

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 430 Session of 2015

INTRODUCED BY HUGHES, TEPLITZ, FONTANA, TARTAGLIONE, VULAKOVICH, BREWSTER, COSTA, GREENLEAF, SCHWANK AND BROWNE, FEBRUARY 12, 2015

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, JUNE 2, 2015

AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania
2 Consolidated Statutes, in State intermediate punishment,
3 further providing for definitions, for referral to State
4 intermediate punishment program, for drug offender treatment
5 program and for written guidelines and regulations; imposing
6 duty on Department of Corrections; and further providing for
7 reports and for construction.

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

10 Section 1. Section 4102 of Title 61 of the Pennsylvania
11 Consolidated Statutes is amended to read:

12 § 4102. Findings and purpose.

13 The General Assembly finds as follows:

14 (1) Many crimes are committed by persons who, because of
15 their addiction to drugs [or] alcohol or gambling, are
16 unable to maintain gainful employment.

17 (2) These persons often commit crimes as a means of
18 obtaining the funds necessary to purchase drugs or alcohol or
19 for gambling.

20 (3) Many persons commit crimes while under the influence

1 of drugs or alcohol even though they are not addicted to such
2 substances in a clinical sense.

3 (4) Punishing persons who commit crimes is an important
4 aspect of recognizing the harm that criminals visit upon
5 their victims.

6 (5) Many people who commit crimes will be able to become
7 law-abiding, contributing members of society if they are able
8 to obtain treatment for their drug [or], alcohol or gambling
9 addiction or abuse.

10 (6) The purpose of this chapter is to create a program
11 that punishes persons who commit crimes, but also provides
12 treatment that offers the opportunity for those persons to
13 address their drug [or], alcohol or gambling addiction or
14 abuse and thereby reduce the incidents of recidivism and
15 enhance public safety.

16 Section 2. The definitions of "defendant," "drug offender
17 treatment program," "eligible offender," "expulsion,"
18 "individualized drug offender treatment plan," "institutional
19 therapeutic community" and "transitional residence" in section
20 4103 of Title 61 are amended and the section is amended by
21 adding definitions to read:

22 § 4103. Definitions.

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

26 "Addicted offender treatment program." An individualized
27 treatment program established by the Department of Corrections
28 consisting primarily of drug and alcohol or gambling addiction
29 treatment that satisfies the terms and conditions listed in
30 section 4105 (relating to addicted offender treatment program).

1 * * *

2 "Defendant." An individual charged with:

3 (1) a drug-related offense, including an individual
4 convicted of violating section 13(a)(14), (30) or (37) of the
5 act of April 14, 1972 (P.L.233, No.64), known as The
6 Controlled Substance, Drug, Device and Cosmetic Act, where
7 the sentence was imposed pursuant to 18 Pa.C.S. § 7508(a)(1)
8 (i), (2)(i), (3)(i), (4)(i) or (7)(i) (relating to drug
9 trafficking sentencing and penalties)[.]; or

10 (2) a gambling-related offense.

11 * * *

12 ["Drug offender treatment program." An individualized
13 treatment program established by the Department of Corrections
14 consisting primarily of drug and alcohol addiction treatment
15 that satisfies the terms and conditions listed in section 4105
16 (relating to drug offender treatment program).]

17 * * *

18 "Eligible offender." Subject to 42 Pa.C.S. § 9721(a.1)
19 (relating to sentencing generally), a defendant designated by
20 the sentencing court as a person convicted of a drug-related
21 offense or gambling-related offense who:

22 (1) Has undergone an assessment performed by the
23 Department of Corrections, which assessment has concluded
24 that the defendant is in need of drug and alcohol or gambling
25 addiction treatment and would benefit from commitment to [a
26 drug] an addicted offender treatment program and that
27 placement in [a drug] an addicted offender treatment program
28 would be appropriate.

29 (2) Does not demonstrate a history of present or past
30 violent behavior.

1 (3) Would be placed in the custody of the department if
2 not sentenced to State intermediate punishment.

3 (4) Provides written consent permitting release of
4 information pertaining to the defendant's participation in [a
5 drug] an addicted offender treatment program.

6 The term shall not include a defendant who is subject to a
7 sentence the calculation of which includes an enhancement for
8 the use of a deadly weapon, as defined pursuant to law or the
9 sentencing guidelines promulgated by the Pennsylvania Commission
10 on Sentencing, a defendant who has been convicted or adjudicated
11 delinquent of any crime requiring registration under 42 Pa.C.S.
12 Ch. 97 Subch. H (relating to registration of sexual offenders)
13 or a defendant with a current conviction or a prior conviction
14 within the past ten years for any of the following offenses:

15 18 Pa.C.S. § 2502 (relating to murder).

16 18 Pa.C.S. § 2503 (relating to voluntary manslaughter).

17 18 Pa.C.S. § 2506 (relating to drug delivery resulting in
18 death).

19 18 Pa.C.S. § 2901(a) (relating to kidnapping).

20 18 Pa.C.S. § 3301(a)(1)(i) (relating to arson and related
21 offenses).

22 18 Pa.C.S. § 3502 (relating to burglary), in the case of
23 burglary of a structure adapted for overnight accommodation
24 in which at the time of the offense any person is present.

25 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to
26 robbery).

27 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).

28 18 Pa.C.S. § 7508 (a)(1)(iii), (2)(iii), (3)(iii) or (4)
29 (iii) (relating to drug trafficking sentencing and
30 penalties).

1 "Expulsion." The permanent removal of a participant from [a
2 drug] an addicted offender treatment program.

3 "Gambling-related offense." A criminal offense for which a
4 defendant is convicted and that the court determines was
5 motivated by the defendant's addiction to gambling.

6 * * *

7 ["Individualized drug offender treatment plan." An
8 individualized addiction treatment plan within the framework of
9 the drug offender treatment program.]

10 "Individualized addicted offender treatment plan." An
11 individualized addiction treatment plan within the framework of
12 the addicted offender treatment program.

13 "Institutional therapeutic community." A residential drug or
14 gambling treatment program in a State correctional institution,
15 accredited as a therapeutic community for treatment of drug and
16 alcohol abuse and addiction or gambling addiction by the
17 American Correctional Association or other nationally recognized
18 accreditation organization for therapeutic community drug and
19 alcohol or gambling addiction treatment.

20 * * *

21 "Transitional residence." A residence investigated and
22 approved by the Department of Corrections as appropriate for
23 housing a participant in [a drug] an addicted offender treatment
24 program.

25 Section 3. Sections 4104, 4105, 4106, 4107 and 4108 of Title
26 61 are amended to read:

27 § 4104. Referral to State intermediate punishment program.

28 (a) Referral for evaluation.--

29 (1) Prior to imposing a sentence, the court may, upon
30 motion of the Commonwealth, commit a defendant to the custody

1 of the department for the purpose of evaluating whether the
2 defendant would benefit from [a drug] an addicted offender
3 treatment program and whether placement in the [drug]
4 addicted offender treatment program is appropriate.

5 (1.1) (i) The prosecuting attorney, in the prosecuting
6 attorney's sole discretion, may advise the court that the
7 Commonwealth has elected to waive the eligibility
8 requirements of this chapter if the victim has been given
9 notice of the prosecuting attorney's intent to waive the
10 eligibility requirements and an opportunity to be heard
11 on the issue.

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

15 (2) Upon committing a defendant to the department, the
16 court shall forward to the department:

17 (i) A summary of the offense for which the defendant
18 has been convicted.

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

23 (iii) Information relating to the defendant's
24 history of drug or alcohol or gambling abuse or
25 addiction, when available.

26 (iv) A presentence investigation report, when
27 available.

28 (v) Any other information the court deems relevant
29 to assist the department with its assessment of the
30 defendant.

1 (b) Assessment of addiction.--

2 (1) The department shall conduct an assessment of the
3 addiction and other treatment needs of a defendant and
4 determine whether the defendant would benefit from [a drug]
5 an addicted offender treatment program. The assessment shall
6 be conducted using a nationally recognized assessment
7 instrument or an instrument that has been normed and
8 validated on the department's inmate population by a
9 recognized expert in such matters. The assessment instrument
10 shall be administered by persons skilled in the treatment of
11 drug and alcohol addiction or gambling addiction and trained
12 to conduct assessments. The assessments shall be reviewed and
13 approved by a supervisor with at least three years of
14 experience providing drug and alcohol or gambling counseling
15 services.

16 (2) The department shall conduct risk and other
17 assessments it deems appropriate and shall provide a report
18 of its assessments to the court, the defendant, the attorney
19 for the Commonwealth and the commission within 60 days of the
20 court's commitment of the defendant to the custody of the
21 department.

22 (c) Proposed [drug] addicted offender treatment program.--If
23 the department in its discretion believes a defendant would
24 benefit from [a drug] an addicted offender treatment program and
25 placement in the [drug] addicted offender treatment program is
26 appropriate, the department shall provide the court, the
27 defendant, the attorney for the Commonwealth and the commission
28 with a proposed [drug] addicted offender treatment program
29 detailing the type of treatment proposed.

30 (d) Prerequisites for commitment.--Upon receipt of a

1 recommendation for placement in [a drug] an addicted offender
2 treatment program from the department and agreement of the
3 attorney for the Commonwealth, the court may sentence an
4 eligible offender to a period of 24 months of State intermediate
5 punishment if the court finds that:

6 (1) The eligible offender is likely to benefit from
7 State intermediate punishment.

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

10 (3) Sentencing the eligible offender to State
11 intermediate punishment would not depreciate the seriousness
12 of the offense.

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

19 (1) The department has recommended placement in [a drug]
20 an addicted offender treatment program.

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

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

25 (4) The resentencing has occurred within 365 days of the
26 date of the defendant's admission to the custody of the
27 department.

28 (5) The court has otherwise complied with all other
29 requirements for the imposition of sentence including victim
30 notification under the act of November 24, 1998 (P.L.882, No.

1 111), known as the Crime Victims Act.

2 (f) Consecutive probation.--Nothing in this chapter shall
3 prohibit the court from sentencing an eligible offender to a
4 consecutive period of probation. The total duration of the
5 sentence may not exceed the maximum term for which the eligible
6 offender could otherwise be sentenced.

7 (g) Applicability and program limitations.--The court may
8 not modify or alter the terms of the department's proposed
9 individualized [drug] addicted offender treatment plan without
10 the agreement of the department and the attorney for the
11 Commonwealth.

12 (h) Videoconferencing.--The department shall make
13 videoconferencing facilities available to allow the court to
14 conduct proceedings necessary under this section when the
15 eligible offender has been committed to the custody of the
16 department pursuant to subsection (b).

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

22 (j) Definitions.--As used in this section, the term
23 "personal injury crime" shall be defined as in section 103 of
24 the act of November 24, 1998 (P.L.882, No.111), known as the
25 Crime Victims Act.

26 § 4105. [Drug] Addicted offender treatment program.

27 (a) Establishment.--The department shall establish and
28 administer [a drug] an addicted offender treatment program as a
29 State intermediate punishment. The program shall be designed to
30 address the individually assessed drug and alcohol or gambling

1 abuse and addiction needs of a participant and shall address
2 other issues essential to the participant's successful
3 reintegration into the community, including, but not limited to,
4 educational and employment issues.

5 (b) Duration and components.--Notwithstanding any credit to
6 which the defendant may be entitled under 42 Pa.C.S. § 9760
7 (relating to credit for time served), the duration of the [drug]
8 addicted offender treatment program shall be 24 months and shall
9 include the following:

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

12 (i) The time during which the defendants are being
13 evaluated by the department under section 4104(b)
14 (relating to referral to State intermediate punishment
15 program).

16 (ii) Following evaluation under subparagraph (i),
17 not less than four months shall be in an institutional
18 therapeutic community.

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

21 (3) A period of at least six-months' treatment through
22 an outpatient addiction treatment facility. During the
23 outpatient addiction treatment period of the [drug] addicted
24 offender treatment program, the participant may be housed in
25 a community corrections center or group home or placed in an
26 approved transitional residence. The participant must comply
27 with any conditions established by the department regardless
28 of where the participant resides during the outpatient
29 addiction treatment portion of the [drug] addicted offender
30 treatment program.

1 (4) A period of supervised reintegration into the
2 community for the balance of the [drug] addicted offender
3 treatment program, during which the participant shall
4 continue to be supervised by the department and comply with
5 any conditions imposed by the department.

6 (c) Program management.--

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

18 (2) This subsection shall be construed to provide the
19 department with the maximum flexibility to administer the
20 [drug] addicted offender treatment program both as a whole
21 and for individual participants.

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

30 (e) Notice to court of completion of program.--When the

1 department determines that a participant has successfully
2 completed the [drug] addicted offender treatment program, it
3 shall notify the sentencing court, the attorney for the
4 Commonwealth and the commission.

5 (f) Expulsion from program.--

6 (1) A participant may be expelled from the [drug]
7 addicted offender treatment program at any time in accordance
8 with guidelines established by the department, including
9 failure to comply with administrative or disciplinary
10 procedures or requirements set forth by the department.

11 (2) The department shall promptly notify the court, the
12 defendant, the attorney for the Commonwealth and the
13 commission of the expulsion of a participant from the [drug]
14 addicted offender treatment program and the reason for such
15 expulsion. The participant shall be housed in a State
16 correctional institution or county jail pending action by the
17 court.

18 (3) The court shall schedule a prompt State intermediate
19 punishment revocation hearing pursuant to 42 Pa.C.S. § 9774
20 (relating to revocation of State intermediate punishment
21 sentence).

22 § 4106. Written guidelines and regulations.

23 The department shall develop written guidelines for
24 participant selection criteria and the establishment of [drug]
25 addicted offender treatment program selection committees within
26 each diagnostic and classification center of the department and
27 shall address suspensions and expulsions from the drug offender
28 treatment program. The guidelines shall not be subject to the
29 act of June 25, 1982 (P.L.633, No.181), known as the Regulatory
30 Review Act, and shall be effective for a period of two years

1 upon publication in the Pennsylvania Bulletin. The guidelines
2 shall be replaced by regulations promulgated by the department
3 consistent with the Regulatory Review Act within the two-year
4 period during which the guidelines are effective. The
5 regulations shall include a requirement that community-based
6 therapeutic communities utilized in the [drug] addicted offender
7 treatment program be accredited as a therapeutic community for
8 treatment of drug and alcohol or gambling abuse and addiction by
9 the Commission on Accreditation of Rehabilitation Facilities or
10 other nationally recognized accreditation organization for
11 community-based therapeutic communities for drug and alcohol or
12 gambling addiction treatment.

13 § 4107. Reports.

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

18 (b) Evaluation and report to General Assembly.--The
19 department and the commission shall monitor and evaluate the
20 drug offender treatment program to ensure that the programmatic
21 objectives are met. In odd-numbered years, the department shall
22 present a report of its evaluation to the Judiciary Committee of
23 the Senate and the Judiciary Committee of the House of
24 Representatives no later than February 1. In even-numbered
25 years, the commission shall present a report of its evaluation
26 to the Judiciary Committee of the Senate and the Judiciary
27 Committee of the House of Representatives no later than February
28 1. The report shall include:

29 (1) The number of offenders evaluated for the [drug]
30 addicted offender treatment program.

1 (2) The number of offenders sentenced to the [drug]
2 addicted offender treatment program.

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

6 (4) The number of offenders successfully completing the
7 [drug] addicted offender treatment program.

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

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

16 § 4108. Construction.

17 Notwithstanding any other provision of law to the contrary,
18 this chapter shall not be construed to:

19 (1) Confer any legal right upon any individual,
20 including an individual participating in the [drug] addicted
21 offender treatment program, to:

22 (i) participate in [a drug] an addicted offender
23 treatment program;

24 (ii) continue participation in [a drug] an addicted
25 offender treatment program;

26 (iii) modify the contents of the [drug] addicted
27 offender treatment program; or

28 (iv) file any cause of action in any court
29 challenging the department's determination that a
30 participant is to be suspended or expelled from or that a

1 participant has successfully completed or failed to
2 successfully complete treatment to be provided during any
3 portion of [a drug] an addicted offender treatment
4 program.

5 (2) Enlarge or limit the right of a participant to
6 appeal the participant's sentence.

7 Section 4. This act shall take effect in ~~60 days~~ SIX MONTHS. <--