
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,
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KNEPPER, DONATUCCI, MISS SIRIANNI, MESSRS. HASKELL, DUFFY,
MELUSKEY AND WAGNER, APRIL 25, 1977

SENATOR O'PAKE, JUDICIARY, IN SENATE, AS AMENDED, JUNE 7, 1978

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, MANDATORY SENTENCES FOR CERTAIN
6 SECOND AND SUBSEQUENT OFFENSES, appellate review of sentence
7 and changing provisions relating to commission membership. <—

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

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

13 § 1321. Sentencing generally.

14 * * *

15 (b) General standards.--In selecting from the alternatives
16 set forth in subsection (a) [of this section] the court shall
17 follow the general principle that the sentence imposed should

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

14 * * *

15 SECTION 2. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ: <—
16 § 1363. SECOND AND SUBSEQUENT OFFENSES.

17 (A) MANDATORY SENTENCES.--ANY PERSON CONVICTED IN ANY COURT
18 OF THIS COMMONWEALTH OF MURDER OF THE THIRD DEGREE, VOLUNTARY
19 MANSLAUGHTER, RAPE, INVOLUNTARY DEVIATE SEXUAL INTERCOURSE,
20 ROBBERY, AGGRAVATED ASSAULT AS DEFINED IN SECTION 2702(A)(1)
21 (RELATING TO AGGRAVATED ASSAULT), ARSON OR KIDNAPPING OR OF
22 ATTEMPT TO COMMIT ANY OF THESE CRIMES SHALL, NOTWITHSTANDING ANY
23 OTHER PROVISION OF THIS TITLE OR OTHER STATUTE, BE SENTENCED TO
24 NOT LESS THAN A MINIMUM TERM OF FIVE YEARS IMPRISONMENT IF THE
25 OFFENSE UNDERLYING THE CONVICTION WAS COMMITTED WITHIN SEVEN
26 YEARS OF THE DATE OF ANY CONVICTION OF THAT PERSON IN THIS
27 COMMONWEALTH OR ANY OTHER STATE OR THE DISTRICT OF COLUMBIA OR
28 IN ANY FEDERAL COURT, OF ANY OF THE ENUMERATED CRIMES (OR THE
29 EQUIVALENT CRIME IN OTHER JURISDICTIONS). THE MAXIMUM TERM OF
30 THE SENTENCE SHALL BE SET AT NOT LESS THAN TEN YEARS. IN SUCH

1 CASES, THERE SHALL BE NO AUTHORITY IN ANY COURT TO IMPOSE ANY
2 LESSER SENTENCE OR TO PLACE THE DEFENDANT ON PROBATION OR TO
3 SUSPEND SENTENCE.

4 (B) COMPUTATION OF TIME LIMITATION.--FOR PURPOSES OF
5 SUBSECTION (A), THE TIME DURING WHICH A PERSON IS INCARCERATED
6 IN ANY PENITENTIARY, PRISON OR OTHER PLACE OF DETENTION SHALL
7 NOT BE CONSIDERED IN COMPUTING THE RELEVANT SEVEN YEAR PERIOD
8 AND WHERE A SECOND OR SUBSEQUENT CRIME IS COMMITTED WHILE THE
9 PERSON IS INCARCERATED, THE SEVEN YEAR PROVISION SHALL NOT BE
10 APPLICABLE AND SUBSECTION (A) SHALL APPLY WITHOUT CONSIDERING
11 THE TIME BETWEEN THE FIRST CONVICTION AND THE COMMISSION OF THE
12 SECOND OFFENSE.

13 (C) CONVICTION OF SAME CRIME UNNECESSARY.--CONVICTION OF THE
14 SAME CRIME IS NOT NECESSARY. THE CONVICTIONS REQUISITE TO
15 SUBSECTION (A) MAY BE FOR ANY COMBINATION OF THE CRIMES
16 ENUMERATED.

17 (D) LIFE IMPRISONMENT FOR HOMICIDE.--NOTWITHSTANDING THE
18 PROVISIONS IN SUBSECTION (A), ANY PERSON CONVICTED OF MURDER OF
19 THE THIRD DEGREE IN THIS COMMONWEALTH WHO HAS PREVIOUSLY BEEN
20 CONVICTED AT ANY TIME OF MURDER OR VOLUNTARY MANSLAUGHTER IN
21 THIS COMMONWEALTH OR OF THE SAME OR SUBSTANTIALLY EQUIVALENT
22 CRIME IN ANY OTHER JURISDICTION, SHALL BE SENTENCED TO LIFE
23 IMPRISONMENT AND THE SENTENCING COURT SHALL NOT BE EMPOWERED TO
24 IMPOSE ANY OTHER SENTENCE OR TO SUSPEND SENTENCE OR TO PLACE THE
25 DEFENDANT ON PROBATION.

26 (E) RECORD OR EVIDENCE OF PRIOR CONVICTIONS.--THE ATTORNEY
27 FOR THE COMMONWEALTH SHALL NOT BE REQUIRED TO CHARGE A PERSON
28 UNDER THE PROVISIONS OF THIS SECTION. THE SENTENCING COURT,
29 PRIOR TO IMPOSITION OF SENTENCE FOR ANY OF THE CRIMES ENUMERATED
30 IN SUBSECTION (A), SHALL HAVE A COMPLETE RECORD OF THE PRIOR

1 CONVICTIONS OF THE DEFENDANT PREPARED BY COURT PERSONNEL OR THE
2 ATTORNEY FOR THE COMMONWEALTH. COPIES OF THIS RECORD SHALL BE
3 FURNISHED TO THE DEFENDANT. IF THE DEFENDANT OR THE ATTORNEY FOR
4 THE COMMONWEALTH CONTESTS THE ACCURACY OF THE RECORD, THE COURT
5 SHALL SCHEDULE A HEARING AND DIRECT THE ATTORNEY FOR THE
6 COMMONWEALTH AND THE DEFENDANT TO OFFER EVIDENCE TO ESTABLISH
7 THE PRIOR RECORD OF THE DEFENDANT, WHICH SHALL BE DETERMINED BY
8 THE COURT. SHOULD THE COURT DETERMINE THAT THIS SECTION IS
9 APPLICABLE, IT SHALL IMPOSE SENTENCE IN ACCORDANCE WITH THIS
10 SECTION.

11 (F) EFFECT OF PENDING LITIGATION ON PRIOR CONVICTION.--FOR
12 PURPOSES OF THIS SECTION, A PRIOR CONVICTION SHALL INCLUDE ANY
13 CONVICTION, WHETHER OR NOT LITIGATION IS STILL PENDING WHICH
14 CONCERNS THAT CONVICTION. IN THE EVENT THAT, SUBSEQUENT TO
15 IMPOSITION OF SENTENCE UNDER THIS SECTION, THE PRIOR CONVICTION
16 IS VACATED AND AN ACQUITTAL OR FINAL DISCHARGE IS ENTERED, THE
17 DEFENDANT SHALL HAVE THE RIGHT TO PETITION THE SENTENCING COURT
18 FOR RECONSIDERATION OF SENTENCE AND RESENTENCING IF A BASIS FOR
19 APPLICATION OF THIS SECTION NO LONGER EXISTS.

20 Section ~~2-~~ 3. Subchapter G of Chapter 13 is repealed. <—

21 Section ~~3-~~ 4. Chapter 13 is amended by adding a ~~subchapter~~ <—
22 SUBCHAPTERS to read: <—

23 SUBCHAPTER G

24 APPELLATE REVIEW OF SENTENCE

25 § 1381. Appellate review of sentence.

26 (a) Allowance of appeal.--The defendant or the Commonwealth
27 may file a petition for allowance of appeal of the discretionary
28 aspects of a sentence for a felony or a misdemeanor to the
29 appellate court that has initial jurisdiction for such appeals.
30 Allowance of appeal may be granted at the discretion of the

1 appellate court where it appears that there is a substantial
2 question that the sentence imposed is not appropriate under this
3 act.

4 (b) Right to appeal.--The defendant or the Commonwealth may
5 appeal as of right the legality of the sentence. ANY ORDER
6 ENTERED IN VIOLATION OF SECTION 1363 (RELATING TO SECOND AND
7 SUBSEQUENT OFFENSES) SHALL BE NULL AND VOID AND, IF APPEALED,
8 THE APPELLATE COURT WHICH HEARS THE CASE SHALL REMAND FOR
9 IMPOSITION OF SENTENCE IN ACCORDANCE WITH LAW. <—

10 (c) Determination on appeal.--The appellate court shall
11 vacate the sentence, and remand the case to the sentencing court
12 with instructions if it finds:

13 (1) the sentencing court purported to sentence within
14 the sentencing guidelines but applied such guidelines
15 erroneously;

16 (2) the sentencing court sentenced within the sentencing
17 guidelines but the case involves circumstances where the
18 application of such guidelines would be clearly unreasonable;
19 or

20 (3) the sentencing court sentenced outside the
21 sentencing guidelines and such sentence is unreasonable.

22 In all other cases the appellate court shall affirm the sentence
23 imposed by the sentencing court.

24 (d) Review of record.--In reviewing the record the appellate
25 court shall have regard for:

26 (1) The nature and circumstances of the offense and the
27 history and characteristics of the defendant.

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

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

1 (4) The guidelines promulgated by the commission.

2 (e) Bail.--Nothing herein shall be construed to enlarge the
3 defendant's right to bail pending appeal.

4 (f) Limitation on appeal.--No appeal of the discretionary
5 aspects of the sentence shall be permitted beyond the appellate
6 court that has initial jurisdiction for such appeals.

7 (g) Implementing rules of court.--The Supreme Court shall by
8 rule prescribe procedures to implement the provisions of this
9 ~~chapter~~ SUBCHAPTER. <—

10 ~~Section 4. Chapter 13 is amended by adding a subchapter to~~ <—
11 ~~read:~~

12 SUBCHAPTER H

13 PENNSYLVANIA COMMISSION ON SENTENCING

14 § 1391. Commission established.

15 The Pennsylvania Commission on Sentencing is hereby created.
16 It shall consist of 11 members, two to be appointed by the
17 Speaker of the House of Representatives, two to be appointed by
18 the President pro tempore of the Senate and four to be appointed
19 by the Chief Justice of Pennsylvania. The appointments made by
20 the Speaker of the House of Representatives shall be members of
21 the House of Representatives no more than one of which shall be
22 of the same political party. The appointments made by the
23 President pro tempore shall be members of the Senate no more
24 than one of which shall be of the same political party, and the
25 appointments by the Chief Justice shall be a justice or judge of
26 a court of record. Three members shall be appointed by the
27 Governor, one shall be a district attorney, one shall be a
28 defense attorney and one shall be either a professor of law or a
29 criminologist. The terms of the members of the commission shall
30 be two years except that of those members first appointed by the

1 Speaker and the President pro tempore, half shall be appointed
2 for two years and half for one year. In the case of the members
3 appointed by the Chief Justice, two shall be appointed for two
4 years and two shall be appointed for one year. In the case of
5 the members appointed by the Governor, two shall be appointed
6 for two years and one shall be appointed for one year.

7 § 1392. Powers and duties of the commission.

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

9 The commission, by majority vote, shall:

10 (1) Select a chairman from its membership.

11 (2) Select an executive director.

12 (3) Promulgate guidelines for sentencing within the
13 limits established by law which shall be considered by the
14 sentencing court in determining the appropriate sentence for
15 felonies and misdemeanors committed by a defendant. Such
16 guidelines shall:

17 (i) Specify the range of sentences applicable to
18 crimes of a given degree of gravity.

19 (ii) Specify a range of enhanced sentences for
20 defendants previously convicted of a felony or felonies
21 or convicted of a crime involving the use of a deadly
22 weapon.

23 (iii) Prescribe variations from the range of
24 sentences applicable on account of aggravating or
25 mitigating circumstances.

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

27 (1) Prior to adoption, publish in the Pennsylvania
28 Bulletin all proposed sentencing guidelines, and hold public
29 hearings not earlier than 30 days and not later than 60 days
30 thereafter to afford an opportunity for the following persons

1 and organizations to testify:

2 (i) Pennsylvania District Attorneys Association.

3 (ii) Chiefs of Police Associations.

4 (iii) Fraternal Order of Police.

5 (iv) Public Defenders Organization.

6 (v) Law school faculty members.

7 (vi) State Board of Probation and Parole.

8 (vii) Bureau of Correction.

9 (viii) Pennsylvania Bar Association.

10 (ix) Pennsylvania Wardens Association.

11 (x) Pennsylvania Association on Probation, Parole

12 and Corrections.

13 (xi) Any other interested persons or organizations.

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

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

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

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

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

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

7 (4) Request such information, data and reports from any
8 Commonwealth agency or judicial officer as the commission may
9 from time to time require and as may be produced consistent
10 with other law.

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

14 (6) Issue invitations requesting the attendance and
15 testimony of witnesses and the production of any evidence
16 that relates directly to a matter with respect to which the
17 commission or any commissioner of the commission is empowered
18 to make a determination under this subchapter.

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

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

24 (ii) Assisting and serving in a consulting capacity
25 to State courts, departments, and agencies in the
26 development, maintenance and coordination of sound
27 sentencing practices.

28 (8) Collect systematically the data obtained from
29 studies, research and the empirical experience of public and
30 private agencies concerning the sentencing processes.

1 (9) Publish data concerning the sentencing processes.

2 (10) Collect systematically and disseminate information
3 concerning sentences actually imposed.

4 (11) Collect systematically and disseminate information
5 regarding effectiveness of sentences imposed.

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

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

19 (d) Meetings of commission.--The commission shall meet not
20 less frequently than quarterly to establish its general policies
21 and rules.

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

26 (f) Open meetings, quorum and minutes.

27 (1) The commission shall be deemed an "agency" within
28 the meaning of the act of July 19, 1974 (P.L.486, No.175),
29 referred to as the Public Agency Open Meeting Law.

30 (2) Nine commissioners shall constitute a quorum.

(3) Minutes of meetings shall be kept by the executive director and filed at the executive office of the commission.

(g) Expenses.--Each commissioner shall be entitled to reimbursement for his accountable expenses incurred while engaged in the commission's business.

§ 1393. Commonwealth agency cooperation.

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

§ 1394. Powers and duties of chairman.

The chairman shall:

(1) Preside at meetings of the commission.

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

§ 1395. Powers of the General Assembly.

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

§ 1396. Annual report.

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

Section 5. The sum of \$100,000, or as much thereof as may be necessary, is hereby appropriated to the Pennsylvania Commission on Sentencing to carry out the purposes of this act.

Section 6. The provisions of 18 Pa.C.S. § 1381 are not severable and if any provision thereof or the application

1 thereof to any person or circumstance is held invalid, the
2 remainder of the section shall be invalid.

3 Section 7. This act shall take effect January 1, 1979 but
4 sections 1, ~~2 and 3~~ 3 AND 4 shall not be applicable until final <—
5 adoption of the initial sentencing guidelines and until 90 days
6 after publication of the initial guidelines adopted by the
7 commission unless rejected by the General Assembly.