate
15 punishment.] (iii) Is a person sentenced to a term of
16 confinement under the jurisdiction of the department, the
17 minimum of which is not more than two years, or a person
18 who is serving a term of confinement, the minimum of
19 which is not more than five years where the person is
20 within two years of completing the person's minimum term.

21 [(4)] (iv) Provides written consent permitting
22 release of information pertaining to the [defendant's]
23 person's participation in [a drug offender] the State
24 drug treatment program.

25 (2) The term shall not include a [defendant] person who
26 is subject to a sentence the calculation of which includes an
27 enhancement for the use of a deadly weapon, as defined
28 pursuant to law or the sentencing guidelines promulgated by
29 the Pennsylvania Commission on Sentencing, a [defendant]
30 person who has been convicted or adjudicated delinquent of
31 any crime requiring registration under 42 Pa.C.S. Ch. 97
32 Subch. H (relating to registration of sexual offenders) or a
33 [defendant] person with a current conviction or a prior
34 conviction within the past ten years for [any of the
35 following offenses:

36 18 Pa.C.S. § 2502 (relating to murder).

37 18 Pa.C.S. § 2503 (relating to voluntary manslaughter).

38 18 Pa.C.S. § 2506 (relating to drug delivery resulting in
39 death).

40 18 Pa.C.S. § 2901(a) (relating to kidnapping).

41 18 Pa.C.S. § 3301(a)(1)(i) (relating to arson and related
42 offenses).

43 18 Pa.C.S. § 3502 (relating to burglary), in the case of
44 burglary of a structure adapted for overnight accommodation
45 in which at the time of the offense any person is present.

46 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to
47 robbery).

48 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).

49 18 Pa.C.S. § 7508 (a)(1)(iii), (2)(iii), (3)(iii) or (4)
50 (iii) (relating to drug trafficking sentencing and
51 penalties).] drug trafficking as defined in 42 Pa.C.S. § 4103

1 (relating to definitions) or a crime of violence as defined
2 in 42 Pa.C.S. § 9714(g) (relating to sentences for second or
3 subsequent offenses).

4 * * *

5 "Participant." An eligible [offender actually sentenced to
6 State intermediate punishment pursuant to 42 Pa.C.S. § 9721(a)
7 (7) (relating to sentencing generally).] person placed in the
8 State drug treatment program.

9 * * *

10 Section 12. Sections 4104, 4105 and 4107 of Title 61 are
11 amended to read:

12 § 4104. [Referral to State intermediate punishment] Selection
13 for the State drug treatment program.

14 (a) [Referral for evaluation.--

15 (1) Prior to imposing a sentence, the court may, upon
16 motion of the Commonwealth, commit a defendant to the custody
17 of the department for the purpose of evaluating whether the
18 defendant would benefit from a drug offender treatment
19 program and whether placement in the drug offender treatment
20 program is appropriate.

21 (1.1)] Duties of commission and sentencing judge.--

22 (1) Through the use of sentencing guidelines, the
23 commission shall employ the term "eligible person" as defined
24 in this chapter to further identify persons who would be
25 potentially appropriate for participation in the State drug
26 treatment program. The sentencing judge shall employ the
27 sentencing guidelines to identify persons who are eligible
28 for participation in the State drug treatment program. The
29 judge shall consider the position of a victim of the crime,
30 as advised by the prosecuting attorney, on whether to exclude
31 the person from eligibility for placement in the State drug
32 treatment program. The judge shall exclude the person from
33 eligibility if the prosecuting attorney opposes eligibility.
34 The judge shall note on the sentencing order if a person has
35 been excluded from eligibility for the State drug treatment
36 program. If the person is not excluded from eligibility, the
37 minimum sentence imposed shall operate as the minimum for
38 parole eligibility purposes if the person is not placed in
39 the program by the department under subsection (c) or if the
40 person is expelled from the program under section 4105(f)
41 (relating to State drug treatment program).

42 (2) (i) The prosecuting attorney shall advise the court
43 if the prosecuting attorney or a victim of the crime opposes
44 eligibility and, in the prosecuting attorney's sole
45 discretion, may advise the court that the Commonwealth has
46 elected to waive the eligibility requirements of this chapter
47 if the victim has been given notice of the prosecuting
48 attorney's intent to waive the eligibility requirements and
49 an opportunity to be heard on the issue.

50 (ii) The court, after considering victim input, may
51 refuse to accept the prosecuting attorney's waiver of the

1 eligibility requirements.

2 [(2) Upon committing a defendant to the department, the
3 court shall forward to the department:

4 (i) A summary of the offense for which the defendant
5 has been convicted.

6 (ii) Information relating to the defendant's history
7 of delinquency or criminality, including the information
8 maintained by the court under 42 Pa.C.S. Ch. 63 (relating
9 to juvenile matters), when available.

10 (iii) Information relating to the defendant's
11 history of drug or alcohol abuse or addiction, when
12 available.

13 (iv) A presentence investigation report, when
14 available.

15 (v) Any other information the court deems relevant
16 to assist the department with its assessment of the
17 defendant.]

18 (b) Assessment of [addiction.--

19 (1) The] addiction.--The department shall conduct an
20 assessment of the addiction and other treatment needs of [a
21 defendant] an eligible person and determine whether the
22 [defendant] person would benefit from [a drug offender] the
23 State drug treatment program. The assessment shall be
24 conducted using a nationally recognized assessment instrument
25 or an instrument that has been normed and validated on the
26 department's inmate population by a recognized expert in such
27 matters. The assessment instrument shall be administered by
28 persons skilled in the treatment of drug and alcohol
29 addiction and trained to conduct assessments. The assessments
30 shall be reviewed and approved by a supervisor with at least
31 three years of experience providing drug and alcohol
32 counseling services.

33 [(2) The department shall conduct risk and other
34 assessments it deems appropriate and shall provide a report
35 of its assessments to the court, the defendant, the attorney
36 for the Commonwealth and the commission within 60 days of the
37 court's commitment of the defendant to the custody of the
38 department.]

39 (c) [Proposed drug offender] Placement in the State drug
40 treatment program.--If the department in its discretion believes
41 [a defendant] an eligible person would benefit from [a drug
42 offender] the State drug treatment program and placement in the
43 [drug offender treatment] program is appropriate, the department
44 shall [provide] make the placement and notify the court, counsel
45 for the defendant[,] and the attorney for the Commonwealth [and
46 the commission with a proposed drug offender treatment program
47 detailing the type of treatment proposed] of the placement.

48 [(d) Prerequisites for commitment.--Upon receipt of a
49 recommendation for placement in a drug offender treatment
50 program from the department and agreement of the attorney for
51 the Commonwealth, the court may sentence an eligible offender to

1 a period of 24 months of State intermediate punishment if the
2 court finds that:

3 (1) The eligible offender is likely to benefit from
4 State intermediate punishment.

5 (2) Public safety would be enhanced by the eligible
6 offender's participation in State intermediate punishment.

7 (3) Sentencing the eligible offender to State
8 intermediate punishment would not depreciate the seriousness
9 of the offense.

10 (e) Resentencing.--The department may make a written request
11 to the sentencing court that an offender who is otherwise
12 eligible but has not been referred for evaluation or originally
13 sentenced to State intermediate punishment be sentenced to State
14 intermediate punishment. The court may resentence the offender
15 to State intermediate punishment if all of the following apply:

16 (1) The department has recommended placement in a drug
17 offender treatment program.

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

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

22 (4) The resentencing has occurred within 365 days of the
23 date of the defendant's admission to the custody of the
24 department.

25 (5) The court has otherwise complied with all other
26 requirements for the imposition of sentence including victim
27 notification under the act of November 24, 1998 (P.L.882,
28 No.111), known as the Crime Victims Act.]

29 (f) Consecutive probation.--Nothing in this chapter shall
30 prohibit the court from sentencing an eligible [offender] person
31 to a consecutive period of probation. The total duration of the
32 sentence may not exceed the maximum term for which the eligible
33 [offender] person could otherwise be sentenced.

34 [(g) Applicability and program limitations.--The court may
35 not modify or alter the terms of the department's proposed
36 individualized drug offender treatment plan without the
37 agreement of the department and the attorney for the
38 Commonwealth.

39 (h) Videoconferencing.--The department shall make
40 videoconferencing facilities available to allow the court to
41 conduct proceedings necessary under this section when the
42 eligible offender has been committed to the custody of the
43 department pursuant to subsection (b).

44 (i) Victims.--Victims of personal injury crimes shall be
45 given the opportunity to receive notice of and to provide prior
46 comment on any recommendation by the department under subsection
47 (b) or (d) that the offender participate in the State
48 Intermediate Punishment Program.

49 (j) Definitions.--As used in this section, the term
50 "personal injury crime" shall be defined as in section 103 of
51 the act of November 24, 1998 (P.L.882, No.111), known as the

1 Crime Victims Act.]

2 § 4105. [Drug offender] State drug treatment program.

3 (a) Establishment.--The department shall establish and
4 administer [a drug offender] the State drug treatment program
5 [as a State intermediate punishment]. The program shall be
6 designed to address the individually assessed drug and alcohol
7 abuse and addiction needs of a participant and shall address
8 other issues essential to the participant's successful
9 reintegration into the community, including, but not limited to,
10 educational and employment issues.

11 (b) Duration and components.--Notwithstanding any credit to
12 which the defendant may be entitled under 42 Pa.C.S. § 9760
13 (relating to credit for time served), the duration of the State
14 drug [offender] treatment program [shall be] is 24 months [and],
15 but if the participant is unable to complete the program within
16 24 months and is otherwise compliant with the program, subject
17 to the discretion of the department, the program duration may be
18 extended up to 30 months total in order for the participant to
19 successfully complete the program. The program shall include the
20 following:

21 (1) A period in a State correctional institution of not
22 less than seven months. This period shall include:

23 (i) The time during which the [defendants are]
24 eligible person is being evaluated by the department
25 under section 4104(b) (relating to [referral to State
26 intermediate punishment] selection for the State drug
27 treatment program).

28 (ii) Following evaluation under subparagraph (i),
29 not less than four months shall be in an institutional
30 therapeutic community.

31 (2) A period of treatment in a community-based
32 therapeutic community of at least two months.

33 (3) A period of at least six-months' treatment through
34 an outpatient addiction treatment facility. During the
35 outpatient addiction treatment period of the [drug offender
36 treatment] program, the participant may be housed in a
37 community corrections center or group home or placed in an
38 approved transitional residence. The participant must comply
39 with any conditions established by the department regardless
40 of where the participant resides during the outpatient
41 addiction treatment portion of the [drug offender treatment]
42 program.

43 (4) A period of supervised reintegration into the
44 community for the balance of the [drug offender treatment]
45 program, during which the participant shall continue to be
46 supervised by the department and comply with any conditions
47 imposed by the department.

48 (5) Upon certification by the department of the
49 participant's successful completion of the program, the
50 entire term of confinement that rendered the participant
51 eligible to participate in the State drug treatment program

1 shall be deemed to have been served.

2 (c) Program management.--

3 (1) Consistent with the minimum time requirements set
4 forth in subsection (b), the department may transfer, at its
5 discretion, a participant between a State correctional
6 institution, an institutional therapeutic community, a
7 community-based therapeutic community, an outpatient
8 addiction treatment program and an approved transitional
9 residence. The department may also transfer a participant
10 back and forth between less restrictive and more restrictive
11 settings based upon the participant's progress or regression
12 in treatment or for medical, disciplinary or other
13 administrative reasons.

14 (2) This subsection shall be construed to provide the
15 department with the maximum flexibility to administer the
16 State drug [offender] treatment program both as a whole and
17 for individual participants.

18 (d) Right of refusal to admit.--The administrator of a
19 community-based therapeutic community or outpatient addiction
20 treatment facility may refuse to accept a participant whom the
21 administrator deems to be inappropriate for admission and may
22 immediately discharge to the custody of the department any
23 participant who fails to comply with facility rules and
24 treatment expectations or refuses to constructively engage in
25 the treatment process.

26 (e) Notice to court of completion of program.--When the
27 department determines that a participant has successfully
28 completed the State drug [offender] treatment program, it shall
29 notify the sentencing court, the attorney for the Commonwealth
30 and the commission.

31 (f) Expulsion from program.--

32 (1) A participant may be expelled from the State drug
33 [offender] treatment program at any time in accordance with
34 guidelines established by the department, including failure
35 to comply with administrative or disciplinary procedures or
36 requirements set forth by the department. An expelled
37 participant shall be housed in a State correctional
38 institution to serve the remainder of the participant's
39 sentence. The expelled participant shall be eligible for
40 parole at the minimum sentence but may not be eligible for
41 short sentence parole under section 6137.5 (relating to short
42 sentence parole).

43 (2) The department shall promptly notify the court, the
44 [defendant] participant, the attorney for the Commonwealth
45 and the commission of the expulsion of a participant from the
46 State drug [offender] treatment program and the reason for
47 such expulsion. [The participant shall be housed in a State
48 correctional institution or county jail pending action by the
49 court.

50 (3) The court shall schedule a prompt State intermediate
51 punishment revocation hearing pursuant to 42 Pa.C.S. § 9774

(relating to revocation of State intermediate punishment sentence).]

§ 4107. [Reports] Evaluation.

[(a) Final report.--The department shall provide a final report to the court, the defendant, the attorney for the Commonwealth and the commission on a participant's progress in the drug offender treatment program.]

(b) Evaluation and report to General Assembly.--The department [and the commission] shall monitor and evaluate the State drug [offender] treatment program to ensure that the programmatic objectives are met. [In odd-numbered years, the] Every three 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. [In even-numbered years, the commission 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 General Assembly shall convene hearings in the appropriate committees to hear and deliberate upon reports under this section. The report shall include:

(1) The number of [offenders] persons evaluated for the State drug [offender] treatment program.

(2) The number of [offenders sentenced to] persons placed into the State drug [offender] treatment program.

(3) The number of [offenders] persons sentenced to a State correctional institution who may have been eligible for the State drug [offender] treatment program.

(4) The number of [offenders] persons successfully completing the State drug [offender] treatment program.

(5) The six-month, one-year, three-year and five-year recidivism rates for [offenders] persons who have completed the State drug [offender] treatment program and for a comparison group of [offenders] persons who were not placed in the State drug [offender] treatment program.

(6) Any changes the department [or the commission] believes will make the State drug [offender] treatment program more effective.

Section 13. The definition of "eligible offender" in section 4503 of Title 61 is amended to read:

§ 4503. Definitions.

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

* * *

"Eligible [offender] person." A defendant or inmate convicted of a criminal offense who will be committed to the custody of the department and who meets all of the following eligibility requirements:

(1) Does not demonstrate a history of present or past violent behavior.

1 (2) Has not been subject to a sentence the calculation
2 of which includes an enhancement for the use of a deadly
3 weapon as defined under law or the sentencing guidelines
4 promulgated by the Pennsylvania Commission on Sentencing or
5 the attorney for the Commonwealth has not demonstrated that
6 the defendant has been found guilty of or was convicted of an
7 offense involving a deadly weapon or offense under 18 Pa.C.S.
8 Ch. 61 (relating to firearms and other dangerous articles) or
9 the equivalent offense under the laws of the United States or
10 one of its territories or possessions, another state, the
11 District of Columbia, the Commonwealth of Puerto Rico or a
12 foreign nation.

13 (3) Has not been found guilty of or previously convicted
14 of or adjudicated delinquent for or an attempt or conspiracy
15 to commit a personal injury crime as defined under section
16 103 of the act of November 24, 1998 (P.L.882, No.111), known
17 as the Crime Victims Act, except for an offense under 18
18 Pa.C.S. § 2701 (relating to simple assault) when the offense
19 is a misdemeanor of the third degree, or an equivalent
20 offense under the laws of the United States or one of its
21 territories or possessions, another state, the District of
22 Columbia, the Commonwealth of Puerto Rico or a foreign
23 nation.

24 (4) Has not been found guilty or previously convicted or
25 adjudicated delinquent for violating any of the following
26 provisions or an equivalent offense under the laws of the
27 United States or one of its territories or possessions,
28 another state, the District of Columbia, the Commonwealth of
29 Puerto Rico or a foreign nation:

30 18 Pa.C.S. § 4302(a) (relating to incest).

31 18 Pa.C.S. § 5901 (relating to open lewdness).

32 18 Pa.C.S. Ch. 76 Subch. C (relating to Internet
33 child pornography).

34 Received a criminal sentence pursuant to 42 Pa.C.S. §
35 9712.1 (relating to sentences for certain drug offenses
36 committed with firearms).

37 Any offense for which registration is required under
38 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
39 sexual offenders).

40 Drug trafficking as defined in section 4103 (relating
41 to definitions).

42 (5) Is not awaiting trial or sentencing for additional
43 criminal charges, if a conviction or sentence on the
44 additional charges would cause the defendant to become
45 ineligible under this definition.

46 [(6) Has not been found guilty or previously convicted
47 of violating section 13(a)(14), (30) or (37) of the act of
48 April 14, 1972 (P.L.233, No.64), known as The Controlled
49 Substance, Drug, Device and Cosmetic Act, where the sentence
50 was imposed pursuant to 18 Pa.C.S. § 7508(a)(1)(iii), (2)
51 (iii), (3)(iii), (4)(iii), (7)(iii) or (8)(iii) (relating to

1 drug trafficking sentencing and penalties).]

2 * * *

3 Section 14. Sections 4509 and 4510 of Title 61 are repealed:
4 [§ 4509. Evaluation.

5 (a) General rule.--The department, the board and the
6 commission shall monitor and evaluate the recidivism risk
7 reduction incentive programs. Evaluations under this section
8 should be scientifically rigorous and seek to determine the
9 effectiveness of the programs, including whether specific
10 recidivism risk reduction incentive programs have reduced the
11 recidivism rates of the program participants as compared to
12 previously incarcerated and similarly situated inmates.

13 (b) Publication.--The department, the board and the
14 commission shall make evaluations conducted under this section
15 and underlying data available to the public. The publicly
16 available data and evaluations shall comply with generally
17 accepted practices of the research community, including
18 expectations relating to subject privacy and identifying
19 information.

20 § 4510. Reports.

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

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

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

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

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

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

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

45 (vi) Any other information the department deems
46 relevant.

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

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

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

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

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

(v) Any other information the commission deems relevant.

(b) Educational plan.--

(1) The Pennsylvania Commission on Crime and Delinquency shall publish a report of a proposed educational program plan within one year of the effective date of this section. The proposed educational program plan shall be developed in consultation with the department, the commission, the board, the Pennsylvania District Attorneys Association, the victim advocate and representatives of the judiciary and the criminal defense bar and other criminal justice stakeholders.

(2) The plan shall seek to provide cost-effective training or information through electronic means, publications or continuing educational programs that address the following topics:

(i) The treatment programs available through the board and the department.

(ii) The availability of programs and eligibility requirements that can reduce recidivism risk, including State intermediate punishment, motivational boot camp and recidivism risk reduction incentive programs.

(iii) The calculation of sentencing credit and practices that could inadvertently prevent an inmate from receiving sentence credit.

(iv) Recent statutory changes relating to sentencing, place of confinement, medical releases, transfer of inmates and parole.]

Section 15. The heading of Subchapter B of Chapter 61 of Title 61 is amended to read:

SUBCHAPTER B

ADMINISTRATION OF THE PENNSYLVANIA PAROLE BOARD

Section 16. Section 6101 and 6111 heading and (a) of Title 61 are amended to read:

§ 6101. Definitions.

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

"Board." The Pennsylvania [Board of Probation and] Parole Board.

§ 6111. Pennsylvania [Board of Probation and] Parole Board.

1 (a) Establishment.--The Pennsylvania [Board of Probation
2 and] Parole Board is an independent administrative board for the
3 administration of the [probation and] parole laws of this
4 Commonwealth.

5 * * *

6 Section 17. Section 6123 of Title 61 is repealed:
7 [§ 6123. Advisory committee.

8 (a) Establishment.--An advisory committee on probation is
9 reestablished to assist the board.

10 (b) Composition.--The advisory committee shall consist of
11 nine members, seven of whom shall be appointed by the Governor,
12 with the consent of a majority of the members of the Senate. At
13 least two shall be judges of courts of record of this
14 Commonwealth, at least one shall be a county commissioner, at
15 least one shall be a chief county probation officer, and the
16 remaining members shall be qualified in the field of probation
17 and parole either by training or experience. The President pro
18 tempore of the Senate and the Speaker of the House of
19 Representatives shall each appoint a member of their respective
20 houses to serve as members of the committee.

21 (c) Terms.--

22 (1) The term of a member hereafter appointed, except to
23 fill a vacancy, shall be for four years and until their
24 successors have been appointed and qualified, but in no event
25 more than 90 days beyond the expiration of their appointed
26 term.

27 (2) The terms of members of the committee who are
28 appointed by virtue of holding an office as a member of the
29 General Assembly, judge, chief county probation officer or
30 county commissioner shall continue only so long as that
31 person remains in that office.

32 (3) Vacancies occurring in an office of a member of the
33 advisory committee by expiration of term, death, resignation,
34 removal or for any other reason shall be filled in the manner
35 provided by section 8 of Article IV of the Constitution of
36 Pennsylvania for the remainder of the term.

37 (4) Whenever the term of an advisory committee member,
38 other than one who is a member of the General Assembly,
39 expires, that member's position shall be immediately deemed a
40 vacancy, and the Governor shall nominate a person to fill
41 that membership position on the committee within 90 days of
42 the date of expiration, even if the member continues to
43 remain on the committee. The Governor shall designate one of
44 the members of the committee as its chairperson.

45 (d) Reimbursement of expenses.--Each member of the advisory
46 committee shall be paid all reasonable and necessary travel and
47 other expenses incurred by him in the performance of his duties.

48 (e) Assistance to be provided.--The advisory committee shall
49 aid the chairperson and the board in formulating and reviewing
50 standards for probation personnel and probation services in the
51 counties.]

1 Section 18. Sections 6131(a)(3), (4) and (5), 6133(c) and
2 (d) and 6137(a)(1) of Title 61 are amended to read:

3 § 6131. General powers of board.

4 (a) General rule.--The board shall have the power and its
5 duty shall be:

6 * * *

7 (3) To collect and maintain a record of all persons who
8 are placed on [probation and] parole.

9 [(4) To collect, compile and publish statistical and
10 other information relating to probation and parole work in
11 all courts and such other information the board may deem of
12 value in probation service.

13 (5) To establish, by regulation, uniform Statewide
14 standards for:

15 (i) Presentence investigations.

16 (ii) The supervision of probationers.

17 (iii) The qualifications for probation personnel.

18 (iv) Minimum salaries.

19 (v) Quality of probation service.

20 The standards for the qualifications of probation personnel
21 shall only apply to probation personnel appointed after the
22 date the standards are established. Should any probation
23 personnel appointed prior to the date the standards were
24 established fail to meet the standards, the court having
25 jurisdiction of such personnel may request the board to
26 establish in-service training for them in accordance with the
27 standards.]

28 * * *

29 § 6133. Probation services.

30 * * *

31 (c) [Grant-in-aid.--

32 (1) A county that provides additional probation staff
33 for presentence investigations and improved probation
34 supervision and programs shall receive a grant-in-aid from
35 the Commonwealth through the board for additional costs
36 incurred thereby but only to the extent that the additional
37 staff and program meet the qualifications and standards
38 established by the board.

39 (2) The grant-in-aid shall provide 80% of the personnel
40 salary costs incurred by a county to administer these
41 additional services and programs.

42 (3) If insufficient funds are appropriated, each county
43 shall receive a prorated reduction in the grant-in-aid.

44 (4) The board shall establish rules and regulations for
45 the allocation of funds available for such grants-in-aid.]

46 Supervision and investigation.--Supervision and presentence
47 investigations by court order or request shall be provided in
48 accordance with board regulations.

49 (d) In-service training.--The board shall provide in-service
50 training for personnel of county probation offices when
51 requested to do so by the court having jurisdiction of the

1 probation office[.] as provided by memorandum of understanding
2 with the Pennsylvania Commission on Crime and Delinquency and
3 contingent upon the availability of money.

4 § 6137. Parole power.

5 (a) General criteria for parole.--

6 (1) The board may parole subject to consideration of
7 guidelines established under 42 Pa.C.S. § 2154.5 (relating to
8 adoption of guidelines for parole) or subject to section
9 6137.5 (relating to short sentence parole) and may release on
10 parole any inmate to whom the power to parole is granted to
11 the board by this chapter, except an inmate condemned to
12 death or serving life imprisonment, whenever in its opinion:

13 (i) The best interests of the inmate justify or
14 require that the inmate be paroled.

15 (ii) It does not appear that the interests of the
16 Commonwealth will be injured by the inmate's parole.

17 * * *

18 Section 19. Title 61 is amended by adding a section to read:
19 § 6137.5. Short sentence parole.

20 (a) General rule.--This section applies to persons committed
21 to the department with a minimum sentence of confinement under
22 42 Pa.C.S. § 9756(b) (relating to sentence of total confinement)
23 of two years or less or a recidivism risk reduction incentive
24 minimum sentence under 42 Pa.C.S. § 9756(b.1) of two years or
25 less, whichever is shorter. Regardless of sentence imposed, this
26 section does not apply to:

27 (1) persons committed for or with an aggregate sentence
28 containing a personal injury crime, or any criminal attempt,
29 criminal solicitation, or criminal conspiracy to commit a
30 personal injury crime, as defined in section 103 of the act
31 of November 24, 1998 (P.L.882, No.111), known as the Crime
32 Victims Act;

33 (2) persons committed for or with an aggregate sentence
34 containing an offense under 18 Pa.C.S. § 6105 (relating to
35 persons not to possess, use, manufacture, control, sell or
36 transfer firearms);

37 (3) persons committed for or with an aggregate sentence
38 containing an enhancement for the use of a deadly weapon as
39 defined under law or the sentencing guidelines promulgated by
40 the Pennsylvania Commission on Sentencing or where the
41 attorney for the Commonwealth has demonstrated that the
42 defendant has been found guilty of or was convicted of an
43 offense involving a deadly weapon or offense under 18 Pa.C.S.
44 Ch. 61 (relating to firearms and other dangerous articles) or
45 an equivalent offense under the laws of the United States or
46 one of its territories or possessions, another state, the
47 District of Columbia, the Commonwealth of Puerto Rico or a
48 foreign nation;

49 (4) persons committed for or with an aggregate sentence
50 containing a violation of any of the following provisions or
51 an equivalent offense under the laws of the United States or

1 one of its territories or possessions, another state, the
2 District of Columbia, the Commonwealth of Puerto Rico or a
3 foreign nation:

4 18 Pa.C.S. § 4302(a) (relating to incest).

5 18 Pa.C.S. § 5901 (relating to open lewdness).

6 18 Pa.C.S. Ch. 76 Subch. C (relating to Internet child
7 pornography).

8 A criminal sentence pursuant to 42 Pa.C.S. § 9712.1
9 (relating to sentences for certain drug offenses committed
10 with firearms).

11 An offense for which registration is required under 42
12 Pa.C.S. Ch. 97 Subch. H (relating to registration of sexual
13 offenders).

14 An offense for which registration is required under 42
15 Pa.C.S. Ch. 97 Subch. I (relating to continued registration
16 of sexual offenders).

17 (5) persons committed for or with an aggregate sentence
18 containing an offense under section 13(a)(14), (30) or (37)
19 of the act of April 14, 1972 (P.L.233, No.64), known as The
20 Controlled Substance, Drug, Device and Cosmetic Act, where
21 the sentence was imposed upon a finding of an amount or
22 aggregate weight under 18 Pa.C.S. § 7508(a)(1)(iii), (2)
23 (iii), (3)(iii), (4)(iii), (7)(iii) or (8)(iii) (relating to
24 drug trafficking sentencing and penalties);

25 (6) persons awaiting trial or sentencing for additional
26 criminal charges, if a conviction or sentence on the
27 additional charges would cause the person to become
28 ineligible under this subsection; or

29 (7) persons who are currently serving a sentence to
30 State prison and have been denied parole on that sentence
31 prior to the effective date of this section.

32 (b) Approval of parole.--The board shall, without requiring
33 an interview, approve for parole at the expiration of the
34 eligible person's minimum date or recidivism risk reduction
35 incentive minimum date, whichever is shorter, unless the person
36 has:

37 (1) been found guilty of a major disciplinary infraction
38 while confined in a county correctional institution or State
39 correctional institution; or

40 (2) a pending felony charge or outstanding felony arrest
41 warrant or detainer, except that this section may be applied
42 to allow a person to be paroled to a detainer related to an
43 underlying felony charge.

44 (c) Nonapplicability.--The requirements of sections 6135
45 (relating to investigation of circumstances of offense), 6137(a)
46 (3.1), (e)(1), (f) and (g) (relating to parole power) and 6139
47 (relating to parole procedure) and section 1101(e) of the Crime
48 Victims Act do not apply to paroles under this section.

49 (d) Assessment.--The department shall provide a risk and
50 needs assessment to the board and the board shall establish
51 initial conditions of parole based on the assessment.

1 (e) Applicability.--This section shall only apply to
2 individuals sentenced after the effective date of this section.

3 (f) Reports.--The Pennsylvania Commission on Sentencing
4 shall provide a report to the General Assembly on cost savings
5 and recidivism attributed to this section as follows:

6 (1) No later than two years after the effective date of
7 this section.

8 (2) No later than two years after the report issued
9 under paragraph (1).

10 (g) Procedures.--The chairman of the board shall adopt
11 procedures to carry out this section.

12 (h) Definition.--As used in this section, the term "major
13 disciplinary infraction" means:

14 (1) committing a violation equivalent to an incident
15 that could lead to a conviction under 18 Pa.C.S. (relating to
16 crimes and offenses);

17 (2) wearing a disguise;

18 (3) tattooing;

19 (4) gambling;

20 (5) Threatening harm to another person upon or following
21 release; or

22 (6) possessing dangerous contraband while incarcerated.

23 Section 20. Section 6138(c) of Title 61 is amended by adding
24 a paragraph to read:

25 § 6138. Violation of terms of parole.

26 * * *

27 (c) Technical violators.--

28 * * *

29 (8) A parolee under the board's supervision who is
30 alleged to have committed a technical parole violation may be
31 arrested and detained for a period not to exceed seven days,
32 provided that either the parolee is detained on a 48-hour
33 warrant or the parolee is brought before a hearing examiner
34 within 48 hours to determine if the parolee shall be released
35 or held for the remainder of the seven days or a shorter
36 period. The chairman of the board shall adopt procedures
37 governing the appropriate use of brief detention under this
38 section so that technical violations enumerated under
39 paragraph (1) are not resolved with brief detention.

40 * * *

41 Section 21. Section 6139(a)(6) and (b) of Title 61 are
42 amended to read:

43 § 6139. Parole procedure.

44 (a) Specific requirements.--

45 * * *

46 (6) In no case shall a parole be granted, or an
47 application for parole be dismissed, unless a board member,
48 hearing examiner or other person so designated by the board
49 shall have seen and heard the parolee in person in regard
50 thereto within six months prior to the granting or dismissal
51 thereof. This requirement does not apply to paroles under

section 6137.5 (relating to short sentence parole) or to persons scored as low probability to parole or high probability to parole under parole guidelines adopted under 42 Pa.C.S. § 2154.5 (relating to adoption of guidelines for parole).

* * *

(b) Reliance on reports.--In granting and revoking paroles and in discharging from parole, the members of the board acting thereon shall not be required to personally hear or see all the witnesses and evidence submitted to them for their action, but they may act on the report submitted to them by their agents and employees, together with any pertinent and adequate information furnished to them by fellow members of the board or by others. In granting or revoking parole or bringing an alleged parole violator before a hearing examiner, the appearance may be conducted via videoconferencing or similar virtual presence technology.

* * *

Section 22. This act shall take effect as follows:

(1) The following shall take effect in 60 days:

(i) The amendment of 42 Pa.C.S. §§ 2154, 2154.1, 2154.7 and 9728(b)(5).

(ii) The repeal of 42 Pa.C.S. § 2154.2.

(iii) The amendment of 61 Pa.C.S. Ch. 61 Subch. B heading.

(iv) The amendment of 61 Pa.C.S. §§ 6101, 6111, 6131(a)(3), (4) and (5) and 6133(c) and (d).

(v) The repeal of 61 Pa.C.S. § 6123.

(2) The following shall take effect in 120 days:

(i) The amendment of 61 Pa.C.S. §§ 6137(a)(1), 6138(c) and 6139(a)(6) and (b).

(ii) The addition of 61 Pa.C.S. § 6137.5.

(3) The remainder of this act shall take effect immediately.