

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1567 Session of
2009

INTRODUCED BY BOYLE, LENTZ, CALTAGIRONE, D. COSTA, BRENNAN,
CASORIO, CRUZ, FAIRCHILD, FARRY, FREEMAN, GIBBONS, HARHAI,
HORNAMAN, KORTZ, LEVDANSKY, MANN, MARKOSEK, McCALL, McGEEHAN,
MELIO, MENSCH, MILLARD, MOUL, MURPHY, MUSTIO, O'NEILL,
PASHINSKI, QUINN, REICHLEY, SANTONI, SCAVELLO, SIPTROTH,
K. SMITH, STERN, SWANGER, J. TAYLOR, VULAKOVICH AND STURLA,
MAY 29, 2009

REFERRED TO COMMITTEE ON JUDICIARY, MAY 29, 2009

AN ACT

1 Amending Title 42 (Judiciary and Judicial Procedure) of the
2 Pennsylvania Consolidated Statutes, further providing for
3 adoption of guidelines for sentencing, for adoption of
4 guidelines for resentencing and for adoption of guidelines
5 for parole; providing for adoption of certain recommitment
6 ranges; and further providing for sentences for second and
7 subsequent offenses.

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

10 Section 1. Sections 2154, 2154.4 and 2154.5 of Title 42 of
11 the Pennsylvania Consolidated Statutes, amended or added
12 September 25, 2008 (P.L.1026, No.81), are amended to read:

13 § 2154. Adoption of guidelines for sentencing.

14 (a) General rule.--The commission shall adopt guidelines for
15 sentencing within the limits established by law which shall be
16 considered by the sentencing court in determining the
17 appropriate sentence for defendants who plead guilty or nolo
18 contendere to, or who were found guilty of, felonies and

1 misdemeanors. In adopting guidelines, the commission shall
2 recommend confinement that is consistent with the protection of
3 the public, the gravity of the offense as it relates to the
4 impact on the life of the victim and the community and the
5 rehabilitative needs of the defendant. The commission shall
6 recommend the use of other sentencing alternatives to promote
7 offender accountability, the just compensation to victims and
8 the most efficient use of correctional resources. The guidelines
9 shall address the following:

10 (1) [Specify] Seriousness of the offense, by specifying
11 the range of sentences applicable to crimes of a given degree
12 of gravity, including incapacitation of serious violent
13 defendants.

14 (2) [Specify] Criminal history, by specifying a range of
15 sentences of increased severity for defendants previously
16 convicted of or adjudicated delinquent for one or more
17 misdemeanor or felony offenses committed prior to the current
18 offense. [For purposes of this section "previously convicted
19 or adjudicated delinquent" shall include any finding of guilt
20 or adjudication of delinquency whether or not sentence has
21 been imposed or disposition ordered prior to the commission
22 of the current offense.]

23 (3) [Specify] Criminal behavior, by specifying a range
24 of sentences of increased severity for defendants who pose a
25 substantial risk to public safety, including those who
26 possessed or used a deadly weapon during the commission of
27 the current conviction offense.

28 (4) [Prescribe] Aggravated and mitigated ranges, by
29 specifying variations from the range of sentences applicable
30 on account of aggravating or mitigating circumstances.

1 (5) [Consider] Correctional impact, by considering the
2 impact of any amendments to [section] sections 9756 (relating
3 to sentence of total confinement) and 9762 (relating to
4 sentencing proceeding; place of confinement).

5 (6) Resource utilization, by providing for
6 prioritization of incarceration, rehabilitation and other
7 criminal justice resources for offenders posing the greatest
8 risk to public safety and for the identification of lower
9 risk offenders for sentencing alternatives as provided in
10 sections 2154.1 (relating to adoption of guidelines for
11 county intermediate punishment), 2154.2 (relating to adoption
12 of guidelines for State intermediate punishment) and 2154.3
13 (relating to adoption of guidelines for fines), where
14 appropriate.

15 (7) Evidence-based practices, by considering available
16 research relating to crime reduction and prevention
17 strategies, as well as cost-effective strategies to maximize
18 available resources.

19 (b) Definition.--As used in this section the [term
20 "possessed" means on the defendant's person or within his
21 immediate physical control.] following words and phrases shall
22 have the meanings given to them in this subsection:

23 "Possessed." On the defendant's person or within his
24 immediate physical control.

25 "Previously convicted" or "adjudicated delinquent." Any
26 finding of guilt or adjudication of delinquency whether or not
27 sentence has been imposed or disposition ordered prior to the
28 commission of the current offense.

29 § 2154.4. Adoption of guidelines for resentencing.

30 The commission shall adopt guidelines that shall be

1 considered by the court when resentencing an offender following
2 revocation of postprison intensive restriction under the
3 provisions of section 9714(a.1)(5) (relating to sentences for
4 second and subsequent offenses), probation, county intermediate
5 punishment or State intermediate punishment. The guidelines
6 shall take into account factors considered in adopting the
7 sentencing guidelines, the seriousness of the violation and the
8 rehabilitative needs of the defendant.

9 § 2154.5. Adoption of guidelines for parole.

10 (a) Adoption.--The commission shall adopt guidelines that
11 shall be considered by the board and any other paroling entity
12 when exercising its power to parole and reparole all persons
13 sentenced by any court in this Commonwealth to imprisonment in
14 any State or county penitentiary, prison or penal institution.
15 The guidelines shall do all of the following:

16 (1) Give primary consideration to the protection of the
17 public and to victim safety.

18 (2) Provide for due consideration of victim input.

19 (3) Be designed to encourage inmates and parolees to
20 conduct themselves in accordance with conditions and rules of
21 conduct set forth by the department or other prison
22 facilities and the board.

23 (4) Be designed to encourage inmates and parolees to
24 participate in programs that have been demonstrated to be
25 effective in reducing recidivism, including appropriate drug
26 and alcohol treatment programs.

27 (5) Provide for prioritization of incarceration,
28 rehabilitation and other criminal justice resources for
29 offenders posing the greatest risk to public safety.

30 (6) Use validated risk assessment tools, be evidence

1 based and take into account available research relating to
2 the risk of recidivism, minimizing the threat posed to public
3 safety and factors maximizing the success of reentry.

4 (b) Discretionary authority.--Notwithstanding any other
5 provision of law, this section shall not remove the
6 discretionary parole authority of the board and any other
7 paroling entity when exercising its power to parole and
8 reparole.

9 (c) Interim standards for parole.--Until such time as the
10 commission adopts guidelines under the provisions of subsection
11 (a), the following provisions shall be applicable to any
12 offender sentenced under the provisions of section 9714(a)
13 (relating to sentences for second and subsequent offenses):

14 (1) The parole determinations of the Pennsylvania Board
15 of Probation and Parole shall, to the extent practicable, use
16 appropriate decisional instruments or other relevant
17 materials or documents that:

18 (i) Give primary consideration to the protection of
19 the public and victim safety.

20 (ii) Provide for due consideration to victim input.

21 (iii) Are designed to encourage inmates and parolees
22 to conduct themselves in accordance with conditions and
23 rules of conduct set forth by the department, other
24 prison facilities and the board.

25 (iv) Are designed to encourage inmates and parolees
26 to participate in programs with demonstrated
27 effectiveness in reducing recidivism and addressing
28 inmates' and parolees' criminogenic needs.

29 (v) Provide for prioritization of incarceration,
30 rehabilitation and other criminal justice resources for

1 offenders posing the greatest risk to public safety.

2 (vi) Are evidence based, use validated risk
3 assessment tools and take into account available research
4 relating to risk of recidivism, threat to public safety
5 and factors for successful reintegration into society.

6 (2) The interim use of such tools, materials and
7 documents shall neither limit the powers of the board nor
8 grant any right to a prisoner to parole or any particular
9 parole determination.

10 Section 2. Title 42 is amended by adding a section to read:

11 § 2154.7. Adoption of certain recommitment ranges.

12 The commission shall adopt recommitment ranges that shall be
13 considered by the board when exercising its power to recommit
14 for violations of the terms or conditions of postprison
15 intensive restriction under the provisions of section
16 9714(a.1)(4) (relating to sentences for second and subsequent
17 offenses).

18 Section 3. Section 9714 of Title 42 is amended to read:

19 § 9714. Sentences for second and subsequent offenses.

20 (a) Mandatory sentence.--

21 (1) [Any] Notwithstanding any other provision of this
22 title or other statute to the contrary, any person who is
23 convicted in any court of this Commonwealth of a crime of
24 violence shall, if at the time of the commission of the
25 current offense the person had previously been convicted of a
26 crime of violence, be sentenced [to a minimum sentence of at
27 least ten years of total confinement, notwithstanding any
28 other provision of this title or other statute to the
29 contrary] to a flat sentence of total confinement, which
30 sentence shall be not less than 15 years nor more than 30

1 years, with no parole. The person shall be further sentenced
2 to a term of postprison intensive restriction of 15 years, to
3 commence upon the expiration of the sentence of total
4 confinement. Upon a second conviction for a crime of
5 violence, the court shall give the person oral and written
6 notice of the penalties under this section for a third
7 conviction for a crime of violence. Failure to provide such
8 notice shall not render the offender ineligible to be
9 sentenced under paragraph (2).

10 (2) [Where] Notwithstanding any other provision of this
11 title or other statute to the contrary, where the person had
12 at the time of the commission of the current offense
13 previously been convicted of two or more such crimes of
14 violence arising from separate criminal transactions, the
15 person shall be sentenced to [a minimum sentence of at least
16 25 years of total confinement, notwithstanding any other
17 provision of this title or other statute to the contrary] a
18 flat sentence of total confinement, which sentence shall not
19 be less than 30 years nor more than 50 years, with no parole,
20 or a sentence of life imprisonment. If the sentence imposed
21 under this paragraph is not life imprisonment, the person
22 shall be further sentenced to a term of postprison intensive
23 restriction of not less than 15 years nor more than 20 years,
24 to commence upon the expiration of the sentence of total
25 confinement. Proof that the offender received notice of or
26 otherwise knew or should have known of the penalties under
27 this paragraph shall not be required. [Upon conviction for a
28 third or subsequent crime of violence the court may, if it
29 determines that 25 years of total confinement is insufficient
30 to protect the public safety, sentence the offender to life

imprisonment without parole.

(a.1) Mandatory maximum.--An offender sentenced to a mandatory minimum sentence under this section shall be sentenced to a maximum sentence equal to twice the mandatory minimum sentence, notwithstanding 18 Pa.C.S. § 1103 (relating to sentence of imprisonment for felony) or any other provision of this title or other statute to the contrary.]

(3) The Pennsylvania Commission on Sentencing shall, within 180 days of the effective date of this subsection, publish guidelines for sentences under paragraphs (1) and (2). In establishing such guidelines, the commission shall afford paramountcy to the protection of individuals and the public from serious, violent crime.

(a.1) Postprison intensive restriction.--The following shall apply:

(1) When imposing a sentence of postprison intensive restriction, the court shall order, as an explicit condition of postprison intensive restriction, that the offender shall be subject to supervision during the period of postprison intensive restriction by the Pennsylvania Board of Probation and Parole and that the offender shall comply with any and all terms and conditions of supervision as may be established by the board. The court shall order, as an explicit condition of postprison intensive restriction, that the offender not commit another Federal, State or local crime during the term of postprison intensive restriction and that the defendant not unlawfully possess a controlled substance or a firearm. The court may order any other condition it considers to be appropriate.

(2) The formal filing of a charge constituting a crime

1 for any violation of the statutes of this Commonwealth or
2 under the laws of the Federal Government or another state
3 against an offender subject to postprison intensive
4 restriction shall constitute an automatic detainer and permit
5 the offender to be taken into and held in custody. The
6 automatic detainer shall dissolve on the 15th day after the
7 offender is taken into custody unless sooner waived or
8 otherwise superseded by direction of the sentencing court.
9 The automatic detainer shall be in addition to and not in
10 lieu of any other detainer that heretofore may have been
11 lodged in such circumstances.

12 (3) The Pennsylvania Board of Probation and Parole and
13 its officers and agents shall have the power and duty to
14 supervise an offender serving a term of postprison intensive
15 restriction, including the power to impose terms and
16 conditions of postprison intensive restriction, to search an
17 offender and to arrest an offender without warrant, writ,
18 rule or process, in the same manner as for a person on
19 parole, as authorized by the act of August 6, 1941 (P.L.861,
20 No.323), referred to as the Pennsylvania Board of Probation
21 and Parole Law, notwithstanding any other provision of this
22 title or other statute to the contrary.

23 (4) The Pennsylvania Board of Probation and Parole may
24 revoke a term of postprison intensive restriction if the
25 board finds that the offender violated a term or condition of
26 postprison intensive restriction imposed by the court or by
27 the board. The board may recommit the offender to serve a
28 term of total confinement, which may be followed by a term of
29 postprison intensive restriction, provided that the aggregate
30 of the terms shall not exceed the total period of postprison

1 intensive restriction originally imposed by the court,
2 without credit for the time previously served on postprison
3 intensive restriction.

4 (5) A court which sentenced an offender under the
5 provisions of subsection (a), acting sua sponte or upon
6 petition filed by the Pennsylvania Board of Probation and
7 Parole, the Department of Corrections, a district attorney or
8 the Attorney General, shall revoke the term of postprison
9 intensive restriction imposed by the court of an offender who
10 is charged with a crime punishable by a sentence of more than
11 one year, or a serious prison misconduct, committed by the
12 offender while serving a term of total confinement under the
13 provisions of subsection (a). Upon such charge, the offender
14 shall be automatically detained. The court shall order the
15 offender to serve an additional term of total confinement for
16 the offense for which the offender was sentenced under the
17 provisions of subsection (a), which may be followed by an
18 additional term of postprison intensive restriction, provided
19 that the aggregate of the additional terms shall not exceed
20 the total period of postprison intensive restriction
21 originally imposed by the court.

22 (a.2) Notification.--The Pennsylvania Board of Probation and
23 Parole shall notify a municipal police department if an offender
24 serving a sentence imposed under the provisions of subsection
25 (a) is a resident in the municipality during a period of
26 postprison intensive restriction or while on parole. The board
27 shall also notify the Pennsylvania State Police of the residence
28 of such offenders. The notice shall contain the name, residence
29 and criminal history of the offender, along with all conditions
30 of postprison intensive restriction or parole which have been

imposed by the sentencing court or the board. The board shall
notify the municipal police department, any other affected
municipal police department and the Pennsylvania State Police of
a change in residence by such an offender.

(d) Proof at sentencing.--Provisions of this section shall not be an element of the crime and notice thereof to the defendant shall not be required prior to conviction[, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing]. The applicability of this section shall be determined at sentencing. The sentencing court, prior to imposing sentence on an offender under subsection (a), shall have a complete record of the previous convictions of the offender, copies of which shall be furnished to the offender. If the offender or the attorney for the Commonwealth contests the accuracy of the record, the court shall schedule a hearing and direct the offender and the attorney for the Commonwealth to submit evidence regarding the previous convictions of the offender. The court shall then determine, by a preponderance of the evidence, the previous convictions of the offender and, if this section is applicable, shall impose sentence in accordance with this section. Should a previous conviction be vacated and an acquittal or final discharge entered subsequent to imposition of sentence under this section, the offender shall have the right to petition the sentencing court for reconsideration of sentence if this section would not have been applicable except for the conviction which was vacated.

(e) Authority of court in sentencing.--There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in

1 [subsections (a) and (a.1) or to place such offender on
2 probation or to suspend sentence] subsection (a), except upon
3 written motion by the Commonwealth and for good cause shown. If
4 a defendant is charged with any crime of violence for which a
5 conviction would result in the imposition of sentence under
6 subsection (a), such charge shall not be dismissed, nolle
7 prossed or modified by the court absent a written statement of
8 reasons therefor, which shall be filed by the Commonwealth not
9 later than ten days before sentencing and become a part of the
10 record. Nothing in this section shall prevent the sentencing
11 court from imposing a sentence greater than that provided in
12 this section when otherwise provided for by law. Sentencing
13 guidelines promulgated by the Pennsylvania Commission on
14 Sentencing shall not supersede the mandatory sentences provided
15 in this section.

16 (f) Appeal by Commonwealth.--If a sentencing court shall
17 fail or refuse to apply this section where applicable, the
18 Commonwealth shall have the right to appellate review of the
19 action of the sentencing court. The appellate court shall vacate
20 the sentence and remand the case to the sentencing court for the
21 imposition of a sentence in accordance with this section if it
22 finds that the sentence was imposed in violation of this
23 section.

24 (g) Definition.--As used in this section, the term "crime of
25 violence" means murder of the third degree, manslaughter of a
26 law enforcement officer in the first degree as defined in 18
27 Pa.C.S. § 2507(c) or (d) (relating to criminal homicide of law
28 enforcement officer), voluntary manslaughter, aggravated assault
29 as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to
30 aggravated assault), assault of law enforcement officer in the

1 first degree as defined in 18 Pa.C.S. § 2702.1(a) (relating to
2 assault of law enforcement officer), rape, involuntary deviate
3 sexual intercourse, aggravated indecent assault, incest, sexual
4 assault, arson as defined in 18 Pa.C.S. § 3301(a) (relating to
5 arson and related offenses), kidnapping, burglary of a structure
6 adapted for overnight accommodation in which at the time of the
7 offense any person is present, robbery as defined in 18 Pa.C.S.
8 § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), [or]
9 robbery of a motor vehicle, or persons not to possess, use,
10 manufacture, control, sell or transfer firearms as provided for
11 in 18 Pa.C.S. § 6105(a.1)(1) (relating to persons not to
12 possess, use, manufacture, control, sell or transfer firearms),
13 or criminal attempt, criminal conspiracy or criminal
14 solicitation to commit murder or any of the offenses listed
15 above, or an equivalent crime under the laws of this
16 Commonwealth in effect at the time of the commission of that
17 offense or an equivalent crime in another jurisdiction. A
18 conviction for a crime of violence shall also include an
19 adjudication of delinquency for an offense specified in this
20 subsection.

21 Section 4. This act shall take effect in 60 days.