

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 28

Session of
1999

INTRODUCED BY MARSICO, GANNON, CLARK, NAILOR, DeLUCA, COY,
KENNEY, SAYLOR, STABACK, BROWNE, PHILLIPS, BARRAR, HERMAN,
READSHAW, GEIST, RUBLEY, BATTISTO, TRUE, WILT, E. Z. TAYLOR,
FAIRCHILD, STERN, ZUG, ROSS, PIPPY, McNAUGHTON, YOUNGBLOOD,
GEORGE, FARGO, GIGLIOTTI, CORRIGAN, BAKER, M. COHEN, BELARDI,
HARHAI, DALLY, SEYFERT, L. I. COHEN, J. TAYLOR, GLADECK,
BENNINGHOFF, BUNT, ALLEN, TRELLO, WASHINGTON, EGOLF,
ARMSTRONG, McILHINNEY, BASTIAN AND SCHRODER, JANUARY 20, 1999

AS AMENDED ON THIRD CONSIDERATION, IN SENATE, JUNE 12, 2000

AN ACT

1 ~~Amending Title 18 (Crimes and Offenses) of the Pennsylvania~~ <—
2 ~~Consolidated Statutes, further providing for harassment and~~
3 ~~stalking, for deceptive business practices and; PROVIDING FOR~~ <—
4 ~~REIMBURSEMENT TO COMMONWEALTH FOR BUSINESS RELOCATION;~~
5 ~~FURTHER PROVIDING for drug trafficking sentencing and~~
6 ~~penalties; and providing for reimbursement to Commonwealth~~ <—
7 ~~for business relocation. SPLIT SENTENCES.~~ <—
8 AMENDING TITLES 18 (CRIMES AND OFFENSES) AND 42 (JUDICIARY AND <—
9 JUDICIAL PROCEDURE) OF THE PENNSYLVANIA CONSOLIDATED
10 STATUTES, FURTHER PROVIDING FOR DRUG TRAFFICKING SENTENCING
11 AND PENALTIES, FOR SENTENCE OF PARTIAL CONFINEMENT, FOR
12 SENTENCE OF TOTAL CONFINEMENT AND FOR SENTENCE OF
13 INTERMEDIATE PUNISHMENT; ADDING PROVISIONS RELATING TO COUNTY
14 INTERMEDIATE PUNISHMENT; AND MAKING A REPEAL.

15 The General Assembly of the Commonwealth of Pennsylvania
16 hereby enacts as follows:

17 ~~Section 1. Section 2709(c)(1) of Title 18 of the~~ <—
18 ~~Pennsylvania Consolidated Statutes is amended to read:~~
19 ~~§ 2709. Harassment and stalking.~~

20 * * *

~~(c) Grading.~~

~~(1) An offense under subsection (a) shall be graded as follows:~~

~~(i) Except as provided in subparagraph (ii), the offense shall constitute a summary offense.~~

~~(ii) An offense under subsection (a)(3) if the defendant is or, during the past five years, was engaged in civil litigation with the victim shall constitute a felony of the third degree.~~

~~* * *~~

~~Section 2. Section 4107(a) of Title 18 is amended by adding a paragraph to read:~~

~~§ 4107. Deceptive or fraudulent business practices.~~

~~(a) Offense defined. A person commits an offense if, in the course of business, he:~~

~~* * *~~

~~(7.1) signs a contract with a consumer for services, receives any payment under the contract and fails to perform the services required by the written contract;~~

~~* * *~~

~~Section 3-2. Title 18 is amended by adding a section to read:~~

~~§ 4120. Reimbursement to Commonwealth for business relocation.~~

~~(a) Offense defined. A person or business entity that receives Commonwealth funding for the creation of employment commits a misdemeanor of the first degree if that person or entity fails to repay the Commonwealth the full amount of the funding 60 days prior to relocation of any unit of the person's or entity's operation, in whole or in part, outside of this~~

1 ~~Commonwealth within a period of five years from receipt of the~~
2 ~~funding.~~

3 ~~(b) Enforcement. The Attorney General shall enforce the~~
4 ~~provisions of this section and shall take such actions as may be~~
5 ~~necessary to ascertain and investigate alleged violations of~~
6 ~~this section and to impose fines.~~

7 ~~Section 4 3. Section 7508(a) 7508(C) of Title 18 is amended~~ <—

8 ~~AND SUBSECTION (A) IS AMENDED by adding a paragraph to read:~~ <—

9 SECTION 1. SECTION 7508(A) OF TITLE 18 OF THE PENNSYLVANIA <—
10 CONSOLIDATED STATUTES IS AMENDED BY ADDING A PARAGRAPH TO READ:
11 § 7508. Drug trafficking sentencing and penalties.

12 (a) General rule.--Notwithstanding any other provisions of
13 this or any other act to the contrary, the following provisions
14 shall apply:

15 * * *

16 (7) A person who is convicted of violating section
17 13(a)(14), (30) or (37) of The Controlled Substance, Drug,
18 Device and Cosmetic Act where the controlled substance or a
19 mixture containing it is heroin shall, upon conviction, be
20 sentenced as set forth in this paragraph:

21 (i) when the aggregate weight of the compound or
22 mixture containing the heroin involved is at least 1.0
23 gram but less than 5.0 10 5.0 grams the sentence shall be <—
24 a mandatory minimum term of two years in prison and a
25 fine of \$5,000 or such larger amount as is sufficient to
26 exhaust the assets utilized in and the proceeds from the
27 illegal activity; however, if at the time of sentencing
28 the defendant has been convicted of another drug
29 trafficking offense: a mandatory minimum term of three
30 years in prison and \$10,000 or such larger amount as is

1 sufficient to exhaust the assets utilized in and the
2 proceeds from the illegal activity;

3 (ii) when the aggregate weight of the compound or
4 mixture containing the heroin involved is at least 5.0 10 <—
5 5.0 grams but less than 50 100 50 grams; a mandatory <—
6 minimum term of three years in prison and a fine of
7 \$15,000 or such larger amount as is sufficient to exhaust
8 the assets utilized in and the proceeds from the illegal
9 activity; however, if at the time of sentencing the
10 defendant has been convicted of another drug trafficking
11 offense: a mandatory minimum term of five years in prison
12 and \$30,000 or such larger amount as is sufficient to
13 exhaust the assets utilized in and the proceeds from the
14 illegal activity; and

15 (iii) when the aggregate weight of the compound or
16 mixture containing the heroin involved is 50 100 50 <—
17 grams or greater: a mandatory minimum term of five years
18 in prison and a fine of \$25,000 or such larger amount as
19 is sufficient to exhaust the assets utilized in and the
20 proceeds from the illegal activity; however, if at the
21 time of sentencing the defendant has been convicted of
22 another drug trafficking offense: a mandatory minimum
23 term of seven years in prison and \$50,000 or such larger
24 amount as is sufficient to exhaust the assets utilized in
25 and the proceeds from the illegal activity.

26 * * *

27 ~~(C) MANDATORY SENTENCING. [THERE] EXCEPT AS PROVIDED IN~~ <—
28 ~~SECTION 7508.1 (RELATING TO SPLIT SENTENCES), THERE SHALL BE NO~~
29 ~~AUTHORITY IN ANY COURT TO IMPOSE ON AN OFFENDER TO WHICH THIS~~
30 ~~SECTION IS APPLICABLE A LESSER SENTENCE THAN PROVIDED FOR HEREIN~~

~~OR TO PLACE THE OFFENDER ON PROBATION, PAROLE, WORK RELEASE OR
PRERELEASE OR TO SUSPEND SENTENCE. NOTHING IN THIS SECTION SHALL
PREVENT THE SENTENCING COURT FROM IMPOSING A SENTENCE GREATER
THAN PROVIDED HEREIN. SENTENCING GUIDELINES PROMULGATED BY THE
PENNSYLVANIA COMMISSION ON SENTENCING SHALL NOT SUPERSEDE THE
MANDATORY SENTENCES PROVIDED HEREIN. DISPOSITION UNDER SECTION
17 OR 18 OF THE CONTROLLED SUBSTANCE, DRUG, DEVICE AND COSMETIC
ACT SHALL NOT BE AVAILABLE TO A DEFENDANT TO WHICH THIS SECTION
APPLIES.~~

~~* * *~~

~~SECTION 4. TITLE 18 IS AMENDED BY ADDING A SECTION TO READ:
§ 7508.1. SPLIT SENTENCES.~~

~~(A) PETITION. IN ANY CASE SUBJECT TO THE MANDATORY
SENTENCING PROVISIONS OF SECTION 7508 (RELATING TO DRUG
TRAFFICKING SENTENCING AND PENALTIES), THE ATTORNEY FOR THE
COMMONWEALTH MAY PETITION THE COURT TO APPLY TO THE CASE THE
SPLIT SENTENCING PROVISIONS OF THIS SECTION. WHILE THE COURT MAY
RECOMMEND THE CASE TO THE ATTORNEY FOR THE COMMONWEALTH AS
APPROPRIATE FOR CONSIDERATION UNDER THIS SECTION, THE DECISION
TO PETITION OR NOT TO PETITION FOR THE APPLICATION TO THE CASE
OF THE SPLIT SENTENCING PROVISIONS SHALL BE AT THE SOLE
DISCRETION OF THE ATTORNEY FOR THE COMMONWEALTH AND SHALL NOT BE
SUBJECT TO APPEAL.~~

~~(B) COURT HEARING. AFTER A PUBLIC HEARING IN OPEN COURT IN
THE PRESENCE OF THE DEFENDANT, THE DEFENDANT'S ATTORNEY AND THE
ATTORNEY FOR THE COMMONWEALTH, THE COURT MAY, BUT SHALL NOT BE
REQUIRED TO, APPLY TO THE CASE THE SPLIT SENTENCING PROVISIONS
OF THIS SECTION IF THE COURT FINDS THAT ALL OF THE FOLLOWING
HAVE BEEN ESTABLISHED:~~

~~(1) THE DEFENDANT HAS BEEN ASSESSED BY A CERTIFIED~~

~~ADDICTION COUNSELOR, PSYCHIATRIST WITH A CERTIFICATE IN
ADDICTION PSYCHIATRY, MEDICAL DOCTOR CERTIFIED IN ADDICTION
TREATMENT BY THE AMERICAN SOCIETY OF ADDICTION MEDICINE OR
PSYCHOLOGIST SPECIALIZING IN ADDICTION TREATMENT, USING THE
PENNSYLVANIA PLACEMENT CRITERIA OR OTHER CRITERIA DESIGNATED
BY THE BUREAU OF DRUG AND ALCOHOL PROGRAMS OF THE DEPARTMENT
OF HEALTH AND HAS BEEN DETERMINED TO BE ADDICTED TO DRUGS OR
ALCOHOL. THE ASSESSOR MUST HAVE AT LEAST THREE YEARS
EXPERIENCE IN TREATING AND ASSESSING DRUG ADDICTED OR
ALCOHOL ADDICTED CRIMINAL OFFENDERS.~~

~~(2) THE DEFENDANT'S DRUG TRAFFICKING WAS CAUSED BY OR
RESULTED FROM THE DEFENDANT'S DRUG OR ALCOHOL ADDICTION.~~

~~(3) THE CIRCUMSTANCES SURROUNDING THE DRUG TRAFFICKING
OFFENSE INVOLVED NO VIOLENCE.~~

~~(4) THE DEFENDANT DID NOT DELIVER OR CAUSE TO BE
DELIVERED CONTROLLED SUBSTANCES TO ANYONE UNDER 18 YEARS OF
AGE.~~

~~(5) A TREATMENT PLAN HAS BEEN DEVELOPED THAT IS
CLINICALLY APPROPRIATE AND CONSISTENT WITH THE ASSESSMENT
CONDUCTED PURSUANT TO PARAGRAPH (1).~~

~~(6) AN INTENSIVE PAROLE SUPERVISION PLAN HAS BEEN
DEVELOPED THAT IS CONSISTENT WITH PUBLIC SAFETY AND THE DRUG
AND ALCOHOL TREATMENT PLAN.~~

~~(C) AGREEMENT TO THE SENTENCE. IF THE COURT APPLIES TO THE
CASE THE SPLIT SENTENCING PROVISIONS OF THIS SECTION, THE COURT
SHALL INDICATE ON THE RECORD THE SPECIFIC TERM OF IMPRISONMENT
UNDER SECTION 7508 THAT OTHERWISE WOULD HAVE BEEN APPLICABLE.
THE COURT SHALL INFORM THE PARTIES OF ITS INTENDED JUDGMENT OF
SENTENCE, WHICH SHALL BE A COMBINATION OF IMPRISONMENT,
TREATMENT IN ACCORDANCE WITH THE TREATMENT PLAN AND INTENSIVE~~

~~PAROLE SUPERVISION IN ACCORDANCE WITH THE INTENSIVE PAROLE
SUPERVISION PLAN. IF EITHER THE DEFENDANT OR THE ATTORNEY FOR
THE COMMONWEALTH OBJECTS TO THE INTENDED SENTENCE, THE SPLIT
SENTENCE SHALL BE IMMEDIATELY WITHDRAWN.~~

~~(D) PAROLE. NO DEFENDANT SENTENCED UNDER THIS SECTION SHALL
BE ELIGIBLE FOR PAROLE PRIOR TO THE EXPIRATION OF THE MINIMUM
TERM OF IMPRISONMENT IMPOSED UNDER THE SPLIT SENTENCE. PAROLE
SHALL BE CONDITIONED UPON THE DEFENDANT'S PARTICIPATION AND
COOPERATION WITH CLINICALLY APPROPRIATE DRUG AND ALCOHOL
TREATMENT IN ACCORDANCE WITH THE TREATMENT PLAN, AND COOPERATION
WITH THE CONDITIONS OF THE INTENSIVE PAROLE SUPERVISION PLAN.
ALL TREATMENT SHALL OCCUR IN NONPROFIT FACILITIES LICENSED BY
THE DEPARTMENT OF HEALTH TO PROVIDE DRUG AND ALCOHOL TREATMENT
SERVICES, AND DESIGNATED BY THE DEPARTMENT OF HEALTH TO HAVE
SUFFICIENT EXPERIENCE AND EXPERTISE IN TREATING DRUG ADDICTED OR
ALCOHOL ADDICTED CRIMINAL OFFENDERS.~~

~~(E) PAROLE VIOLATIONS. IF THE DEFENDANT HAS BEEN FOUND TO
HAVE VIOLATED ANY CONDITIONS OF THE INTENSIVE PAROLE, THE
DEFENDANT SHALL BE RECOMMITTED TO SERVE A TERM OF IMPRISONMENT
THAT, WHEN COMBINED WITH THE INITIAL TERM OF IMPRISONMENT,
EQUALS OR EXCEEDS THE MANDATORY MINIMUM SENTENCE INDICATED
PURSUANT TO SUBSECTION (C).~~

~~Section 5. This act shall take effect in 60 days.~~

SECTION 2. SECTION 9729 OF TITLE 42 IS REPEALED.

SECTION 3. SECTION 9755 OF TITLE 42 IS AMENDED BY ADDING A
SUBSECTION TO READ:

§ 9755. SENTENCE OF PARTIAL CONFINEMENT.

* * *

(H) SENTENCE OF PARTIAL CONFINEMENT COMBINED WITH SENTENCE
OF INTERMEDIATE PUNISHMENT.--THE COURT MAY IMPOSE A SENTENCE OF

PARTIAL CONFINEMENT WITHOUT PAROLE UNDER THIS SUBSECTION ONLY
WHEN:

(1) THE PERIOD OF PARTIAL CONFINEMENT IS FOLLOWED
IMMEDIATELY BY A SENTENCE IMPOSED PURSUANT TO SECTION 9763
(RELATING TO SENTENCE OF INTERMEDIATE PUNISHMENT) IN WHICH
CASE THE SENTENCE OF PARTIAL CONFINEMENT SHALL SPECIFY THE
NUMBER OF DAYS OF PARTIAL CONFINEMENT TO BE SERVED; AND

(2) THE MAXIMUM SENTENCE OF PARTIAL CONFINEMENT IMPOSED
ON ONE OR MORE INDICTMENTS TO RUN CONSECUTIVELY OR
CONCURRENTLY TOTAL 90 DAYS OR LESS.

SECTION 4. SECTION 9756(C) OF TITLE 42 IS AMENDED AND THE
SECTION IS AMENDED BY ADDING A SUBSECTION TO READ:

§ 9756. SENTENCE OF TOTAL CONFINEMENT.

* * *

(C) PROHIBITION OF PAROLE FOR SUMMARY OFFENSES.--[EXCEPT IN
THE CASE OF MURDER OF THE FIRST DEGREE, THE] THE COURT MAY
IMPOSE A SENTENCE TO IMPRISONMENT WITHOUT THE RIGHT TO PAROLE
UNDER THIS SUBSECTION ONLY WHEN:

(1) A SUMMARY OFFENSE IS CHARGED;

(2) SENTENCE IS IMPOSED FOR NONPAYMENT OF FINES OR
COSTS, OR BOTH, IN WHICH CASE THE SENTENCE SHALL SPECIFY THE
NUMBER OF DAYS TO BE SERVED; AND

(3) THE MAXIMUM TERM OR TERMS OF IMPRISONMENT IMPOSED ON
ONE OR MORE INDICTMENTS TO RUN CONSECUTIVELY OR CONCURRENTLY
TOTAL LESS THAN 30 DAYS.

* * *

(C.1) SENTENCE OF TOTAL CONFINEMENT COMBINED WITH SENTENCE
OF INTERMEDIATE PUNISHMENT.--THE COURT MAY IMPOSE A SENTENCE OF
IMPRISONMENT WITHOUT PAROLE UNDER THIS SUBSECTION ONLY WHEN:

(1) THE PERIOD OF TOTAL CONFINEMENT IS FOLLOWED

1 IMMEDIATELY BY A SENTENCE IMPOSED PURSUANT TO SECTION 9763
2 (RELATING TO SENTENCE OF INTERMEDIATE PUNISHMENT) IN WHICH
3 CASE THE SENTENCE OF TOTAL CONFINEMENT SHALL SPECIFY THE
4 NUMBER OF DAYS OF TOTAL CONFINEMENT ALSO TO BE SERVED; AND

5 (2) THE MAXIMUM SENTENCE OF TOTAL CONFINEMENT IMPOSED ON
6 ONE OR MORE INDICTMENTS TO RUN CONSECUTIVELY OR CONCURRENTLY
7 TOTAL 90 DAYS OR LESS.

8 * * *

9 SECTION 5. SECTIONS 9763(A) AND (D) AND 9773(B) OF TITLE 42
10 ARE AMENDED TO READ:

11 § 9763. SENTENCE OF INTERMEDIATE PUNISHMENT.

12 (A) GENERAL RULE.--IN IMPOSING A SENTENCE OF INTERMEDIATE
13 PUNISHMENT, THE COURT SHALL SPECIFY AT THE TIME OF SENTENCING
14 THE LENGTH OF THE TERM FOR WHICH THE DEFENDANT IS TO BE IN AN
15 INTERMEDIATE PUNISHMENT PROGRAM ESTABLISHED UNDER CHAPTER 98
16 (RELATING TO COUNTY INTERMEDIATE PUNISHMENT) OR A COMBINATION OF
17 INTERMEDIATE PUNISHMENT PROGRAMS. THE TERM MAY NOT EXCEED THE
18 MAXIMUM TERM FOR WHICH THE DEFENDANT COULD BE CONFINED AND THE
19 PROGRAM TO WHICH THE DEFENDANT IS SENTENCED. THE COURT MAY ORDER
20 A DEFENDANT TO SERVE A PORTION OF THE SENTENCE UNDER SECTION
21 9755 (RELATING TO SENTENCE OF PARTIAL CONFINEMENT) OR 9756
22 (RELATING TO SENTENCE OF TOTAL CONFINEMENT) AND TO SERVE A
23 PORTION IN AN INTERMEDIATE PUNISHMENT PROGRAM OR A COMBINATION
24 OF INTERMEDIATE PUNISHMENT PROGRAMS.

25 * * *

26 (D) SENTENCE FOLLOWING VIOLATION OF CONDITION.--THE SENTENCE
27 TO BE IMPOSED IN THE EVENT OF THE VIOLATION OF A CONDITION UNDER
28 SUBSECTION (B) SHALL NOT BE IMPOSED PRIOR TO A FINDING ON THE
29 RECORD THAT A VIOLATION HAS OCCURRED. NOTWITHSTANDING ANY OTHER
30 PROVISION OF LAW REQUIRING NOTICE PRIOR TO SENTENCING, IN THE

1 EVENT OF A VIOLATION OF A CONDITION UNDER SUBSECTION (B), THE
2 ATTORNEY FOR THE COMMONWEALTH MAY FILE NOTICE AT ANY TIME PRIOR
3 TO RESENTENCING OF THE COMMONWEALTH'S INTENTION TO PROCEED UNDER
4 AN APPLICABLE PROVISION OF LAW REQUIRING A MANDATORY MINIMUM
5 SENTENCE.

6 § 9773. MODIFICATION OR REVOCATION OF INTERMEDIATE PUNISHMENT
7 SENTENCE.

8 * * *

9 (B) REVOCATION.--THE COURT MAY REVOKE A SENTENCE OF
10 INTERMEDIATE PUNISHMENT UPON PROOF OF A VIOLATION OF SPECIFIC
11 CONDITIONS OF THE SENTENCE. UPON REVOCATION AND SUBJECT TO
12 SECTION 9763(D)(RELATING TO SENTENCE OF INTERMEDIATE
13 PUNISHMENT), THE SENTENCING ALTERNATIVES AVAILABLE TO THE COURT
14 SHALL BE THE SAME AS THE ALTERNATIVES AVAILABLE AT THE TIME OF
15 INITIAL SENTENCING. CONSIDERATION SHALL BE GIVEN TO THE TIME
16 SERVED IN THE INTERMEDIATE PUNISHMENT PROGRAM.

17 * * *

18 SECTION 6. TITLE 42 IS AMENDED BY ADDING A CHAPTER TO READ:

19 CHAPTER 98

20 COUNTY INTERMEDIATE PUNISHMENT

21 SEC.

22 9801. SHORT TITLE OF CHAPTER.

23 9802. DEFINITIONS.

24 9803. PURPOSE.

25 9804. COUNTY INTERMEDIATE PUNISHMENT PROGRAMS.

26 9805. BOARDS.

27 9806. COUNTY INTERMEDIATE PUNISHMENT PLAN.

28 9807. COMMISSION.

29 9808. FUNDING AND AUDITS.

30 9809. PROHIBITIONS.

1 9810. CONTINUED ELIGIBILITY.

2 9811. NONAPPLICATION OF CERTAIN PROVISIONS.

3 9812. CONSTRUCTION.

4 § 9801. SHORT TITLE OF CHAPTER.

5 THIS CHAPTER SHALL BE KNOWN AND MAY BE CITED AS THE COUNTY
6 INTERMEDIATE PUNISHMENT ACT.

7 § 9802. 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 "BOARD." A COUNTY PRISON BOARD, IN COUNTIES OF THE FIRST AND
12 SECOND CLASS, THE CRIMINAL JUSTICE COORDINATING COMMISSION OR
13 ITS SUCCESSOR AGENCY.

14 "COMMISSION." THE PENNSYLVANIA COMMISSION ON CRIME AND
15 DELINQUENCY.

16 "COUNTY INTERMEDIATE PUNISHMENT PLAN." A DOCUMENT WHICH
17 DESCRIBES A PROPOSED INTERMEDIATE PUNISHMENT PROGRAM.

18 "COUNTY INTERMEDIATE PUNISHMENT PROGRAM." A RESIDENTIAL OR
19 NONRESIDENTIAL PROGRAM PROVIDED IN A COMMUNITY FOR ELIGIBLE
20 OFFENDERS.

21 "COURT." THE TRIAL JUDGE EXERCISING SENTENCING JURISDICTION
22 OVER AN ELIGIBLE OFFENDER UNDER THIS ACT. TRIAL JUDGE MAY
23 INCLUDE A DISTRICT JUSTICE IF USE OF INTERMEDIATE PUNISHMENT
24 PROGRAMS BY THE MINOR JUDICIARY IS APPROVED BY THE COURT OF
25 COMMON PLEAS VIA ADMINISTRATIVE ORDER OR LOCAL RULE.

26 "ELIGIBLE OFFENDER." SUBJECT TO SECTION 9721(A.1) (RELATING
27 TO SENTENCING GENERALLY), A PERSON CONVICTED OF AN OFFENSE WHO
28 WOULD OTHERWISE BE SENTENCED TO A COUNTY CORRECTIONAL FACILITY,
29 WHO DOES NOT DEMONSTRATE A PRESENT OR PAST PATTERN OF VIOLENT
30 BEHAVIOR AND WHO WOULD OTHERWISE BE SENTENCED TO PARTIAL

1 CONFINEMENT PURSUANT TO SECTION 9724 (RELATING TO PARTIAL
2 CONFINEMENT) OR TOTAL CONFINEMENT PURSUANT TO SECTION 9725
3 (RELATING TO TOTAL CONFINEMENT). THE TERM DOES NOT INCLUDE AN
4 OFFENDER CONVICTED OF 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. § 2702 (RELATING TO AGGRAVATED ASSAULT).

8 18 PA.C.S. § 2703 (RELATING TO ASSAULT BY PRISONER).

9 18 PA.C.S. § 2704 (RELATING TO ASSAULT BY LIFE PRISONER).

10 18 PA.C.S. § 2901 (RELATING TO KIDNAPPING).

11 18 PA.C.S. § 3121 (RELATING TO RAPE).

12 18 PA.C.S. § 3122.1 (RELATING TO STATUTORY SEXUAL
13 ASSAULT).

14 18 PA.C.S. § 3123 (RELATING TO INVOLUNTARY DEVIATE SEXUAL
15 INTERCOURSE).

16 18 PA.C.S. § 3124.1 (RELATING TO SEXUAL ASSAULT).

17 18 PA.C.S. § 3125 (RELATING TO AGGRAVATED INDECENT
18 ASSAULT).

19 18 PA.C.S. § 3126 (RELATING TO INDECENT ASSAULT).

20 18 PA.C.S. § 3301 (RELATING TO ARSON AND RELATED
21 OFFENSES).

22 18 PA.C.S. § 3502 (RELATING TO BURGLARY), WHEN GRADED AS
23 A FELONY OF THE FIRST DEGREE.

24 18 PA.C.S. § 3701 (RELATING TO ROBBERY).

25 18 PA.C.S. § 3923 (RELATING TO THEFT BY EXTORTION).

26 18 PA.C.S. § 4302 (RELATING TO INCEST).

27 18 PA.C.S. § 5121 (RELATING TO ESCAPE).

28 "NONPROFIT AGENCY." A NOT-FOR-PROFIT HUMAN SERVICE
29 ORGANIZATION WHICH PROVIDES TREATMENT, GUIDANCE, COUNSELING,
30 TRAINING OR REHABILITATION SERVICES TO INDIVIDUALS, FAMILIES OR

1 GROUPS.

2 § 9803. PURPOSE.

3 COUNTY INTERMEDIATE PUNISHMENT PROGRAMS SHALL BE DEVELOPED,
4 IMPLEMENTED AND OPERATED FOR THE FOLLOWING PURPOSES:

5 (1) TO PROTECT SOCIETY AND PROMOTE EFFICIENCY AND
6 ECONOMY IN THE DELIVERY OF CORRECTIONS SERVICES.

7 (2) TO PROMOTE ACCOUNTABILITY OF OFFENDERS TO THEIR
8 LOCAL COMMUNITY.

9 (3) TO FILL GAPS IN LOCAL CORRECTIONAL SYSTEMS AND
10 ADDRESS LOCAL NEEDS THROUGH EXPANSION OF PUNISHMENT AND
11 SERVICES AVAILABLE TO THE COURT.

12 (4) TO PROVIDE OPPORTUNITIES FOR OFFENDERS WHO
13 DEMONSTRATE SPECIAL NEEDS TO RECEIVE SERVICES WHICH ENHANCE
14 THEIR ABILITY TO BECOME CONTRIBUTING MEMBERS OF THE
15 COMMUNITY.

16 § 9804. COUNTY INTERMEDIATE PUNISHMENT PROGRAMS.

17 (A) DESCRIPTION.--COUNTY INTERMEDIATE PUNISHMENT PROGRAM
18 OPTIONS SHALL INCLUDE THE FOLLOWING:

19 (1) RESTRICTIVE INTERMEDIATE PUNISHMENTS PROVIDING FOR
20 THE STRICT SUPERVISION OF THE OFFENDER INCLUDING PROGRAMS
21 THAT:

22 (I) HOUSE THE OFFENDER FULL OR PART TIME;

23 (II) SIGNIFICANTLY RESTRICT THE OFFENDER'S MOVEMENT
24 AND MONITOR THE OFFENDER'S COMPLIANCE WITH THE PROGRAM;

25 OR

26 (III) INVOLVE A COMBINATION OF PROGRAMS THAT MEET
27 THE STANDARDS SET FORTH UNDER SUBPARAGRAPHS (I) AND (II).

28 (2) WHEN UTILIZED IN COMBINATION WITH RESTRICTIVE
29 INTERMEDIATE PUNISHMENTS, RESTORATIVE SANCTIONS PROVIDING FOR
30 NONCONFINEMENT SENTENCING OPTIONS THAT:

(I) ARE THE LEAST RESTRICTIVE IN TERMS OF THE
CONSTRAINT OF THE OFFENDER'S LIBERTIES.

(II) DO NOT INVOLVE THE HOUSING OF THE OFFENDER,
EITHER FULL OR PART TIME.

(III) FOCUS ON RESTORING THE VICTIM TO PRE-OFFENSE
STATUS.

(B) ELIGIBILITY.--

(1) NO PERSON OTHER THAN THE ELIGIBLE OFFENDER SHALL BE
SENTENCED TO A COUNTY INTERMEDIATE PUNISHMENT PROGRAM.

(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.

(3) ANY PERSON RECEIVING A PENALTY IMPOSED PURSUANT TO
75 PA.C.S. § 1543(B) (RELATING TO DRIVING WHILE OPERATING
PRIVILEGE IS SUSPENDED OR REVOKED) OR 3731(E) (RELATING TO
DRIVING UNDER INFLUENCE OF ALCOHOL OR A CONTROLLED SUBSTANCE)
MAY ONLY BE SENTENCED TO INTERMEDIATE PUNISHMENT PROGRAM IN:

(I) A RESIDENTIAL INPATIENT PROGRAM OR A RESIDENTIAL
REHABILITATIVE CENTER;

(II) HOUSE ARREST AND ELECTRONIC SURVEILLANCE
COMBINED WITH DRUG AND ALCOHOL TREATMENT; OR

(III) PARTIAL CONFINEMENT PROGRAMS, SUCH AS WORK
RELEASE, WORK CAMPS AND HALFWAY FACILITIES COMBINED WITH
DRUG AND ALCOHOL TREATMENT.

§ 9805. BOARDS.

(A) DUTY OF BOARD.--TO QUALIFY FOR FUNDING UNDER THIS
CHAPTER, A BOARD MUST DEVELOP A COUNTY INTERMEDIATE PUNISHMENT

1 PROGRAM PLAN TO BE SUBMITTED TO THE COMMISSION.

2 (B) JOINT JUDICIAL DISTRICTS.--WHERE TWO COUNTIES COMPRISE A
3 JOINT JUDICIAL DISTRICT, THE COUNTIES MAY JOINTLY SUBMIT A PLAN,
4 WHICH SHALL REQUIRE THE CONCURRENCE OF A MAJORITY OF MEMBERS
5 FROM THE BOARDS OF EACH COUNTY. THE PRESIDENT JUDGE OF THE
6 JUDICIAL DISTRICT SHALL CHAIR THE MEETINGS OF BOTH BOARDS FOR
7 ACTIONS NECESSARY PURSUANT TO THIS CHAPTER.

8 (C) COUNTIES WITH NO BOARD.--IF A COUNTY OF THE SIXTH,
9 SEVENTH OR EIGHTH CLASS DOES NOT HAVE A PRISON BOARD, THE COUNTY
10 SHALL ESTABLISH AN INTERMEDIATE PUNISHMENT BOARD FOR THE PURPOSE
11 OF COMPLYING WITH THE REQUIREMENTS OF THIS CHAPTER. THE
12 INTERMEDIATE PUNISHMENT BOARD SHALL CONSIST OF THE PRESIDENT
13 JUDGE OF THE COURT OF COMMON PLEAS OR HIS DESIGNEE, THE DISTRICT
14 ATTORNEY, THE SHERIFF, THE CONTROLLER AND THE COUNTY
15 COMMISSIONERS.

16 (D) POWERS AND DUTIES.--A BOARD HAS THE FOLLOWING POWERS AND
17 DUTIES:

18 (1) TO ASSESS AVAILABLE COUNTYWIDE CORRECTIONAL SERVICES
19 AND FUTURE NEEDS.

20 (2) TO WORK WITH THE COUNTY OFFICE OF PROBATION AND
21 PAROLE IN DEVELOPING THE COUNTY INTERMEDIATE PUNISHMENT PLAN.

22 (3) TO ADOPT A COUNTY INTERMEDIATE PUNISHMENT PLAN,
23 INCLUDING PROGRAM POLICES FOR ADMINISTRATION.

24 (4) TO MAKE RECOMMENDATIONS TO THE BOARD OF COUNTY
25 COMMISSIONERS, OR CHIEF EXECUTIVE OFFICER IN COUNTIES OF THE
26 FIRST CLASS, ON CONTRACTS WITH PRIVATE PROVIDERS OR NONPROFIT
27 AGENCIES FOR THE PROVISION OF INTERMEDIATE PUNISHMENT
28 PROGRAMS.

29 (5) TO MONITOR THE EFFECTIVENESS OF COUNTY CORRECTIONAL
30 SERVICES AND IDENTIFY NEEDED MODIFICATIONS.

1 (6) TO MAKE RECOMMENDATIONS TO THE BOARD OF COUNTY
2 COMMISSIONERS, OR CHIEF EXECUTIVE OFFICER IN COUNTIES OF THE
3 FIRST CLASS, REGARDING THE PURCHASE, LEASE OR TRANSFER OF
4 LANDS, BUILDINGS AND EQUIPMENT NECESSARY TO CARRY OUT THE
5 INTERMEDIATE PUNISHMENT PLAN.

6 (7) TO DESIGNATE THE APPROPRIATE COUNTY OFFICE TO
7 MAINTAIN A CASE RECORD FOR EACH INDIVIDUAL ADMITTED TO A
8 COUNTY INTERMEDIATE PUNISHMENT PROGRAM WITHIN THE COUNTY.

9 (8) TO MAKE AN ANNUAL REPORT ON THE PROGRAM TO THE
10 GOVERNING BODY OF THE COUNTY, THE PENNSYLVANIA COMMISSION ON
11 SENTENCING AND THE COMMISSION.

12 (9) TO DEVELOP THE COUNTY INTERMEDIATE PUNISHMENT PLAN
13 UNDER SECTION 9806 (RELATING TO COUNTY INTERMEDIATE
14 PUNISHMENT PLAN).

15 (E) ADVICE TO BOARD.--

16 (1) WHEN DEVELOPING THE COUNTY INTERMEDIATE PUNISHMENT
17 PLAN, THE BOARD SHALL CONSULT WITH COUNTY CRIMINAL JUSTICE
18 AND RELATED HUMAN SERVICE PROVIDERS, AS WELL AS THE PUBLIC.

19 (2) AT A MINIMUM, THE FOLLOWING SHALL BE CONSULTED FOR
20 THE PURPOSE OF DEVELOPING THE PLAN:

21 (I) COURT OF COMMON PLEAS.

22 (II) BOARD OF COUNTY COMMISSIONERS.

23 (III) INTERMEDIATE PUNISHMENT OFFICE.

24 (IV) ADULT PROBATION AND PAROLE OFFICE.

25 (V) COUNTY JAIL.

26 (VI) DISTRICT ATTORNEY.

27 (VII) PUBLIC DEFENDER OR DEFENSE BAR.

28 (VIII) SINGLE COUNTY AUTHORITY.

29 (IX) MENTAL HEALTH/MENTAL RETARDATION OFFICE.

30 (X) CITIZEN INPUT.

1 (XI) VICTIM INPUT.

2 (3) THE BOARD MAY ELECT ONE OF THE FOLLOWING METHODS TO
3 SOLICIT PLAN INPUT FROM PROVIDERS AND THE PUBLIC:

4 (I) EXPAND THE MEMBERSHIP OF THE BOARD, FOR PURPOSES
5 OF DEVELOPING THE COUNTY INTERMEDIATE PUNISHMENT PLAN, TO
6 INCLUDE THOSE LISTED IN PARAGRAPH (2).

7 (II) APPOINT AN INTERMEDIATE PUNISHMENT ADVISORY
8 COMMITTEE TO INCLUDE THOSE LISTED IN PARAGRAPH (2) TO
9 UNDERTAKE ANY DUTIES ASSIGNED BY THE BOARD.

10 (III) DEVELOP AN ALTERNATE PROCESS APPROVED BY THE
11 PENNSYLVANIA COMMISSION ON CRIME AND DELINQUENCY AND
12 INVOLVING THOSE LISTED IN PARAGRAPH (2).

13 § 9806. COUNTY INTERMEDIATE PUNISHMENT PLAN.

14 (A) REQUIREMENT.--THE BOARD MAY DEVELOP A PLAN FOR THE
15 IMPLEMENTATION AND OPERATION OF INTERMEDIATE PUNISHMENT PROGRAMS
16 IN THE COUNTY. THE PLAN SHALL PROVIDE FOR ALL OF THE FOLLOWING:

17 (1) AN ASSESSMENT OF AVAILABLE COUNTYWIDE CORRECTIONAL
18 SERVICES AND FUTURE NEEDS.

19 (2) A REVIEW OF CURRENT SENTENCING PROCEDURES AND THE
20 IMPACT THESE PROCEDURES HAVE ON COUNTY CORRECTIONAL
21 RESOURCES.

22 (3) A REVIEW OF CURRENT ALTERNATIVES TO PRETRIAL
23 DETENTION AND THE POTENTIAL THESE PROGRAMS HAVE FOR AFFECTING
24 THE JAIL POPULATION.

25 (4) A DESCRIPTION OF THE EXISTING RESOURCES IN THE
26 COUNTY WHICH CAN BE USED AS INTERMEDIATE PUNISHMENTS OR
27 SERVICES TO OFFENDERS SENTENCED TO INTERMEDIATE PUNISHMENT.

28 (5) THE FORMULATION OF POLICY STATEMENTS TARGETED TO THE
29 NEEDS IDENTIFIED BY THE COUNTY AND THE IMPACT THESE POLICIES
30 WILL HAVE ON THE USE OF CONFINEMENT AND INTERMEDIATE

1 PUNISHMENT.

2 (6) THE DEVELOPMENT OF GOALS AND OBJECTIVES WHICH ARE
3 AIMED AT EFFECTIVE UTILIZATION OF EXISTING AND PROJECTED
4 CORRECTIONAL RESOURCES.

5 (7) THE DEVELOPMENT OF AN EVALUATION STRATEGY WHICH
6 MEASURES THE QUALITATIVE AND QUANTITATIVE PERFORMANCES OF ALL
7 PROGRAMS.

8 (B) TECHNICAL ASSISTANCE.--THE COMMISSION SHALL PROVIDE
9 TECHNICAL ASSISTANCE TO DEVELOP COMMUNITY CORRECTIONS PLANS.

10 (C) REVIEW AND APPROVAL.--THE PLAN SHALL BE SUBMITTED TO THE
11 COMMISSION FOR REVIEW AND APPROVAL IN THE FORMAT DESIGNATED BY
12 THE COMMISSION. THE COMMISSION SHALL COMPLETE ITS REVIEW WITHIN
13 90 DAYS OF SUBMISSION. FAILURE TO DISAPPROVE OR RECOMMEND
14 AMENDMENT WITHIN 90 DAYS SHALL CONSTITUTE APPROVAL.

15 (D) FORMAL SUBMISSION.--THE PLAN AND ANY PROPOSED CHANGES
16 THERETO SHALL BE SUBMITTED ON AN ANNUAL BASIS.

17 § 9807. COMMISSION.

18 (A) POWERS AND DUTIES.--THE COMMISSION SHALL HAVE THE
19 FOLLOWING POWERS AND DUTIES:

20 (1) SUBJECT TO THE PROVISIONS OF SUBSECTION (B), TO
21 ADOPT RULES AND REGULATIONS PURSUANT TO THIS ACT REGARDING:

22 (I) THE SUBMISSION, REVIEW AND APPROVAL OF COUNTY
23 INTERMEDIATE PUNISHMENT PLANS .

24 (II) STANDARDS FOR THE DEVELOPMENT, OPERATION AND
25 EVALUATION OF PROGRAMS AND SERVICES. IN PROMULGATING
26 REGULATIONS UNDER THIS SUBPARAGRAPH, THE COMMISSION SHALL
27 CONSIDER COMMENTS SUBMITTED BY THE COUNTIES.

28 (III) THE ADMINISTRATION AND DISBURSEMENT OF FUNDS
29 UNDER THIS CHAPTER.

30 (2) TO PROVIDE TRAINING AND TECHNICAL ASSISTANCE TO

1 BOARDS AND PROGRAM STAFF.

2 (3) TO ENSURE THAT ALL PROGRAMS ARE IN COMPLIANCE WITH
3 APPLICABLE FEDERAL, STATE AND LOCAL LAW.

4 (4) TO MONITOR COUNTY INTERMEDIATE PUNISHMENT PROGRAMS
5 TO DETERMINE THEIR IMPACT ON OFFENDERS.

6 (5) TO REMIT FUNDS AS PROVIDED FOR UNDER SECTION 9808
7 (RELATING TO FUNDING AND AUDITS).

8 (B) INTERIM REGULATIONS.--PENDING ADOPTION AND PUBLICATION
9 OF FINAL RULES AND REGULATIONS, THE COMMISSION SHALL HAVE THE
10 POWER AND AUTHORITY TO SUSPEND EXISTING REGULATIONS AND TO
11 PROMULGATE, ADOPT, PUBLISH AND USE INTERIM REGULATIONS FOR THE
12 IMPLEMENTATION OF THIS CHAPTER FOR A PERIOD OF ONE YEAR
13 IMMEDIATELY FOLLOWING THE EFFECTIVE DATE OF THIS CHAPTER OR
14 UNTIL THE EFFECTIVE DATE OF FINAL RULES AND REGULATIONS,
15 WHICHEVER FIRST OCCURS. NOTWITHSTANDING ANY OTHER PROVISION OF
16 LAW TO THE CONTRARY, THE INTERIM REGULATIONS PROPOSED UNDER THE
17 AUTHORITY OF THIS SECTION SHALL BE SUBJECT TO REVIEW BY THE
18 OFFICE OF GENERAL COUNSEL AND THE ATTORNEY GENERAL IN THE MANNER
19 PROVIDED FOR THE REVIEW OF PROPOSED RULES AND REGULATIONS
20 PURSUANT TO THE ACT OF OCTOBER 15, 1980 (P.L.950, NO.164), KNOWN
21 AS THE COMMONWEALTH ATTORNEYS ACT, AND SHALL NOT BE SUBJECT TO
22 REVIEW PURSUANT TO THE ACT OF JUNE 25, 1982 (P.L.633, NO.181),
23 KNOWN AS THE REGULATORY REVIEW ACT.

24 § 9808. FUNDING AND AUDITS.

25 (A) ELIGIBILITY.--SUBJECT TO THE AVAILABILITY OF FUNDING,
26 COUNTIES WITH APPROVED PLANS SHALL BE ELIGIBLE FOR DIRECT
27 FUNDING DETERMINED BY THE COMMISSION TO SUPPORT THE COST OF
28 INTERMEDIATE PUNISHMENT PROGRAMS. THIS CHAPTER SHALL NOT BE
29 CONSTRUED TO PROHIBIT THE USE OF FEDERAL FUNDS.

30 (B) AUDIT.--ANNUAL REPORTS AND ALL FINANCIAL RECORDS SHALL

1 BE SUBJECT TO ANNUAL AUDIT BY THE AUDITOR GENERAL.

2 § 9809. PROHIBITIONS.

3 (A) GENERAL RULE.--RECIPIENTS MAY NOT USE FUNDS GRANTED
4 UNDER THIS CHAPTER TO SUPPLANT EXISTING FUNDS FROM THE STATE OR
5 LOCAL GOVERNMENT FOR EXISTING CORRECTIONAL PROGRAMS OR FOR THE
6 CONSTRUCTION, RENOVATION OR OPERATION OF A STATE, COUNTY OR
7 MUNICIPAL INCARCERATION FACILITY.

8 (B) ADMINISTRATIVE COSTS.--ADMINISTRATIVE COSTS CONNECTED
9 WITH THE EXPENDITURE OF COUNTY INTERMEDIATE PUNISHMENT FUNDS
10 UNDER THIS CHAPTER MAY NOT EXCEED A PERCENTAGE AMOUNT
11 ESTABLISHED BY THE COMMISSION.

12 § 9810. CONTINUED ELIGIBILITY.

13 (A) EVALUATION.--IN ORDER TO REMAIN ELIGIBLE FOR CONTINUED
14 GRANT FUNDING, A COUNTY SHALL COMPLY WITH COMMISSION STANDARDS
15 AND REGULATIONS AND PARTICIPATE IN AN EVALUATION TO DETERMINE
16 PROGRAM EFFECTIVENESS. THE FORM OF THE EVALUATION SHALL BE
17 DETERMINED BY THE COMMISSION.

18 (B) SUSPENSION OF FUNDING.--

19 (1) IF THE COMMISSION DETERMINES THAT THERE ARE
20 REASONABLE GROUNDS TO BELIEVE THAT A COUNTY IS NOT COMPLYING
21 WITH ITS PLAN OR MINIMUM STANDARDS, THE COMMISSION SHALL GIVE
22 30 DAYS' WRITTEN NOTICE TO THE BOARD.

23 (2) IF THE COMMISSION FINDS NONCOMPLIANCE, IT SHALL
24 REQUIRE THE BOARD TO PROVIDE A WRITTEN AGREEMENT AS TO HOW
25 AND WHEN THE SPECIFIC DEFICIENCIES IDENTIFIED WILL BE
26 CORRECTED.

27 (3) IF NO AGREEMENT IS SUBMITTED TO THE COMMISSION
28 WITHIN THE TIME LIMIT OR IF THE DEFICIENCIES ARE NOT
29 CORRECTED WITHIN 45 DAYS AFTER AN AGREEMENT HAS BEEN APPROVED
30 BY THE COMMISSION, THE COMMISSION MAY SUSPEND PART OR ALL OF

1 THE FUNDING UNTIL COMPLIANCE IS ACHIEVED.

2 § 9811. NONAPPLICATION OF CERTAIN PROVISIONS.

3 THE PROVISIONS OF THE ACT OF JULY 12, 1972 (P.L.762, NO.180),
4 REFERRED TO AS THE INTERGOVERNMENTAL COOPERATION LAW, SHALL NOT
5 APPLY TO COUNTIES WHICH JOINTLY SUBMIT A PLAN UNDER THE
6 PROVISIONS OF THIS CHAPTER.

7 § 9812. CONSTRUCTION.

8 NOTHING IN THIS CHAPTER SHALL BE CONSTRUED AS CREATING AN
9 ENFORCEABLE RIGHT IN ANY PERSON TO PARTICIPATE IN AN
10 INTERMEDIATE PUNISHMENT PROGRAM IN LIEU OF INCARCERATION.
11 NOTHING IN THIS CHAPTER SHALL BE CONSTRUED AS REQUIRING ANY
12 COUNTY TO APPROPRIATE FUNDS FOR THE IMPLEMENTATION OF AN
13 INTERMEDIATE PUNISHMENT PROGRAM EXCEPT AS MAY BE NECESSARY TO
14 QUALIFY FOR FUNDS UNDER THIS CHAPTER.

15 SECTION 7. THE ACT OF DECEMBER 19, 1990 (P.L.799, NO.193),
16 KNOWN AS THE COUNTY INTERMEDIATE PUNISHMENT ACT, IS REPEALED.

17 SECTION 8. THIS ACT SHALL TAKE EFFECT IN 60 DAYS.