

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, MELUSKEY AND WAGNER, APRIL 25, 1977

AS AMENDED ON THIRD CONSIDERATION, HOUSE OF REPRESENTATIVES, MAY 23, 1978

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 AND CHANGING PROVISIONS RELATING TO COMMISSION MEMBERSHIP. <—

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

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

12 § 1321. Sentencing generally.

13 \* \* \*

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

1 with the protection of the public, the gravity of the offense,  
2 AS IT RELATES TO THE IMPACT ON THE LIFE OF THE VICTIM AND ON THE <—  
3 COMMUNITY and the rehabilitative needs of the defendant. The  
4 court shall also consider any guidelines for sentencing  
5 promulgated by the Pennsylvania Commission on Sentencing,  
6 established by section 1391 (relating to commission  
7 established). In every case in which the court imposes a  
8 sentence for a felony or misdemeanor, the court shall make as a  
9 part of the record, and disclose in open court at the time of  
10 sentencing, a statement of the reason or reasons for the  
11 sentence imposed. Failure to comply shall be grounds for  
12 vacating the sentence and resentencing the defendant.

13 \* \* \*

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 Subchapter G of Chapter 13 is repealed.

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

17 SUBCHAPTER G

18 REVIEW APPELLATE OF SENTENCE <—

19 § 1381. Review APPELLATE REVIEW of sentence. <—

20 ~~(a) Leave to petition for review. The defendant or the~~ <—  
21 ~~Commonwealth may file a petition for review of sentence for a~~  
22 ~~felony or misdemeanor to the Superior Court, except in the case~~  
23 ~~of a sentence upon conviction for felonious homicide, in which~~  
24 ~~event the petition for review shall lie to the Supreme Court.~~

25 (A) ALLOWANCE OF APPEAL.--THE DEFENDANT OR THE COMMONWEALTH <—  
26 MAY FILE A PETITION FOR ALLOWANCE OF APPEAL OF THE DISCRETIONARY  
27 ASPECTS OF A SENTENCE FOR A FELONY OR A MISDEMEANOR TO THE  
28 APPELLATE COURT THAT HAS INITIAL JURISDICTION FOR SUCH APPEALS.  
29 ALLOWANCE OF APPEAL MAY BE GRANTED AT THE DISCRETION OF THE  
30 APPELLATE COURT WHERE IT APPEARS THAT THERE IS A SUBSTANTIAL

1 QUESTION THAT THE SENTENCE IMPOSED IS NOT APPROPRIATE UNDER THIS  
2 ACT.

3 (B) RIGHT TO APPEAL.--THE DEFENDANT OR THE COMMONWEALTH MAY  
4 APPEAL AS OF RIGHT THE LEGALITY OF THE SENTENCE.

5 ~~(b)~~ (C) Determination on ~~review~~ APPEAL.--The appellate court ←  
6 shall vacate the sentence, and remand the case to the sentencing  
7 court with instructions if it finds:

8 (1) the sentencing court purported to sentence within  
9 the sentencing guidelines but applied such guidelines  
10 erroneously; or

11 (2) the sentencing court sentenced within the sentencing  
12 guidelines but the case involves circumstances where the  
13 application of such guidelines would be clearly unreasonable;  
14 or

15 (3) the sentencing court sentenced outside the  
16 sentencing guidelines and such sentence is unreasonable.

17 In all other cases the appellate court shall affirm the sentence  
18 imposed by the sentencing court.

19 ~~(c)~~ (D) Review of record.--In reviewing the record the ←  
20 appellate court shall have regard for:

21 (1) The nature and circumstances of the offense and the  
22 history and characteristics of the defendant.

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

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

26 (4) The guidelines promulgated by the commission.

27 ~~(d) Final sentence. No sentence imposed by a sentencing ←  
28 court shall be final nor shall the defendant begin serving the  
29 sentence unless:~~

30 ~~(1) the period for filing leave to petition for review~~

1 ~~has expired; or~~

2 ~~(2) the appellate court has denied leave to petition for~~  
3 ~~review of the sentence; or~~

4 ~~(3) the sentence has been affirmed by the appellate~~  
5 ~~court.~~

6 ~~(c) Limitation on review. No review of the sentence imposed~~  
7 ~~shall be permitted beyond the Superior Court, except in the case~~  
8 ~~of felonious homicide where the review shall lie to the Supreme~~  
9 ~~Court.~~

10 (E) BAIL.--NOTHING HEREIN SHALL BE CONSTRUED TO ENLARGE THE <—  
11 DEFENDANT'S RIGHT TO BAIL PENDING APPEAL.

12 (F) LIMITATION ON APPEAL.--NO APPEAL OF THE DISCRETIONARY  
13 ASPECTS OF THE SENTENCE SHALL BE PERMITTED BEYOND THE APPELLATE  
14 COURT THAT HAS INITIAL JURISDICTION FOR SUCH APPEALS.

15 ~~(f)~~ (G) The Supreme Court shall by rule prescribe procedures <—  
16 to implement the provisions of this chapter.

17 Section 4. Chapter 13 is amended by adding a subchapter to  
18 read:

19 SUBCHAPTER H

20 PENNSYLVANIA COMMISSION ON SENTENCING

21 § 1391. Commission established.

22 The Pennsylvania Commission on Sentencing is hereby created.

23 It shall consist of ~~13~~ 11 members, two to be appointed by the <—

24 Speaker of the House of Representatives, two to be appointed by

25 the President pro tempore of the Senate and ~~six~~ FOUR to be <—

26 appointed by the Chief Justice ~~of the Supreme Court~~ of <—

27 Pennsylvania. The appointments made by the Speaker of the House

28 of Representatives shall be members of the House of

29 Representatives no more than one of which shall be of the same

30 political party. The appointments made by the President pro

1 tempore shall be members of the Senate no more than one of which  
2 shall be of the same political party, and the appointments by  
3 the Chief Justice shall be a justice or judge of a court of  
4 record. Three members shall be appointed by the Governor, one  
5 shall be a district attorney, one shall be a defense attorney or ←  
6 ~~public defender~~ and one shall be either a professor of law or a  
7 criminologist. The terms of the members of the commission shall  
8 be two years except that of those members first appointed by the  
9 Speaker and the President pro tempore, half shall be appointed  
10 for two years and half for one year. In the case of the members  
11 appointed by the Chief Justice, ~~of the Supreme Court, three~~ TWO ←  
12 shall be appointed for two years and ~~three~~ TWO shall be ←  
13 appointed for one year. In the case of the members appointed by  
14 the Governor, two shall be appointed for two years and one shall  
15 be appointed for one year.

16 § 1392. Powers and duties of the commission.

17 (a) Organization of commission; guidelines for sentencing.--  
18 The commission, by majority vote, shall:

19 (1) Select a chairman from its membership.

20 (2) Select an executive director. ~~who shall appoint and ←~~  
21 ~~fix the pay of personnel of the commission.~~

22 (3) Promulgate guidelines for sentencing WITHIN THE ←  
23 LIMITS ESTABLISHED BY LAW which shall be considered by the  
24 sentencing court in determining the appropriate sentence for  
25 felonies and misdemeanors committed by a defendant. Such  
26 guidelines shall:

27 (i) Specify the range of sentences ~~that shall be ←~~  
28 applicable to crimes of a given degree of gravity.

29 (ii) Specify a range of enhanced sentences for  
30 defendants previously convicted of a felony or felonies

1 or convicted of a crime involving the use of a deadly  
2 weapon.

3 (iii) Prescribe variations from the range of  
4 sentences ~~that shall be permitted~~ APPLICABLE on account ←  
5 of aggravating or mitigating circumstances.

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

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

12 (i) Pennsylvania District Attorneys Association.

13 (ii) Chiefs of Police Associations.

14 (iii) Fraternal Order of Police.

15 (iv) Public Defenders Organization.

16 (v) ~~Representatives of Law Schools.~~ LAW SCHOOL ←

17 FACULTY MEMBERS.

18 (vi) State Board of Probation and Parole.

19 (vii) Bureau of Correction.

20 (viii) Pennsylvania Bar Association.

21 (ix) Pennsylvania Wardens Association.

22 (x) Pennsylvania Association on Probation, Parole  
23 and Corrections.

24 (xi) Any other interested persons or organizations.

25 (2) Publish in the Pennsylvania Bulletin all sentencing  
26 guidelines adopted by the commission. The initial sentencing  
27 guidelines shall be promulgated within 18 months of the  
28 effective date of this subchapter.

29 (3) Initial and any subsequent guidelines adopted by the  
30 commission shall become effective 90 days after publication

1 in the Pennsylvania Bulletin, unless rejected in their  
2 ~~entirely~~ ENTIRETY by the General Assembly by a concurrent ←  
3 resolution.

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

6 (1) Establish general policies and promulgate such rules  
7 and regulations for the commission as are necessary to carry  
8 out the purposes of this subchapter.

9 (2) Utilize, with their consent, the services,  
10 equipment, personnel, information, and facilities of Federal,  
11 State, local, and private agencies and instrumentalities with  
12 or without reimbursement therefor.

13 (3) Enter into and perform such contracts, leases,  
14 cooperative agreements, and other transactions as may be  
15 necessary in the conduct of the functions of the commission,  
16 with any public agency, or with any person, firm,  
17 association, corporation, educational institution or  
18 nonprofit organization.

19 (4) Request such information, data and reports from any  
20 Commonwealth agency or judicial officer as the commission may  
21 from time to time require and as may be produced consistent  
22 with other law.

23 (5) Arrange with the head of any other Commonwealth  
24 agency for the performance by such agency of any function of  
25 the commission, with or without reimbursement.

26 (6) Issue invitations requesting the attendance and  
27 testimony of witnesses and the production of any evidence  
28 that relates directly to a matter with respect to which the  
29 commission or any commissioner ~~or agent~~ of the commission is ←  
30 empowered to make a determination under this subchapter. The ←

1 ~~attendance of such witnesses and the production of evidence~~  
2 ~~may be required from any place within this Commonwealth at~~  
3 ~~any designated place of hearings within this Commonwealth.~~

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

6 (i) Serving as a clearinghouse and information  
7 center for the collection, preparation and dissemination  
8 of information on Commonwealth sentencing practices.

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

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

16 (9) Publish data concerning the sentencing processes.

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

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

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

26 (13) The commission shall have such other powers and  
27 duties and shall perform such other functions as may be  
28 necessary to carry out the purposes of this subchapter or as  
29 may be provided under any other provisions of law and may  
30 delegate to any commissioner or designated person such powers

1 as may be appropriate other than the power to establish  
2 general policies, guidelines, rules and factors under  
3 subsection (b)(1).

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

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

11 (f) Open meetings, quorum and minutes.

12 (i) The commission shall be deemed an "agency"  
13 within the meaning of the act of July 19, 1974 (P.L.486,  
14 No.175), referred to as the Public Agency Open Meeting  
15 Law.

16 (ii) ~~Seven~~ NINE commissioners shall constitute a ←  
17 quorum.

18 (iii) Minutes of meetings shall be kept by the  
19 executive director and filed at the executive office of  
20 the commission.

21 (g) Expenses.--Each commissioner shall be entitled to  
22 reimbursement for his accountable expenses incurred while  
23 engaged in the commission's business.

24 § 1393. Commonwealth agency cooperation.

25 Upon the request of the commission, each Commonwealth agency  
26 is authorized and directed to make its services, equipment,  
27 personnel, facilities and information available to the greatest  
28 practicable extent to the commission in the execution of its  
29 functions.

30 § 1394. Powers and duties of chairman.

1 The chairman shall:

2 (1) Preside at meetings of the commission.

3 (2) Direct the preparation of requests for  
4 appropriations for the commission, and the use of funds made  
5 available to the commission.

6 § 1395. Powers of the General Assembly.

7 The General Assembly may by concurrent resolution reject in  
8 their entirety any initial or subsequent guidelines adopted by  
9 the commission within 90 days of their publication.

10 § 1396. Annual report.

11 The commission shall report annually to the General Assembly,  
12 the Administrative Office of Pennsylvania Courts and the  
13 Governor on the activities of the commission.

14 Section 5. The sum of ~~\$200,000~~ \$100,000, or as much thereof <—  
15 as may be necessary, is hereby appropriated to the Pennsylvania  
16 Commission on Sentencing to carry out the purposes of this act.

17 SECTION 6. THE PROVISIONS OF SECTION 1381 ARE NOT SEVERABLE <—  
18 AND IF ANY PROVISION THEREOF OR THE APPLICATION THEREOF TO ANY  
19 PERSON OR CIRCUMSTANCE IS HELD INVALID, THE REMAINDER OF THE  
20 SECTION SHALL BE INVALID.

21 Section ~~6~~ 7. This act shall take effect ~~July 1, 1978~~ JANUARY <—  
22 1, 1979 but sections 1, 2 and 3 shall not be applicable until  
23 final adoption of the initial sentencing guidelines AND until 90 <—  
24 days after publication of the initial guidelines adopted by the  
25 commission unless rejected by the General Assembly.