

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, MRS. GILLETTE, MESSRS. SCHMITT, SWEET, YAHNER, VROON, RICHARDSON, FREIND, GARZIA, MRS. HARPER, MESSRS. DeMEDIO, KNEPPER DONATUCCI, MISS SIRIANNI, MESSRS. HASKELL, DUFFY AND WAGNER, APRIL 25, 1977

AS REPORTED FROM COMMITTEE ON JUDICIARY, HOUSE OF REPRESENTATIVES, AS AMENDED, OCTOBER 4, 1977

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 and appellate review of sentence.

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

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

11 § 1321. Sentencing generally.

12 * * *

13 (b) General standards.--In selecting from the alternatives
14 set forth in subsection (a) [of this section] the court shall
15 follow the general principle that the sentence imposed should
16 call for the minimum amount of confinement that is consistent

1 with the protection of the public, the gravity of the offense,
2 and the rehabilitative needs of the defendant. The court shall
3 also consider any guidelines for sentencing promulgated by the
4 Pennsylvania Commission on Sentencing, established by section
5 1391 (relating to commission established). In every case in
6 which the court imposes a sentence FOR A FELONY OR MISDEMEANOR, <—
7 the court shall make as a part of the record, and disclose in
8 open court at the time of sentencing, a statement of the reason
9 or reasons for the sentence imposed. Failure to comply shall be
10 grounds for vacating the sentence and resentencing the
11 defendant.

12 * * *

13 Section 2. Subchapter G of Chapter 13 is repealed.

14 Section 3. Chapter 13 is amended by adding a subchapter to
15 read:

16 SUBCHAPTER G

17 ~~APPELLATE~~ REVIEW OF SENTENCE <—

18 § 1381. ~~Appellate review~~ REVIEW of sentence. <—

19 (a) ~~Petition~~ LEAVE TO PETITION for review.--The defendant or <—
20 the Commonwealth may file a petition for review of sentence FOR <—
21 A FELONY OR MISDEMEANOR to the Superior Court, except in the
22 case of a sentence upon conviction for felonious homicide, in
23 which event the petition for review shall lie to the Supreme
24 Court.

25 (b) ~~Appellate determination~~ DETERMINATION ON REVIEW.--The <—
26 appellate court shall vacate the sentence, and remand the case
27 to the sentencing court with instructions if it finds:

28 (1) the sentencing court purported to sentence within
29 the sentencing guidelines but applied such guidelines
30 erroneously; OR <—

1 (2) the sentencing court sentenced within the sentencing
2 guidelines but the case involves circumstances where the
3 application of such guidelines would be clearly unreasonable;
4 or

5 (3) the sentencing court sentenced outside the
6 sentencing guidelines and such sentence is unreasonable.

7 In all other cases the appellate court shall affirm the sentence
8 imposed by the sentencing court.

9 (c) Review of record.--In reviewing the record the appellate
10 court shall have regard for:

11 (1) The nature and circumstances of the offense and the
12 history and characteristics of the defendant.

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

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

16 (4) The guidelines promulgated by the commission.

17 (d) Final sentence.--No sentence imposed by a sentencing
18 court shall be ~~considered final~~ FINAL NOR SHALL THE DEFENDANT
19 BEGIN SERVING THE SENTENCE unless:

20 (1) the period for filing a LEAVE TO petition for review
21 has expired; or

22 (2) THE APPELLATE COURT HAS DENIED LEAVE TO PETITION FOR
23 REVIEW OF THE SENTENCE; OR

24 ~~(2)~~ (3) the sentence has been affirmed by the appellate
25 court.

26 (e) Limitation on ~~appeal~~ REVIEW.--No ~~appeal~~ REVIEW of the
27 sentence imposed shall be permitted beyond the Superior Court,
28 except in the case of felonious homicide where the ~~petition for~~
29 review shall lie to the Supreme Court.

30 (f) The Supreme Court shall by rule prescribe procedures to

1 implement the provisions of this chapter.

2 Section 4. Chapter 13 is amended by adding a subchapter to
3 read:

4 SUBCHAPTER H

5 PENNSYLVANIA COMMISSION ON SENTENCING

6 § 1391. Commission established.

7 The Pennsylvania Commission on Sentencing is hereby created.

8 It shall consist of ~~15~~ 13 members, ~~four~~ TWO to be appointed by <—
9 the Speaker of the House of Representatives, ~~four~~ TWO to be <—
10 appointed by the President pro tempore of the Senate and ~~seven~~ <—
11 SIX to be appointed by the Chief Justice of the Supreme Court of <—
12 Pennsylvania. The appointments made by the Speaker of the House
13 of Representatives shall be members of the House of
14 Representatives no more than ~~two~~ ONE of which shall be of the <—
15 same political party. The appointments made by the President pro
16 tempore shall be members of the Senate no more than ~~two~~ ONE of <—
17 which shall be of the same political party, and the appointments
18 by the Chief Justice shall be a justice or judge of a court of
19 record. THREE MEMBERS SHALL BE APPOINTED BY THE GOVERNOR, ONE <—
20 SHALL BE A DISTRICT ATTORNEY, ONE SHALL BE A DEFENSE ATTORNEY OR
21 PUBLIC DEFENDER AND ONE SHALL BE EITHER A PROFESSOR OF LAW OR A
22 CRIMINOLOGIST. The terms of the members of the commission shall
23 be two years except that of those members first appointed by the
24 Speaker and the President pro tempore, half shall be appointed
25 for two years and half for one year. In the case of the members
26 appointed by the Chief Justice of the Supreme Court, ~~four~~ THREE <—
27 shall be appointed for two years and three shall be appointed
28 for one year. IN THE CASE OF THE MEMBERS APPOINTED BY THE <—
29 GOVERNOR, TWO SHALL BE APPOINTED FOR TWO YEARS AND ONE SHALL BE
30 APPOINTED FOR ONE YEAR.

1 § 1392. Powers and duties of the commission.

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

3 The commission, by majority vote, shall:

4 (1) Select a chairman from its membership.

5 (2) Select an executive director WHO SHALL APPOINT AND <—
6 FIX THE PAY OF PERSONNEL OF THE COMMISSION.

7 ~~(3) Promulgate guidelines for sentencing which shall be <—~~
8 ~~considered by the sentencing court in determining the~~
9 ~~appropriate sentence for a defendant. Such guidelines shall:~~

10 ~~(i) Prescribe presumptive sentences for crimes, in~~
11 ~~accordance with their gravity.~~

12 ~~(ii) Prescribe variations from the presumptive~~
13 ~~sentence that shall be permitted on account of~~
14 ~~aggravating or mitigating circumstances.~~

15 ~~(iii) Specify the sentence, or range of sentences,~~
16 ~~that shall normally be applicable to the crimes of a~~
17 ~~given degree of gravity.~~

18 (3) PROMULGATE GUIDELINES FOR SENTENCING WHICH SHALL BE <—
19 CONSIDERED BY THE SENTENCING COURT IN DETERMINING THE
20 APPROPRIATE SENTENCE FOR FELONIES AND MISDEMEANORS COMMITTED
21 BY A DEFENDANT. SUCH GUIDELINES SHALL:

22 (I) SPECIFY THE RANGE OF SENTENCES THAT SHALL BE
23 APPLICABLE TO CRIMES OF A GIVEN DEGREE OF GRAVITY.

24 (II) SPECIFY A RANGE OF ENHANCED SENTENCES FOR
25 DEFENDANTS PREVIOUSLY CONVICTED OF A FELONY OR FELONIES
26 OR CONVICTED OF A CRIME INVOLVING THE USE OF A DEADLY
27 WEAPON.

28 (III) PRESCRIBE VARIATIONS FROM THE RANGE OF
29 SENTENCES THAT SHALL BE PERMITTED ON ACCOUNT OF
30 AGGRAVATING OR MITIGATING CIRCUMSTANCES.

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

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

(i) Pennsylvania District Attorneys Association.

(ii) Chiefs of Police Associations.

(iii) Fraternal Order of Police.

(iv) Public Defenders Organization.

(v) Representatives of Law Schools.

(vi) State Board of Probation and Parole.

(vii) Bureau of Correction.

(viii) Pennsylvania Bar Association.

(IX) PENNSYLVANIA WARDENS ASSOCIATION.

(X) PENNSYLVANIA ASSOCIATION ON PROBATION, PAROLE
AND CORRECTIONS.

(xi) Any other interested persons or organizations.

(2) Publish in the Pennsylvania Bulletin all ~~finally~~ ~~adopted~~ ~~sentencing~~ guidelines ADOPTED BY THE COMMISSION. The initial sentencing guidelines shall be promulgated within ~~one~~ ~~year~~ 18 MONTHS of the effective date of this subchapter.

(3) INITIAL AND ANY SUBSEQUENT GUIDELINES ADOPTED BY THE COMMISSION SHALL BECOME EFFECTIVE 90 DAYS AFTER PUBLICATION IN THE PENNSYLVANIA BULLETIN, UNLESS REJECTED IN THEIR ENTIRELY BY THE GENERAL ASSEMBLY BY A CONCURRENT RESOLUTION.

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

(1) Establish general policies and promulgate such rules and regulations for the commission as are necessary to carry

1 out the purposes of this subchapter.

2 (2) Utilize, with their consent, the services,
3 equipment, personnel, information, and facilities of Federal,
4 State, local, and private agencies and instrumentalities with
5 or without reimbursement therefor.

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

12 (4) Request such information, data and reports from any
13 Commonwealth agency or judicial officer as the commission may
14 from time to time require and as may be produced consistent
15 with other law.

16 (5) Arrange with the head of any other Commonwealth
17 agency for the performance by such agency of any function of
18 the commission, with or without reimbursement.

19 (6) Issue ~~subpoenas requiring~~ INVITATIONS REQUESTING the <—
20 attendance and testimony of witnesses and the production of
21 any evidence that relates directly to a matter with respect
22 to which the commission or any commissioner or agent of the
23 commission is empowered to make a determination under this
24 subchapter. The attendance of such witnesses and the
25 production of evidence may be required from any place within
26 this Commonwealth at any designated place of hearings within
27 this Commonwealth.

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

30 (i) Serving as a clearinghouse and information

center for the collection, preparation and dissemination of information on Commonwealth sentencing practices.

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

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

(9) Publish data concerning the sentencing processes.

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

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

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

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

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

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

5 (F) OPEN MEETINGS; QUORUM; MINUTES. <—

6 (I) THE COMMISSION SHALL BE DEEMED AN "AGENCY"
7 WITHIN THE MEANING OF THE ACT OF JULY 19, 1974 (P.L.486,
8 NO.175), REFERRED TO AS THE PUBLIC AGENCY OPEN MEETING
9 LAW.

10 (II) SEVEN COMMISSIONERS SHALL CONSTITUTE A QUORUM.

11 (III) MINUTES OF MEETINGS SHALL BE KEPT BY THE
12 EXECUTIVE DIRECTOR AND FILED AT THE EXECUTIVE OFFICE OF
13 THE COMMISSION.

14 § 1393. Commonwealth agency cooperation.

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

20 § 1394. Powers and duties of chairman.

21 The chairman shall:

22 (1) Preside at meetings of the commission.

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

26 ~~(3) Appoint and fix the basic pay of personnel of the~~ <—
27 ~~commission.~~

28 § 1395. POWERS OF THE GENERAL ASSEMBLY. <—

29 THE GENERAL ASSEMBLY MAY BY CONCURRENT RESOLUTION, REJECT IN
30 THEIR ENTIRETY ANY INITIAL OR SUBSEQUENT GUIDELINES ADOPTED BY

1 THE COMMISSION WITHIN 90 DAYS OF THEIR PUBLICATION.

2 § ~~1395~~. 1396. Annual report. <—

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

6 SECTION 5. THE SUM OF \$200,000, OR AS MUCH THEREOF AS MAY BE <—
7 NECESSARY, IS HEREBY APPROPRIATED TO THE PENNSYLVANIA COMMISSION
8 ON SENTENCING TO CARRY OUT THE PURPOSES OF THIS ACT.

9 Section 5. ~~Sections 1, 2 and 3~~ 6. THIS ACT shall take <—
10 effect immediately but SECTIONS 1, 2 AND 3 shall not be <—
11 applicable until final adoption of the initial sentencing
12 guidelines; ~~section 4 shall take effect in 30 days~~. UNTIL 90 <—
13 DAYS AFTER PUBLICATION OF THE INITIAL GUIDELINES ADOPTED BY THE
14 COMMISSION UNLESS REJECTED BY THE GENERAL ASSEMBLY.