

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

## HOUSE BILL

No. 953

Session of  
1977

INTRODUCED BY MESSRS. SCIRICA, BERSON, SPENCER, IRVIS, RHODES,  
MANDERINO, FISHER, O'DONNELL, W. D. HUTCHINSON, YOHN, COLE,  
PYLES, BROWN, REED, HOFFEL, BERLIN, PRATT, DOYLE, WHITE,  
MRS. GILLETTE, MESSRS. SCHMITT, SWEET, YAHNER, VROON,  
RICHARDSON, FREIND, GARZIA, MRS. HARPER, MESSRS. DeMEDIO,  
KNEPPER, DONATUCCI, MISS SIRIANNI, MESSRS. HASKELL, DUFFY AND  
WAGNER, APRIL 25, 1977

AS RE-REPORTED FROM COMMITTEE ON APPROPRIATIONS, HOUSE OF  
REPRESENTATIVES, AS AMENDED, NOVEMBER 15, 1977

## AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania  
2 Consolidated Statutes, creating the Pennsylvania Commission  
3 on Sentencing, establishing guidelines for criminal  
4 sentencing to be used by trial courts, and further providing  
5 for sentencing alternatives and appellate review of sentence.

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

8 Section 1. Subsection (b) of section 1321 of Title 18, act  
9 of November 25, 1970 (P.L.707, No.230), known as the  
10 Pennsylvania Consolidated Statutes, is amended to read:

11 § 1321. Sentencing generally.

12 \* \* \*

13 (b) General standards.--In selecting from the alternatives  
14 set forth in subsection (a) [of this section] the court shall  
15 follow the general principle that the sentence imposed should  
16 call for the minimum amount of confinement that is consistent

1 with the protection of the public, the gravity of the offense,  
2 and the rehabilitative needs of the defendant. The court shall  
3 also consider any guidelines for sentencing promulgated by the  
4 Pennsylvania Commission on Sentencing, established by section  
5 1391 (relating to commission established). In every case in  
6 which the court imposes a sentence for a felony or misdemeanor,  
7 the court shall make as a part of the record, and disclose in  
8 open court at the time of sentencing, a statement of the reason  
9 or reasons for the sentence imposed. Failure to comply shall be  
10 grounds for vacating the sentence and resentencing the  
11 defendant.

12 \* \* \*

13 Section 2. Subchapter G of Chapter 13 is repealed.

14 Section 3. Chapter 13 is amended by adding a subchapter to  
15 read:

16 SUBCHAPTER G

17 REVIEW OF SENTENCE

18 § 1381. Review of sentence.

19 (a) Leave to petition for review.--The defendant or the  
20 Commonwealth may file a petition for review of sentence for a  
21 felony or misdemeanor to the Superior Court, except in the case  
22 of a sentence upon conviction for felonious homicide, in which  
23 event the petition for review shall lie to the Supreme Court.

24 (b) Determination on review.--The appellate court shall  
25 vacate the sentence, and remand the case to the sentencing court  
26 with instructions if it finds:

27 (1) the sentencing court purported to sentence within  
28 the sentencing guidelines but applied such guidelines  
29 erroneously; or

30 (2) the sentencing court sentenced within the sentencing

1 guidelines but the case involves circumstances where the  
2 application of such guidelines would be clearly unreasonable;  
3 or

4 (3) the sentencing court sentenced outside the  
5 sentencing guidelines and such sentence is unreasonable.

6 In all other cases the appellate court shall affirm the sentence  
7 imposed by the sentencing court.

8 (c) Review of record.--In reviewing the record the appellate  
9 court shall have regard for:

10 (1) The nature and circumstances of the offense and the  
11 history and characteristics of the defendant.

12 (2) The opportunity of the sentencing court to observe  
13 the defendant, including any presentence investigation.

14 (3) The findings upon which the sentence was based.

15 (4) The guidelines promulgated by the commission.

16 (d) Final sentence.--No sentence imposed by a sentencing  
17 court shall be final nor shall the defendant begin serving the  
18 sentence unless:

19 (1) the period for filing leave to petition for review  
20 has expired; or

21 (2) the appellate court has denied leave to petition for  
22 review of the sentence; or

23 (3) the sentence has been affirmed by the appellate  
24 court.

25 (e) Limitation on review.--No review of the sentence imposed  
26 shall be permitted beyond the Superior Court, except in the case  
27 of felonious homicide where the review shall lie to the Supreme  
28 Court.

29 (f) The Supreme Court shall by rule prescribe procedures to  
30 implement the provisions of this chapter.

1       Section 4. Chapter 13 is amended by adding a subchapter to  
2 read:

3                                       SUBCHAPTER H

4                       PENNSYLVANIA COMMISSION ON SENTENCING

5   § 1391. Commission established.

6       The Pennsylvania Commission on Sentencing is hereby created.  
7 It shall consist of 13 members, two to be appointed by the  
8 Speaker of the House of Representatives, two to be appointed by  
9 the President pro tempore of the Senate and six to be appointed  
10 by the Chief Justice of the Supreme Court of Pennsylvania. The  
11 appointments made by the Speaker of the House of Representatives  
12 shall be members of the House of Representatives no more than  
13 one of which shall be of the same political party. The  
14 appointments made by the President pro tempore shall be members  
15 of the Senate no more than one of which shall be of the same  
16 political party, and the appointments by the Chief Justice shall  
17 be a justice or judge of a court of record. Three members shall  
18 be appointed by the Governor, one shall be a district attorney,  
19 one shall be a defense attorney or public defender and one shall  
20 be either a professor of law or a criminologist. The terms of  
21 the members of the commission shall be two years except that of  
22 those members first appointed by the Speaker and the President  
23 pro tempore, half shall be appointed for two years and half for  
24 one year. In the case of the members appointed by the Chief  
25 Justice of the Supreme Court, three shall be appointed for two  
26 years and three shall be appointed for one year. In the case of  
27 the members appointed by the Governor, two shall be appointed  
28 for two years and one shall be appointed for one year.

29   § 1392. Powers and duties of the commission.

30       (a) Organization of commission; guidelines for sentencing.--

1 The commission, by majority vote, shall:

2 (1) Select a chairman from its membership.

3 (2) Select an executive director who shall appoint and  
4 fix the pay of personnel of the commission.

5 (3) Promulgate guidelines for sentencing which shall be  
6 considered by the sentencing court in determining the  
7 appropriate sentence for felonies and misdemeanors committed  
8 by a defendant. Such guidelines shall:

9 (i) Specify the range of sentences that shall be  
10 applicable to crimes of a given degree of gravity.

11 (ii) Specify a range of enhanced sentences for  
12 defendants previously convicted of a felony or felonies  
13 or convicted of a crime involving the use of a deadly  
14 weapon.

15 (iii) Prescribe variations from the range of  
16 sentences that shall be permitted on account of  
17 aggravating or mitigating circumstances.

18 (b) Publication of guidelines.--The commission shall:

19 (1) Prior to adoption, publish in the Pennsylvania  
20 Bulletin all proposed sentencing guidelines, and hold public  
21 hearings not earlier than 30 days and not later than 60 days  
22 thereafter to afford an opportunity for the following persons  
23 and organizations to testify:

24 (i) Pennsylvania District Attorneys Association.

25 (ii) Chiefs of Police Associations.

26 (iii) Fraternal Order of Police.

27 (iv) Public Defenders Organization.

28 (v) Representatives of Law Schools.

29 (vi) State Board of Probation and Parole.

30 (vii) Bureau of Correction.

(viii) Pennsylvania Bar Association.

(ix) Pennsylvania Wardens Association.

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

(xi) Any other interested persons or organizations.

(2) Publish in the Pennsylvania Bulletin all sentencing  
guidelines adopted by the commission. The initial sentencing  
guidelines shall be promulgated within 18 months of the  
effective date of this subchapter.

(3) Initial and any subsequent guidelines adopted by the  
commission shall become effective 90 days after publication  
in the Pennsylvania Bulletin, unless rejected in their  
entirety by the General Assembly by a concurrent resolution.

(c) Powers of commission.--The commission, by majority vote,  
and pursuant to rules and regulations, shall have the power to:

(1) Establish general policies and promulgate such rules  
and regulations for the commission as are necessary to carry  
out the purposes of this subchapter.

(2) Utilize, with their consent, the services,  
equipment, personnel, information, and facilities of Federal,  
State, local, and private agencies and instrumentalities with  
or without reimbursement therefor.

(3) Enter into and perform such contracts, leases,  
cooperative agreements, and other transactions as may be  
necessary in the conduct of the functions of the commission,  
with any public agency, or with any person, firm,  
association, corporation, educational institution or  
nonprofit organization.

(4) Request such information, data and reports from any  
Commonwealth agency or judicial officer as the commission may

1 from time to time require and as may be produced consistent  
2 with other law.

3 (5) Arrange with the head of any other Commonwealth  
4 agency for the performance by such agency of any function of  
5 the commission, with or without reimbursement.

6 (6) Issue invitations requesting the attendance and  
7 testimony of witnesses and the production of any evidence  
8 that relates directly to a matter with respect to which the  
9 commission or any commissioner or agent of the commission is  
10 empowered to make a determination under this subchapter. The  
11 attendance of such witnesses and the production of evidence  
12 may be required from any place within this Commonwealth at  
13 any designated place of hearings within this Commonwealth.

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

16 (i) Serving as a clearinghouse and information  
17 center for the collection, preparation and dissemination  
18 of information on Commonwealth sentencing practices.

19 (ii) Assisting and serving in a consulting capacity  
20 to State courts, departments, and agencies in the  
21 development, maintenance and coordination of sound  
22 sentencing practices.

23 (8) Collect systematically the data obtained from  
24 studies, research and the empirical experience of public and  
25 private agencies concerning the sentencing processes.

26 (9) Publish data concerning the sentencing processes.

27 (10) Collect systematically and disseminate information  
28 concerning sentences actually imposed.

29 (11) Collect systematically and disseminate information  
30 regarding effectiveness of sentences imposed.

1           (12) Make recommendations to the General Assembly  
2       concerning modification or enactment of sentencing and  
3       correctional statutes which the commission finds to be  
4       necessary and advisable to carry out an effective, humane and  
5       rational sentencing policy.

6           (13) The commission shall have such other powers and  
7       duties and shall perform such other functions as may be  
8       necessary to carry out the purposes of this subchapter or as  
9       may be provided under any other provisions of law and may  
10      delegate to any commissioner or designated person such powers  
11      as may be appropriate other than the power to establish  
12      general policies, guidelines, rules and factors under  
13      subsection (b)(1).

14      (d) Meetings of commission.--The commission shall meet not  
15      less frequently than quarterly to establish its general policies  
16      and rules.

17      (e) Records of action.--Except as otherwise provided by law,  
18      the commission shall maintain and make available for public  
19      inspection a record of the final vote of each member on any  
20      action taken by it.

21      (f) Open meetings; quorum; minutes.

22           (i) The commission shall be deemed an "agency"  
23       within the meaning of the act of July 19, 1974 (P.L.486,  
24       No.175), referred to as the Public Agency Open Meeting  
25       Law.

26           (ii) Seven commissioners shall constitute a quorum.

27           (iii) Minutes of meetings shall be kept by the  
28       executive director and filed at the executive office of  
29       the commission.

30      (G) EXPENSES.--EACH COMMISSIONER SHALL BE ENTITLED TO

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1 REIMBURSEMENT FOR HIS ACCOUNTABLE EXPENSES INCURRED WHILE  
2 ENGAGED IN THE COMMISSION'S BUSINESS.

3 § 1393. Commonwealth agency cooperation.

4 Upon the request of the commission, each Commonwealth agency  
5 is authorized and directed to make its services, equipment,  
6 personnel, facilities and information available to the greatest  
7 practicable extent to the commission in the execution of its  
8 functions.

9 § 1394. Powers and duties of chairman.

10 The chairman shall:

11 (1) Preside at meetings of the commission.

12 (2) Direct the preparation of requests for  
13 appropriations for the commission, and the use of funds made  
14 available to the commission.

15 § 1395. Powers of the General Assembly.

16 The General Assembly may by concurrent resolution, reject in  
17 their entirety any initial or subsequent guidelines adopted by  
18 the commission within 90 days of their publication.

19 § 1396. Annual report.

20 The commission shall report annually to the General Assembly,  
21 the Administrative Office of Pennsylvania Courts and the  
22 Governor on the activities of the commission.

23 Section 5. The sum of \$200,000, or as much thereof as may be  
24 necessary, is hereby appropriated to the Pennsylvania Commission  
25 on Sentencing to carry out the purposes of this act.

26 Section 6. This act shall take effect ~~immediately~~ JULY 1, <—  
27 1978 but sections 1, 2 and 3 shall not be applicable until final  
28 adoption of the initial sentencing guidelines until 90 days  
29 after publication of the initial guidelines adopted by the  
30 commission unless rejected by the General Assembly.