

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1299 Session of
2010

INTRODUCED BY GREENLEAF, WAUGH, O'PAKE, ERICKSON, McILHINNEY,
WASHINGTON, WOZNIAK, M. WHITE, WILLIAMS, EARLL, CORMAN,
TARTAGLIONE AND FERLO, MARCH 30, 2010

SENATOR GREENLEAF, JUDICIARY, AS AMENDED, APRIL 13, 2010

AN ACT

1 Amending Titles 42 (Judiciary and Judicial Procedure) and 61
2 (Prisons and Parole) of the Pennsylvania Consolidated
3 Statutes, further providing for sentences for second and
4 subsequent offenses, for sentencing generally, for sentence
5 of county intermediate punishment and for county intermediate
6 punishment programs; in State intermediate punishment,
7 further providing for definitions and for referral to State
8 intermediate punishment program; ~~and,~~ in recidivism risk
9 reduction incentive, further providing for definitions; AND
10 MAKING EDITORIAL CHANGES. ←
←

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

13 Section 1. Sections 2154.2, 9714(g) and 9721(a.1) of Title ←
14 42 of the Pennsylvania Consolidated Statutes are amended to
15 read:

16 § 2154.2. ADOPTION OF GUIDELINES FOR STATE INTERMEDIATE ←
17 PUNISHMENT.

18 THE COMMISSION SHALL ADOPT GUIDELINES TO IDENTIFY OFFENDERS
19 WHO WOULD BE APPROPRIATE FOR PARTICIPATION IN STATE INTERMEDIATE
20 PUNISHMENT PROGRAMS. THESE GUIDELINES SHALL BE CONSIDERED BY THE
21 ATTORNEY FOR THE COMMONWEALTH AND THE SENTENCING COURT IN

1 DETERMINING WHETHER TO COMMIT A DEFENDANT FOR EVALUATION AND
2 WHETHER TO SENTENCE AN ELIGIBLE OFFENDER PURSUANT TO [CHAPTER
3 99] 61 PA.C.S. CH. 41 (RELATING TO STATE INTERMEDIATE
4 PUNISHMENT). THE GUIDELINES SHALL:

5 (1) USE THE DESCRIPTION OF "ELIGIBLE OFFENDER" PROVIDED
6 IN [CHAPTER 99] 61 PA.C.S. CH. 41.

7 (2) GIVE PRIMARY CONSIDERATION TO PROTECTION OF THE
8 PUBLIC SAFETY.

9 § 9714. Sentences for second and subsequent offenses.

10 * * *

11 (g) Definition.--As used in this section, the term "crime of
12 violence" means murder of the third degree, voluntary
13 manslaughter, manslaughter of a law enforcement officer as
14 defined in 18 Pa.C.S. § 2507(c) or (d) (relating to criminal
15 homicide of law enforcement officer), murder of the third degree
16 involving an unborn child as defined in 18 Pa.C.S. § 2604(c)
17 (relating to murder of unborn child), aggravated assault of an
18 unborn child as defined in 18 Pa.C.S. § 2606 (relating to
19 aggravated assault of unborn child), aggravated assault as
20 defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to
21 aggravated assault), assault of law enforcement officer as
22 defined in 18 Pa.C.S. § 2702.1 (relating to assault of law
23 enforcement officer), use of weapons of mass destruction as
24 defined in 18 Pa.C.S. § 2716(b) (relating to weapons of mass
25 destruction), terrorism as defined in 18 Pa.C.S. § 2717(b)(2)
26 (relating to terrorism), trafficking of persons when the offense
27 is graded as a felony of the first degree as provided in 18
28 Pa.C.S. § 3002 (relating to trafficking of persons), rape,
29 involuntary deviate sexual intercourse, aggravated indecent
30 assault, incest, sexual assault, arson as defined in 18 Pa.C.S.

1 § 3301(a) (relating to arson and related offenses), ecoterrorism
2 as defined in 18 Pa.C.S. § 3311(b)(2) (relating to
3 ecoterrorism), kidnapping, burglary of a structure adapted for
4 overnight accommodation in which at the time of the offense any
5 person is present, robbery as defined in 18 Pa.C.S. § 3701(a)(1)
6 (i), (ii) or (iii) (relating to robbery), or robbery of a motor
7 vehicle, or criminal attempt, criminal conspiracy or criminal
8 solicitation to commit murder or any of the offenses listed
9 above, or an equivalent crime under the laws of this
10 Commonwealth in effect at the time of the commission of that
11 offense or an equivalent crime in another jurisdiction.

12 § 9721. Sentencing generally.

13 * * *

14 (a.1) Exception.--

15 (1) Unless specifically authorized under section 9763
16 (relating to a sentence of county intermediate punishment) or
17 **【Chapter 99】** 61 PA.C.S. CH. 41 (relating to State ←
18 intermediate punishment), subsection (a) shall not apply
19 where a mandatory minimum sentence is otherwise provided by
20 law.

21 (2) An eligible offender may be sentenced to State
22 intermediate punishment pursuant to subsection (a)(7) and as
23 described in **【Chapter 99】** 61 PA.C.S. CH. 41 or to State ←
24 motivational boot camp as described in 61 Pa.C.S. Ch. 39
25 (relating to motivational boot camp), even if a mandatory
26 minimum sentence would otherwise be provided by law.

27 (3) An eligible offender may be sentenced to total
28 confinement pursuant to subsection (a)(4) and a recidivism
29 reduction incentive minimum sentence pursuant to section
30 9756(b.1) (relating to sentence of total confinement), even

1 if a mandatory minimum sentence would otherwise be provided
2 by law.

3 * * *

4 Section 2. Section 9763(c) heading of Title 42 is amended
5 and the section is amended by adding a subsection to read:

6 § 9763. Sentence of county intermediate punishment.

7 * * *

8 (c) Restriction for certain Vehicle Code violations.--

9 * * *

10 (c.1) Restriction for drug trafficking.--

11 (1) Any person receiving a penalty imposed pursuant to
12 18 Pa.C.S. § 7508 (relating to drug trafficking sentencing
13 and penalties) where the sentence is imposed pursuant to 18
14 Pa.C.S. § 7508(a)(1)(i), (2)(i), (3)(i), (4)(i) or (7)(i) may
15 only be sentenced to county intermediate punishment after
16 undergoing a diagnostic assessment of dependency on alcohol
17 or other drugs.

18 (2) If the defendant is determined to be in need of drug
19 and alcohol treatment, the defendant may only be sentenced to
20 county intermediate punishment which includes participation
21 in clinically prescribed drug and alcohol treatment combined
22 with one or more of the following programs:

23 (i) a residential inpatient program or a residential
24 rehabilitative center;

25 (ii) house arrest with electronic surveillance; or

26 (iii) a partial confinement program, including, but
27 not limited to, work release, work camp and halfway
28 facility.

29 (3) If the defendant is determined not to be in need of
30 drug and alcohol treatment, the defendant may only be

sentenced to county intermediate punishment in:

(i) house arrest with electronic surveillance;

(ii) a partial confinement program, including, but
not limited to, work release, work camp and halfway
facility; or

(iii) any combination of the programs specified in
this paragraph.

(4) Each day of participation in a restrictive
intermediate punishment program or combination of programs
shall be considered the equivalent of and satisfy one day of
total confinement required pursuant to 18 Pa.C.S. § 7508
where the sentence is imposed pursuant to 18 Pa.C.S. §
7508(a)(1)(i), (2)(i), (3)(i), (4)(i) or (7)(i).

* * *

SECTION 3. SECTION 9774(A) OF TITLE 42 IS AMENDED TO READ: ←

§ 9774. REVOCATION OF STATE INTERMEDIATE PUNISHMENT SENTENCE.

(A) GENERAL RULE.--THE COURT MAY AT ANY TIME TERMINATE A
SENTENCE OF STATE INTERMEDIATE PUNISHMENT PURSUANT TO [CHAPTER
99] 61 PA.C.S. CH. 41 (RELATING TO STATE INTERMEDIATE
PUNISHMENT).

* * *

Section ~~3~~ 4. Section 9804(b) of Title 42 is amended by ←
adding a paragraph to read:

§ 9804. County intermediate punishment programs.

* * *

(b) Eligibility.--

* * *

(6) (i) Any person receiving a penalty imposed pursuant
to 18 Pa.C.S. § 7508 (relating to drug trafficking
sentencing and penalties) where the sentence is imposed

1 pursuant to 18 Pa.C.S. § 7508(a)(1)(i), (2)(i), (3)(i),
2 (4)(i) or (7)(i) may only be sentenced to county
3 intermediate punishment after undergoing a diagnostic
4 assessment of dependency on alcohol or other drugs.

5 (ii) If the defendant is determined to be in need of
6 drug and alcohol treatment, the defendant may only be
7 sentenced to county intermediate punishment which
8 includes participation in clinically prescribed drug and
9 alcohol treatment combined with one or more of the
10 following programs:

11 (A) a residential inpatient program or a
12 residential rehabilitative center;

13 (B) house arrest with electronic surveillance;
14 or

15 (C) a partial confinement program, including,
16 but not limited to, work release, work camp and
17 halfway facility.

18 (iii) If the defendant is determined not to be in
19 need of drug and alcohol treatment, the defendant may
20 only be sentenced to county intermediate punishment in:

21 (A) house arrest with electronic surveillance;

22 (B) a partial confinement program, including,
23 but not limited to, work release, work camp and
24 halfway facility; or

25 (C) any combination of the programs specified in
26 this paragraph.

27 (iv) Each day of participation in a restrictive
28 intermediate punishment program or combination of
29 programs shall be considered the equivalent of and
30 satisfy one day of total confinement required pursuant to

1 18 Pa.C.S. § 7508 where the sentence is imposed pursuant
2 to 18 Pa.C.S. § 7508(a)(1)(i), (2)(i), (3)(i), (4)(i) or
3 (7)(i).

4 Section 4 5. The definitions of "defendant" and "eligible
5 offender" in section 4103 of Title 61 are amended to read:

6 § 4103. Definitions.

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

10 * * *

11 "Defendant." An individual charged with a drug-related
12 offense, including an individual convicted of violating section
13 13(a)(14), (30) or (37) of the act of April 14, 1972 (P.L.233,
14 No.64), known as The Controlled Substance, Drug, Device and
15 Cosmetic Act, where the sentence was imposed pursuant 18 Pa.C.S.
16 § 7508(a)(1)(i), (2)(i), (3)(i), (4)(i) or (7)(i) (relating to
17 drug trafficking sentencing and penalties).

18 * * *

19 "Eligible offender." Subject to 42 Pa.C.S. § 9721(a.1)
20 (relating to sentencing generally), a defendant designated by
21 the sentencing court as a person convicted of a drug-related
22 offense who:

23 (1) Has undergone an assessment performed by the
24 Department of Corrections, which assessment has concluded
25 that the defendant is in need of drug and alcohol addiction
26 treatment and would benefit from commitment to a drug
27 offender treatment program and that placement in a drug
28 offender treatment program would be appropriate.

29 (2) Does not demonstrate a history of present or past
30 violent behavior.

1 (3) Would be placed in the custody of the department if
2 not sentenced to State intermediate punishment.

3 (4) Provides written consent permitting release of
4 information pertaining to the defendant's participation in a
5 drug offender treatment program.

6 The term shall not include a defendant who is subject to a
7 sentence the calculation of which includes an enhancement for
8 the use of a deadly weapon, as defined pursuant to law or the
9 sentencing guidelines promulgated by the Pennsylvania Commission
10 on Sentencing, or a defendant who has been convicted of a
11 [personal injury crime as defined in section 103 of the act of
12 November 24, 1998 (P.L.882, No.111), known as the Crime Victims
13 Act, or an attempt or conspiracy to commit such a crime or who
14 has been convicted of violating 18 Pa.C.S. § 4302 (relating to
15 incest), 5901] crime of violence as defined in 42 Pa.C.S. §
16 9714(g) (relating to sentences for second and subsequent
17 offenses) or a violation of 18 Pa.C.S. § 5901 (relating to open
18 lewdness), 6312 (relating to sexual abuse of children), 6318
19 (relating to unlawful contact with minor) or 6320 (relating to
20 sexual exploitation of children) or Ch. 76 Subch. C (relating to
21 Internet child pornography).

22 * * *

23 Section ~~5~~ 6. Section 4104(a)(1), (d) and (e) of Title 61 are ←
24 amended to read:

25 § 4104. Referral to State intermediate punishment program.

26 (a) Referral for evaluation.--

27 (1) Prior to imposing a sentence, the court may[, upon
28 motion of the Commonwealth and agreement of the defendant,]
29 commit a defendant to the custody of the department for the
30 purpose of evaluating whether the defendant would benefit

1 from a drug offender treatment program and whether placement
2 in the drug offender treatment program is appropriate.

3 * * *

4 (d) Prerequisites for commitment.--Upon receipt of a
5 recommendation for placement in a drug offender treatment
6 program from the department [and agreement of the attorney for
7 the Commonwealth and the defendant], the court may sentence an
8 eligible offender to a period of 24 months of State intermediate
9 punishment if the court finds that:

10 (1) The eligible offender is likely to benefit from
11 State intermediate punishment.

12 (2) Public safety would be enhanced by the eligible
13 offender's participation in State intermediate punishment.

14 (3) Sentencing the eligible offender to State
15 intermediate punishment would not depreciate the seriousness
16 of the offense.

17 (e) Resentencing.--The department may make a written request
18 to the sentencing court that an offender who is otherwise
19 eligible but has not been referred for evaluation or originally
20 sentenced to State intermediate punishment be sentenced to State
21 intermediate punishment. The court may resentence the offender
22 to State intermediate punishment if all of the following apply:

23 (1) The department has recommended placement in a drug
24 offender treatment program.

25 [(2) The attorney for the Commonwealth and the offender
26 have agreed to the placement and modification of sentence.]

27 (3) The court makes the findings set forth under
28 subsection (d).

29 (4) The resentencing has occurred within 365 days of the
30 date of the defendant's admission to the custody of the

department.

(5) The court has otherwise complied with all other requirements for the imposition of sentence including victim notification under the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.

* * *

Section ~~6~~ 7. The definition of "eligible offender" in section 4503 of Title 61 is amended to read:

§ 4503. 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:

* * *

"Eligible offender." A defendant or inmate convicted of a criminal offense who will be committed to the custody of the department and who meets all of the following eligibility requirements:

(1) Does not demonstrate a history of present or past violent behavior.

(2) Has not been subject to a sentence the calculation of which includes an enhancement for the use of a deadly weapon as defined under law or the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing or the attorney for the Commonwealth has not demonstrated that the defendant has been found guilty of or was convicted of an offense involving a deadly weapon or offense under 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles) or the equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a

foreign nation.

(3) Has not been found guilty of or previously convicted of or adjudicated delinquent for or an attempt or conspiracy to commit a [personal injury crime as defined under section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act] crime of violence as defined in 42 Pa.C.S. § 9714(g) (relating to sentences for second and subsequent offenses), or an equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation.

(4) Has not been found guilty or previously convicted or adjudicated delinquent for violating any of the following provisions or an equivalent offense under the laws of the United States or one of its territories or possessions, another state, the District of Columbia, the Commonwealth of Puerto Rico or a foreign nation:

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

18 Pa.C.S. § 5901 (relating to open lewdness).

18 Pa.C.S. § 6312 (relating to sexual abuse of children).

18 Pa.C.S. § 6318 (relating to unlawful contact with minor).

18 Pa.C.S. § 6320 (relating to sexual exploitation of children).

18 Pa.C.S. Ch. 76 Subch. C (relating to Internet child pornography).

Received a criminal sentence pursuant to 42 Pa.C.S. § 9712.1 (relating to sentences for certain drug offenses committed with firearms).

Any offense listed under 42 Pa.C.S. § 9795.1

(relating to registration).

(5) Is not awaiting trial or sentencing for additional criminal charges, if a conviction or sentence on the additional charges would cause the defendant to become ineligible under this definition.

(6) Has not been found guilty or previously convicted of violating section 13(a)(14), (30) or (37) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, where the sentence was imposed pursuant to 18 Pa.C.S. § 7508(a)(1)(iii), (2)(iii), (3)(iii), (4)(iii), (7)(iii) or (8)(iii) (relating to drug trafficking sentencing and penalties).

* * *

Section 7 8. This act shall take effect in 60 days.

