

CRIMES CODE (18 PA.C.S.) AND JUDICIAL CODE (42 PA.C.S.) - AMEND
Act of Jun. 22, 2000, P.L. 345, No. 41
Session of 2000
No. 2000-41

Cl. 18

HB 28

AN ACT

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for drug trafficking sentencing and penalties, for sentence of partial confinement, for sentence of total confinement and for sentence of intermediate punishment; adding provisions relating to county intermediate punishment; and making a repeal.

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

Section 1. Section 7508(a) of Title 18 of the Pennsylvania Consolidated Statutes is amended by adding a paragraph to read:
§ 7508. Drug trafficking sentencing and penalties.

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

* * *

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

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

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

\$30,000 or such larger amount as is sufficient to exhaust the assets utilized in and the proceeds from the illegal activity; and

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

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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 immediately by a sentence imposed pursuant to section 9763 (relating to sentence of intermediate punishment) in which case the sentence of total confinement shall specify the number of days of total confinement also to be served; and

(2) the maximum sentence of total confinement imposed on one or more indictments to run consecutively or concurrently total 90 days or less.

* * *

Section 5. Sections 9763(a) and (d) and 9773(b) of Title 42 are amended to read:

§ 9763. Sentence of intermediate punishment.

(a) General rule.--In imposing a sentence of intermediate punishment, the court shall specify at the time of sentencing the length of the term for which the defendant is to be in an intermediate punishment program **established under Chapter 98 (relating to county intermediate punishment)** or a combination of intermediate punishment programs. The term may not exceed the maximum term for which the defendant could be confined and the program to which the defendant is sentenced. The court may order a defendant to serve a portion of the sentence under section 9755 (relating to sentence of partial confinement) or 9756 (relating to sentence of total confinement) and to serve a portion in an intermediate punishment program or a combination of intermediate punishment programs.

* * *

(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. **Notwithstanding any other provision of law requiring notice prior to sentencing, in the event of a violation of a condition under subsection (b), the attorney for the Commonwealth may file notice at any time prior to resentencing of the Commonwealth's intention to proceed under an applicable provision of law requiring a mandatory minimum sentence.**

§ 9773. Modification or revocation of intermediate punishment sentence.

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(b) Revocation.--The court may revoke a sentence of intermediate punishment upon proof of a violation of specific conditions of the sentence. Upon revocation **and subject to section 9763(d) (relating to sentence of intermediate punishment)**, 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.

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Section 6. Title 42 is amended by adding a chapter to read:

CHAPTER 98

COUNTY INTERMEDIATE PUNISHMENT

Sec.

- 9801. Short title of chapter.
- 9802. Definitions.
- 9803. Purpose.
- 9804. County intermediate punishment programs.
- 9805. Boards.
- 9806. County intermediate punishment plan.
- 9807. Commission.
- 9808. Funding and audits.

9809. Prohibitions.

9810. Continued eligibility.

9811. Nonapplication of certain provisions.

9812. Construction.

§ 9801. Short title of chapter.

This chapter shall be known and may be cited as the County Intermediate Punishment Act.

§ 9802. Definitions.

The following words and phrases when used in this chapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." A county prison board, in counties of the first and second class, the Criminal Justice Coordinating Commission or its successor agency.

"Commission." The Pennsylvania Commission on Crime and Delinquency.

"County intermediate punishment plan." A document which describes a proposed intermediate punishment program.

"County intermediate punishment program." A residential or nonresidential program provided in a community for eligible offenders.

"Court." The trial judge exercising sentencing jurisdiction over an eligible offender under this chapter. Trial judge may include a district justice if use of intermediate punishment programs by the minor judiciary is approved by the court of common pleas via administrative order or local rule.

"Eligible offender." Subject to section 9721(a.1) (relating to sentencing generally), a person convicted of an offense who would otherwise be sentenced to a county correctional facility, who does not demonstrate a present or past pattern of violent behavior and who would otherwise be sentenced to partial confinement pursuant to section 9724 (relating to partial confinement) or total confinement pursuant to section 9725 (relating to total confinement). The term does not include an offender convicted of any of the following offenses:

18 Pa.C.S. § 2502 (relating to murder).

18 Pa.C.S. § 2503 (relating to voluntary manslaughter).

18 Pa.C.S. § 2702 (relating to aggravated assault).

18 Pa.C.S. § 2703 (relating to assault by prisoner).

18 Pa.C.S. § 2704 (relating to assault by life prisoner).

18 Pa.C.S. § 2901 (relating to kidnapping).

18 Pa.C.S. § 3121 (relating to rape).

18 Pa.C.S. § 3122.1 (relating to statutory sexual assault).

18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).

18 Pa.C.S. § 3124.1 (relating to sexual assault).

18 Pa.C.S. § 3125 (relating to aggravated indecent assault).

18 Pa.C.S. § 3126 (relating to indecent assault).

18 Pa.C.S. § 3301 (relating to arson and related offenses).

18 Pa.C.S. § 3502 (relating to burglary) when graded as a felony of the first degree.

18 Pa.C.S. § 3701 (relating to robbery).

18 Pa.C.S. § 3923 (relating to theft by extortion).

18 Pa.C.S. § 4302 (relating to incest).

18 Pa.C.S. § 5121 (relating to escape).

"Nonprofit agency." A not-for-profit human service organization which provides treatment, guidance, counseling, training or rehabilitation services to individuals, families or groups.

§ 9803. Purpose.

County intermediate punishment programs shall be developed, implemented and operated for the following purposes:

(1) To protect society and promote efficiency and economy in the delivery of corrections services.

(2) To promote accountability of offenders to their local community.

(3) To fill gaps in local correctional systems and address local needs through expansion of punishment and services available to the court.

(4) To provide opportunities for offenders who demonstrate special needs to receive services which enhance their ability to become contributing members of the community.

§ 9804. County intermediate punishment programs.

(a) Description.--County intermediate punishment program options shall include the following:

(1) Restrictive intermediate punishments providing for the strict supervision of the offender, including programs that:

(i) house the offender full or part time;

(ii) significantly restrict the offender's movement and monitor the offender's compliance with the program; or

(iii) involve a combination of programs that meet the standards set forth under subparagraphs (i) and (ii).

(2) When utilized in combination with restrictive intermediate punishments, restorative sanctions providing for 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 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 program plan to be submitted to the commission.

(b) Joint judicial districts.--Where two counties comprise a joint judicial district, the counties may jointly submit a plan which shall require the concurrence of a majority of members from the boards of each county. The president judge of the judicial district shall chair the meetings of both boards for actions necessary pursuant to this chapter.

(c) Counties with no board.--If a county of the sixth, seventh or eighth class does not have a prison board, the county shall establish an intermediate punishment board for the purpose of complying with the requirements of this chapter. The intermediate punishment board shall consist of the president judge of the court of common pleas or his designee, the district attorney, the sheriff, the controller and the county commissioners.

(d) Powers and duties.--A board has the following powers and duties:

(1) To assess available countywide correctional services and future needs.

(2) To work with the county office of probation and parole in developing the county intermediate punishment plan.

(3) To adopt a county intermediate punishment plan, including program policies for administration.

(4) To make recommendations to the board of county commissioners, or chief executive officer in counties of the first class, on contracts with private providers or nonprofit agencies for the provision of intermediate punishment programs.

(5) To monitor the effectiveness of county correctional services and identify needed modifications.

(6) To make recommendations to the board of county commissioners, or chief executive officer in counties of the first class, regarding the purchase, lease or transfer of lands, buildings and equipment necessary to carry out the intermediate punishment plan.

(7) To designate the appropriate county office to maintain a case record for each individual admitted to a county intermediate punishment program within the county.

(8) To make an annual report on the program to the governing body of the county, the Pennsylvania Commission on Sentencing and the commission.

(9) To develop the county intermediate punishment plan under section 9806 (relating to county intermediate punishment plan).

(e) Advice to board.--

(1) When developing the county intermediate punishment plan, the board shall consult with county criminal justice and related human service providers as well as the public.

(2) At a minimum, the following shall be consulted for the purpose of developing the plan:

- (i) Court of common pleas.
- (ii) Board of county commissioners.
- (iii) Intermediate Punishment Office.
- (iv) Adult Probation and Parole Office.
- (v) County jail.
- (vi) District attorney.
- (vii) Public defender or defense bar.
- (viii) Single county authority.
- (ix) Mental Health/Mental Retardation Office.
- (x) Citizen input.
- (xi) Victim input.

(3) The board may elect one of the following methods to solicit plan input from providers and the public:

(i) Expand the membership of the board for purposes of developing the county intermediate punishment plan to include those listed in paragraph (2).

(ii) Appoint an intermediate punishment advisory committee to include those listed in paragraph (2) to undertake any duties assigned by the board.

(iii) Develop an alternate process approved by the Pennsylvania Commission on Crime and Delinquency and involving those listed in paragraph (2).

§ 9806. County intermediate punishment plan.

(a) Requirement.--The board may develop a plan for the implementation and operation of intermediate punishment programs in the county. The plan shall provide for all of the following:

(1) An assessment of available countywide correctional services and future needs.

(2) A review of current sentencing procedures and the impact these procedures have on county correctional resources.

(3) A review of current alternatives to pretrial detention and the potential these programs have for affecting the jail population.

(4) A description of the existing resources in the county which can be used as intermediate punishments or services to offenders sentenced to intermediate punishment.

(5) The formulation of policy statements targeted to the needs identified by the county and the impact these policies will have on the use of confinement and intermediate punishment.

(6) The development of goals and objectives which are aimed at effective utilization of existing and projected correctional resources.

(7) The development of an evaluation strategy which measures the qualitative and quantitative performances of all programs.

(b) Technical assistance.--The commission shall provide technical assistance to develop community corrections plans.

(c) Review and approval.--The plan shall be submitted to the commission for review and approval in the format designated by the commission. The commission shall complete its review within 90 days of submission. Failure to disapprove or recommend amendment within 90 days shall constitute approval.

(d) Formal submission.--The plan and any proposed changes thereto shall be submitted on an annual basis.

§ 9807. Commission.

(a) Powers and duties.--The commission shall have the following powers and duties:

(1) Subject to the provisions of subsection (b), to adopt rules and regulations pursuant to this act regarding:

(i) The submission, review and approval of county intermediate punishment plans.

(ii) Standards for the development, operation and evaluation of programs and services. In promulgating regulations under this subparagraph, the commission shall consider comments submitted by the counties.

(iii) The administration and disbursement of funds under this chapter.

(2) To provide training and technical assistance to boards and program staff.

(3) To ensure that all programs are in compliance with applicable Federal, State and local law.

(4) To monitor county intermediate punishment programs to determine their impact on offenders.

(5) To remit funds as provided for under section 9808 (relating to funding and audits).

(b) Interim regulations.--Pending adoption and publication of final rules and regulations, the commission shall have the power and authority to suspend existing regulations and to promulgate, adopt, publish and use interim regulations for the implementation of this chapter for a period of one year immediately following the effective date of this chapter or until the effective date of final rules and regulations, whichever first occurs. Notwithstanding any other provision of law to the contrary, the interim regulations proposed under the authority of this section shall be subject to review by the Office of General Counsel and the Attorney General in the manner provided for the review of proposed rules and regulations pursuant to the act of October 15, 1980 (P.L.950, No.164), known as the Commonwealth Attorneys Act, and shall not be subject to review pursuant to the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act.

§ 9808. Funding and audits.

(a) Eligibility.--Subject to the availability of funding, counties with approved plans shall be eligible for direct funding determined by the commission to support the cost of intermediate punishment programs. This chapter shall not be construed to prohibit the use of Federal funds.

(b) Audit.--Annual reports and all financial records shall be subject to annual audit by the Auditor General.

§ 9809. Prohibitions.

(a) General rule.--Recipients may not use funds granted under this chapter to supplant existing funds from the State or

local government for existing correctional programs or for the construction, renovation or operation of a State, county or municipal incarceration facility.

(b) Administrative costs.--Administrative costs connected with the expenditure of county intermediate punishment funds under this chapter may not exceed a percentage amount established by the commission.

§ 9810. Continued eligibility.

(a) Evaluation.--In order to remain eligible for continued grant funding, a county shall comply with commission standards and regulations and participate in an evaluation to determine program effectiveness. The form of the evaluation shall be determined by the commission.

(b) Suspension of funding.--

(1) If the commission determines that there are reasonable grounds to believe that a county is not complying with its plan or minimum standards, the commission shall give 30 days' written notice to the board.

(2) If the commission finds noncompliance, it shall require the board to provide a written agreement as to how and when the specific deficiencies identified will be corrected.

(3) If no agreement is submitted to the commission within the time limit or if the deficiencies are not corrected within 45 days after an agreement has been approved by the commission, the commission may suspend part or all of the funding until compliance is achieved.

§ 9811. Nonapplication of certain provisions.

The provisions of the act of July 12, 1972 (P.L.762, No.180), referred to as the Intergovernmental Cooperation Law, shall not apply to counties which jointly submit a plan under the provisions of this chapter.

§ 9812. Construction.

Nothing in this chapter shall be construed as creating an enforceable right in any person to participate in an intermediate punishment program in lieu of incarceration. Nothing in this chapter shall be construed as requiring any county to appropriate funds for the implementation of an intermediate punishment program except as may be necessary to qualify for funds under this chapter.

Section 7. The act of December 19, 1990 (P.L.799, No.193), known as the County Intermediate Punishment Act, is repealed.

Section 8. This act shall take effect in 60 days.

APPROVED--The 22nd day of June, A. D. 2000.

THOMAS J. RIDGE