
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 195 Session of
1977

Report of the Committee of Conference

To the Members of the Senate and House of Representatives:

We, the undersigned, Committee of Conference on the part of the Senate and House of Representatives for the purpose of considering Senate Bill No. 195, entitled:
"An act amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, FURTHER PROVIDING FOR SENTENCING AND providing for alteration of identification marks on ~~movable~~ personal property."

respectfully submit the following bill as our report:

MICHAEL A. O'PAKE

VINCENT J. FUMO

ROBERT C. JUBELIRER

(Committee on the part of the Senate.)

NORMAN S. BERSON

JOSEPH RHODES, JR.

ANTHONY J. SCIRICA

(Committee on the part of the House of Representatives.)

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, further providing for sentencing and
3 providing for alteration of identification marks on personal
4 property.

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

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

10 § 1321. Sentencing generally.

11 * * *

12 (b) General standards.--In selecting from the alternatives
13 set forth in subsection (a) [of this section] the court shall
14 follow the general principle that the sentence imposed should
15 call for [the minimum amount of] confinement that is consistent
16 with the protection of the public, the gravity of the offense as
17 it relates to the impact on the life of the victim and on the
18 community, and the rehabilitative needs of the defendant. The
19 court shall also consider any guidelines for sentencing adopted
20 by the Pennsylvania Commission on Sentencing and taking effect
21 pursuant to section 1385 (relating to publication of guidelines
22 for sentencing). In every case in which the court imposes a
23 sentence for a felony or misdemeanor, the court shall make as a
24 part of the record, and disclose in open court at the time of
25 sentencing, a statement of the reason or reasons for the
26 sentence imposed. In every case where the court imposes a
27 sentence outside the sentencing guidelines adopted by the
28 Pennsylvania Commission on Sentencing pursuant to section 1384
29 (relating to adoption of guidelines for sentencing) and made
30 effective pursuant to section 1385, the court shall provide a

1 contemporaneous written statement of the reason or reasons for
2 the deviation from the guidelines. Failure to comply shall be
3 grounds for vacating the sentence and resentencing the
4 defendant.

5 * * *

6 Section 2. Subchapter G of Chapter 13 of Title 18 is
7 repealed.

8 Section 3. Chapter 13 of Title 18 is amended by adding a
9 subchapter to read:

10 SUBCHAPTER G

11 PENNSYLVANIA COMMISSION ON SENTENCING

12 Sec.

13 1381. Composition and organization of commission.

14 1382. Powers and duties of commission.

15 1383. Commonwealth agency cooperation.

16 1384. Adoption of guidelines for sentencing.

17 1385. Publication of guidelines for sentencing.

18 1386. Appellate review of sentence.

19 § 1381. Composition and organization of commission.

20 (a) Composition.--The Pennsylvania Commission on Sentencing
21 is hereby created. It shall consist of 11 members, two to be
22 appointed by the Speaker of the House of Representatives, two to
23 be appointed by the President pro tempore of the Senate, four to
24 be appointed by the Chief Justice of the Supreme Court and three
25 to be appointed by the Governor. The appointments made by the
26 Speaker of the House of Representatives shall be members of the
27 House of Representatives no more than one of which shall be of
28 the same political party. The appointments made by the President
29 pro tempore shall be members of the Senate no more than one of
30 which shall be of the same political party. The appointments by

1 the Chief Justice shall be a justice or judge of a court of
2 record. The appointments made by the Governor shall be a
3 district attorney, a defense attorney and either a professor of
4 law or a criminologist. The terms of the members of the
5 commission shall be two years except that of those members first
6 appointed by the Speaker and the President pro tempore, half
7 shall be appointed for two years and half for one year. In the
8 case of the members appointed by the Chief Justice, two shall be
9 appointed for two years and two shall be appointed for one year.
10 In the case of the members appointed by the Governor, two shall
11 be appointed for two years and one shall be appointed for one
12 year.

13 (b) Chairman and executive director.--The commission, by
14 majority vote, shall select a chairman from its membership and
15 select an executive director. The chairman shall:

16 (1) Preside at meetings of the commission.

17 (2) Direct the preparation of requests for
18 appropriations for the commission and the use of funds made
19 available to the commission.

20 (c) Meetings and quorum.--

21 (1) The commission shall meet not less frequently than
22 quarterly to establish its general policies and rules.

23 (2) The commission shall be deemed an "agency" within
24 the meaning of the act of July 19, 1974 (P.L.486, No.175),
25 referred to as the Public Agency Open Meeting Law.

26 (3) Nine commissioners shall constitute a quorum.

27 (4) Minutes of meetings shall be kept by the executive
28 director and filed at the executive office of the commission.

29 (d) Records of action.--Except as otherwise provided by law,
30 the commission shall maintain and make available for public

1 inspection a record of the final vote of each member on any
2 action taken by it.

3 (e) Expenses.--Each commissioner shall be entitled to
4 reimbursement for his accountable expenses incurred while
5 engaged in the commission's business.

6 § 1382. Powers and duties of commission.

7 (a) General rule.--The commission, by majority vote and
8 pursuant to rules and regulations, shall have the power to:

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

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

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

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

26 (5) Arrange with the head of any other Commonwealth
27 agency for the performance by that agency of any function of
28 the commission, with or without reimbursement.

29 (6) Issue invitations requesting the attendance and
30 testimony of witnesses and the production of any evidence

1 that relates directly to a matter with respect to which the
2 commission or any commissioner of the commission is empowered
3 to make a determination under this subchapter.

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 (b) Annual reports.--The commission shall report annually to
27 the General Assembly, the Administrative Office of Pennsylvania
28 Courts and the Governor on the activities of the commission.

29 (c) Additional powers and duties.--The commission shall have
30 such other powers and duties and shall perform such other

1 functions as may be necessary to carry out the purposes of this
2 subchapter or as may be provided under any other provisions of
3 law and may delegate to any commissioner or designated person
4 such powers as may be appropriate other than the power to
5 establish general policies, guidelines, rules and factors under
6 subsection (a)(1).

7 § 1383. Commonwealth agency cooperation.

8 Upon the request of the commission, each Commonwealth agency
9 is authorized and directed to make its services, equipment,
10 personnel, facilities and information available to the greatest
11 practical extent to the commission in the execution of its
12 functions.

13 § 1384. Adoption of guidelines for sentencing.

14 The commission by majority vote 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 felonies and misdemeanors committed by
18 a defendant. The guidelines shall:

19 (1) Specify the range of sentences applicable to crimes
20 of a given degree of gravity.

21 (2) Specify a range of sentences of increased severity
22 for defendants previously convicted of a felony or felonies
23 or convicted of a crime involving the use of a deadly weapon.

24 (3) Prescribe variations from the range of sentences
25 applicable on account of aggravating or mitigating
26 circumstances.

27 § 1385. Publication of guidelines for sentencing.

28 (a) General rule.--The commission shall:

29 (1) Prior to adoption, publish in the Pennsylvania
30 Bulletin all proposed initial and subsequent sentencing

1 guidelines and hold public hearings not earlier than 30 days
2 and not later than 60 days thereafter to afford an
3 opportunity for the following persons and organizations to
4 testify:

5 (i) Pennsylvania District Attorneys Association.

6 (ii) Chiefs of Police Associations.

7 (iii) Fraternal Order of Police.

8 (iv) Public Defenders Organization.

9 (v) Law school faculty members.

10 (vi) State Board of Probation and Parole.

11 (vii) Bureau of Correction.

12 (viii) Pennsylvania Bar Association.

13 (ix) Pennsylvania Wardens Association.

14 (x) Pennsylvania Association on Probation, Parole
15 and Corrections.

16 (xi) Pennsylvania Conference of State Trial Judges.

17 (xii) Any other interested persons or organizations.

18 (2) Publish in the Pennsylvania Bulletin all initial and
19 subsequent sentencing guidelines as adopted by the
20 commission.

21 (3) Adopt and publish in the Pennsylvania Bulletin
22 pursuant to subsection (a)(2) the initial sentencing
23 guidelines within 18 months of the first meeting of the
24 Pennsylvania Commission on Sentencing.

25 (b) Rejection by General Assembly.--The General Assembly may
26 by concurrent resolution reject in their entirety any initial or
27 subsequent guidelines adopted by the commission within 90 days
28 of their publication in the Pennsylvania Bulletin pursuant to
29 subsection (a)(2).

30 (c) Effective date.--Initial and any subsequent guidelines

1 adopted by the commission shall become effective 90 days after
2 publication in the Pennsylvania Bulletin pursuant to subsection
3 (a)(2) unless rejected in their entirety by the General Assembly
4 by a concurrent resolution.

5 § 1386. Appellate review of sentence.

6 (a) Right to appeal.--The defendant or the Commonwealth may
7 appeal as of right the legality of the sentence.

8 (b) Allowance of appeal.--The defendant or the Commonwealth
9 may file a petition for allowance of appeal of the discretionary
10 aspects of a sentence for a felony or a misdemeanor to the
11 appellate court that has initial jurisdiction for such appeals.

12 Allowance of appeal may be granted at the discretion of the
13 appellate court where it appears that there is a substantial
14 question that the sentence imposed is not appropriate under this
15 chapter.

16 (c) Determination on appeal.--The appellate court shall
17 vacate the sentence and remand the case to the sentencing court
18 with instructions if it finds:

19 (1) the sentencing court purported to sentence within
20 the sentencing guidelines but applied the guidelines
21 erroneously;

22 (2) the sentencing court sentenced within the sentencing
23 guidelines but the case involves circumstances where the
24 application of the guidelines would be clearly unreasonable;
25 or

26 (3) the sentencing court sentenced outside the
27 sentencing guidelines and the sentence is unreasonable.

28 In all other cases the appellate court shall affirm the sentence
29 imposed by the sentencing court.

30 (d) Review of record.--In reviewing the record the appellate

1 court shall have regard for:

2 (1) The nature and circumstances of the offense and the
3 history and characteristics of the defendant.

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

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

7 (4) The guidelines promulgated by the commission.

8 (e) Right to bail not enlarged.--Nothing in this chapter
9 shall be construed to enlarge the defendant's right to bail
10 pending appeal.

11 (f) Limitation on additional appellate review.--No appeal of
12 the discretionary aspects of the sentence shall be permitted
13 beyond the appellate court that has initial jurisdiction for
14 such appeals.

15 (g) Implementing rules of court.--The Supreme Court shall by
16 rule prescribe procedures to implement the provisions of this
17 section.

18 Section 4. Section 4104 of Title 18 is amended to read:

19 § 4104. Tampering with records or identification.

20 (a) Writings.-- A person commits a misdemeanor of the first
21 degree if, knowing that he has no privilege to do so, he
22 falsifies, destroys, removes or conceals any writing or record,
23 or distinguishing mark or brand or other identification with
24 intent to deceive or injure anyone or to conceal any wrongdoing.

25 (b) Personal property.--A person commits a summary offense
26 if he knowingly buys, sells or moves in commerce any personal
27 property from which the manufacturer's name plate, serial number
28 or any other distinguishing number or identification mark has
29 been removed, defaced, covered, altered or destroyed unless the
30 alterations have been customarily made or done as an established

1 practice in the ordinary and regular conduct of business by the
2 original manufacturer or under specific authorization and
3 direction from the original manufacturer. Personal property as
4 set forth in this subsection shall not include firearms, motor
5 vehicles or insurance company salvage recoveries.

6 (c) Innocent alterations.--If property subject to the
7 provisions of this section has had its identifying marks defaced
8 or eliminated innocently and is in the possession of its
9 rightful owner, the owner may, notwithstanding the provisions of
10 subsection (a) or (b), dispose of the property by sale or
11 otherwise if he delivers to the acquirer a notarized statement
12 that the property was innocently altered and that the person
13 disposing of it is its rightful owner.

14 Section 5. Pursuant to this section, there is established an
15 interim guideline for the minimum sentencing of certain repeat
16 offenders.

17 (a) Until sentencing guidelines adopted by the Pennsylvania
18 Commission on Sentencing and relating to the offenses set out in
19 this subsection become effective pursuant to 42 Pa.C.S. § 1385
20 (relating to publication of guidelines for sentencing), when any
21 person is convicted in any court of this Commonwealth of murder
22 of the third degree, voluntary manslaughter, rape, involuntary
23 deviate sexual intercourse, robbery, aggravated assault as
24 defined in 18 Pa.C.S. § 2702(a)(1) (relating to aggravated
25 assault) involving the use of a firearm, arson or kidnapping, or
26 of attempt to commit any of these crimes, and when that person
27 has been previously convicted in this Commonwealth, or any other
28 state or the District of Columbia, or any Federal court, of any
29 of the offenses set forth in this section or their equivalent,
30 the sentencing court shall consider as a guideline in imposing

1 sentence that such person be sentenced to a minimum term of not
2 less than four years imprisonment.

3 (b) In any case where a court sentences a person subject to
4 the provisions of subsection (a), to a term of less than four
5 years imprisonment, the court shall provide a contemporaneous
6 written statement of the reason or reasons for the sentence.

7 (c) The defendant or the Commonwealth may appeal as of right
8 the legality of a sentence imposed pursuant to the provisions of
9 subsection (a).

10 (d) The defendant or the Commonwealth may file a petition
11 for allowance of appeal of the discretionary aspects of a
12 sentence imposed pursuant to the provisions of subsection (a) to
13 the appellate court that has initial jurisdiction for such
14 appeals. Allowance of appeal may be granted at the discretion of
15 the appellate court where it appears that there is a substantial
16 question that the sentence imposed is not appropriate under this
17 section.

18 (e) The appellate court shall vacate the sentence and remand
19 the case to the sentencing court with instructions if it finds:

20 (1) the sentencing court purported to sentence within
21 the sentencing guideline provided in subsection (a) but
22 applied the guideline erroneously;

23 (2) the sentencing court sentenced within the sentencing
24 guideline provided in subsection (a) but the case involves
25 circumstances where the application of the guideline would be
26 clearly unreasonable; or

27 (3) the sentencing court sentenced outside the
28 sentencing guideline provided in subsection (a) and the
29 sentence is unreasonable.

30 In all other cases the appellate court shall affirm the sentence

1 imposed by the sentencing court.

2 (f) In reviewing the record the appellate court shall have
3 regard for:

4 (1) The nature and circumstances of the offense and the
5 history and characteristics of the defendant.

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

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

9 (4) The guideline provided in subsection (a).

10 (g) Nothing in this section shall be construed to enlarge
11 the defendant's right to bail pending appeal.

12 (h) No appeal of the discretionary aspects of the sentence
13 pursuant to this section shall be permitted beyond the appellate
14 court that has initial jurisdiction for such appeals.

15 (i) The Supreme Court shall by rule prescribe procedures to
16 implement the provisions of this section.

17 (j) This section shall expire and be deemed null and void
18 upon the effective date of sentencing guidelines adopted by the
19 Pennsylvania Commission on Sentencing relating to the offenses
20 set out in subsection (a).

21 Section 6. The sum of \$100,000, or as much thereof as may be
22 necessary, is hereby appropriated to the Pennsylvania Commission
23 on Sentencing to carry out its duties as prescribed by this act.

24 Section 7. The provisions of section 3 are not severable and
25 if any provision thereof or the application thereof to any
26 person or circumstance is held invalid, the remainder of section
27 3 and section 6 shall be invalid.

28 Section 8. (a) Except as provided in subsections (b) and
29 (c), this act shall take effect January 1, 1979.

30 (b) The provisions of 42 Pa.C.S. § 1386 (relating to

1 appellate review of sentence) shall take effect upon the
2 effective date of the initial guidelines adopted by the
3 Pennsylvania Commission on Sentencing and taking effect pursuant
4 to 42 Pa.C.S. § 1385 (relating to publication of guidelines for
5 sentencing).

6 (c) The amendatory provisions of section 1 insofar as such
7 provisions relate to the functions and authority of the
8 Pennsylvania Commission on Sentencing and the provisions of
9 sections 3, 6 and 7 of this amendatory act shall expire and be
10 deemed null and void four years from the date on which the
11 initial guidelines are adopted pursuant to 42 Pa.C.S. § 1385.