

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 1464 Session of
1983

INTRODUCED BY SWEET, PICCOLA, DAWIDA, HOFFEL, FREIND, NOYE,
VAN HORNE, PRATT, MRKONIC, SAURMAN, CALTAGIRONE, GREENWOOD,
POTT, KOWALYSHYN, SCHEETZ, FISCHER, KOSINSKI, WACHOB,
MADIGAN, BATTISTO, CLYMER, GANNON, WOGAN, PUNT, SEMMEL,
FLICK, BALDWIN, KASUNIC, KUKOVICH, BOYES AND BELFANTI,
SEPTEMBER 21, 1983

REFERRED TO COMMITTEE ON JUDICIARY, SEPTEMBER 21, 1983

AN ACT

1 Amending Title 18 (Crimes and Offenses) of the Pennsylvania
2 Consolidated Statutes, providing for increased sentences for
3 dangerous special offenders.

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

6 Section 1. Title 18 of the Pennsylvania Consolidated
7 Statutes is amended by adding a section to read:

8 § 1107. Increased sentence for dangerous special offenders.

9 (a) Notice may be filed.--Whenever an attorney charged with
10 the prosecution of a defendant in a court of common pleas for an
11 alleged felony committed when the defendant was over the age of
12 21 has reason to believe that the defendant is a dangerous
13 special offender, the attorney, a reasonable time before trial
14 or acceptance by the court of a plea of guilty or nolo
15 contendere, may sign and file with the court and may amend a
16 notice:

1 (1) Specifying that the defendant is a dangerous special
2 offender who upon conviction for the felony is subject to the
3 imposition of a sentence under subsection (b).

4 (2) Setting out with particularity the reasons why the
5 attorney believes the defendant to be a dangerous special
6 offender. In no case shall the fact that the defendant is
7 alleged to be a dangerous special offender be an issue upon
8 the trial of the felony, be disclosed to the jury or be
9 disclosed before any plea of guilty or nolo contendere or
10 verdict or finding of guilty to the presiding judge without
11 the consent of the parties.

12 If the court finds that the filing of the notice as a public
13 record may prejudice fair consideration of a pending criminal
14 matter, it may order the notice sealed and the notice shall not
15 be subject to subpoena or public inspection during the pendency
16 of the criminal matter, except on order of the court, but shall
17 be subject to inspection by the defendant alleged to be a
18 dangerous special offender and his counsel.

19 (b) Hearing to be held.--Upon any plea of guilty or nolo
20 contendere or verdict or finding of guilty of the defendant of
21 the felony, a hearing shall be held, before sentence is imposed,
22 by the court sitting without a jury. The court shall fix a time
23 for the hearing and notice thereof shall be given to the
24 defendant and the district attorney at least ten days prior
25 thereto. The court shall permit the district attorney and
26 counsel for the defendant, or the defendant if he is not
27 represented by counsel, to inspect the presentence report
28 sufficiently prior to the hearing as to afford a reasonable
29 opportunity for verification. In connection with the hearing,
30 the defendant and the attorney general shall be entitled to

1 assistance of counsel, compulsory process and cross-examination
2 of any witnesses that appear at the hearing. A duly
3 authenticated copy of a former judgment or commitment shall be
4 prima facie evidence of the former judgment or commitment. If it
5 appears by a preponderance of the information, including
6 information submitted during the trial of the felony and the
7 sentencing hearing and so much of the presentence report as the
8 court relies upon, that the defendant is a dangerous special
9 offender, the court shall sentence the defendant to imprisonment
10 for an appropriate term not to exceed 25 years and not
11 disproportionate in severity to the maximum term otherwise
12 authorized by law for the felony. Otherwise it shall sentence
13 the defendant in accordance with the law prescribing penalties
14 for the felony. The court shall place in the record its
15 findings, including an identification of the information relied
16 upon in making the findings and its reasons for the sentence
17 imposed.

18 (c) Other sentences may be imposed.--This section does not
19 prevent the imposition and execution of a sentence of death or
20 of imprisonment for life or for a term exceeding 25 years upon
21 any person convicted of an offense so punishable.

22 (d) Court may not sentence to less than minimum.--
23 Notwithstanding any other provision of this section, the court
24 shall not sentence a dangerous special offender to less than any
25 mandatory minimum penalty prescribed by law for the felony. This
26 section shall not be construed as creating any mandatory minimum
27 penalty.

28 (e) Special offender defined.--A defendant is a special
29 offender for purposes of this section if any of the following
30 circumstances exist:

1 (1) The defendant has previously been convicted in
2 courts of the United States, another state, the District of
3 Columbia, the Commonwealth of Puerto Rico, a territory or
4 possession of the United States, any political subdivision or
5 any department, agency or instrumentality thereof for two or
6 more offenses committed on occasions different from one
7 another and from the felony and punishable in those courts by
8 death or imprisonment in excess of one year, for one or more
9 of those convictions the defendant has been imprisoned prior
10 to the commission of the felony and less than five years have
11 elapsed between the commission of the felony and either the
12 defendant's release, on parole or otherwise, from
13 imprisonment for one of the convictions or his commission of
14 the last previous offense or another offense punishable by
15 death or imprisonment in excess of one year under applicable
16 laws of this Commonwealth, the United States, another state,
17 the District of Columbia, the Commonwealth of Puerto Rico, a
18 territory or possession of the United States, any political
19 subdivision or any department, agency or instrumentality
20 thereof.

21 (2) The defendant committed the felony as part of a
22 pattern of conduct which was criminal under applicable laws
23 of any jurisdiction, which constituted a substantial source
24 of his income and in which he manifested special skill or
25 expertise.

26 (3) The felony was, or the defendant committed the
27 felony in furtherance of, a conspiracy with three or more
28 other persons to engage in a pattern of conduct criminal
29 under applicable laws of any jurisdiction and the defendant
30 did or agreed that he would initiate, organize, plan,

1 finance, direct, manage or supervise all or part of the
2 conspiracy or conduct or give or receive a bribe or use force
3 as all or part of the conduct.

4 A conviction shown on direct or collateral review or at the
5 hearing to be invalid or for which the defendant has been
6 pardoned on the ground of innocence shall be disregarded for
7 purposes of paragraph (1). In support of findings under
8 paragraph (2), it may be shown that the defendant has had in his
9 own name or under his control income or property not explained
10 as derived from a source other than that conduct. For purposes
11 of paragraph (2), a substantial source of income means a source
12 of income which for any period of one year or more exceeds the
13 minimum wage, determined on the basis of a 40-hour week and a
14 50-week year, without reference to exceptions under section
15 6(a)(1) of the Fair Labor Standards Act of 1938 (52 Stat. 1602,
16 29 U.S.C. § 206), for an employee engaged in commerce or in the
17 production of goods for commerce and which for the same period
18 exceeds 50% of the defendant's declared adjusted gross income
19 under section 62 of the Internal Revenue Act of 1954 (68A Stat.
20 17, 26 U.S.C. § 62). For purposes of paragraph (2), special
21 skill or expertise in criminal conduct includes unusual
22 knowledge, judgment or ability, including manual dexterity,
23 facilitating the initiation, organizing, planning, financing,
24 direction, management, supervision, execution or concealment of
25 criminal conduct, the enlistment of accomplices in that conduct,
26 the escape from detection or apprehension for that conduct or
27 the disposition of the fruits or proceeds of that conduct. For
28 purposes of paragraphs (2) and (3), criminal conduct forms a
29 pattern if it embraces criminal acts that have the same or
30 similar purposes, results, participants, victims or methods of

1 commission or otherwise are interrelated by distinguishing
2 characteristics and are not isolated events.

3 (f) Dangerous defendant defined.--A defendant is dangerous
4 for purposes of this section if a period of confinement longer
5 than that provided for the felony is required for the protection
6 of the public from further criminal conduct by the defendant.

7 (g) Time for taking appeal.--The time for taking an appeal
8 from a conviction for which sentence is imposed after
9 proceedings under this section shall be measured from imposition
10 of the original sentence.

11 Section 2. This act shall take effect in 60 days.