

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL
No. 251 Session of
1989

INTRODUCED BY CALTAGIRONE, FEBRUARY 6, 1989

AS AMENDED ON SECOND CONSIDERATION, IN SENATE, NOVEMBER 19, 1990

AN ACT

1 ~~Amending Title 18 (Crimes and Offenses) of the Pennsylvania~~ <—
2 ~~Consolidated Statutes, defining the offense of flight to~~
3 ~~avoid prosecution.~~

4 AMENDING TITLES 18 (CRIMES AND OFFENSES) AND 42 (JUDICIARY AND <—
5 JUDICIAL PROCEDURE) OF THE PENNSYLVANIA CONSOLIDATED
6 STATUTES, FURTHER PROVIDING FOR BURGLARY; PROVIDING FOR
7 INTERMEDIATE PUNISHMENT; AND PROVIDING PENALTIES.

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

10 ~~Section 1. Title 18 of the Pennsylvania Consolidated~~ <—
11 ~~Statutes is amended by adding a section to read:~~

12 ~~§ 5126. Flight to avoid prosecution.~~

13 ~~A person who moves or travels or secretes himself with intent~~
14 ~~to avoid prosecution for or, after conviction, to avoid custody~~
15 ~~or confinement for a crime, including an attempt to commit a~~
16 ~~crime, commits:~~

17 ~~(1) A felony of the first degree when the crime with~~
18 ~~which the person was charged or of which he was convicted is~~
19 ~~punishable by death or is a felony of the first degree.~~

~~(2) A felony of the third degree when the crime with which the person was charged or of which he was convicted is a felony of the second or third degree.~~

~~(3) A misdemeanor of the third degree when the crime with which the person was charged or of which he was convicted is a misdemeanor of the first, second or third degree.~~

~~Section 2. This act shall take effect in 60 days.~~

SECTION 1. SECTION 3502(C) OF TITLE 18 OF THE PENNSYLVANIA CONSOLIDATED STATUTES IS AMENDED TO READ:

§ 3502. BURGLARY.

* * *

(C) GRADING.--[BURGLARY IS A FELONY OF THE FIRST DEGREE.]

(1) EXCEPT AS PROVIDED IN PARAGRAPH (2), BURGLARY IS A FELONY OF THE FIRST DEGREE.

(2) IF THE BUILDING, STRUCTURE OR PORTION ENTERED IS NOT ADAPTED FOR OVERNIGHT ACCOMMODATION AND IF NO INDIVIDUAL IS PRESENT AT THE TIME OF ENTRY, BURGLARY IS A FELONY OF THE SECOND DEGREE.

* * *

SECTION 2. TITLE 42 IS AMENDED BY ADDING A SECTION TO READ:
§ 2154.1. ADOPTION OF GUIDELINES FOR INTERMEDIATE PUNISHMENT.

THE COMMISSION SHALL ADOPT GUIDELINES TO IDENTIFY OFFENDERS WHO WOULD BE ELIGIBLE AND APPROPRIATE FOR PARTICIPATION IN INTERMEDIATE PUNISHMENT PROGRAMS. THESE GUIDELINES SHALL BE CONSIDERED BY THE SENTENCING COURT IN DETERMINING WHETHER TO SENTENCE AN OFFENDER PURSUANT TO SECTION 9763 (RELATING TO SENTENCE OF INTERMEDIATE PUNISHMENT). THE GUIDELINES SHALL:

(1) USE THE DESCRIPTION OF "ELIGIBLE OFFENDER" PROVIDED IN § 9728 (RELATING TO INTERMEDIATE PUNISHMENT).

1 (2) GIVE PRIMARY CONSIDERATION TO PROTECTION OF THE
2 PUBLIC SAFETY.

3 SECTION ~~2~~ 3. SECTION 9721(A) OF TITLE 42 IS AMENDED TO READ: <—
4 § 9721. SENTENCING GENERALLY.

5 (A) GENERAL RULE.--IN DETERMINING THE SENTENCE TO BE IMPOSED
6 THE COURT SHALL, EXCEPT WHERE A MANDATORY MINIMUM SENTENCE IS
7 OTHERWISE PROVIDED BY LAW, CONSIDER AND SELECT ONE OR MORE OF
8 THE FOLLOWING ALTERNATIVES, AND MAY IMPOSE THEM CONSECUTIVELY OR
9 CONCURRENTLY:

10 (1) AN ORDER OF PROBATION.

11 (2) A DETERMINATION OF GUILT WITHOUT FURTHER PENALTY.

12 (3) PARTIAL CONFINEMENT.

13 (4) TOTAL CONFINEMENT.

14 (5) A FINE.

15 (6) INTERMEDIATE PUNISHMENT.

16 * * *

17 SECTION ~~3~~ 4. TITLE 42 IS AMENDED BY ADDING SECTIONS TO READ: <—
18 § 9728. INTERMEDIATE PUNISHMENT.

19 (A) GENERAL RULE.--THE COURT MAY, PURSUANT TO SECTION 9763
20 (RELATING TO SENTENCE OF INTERMEDIATE PUNISHMENT) SENTENCE AN
21 ELIGIBLE OFFENDER TO A COUNTY INTERMEDIATE PUNISHMENT PROGRAM.
22 THE COURT MAY AT ANY TIME TERMINATE A SENTENCE OF INTERMEDIATE
23 PUNISHMENT OR INCREASE OR LESSEN THE CONDITIONS OF SENTENCE
24 PURSUANT TO SECTION 9773 (RELATING TO MODIFICATION OR REVOCATION
25 OF INTERMEDIATE PUNISHMENT SENTENCE). THE COURT MAY IMPOSE
26 REASONABLE COSTS OF PARTICIPATION IN THE PROGRAM UPON THE
27 OFFENDER. THE COURT SHALL NOT HAVE THE AUTHORITY TO SENTENCE AN <—
28 OFFENDER UNDER THIS SECTION UNLESS THE COUNTY HAS ESTABLISHED AN
29 INTERMEDIATE PUNISHMENT PROGRAM WHICH HAS BEEN APPROVED BY THE
30 PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY.

1 (B) ELIGIBILITY.--FOR THE PURPOSES OF SENTENCING UNDER THIS
2 SECTION, AN ELIGIBLE OFFENDER SHALL BE A PERSON CONVICTED OF AN
3 OFFENSE WHO WOULD OTHERWISE BE SENTENCED TO A COUNTY
4 CORRECTIONAL FACILITY, WHO DOES NOT DEMONSTRATE A PRESENT OR <—
5 PAST PATTERN OF VIOLENT BEHAVIOR AND WHO WOULD OTHERWISE BE <—
6 SENTENCED TO PARTIAL CONFINEMENT PURSUANT TO SECTION 9724
7 (RELATING TO PARTIAL CONFINEMENT) OR TOTAL CONFINEMENT PURSUANT
8 TO SECTION 9725 (RELATING TO TOTAL CONFINEMENT).

9 (C) INELIGIBILITY.--

10 (1) A PERSON CONVICTED OF ANY OF THE FOLLOWING OFFENSES
11 SHALL BE INELIGIBLE FOR SENTENCING UNDER THIS SECTION:

12 18 PA.C.S. § 2502 (RELATING TO MURDER).

13 18 PA.C.S. § 2503 (RELATING TO VOLUNTARY
14 MANSLAUGHTER).

15 18 PA.C.S. § 2702 (RELATING TO AGGRAVATED ASSAULT).

16 18 PA.C.S. § 2703 (RELATING TO ASSAULT BY PRISONER).

17 18 PA.C.S. § 2704 (RELATING TO ASSAULT BY LIFE
18 PRISONER).

19 18 PA.C.S. § 2901 (RELATING TO KIDNAPPING).

20 18 PA.C.S. § 3121 (RELATING TO RAPE).

21 18 PA.C.S. § 3122 (RELATING TO STATUTORY RAPE).

22 18 PA.C.S. § 3123 (RELATING TO INVOLUNTARY DEVIATE
23 SEXUAL INTERCOURSE).

24 18 PA.C.S. § 3126 (RELATING TO INDECENT ASSAULT).

25 18 PA.C.S. § 3301 (RELATING TO ARSON AND RELATED
26 OFFENSES).

27 18 PA.C.S. § 3701 (RELATING TO ROBBERY).

28 18 PA.C.S. § 3923 (RELATING TO THEFT BY EXTORTION).

29 18 PA.C.S. § 5121 (RELATING TO ESCAPE).

30 (2) AN OFFENSE UNDER THIS SUBSECTION ALSO INCLUDES A

1 CONVICTION UNDER 18 PA.C.S. SECTION 3502 (RELATING TO
2 BURGLARY) WHERE THE GRADING OF THE OFFENSE WAS A FELONY OF
3 THE FIRST DEGREE UNDER SECTION 3502(C)(1).

4 (3) AN OFFENSE UNDER THIS SUBSECTION ALSO INCLUDES A
5 CONVICTION UNDER THE ACT OF APRIL 14, 1972 (P.L.233, NO.64),
6 KNOWN AS THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC
7 ACT.

8 § 9763. SENTENCE OF INTERMEDIATE PUNISHMENT.

9 (A) GENERAL RULE.--IN IMPOSING A SENTENCE OF INTERMEDIATE
10 PUNISHMENT, THE COURT SHALL SPECIFY AT THE TIME OF SENTENCING
11 THE LENGTH OF THE TERM FOR WHICH THE DEFENDANT IS TO BE IN AN
12 INTERMEDIATE PUNISHMENT PROGRAM, OR A COMBINATION OF
13 INTERMEDIATE PUNISHMENT PROGRAMS. THE TERM MAY NOT EXCEED THE
14 MAXIMUM TERM FOR WHICH THE DEFENDANT COULD BE CONFINED AND THE
15 PROGRAM TO WHICH THE DEFENDANT IS SENTENCED. THE COURT MAY ORDER
16 A DEFENDANT TO SERVE A PORTION OF THE SENTENCE UNDER SECTION
17 9755 (RELATING TO SENTENCE OF PARTIAL CONFINEMENT) OR 9756
18 (RELATING TO SENTENCE OF TOTAL CONFINEMENT) AND TO SERVE A
19 PORTION IN AN INTERMEDIATE PUNISHMENT PROGRAM OR A COMBINATION
20 OF INTERMEDIATE PUNISHMENT PROGRAMS.

21 (B) CONDITIONS GENERALLY.--THE COURT MAY ATTACH ANY OF THE
22 FOLLOWING CONDITIONS UPON THE DEFENDANT AS IT DEEMS NECESSARY:

23 (1) TO MEET FAMILY RESPONSIBILITIES.

24 (2) TO BE DEVOTED TO A SPECIFIC OCCUPATION OR
25 EMPLOYMENT.

26 (3) TO PARTICIPATE IN A PUBLIC OR NONPROFIT COMMUNITY
27 SERVICE PROGRAM.

28 (4) TO UNDERGO INDIVIDUAL OR FAMILY COUNSELING.

29 (5) TO UNDERGO AVAILABLE MEDICAL OR PSYCHIATRIC
30 TREATMENT OR TO ENTER AND REMAIN IN A SPECIFIED INSTITUTION,

1 WHEN REQUIRED FOR THAT PURPOSE.

2 (6) TO ATTEND EDUCATIONAL OR VOCATIONAL TRAINING
3 PROGRAMS.

4 (7) TO ATTEND OR RESIDE IN A REHABILITATIVE FACILITY OR
5 OTHER INTERMEDIATE PUNISHMENT PROGRAM.

6 (8) TO REFRAIN FROM FREQUENTING UNLAWFUL OR DISREPUTABLE
7 PLACES OR CONSORTING WITH DISREPUTABLE PERSONS.

8 (9) TO NOT POSSESS A FIREARM OR OTHER DANGEROUS WEAPON
9 UNLESS GRANTED WRITTEN PERMISSION.

10 (10) TO MAKE RESTITUTION OF THE FRUITS OF THE CRIME OR
11 TO MAKE REPARATIONS, IN AN AFFORDABLE AMOUNT, FOR THE LOSS OR
12 DAMAGE CAUSED BY THE CRIME.

13 (11) TO BE SUBJECT TO INTENSIVE SUPERVISION WHILE
14 REMAINING WITHIN THE JURISDICTION OF THE COURT AND TO NOTIFY
15 THE COURT OR DESIGNATED PERSON OF ANY CHANGE IN ADDRESS OR
16 EMPLOYMENT.

17 (12) TO REPORT AS DIRECTED TO THE COURT OR THE
18 DESIGNATED PERSON AND TO PERMIT THE DESIGNATED PERSON TO
19 VISIT THE DEFENDANT'S HOME.

20 (13) TO PAY A FINE.

21 (14) TO PARTICIPATE IN DRUG OR ALCOHOL SCREENING AND
22 TREATMENT PROGRAMS, INCLUDING OUTPATIENT AND INPATIENT
23 PROGRAMS.

24 (15) TO DO OTHER THINGS REASONABLY RELATED TO
25 REHABILITATION.

26 (16) TO REMAIN WITHIN THE PREMISES OF THE DEFENDANT'S
27 RESIDENCE DURING THE HOURS DESIGNATED BY THE COURT.

28 (17) TO BE SUBJECT TO ELECTRONIC MONITORING.

29 (C) RESTRICTION.--A DEFENDANT CONVICTED UNDER 75 PA.C.S.

30 SECTION 3731(E) (RELATING TO DRIVING UNDER INFLUENCE OF ALCOHOL

OR CONTROLLED SUBSTANCE) MAY ONLY BE SENTENCED TO INTERMEDIATE
PUNISHMENT:

~~(1) IN A REHABILITATION CENTER; OR~~

(1) IN A RESIDENTIAL INPATIENT PROGRAM OR IN A
RESIDENTIAL REHABILITATIVE CENTER; OR

(2) BY HOUSE ARREST OR ELECTRONIC SURVEILLANCE COMBINED
WITH DRUG AND ALCOHOL TREATMENT.

(D) SENTENCE FOLLOWING VIOLATION OF CONDITION.--THE SENTENCE
TO BE IMPOSED IN THE EVENT OF THE VIOLATION OF A CONDITION UNDER
SUBSECTION (B) SHALL NOT BE IMPOSED PRIOR TO A FINDING ON THE
RECORD THAT A VIOLATION HAS OCCURRED.

§ 9773. MODIFICATION OR REVOCATION OF INTERMEDIATE PUNISHMENT
SENTENCE.

(A) GENERAL RULE.--THE COURT MAY AT ANY TIME TERMINATE A
SENTENCE OF INTERMEDIATE PUNISHMENT OR INCREASE OR DECREASE THE
CONDITIONS OF A SENTENCE PURSUANT TO SECTION 9763 (RELATING TO
SENTENCE OF INTERMEDIATE PUNISHMENT).

(B) REVOCATION.--THE COURT MAY REVOKE A SENTENCE OF
INTERMEDIATE PUNISHMENT UPON PROOF OF A VIOLATION OF SPECIFIC
CONDITIONS OF THE SENTENCE. UPON REVOCATION, THE SENTENCING
ALTERNATIVES AVAILABLE TO THE COURT SHALL BE THE SAME AS THE
ALTERNATIVES AVAILABLE AT THE TIME OF INITIAL SENTENCING.
CONSIDERATION SHALL BE GIVEN TO THE TIME SERVED IN THE
INTERMEDIATE PUNISHMENT PROGRAM.

(C) HEARING REQUIRED.--A COURT SHALL NOT REVOKE OR INCREASE
THE CONDITIONS OF A SENTENCE OF INTERMEDIATE PUNISHMENT WITHOUT
A HEARING AT WHICH THE COURT SHALL CONSIDER THE RECORD OF THE
INITIAL SENTENCING PROCEEDING AS WELL AS THE CONDUCT OF THE
DEFENDANT WHILE SERVING A SENTENCE OF INTERMEDIATE PUNISHMENT. A
HEARING IS NOT REQUIRED TO DECREASE THE CONDITIONS OF THE

1 SENTENCE.

2 SECTION 4 5. THIS ACT SHALL TAKE EFFECT ~~IN 60 DAYS~~ JULY 1, <—
3 1991.