

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 227 Session of 2021

INTRODUCED BY HUGHES, FONTANA, TARTAGLIONE, BREWSTER, SCHWANK,
COSTA AND COMITTA, FEBRUARY 11, 2021

REFERRED TO JUDICIARY, FEBRUARY 11, 2021

AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania
2 Consolidated Statutes, in State drug treatment program,
3 further providing for findings and purpose, for definitions,
4 for selection for the State drug treatment program, for State
5 drug treatment program, for written guidelines and
6 regulations, for evaluation and for construction.

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

9 Section 1. Section 4102 of Title 61 of the Pennsylvania
10 Consolidated Statutes is amended to read:

11 § 4102. Findings and purpose.

12 The General Assembly finds as follows:

13 (1) Many crimes are committed by persons who, because of
14 their addiction to drugs [or], alcohol or gambling, are
15 unable to maintain gainful employment.

16 (2) These persons often commit crimes as a means of
17 obtaining the funds necessary to purchase drugs or alcohol or
18 for gambling.

19 (3) Many persons commit crimes while under the influence
20 of drugs or alcohol even though they are not addicted to such

1 substances in a clinical sense.

2 (4) Punishing persons who commit crimes is an important
3 aspect of recognizing the harm that criminals visit upon
4 their victims.

5 (5) Many people who commit crimes will be able to become
6 law-abiding, contributing members of society if they are able
7 to obtain treatment for their drug [or], alcohol or gambling
8 addiction or abuse.

9 (6) The purpose of this chapter is to create a program
10 that punishes persons who commit crimes, but also provides
11 treatment that offers the opportunity for those persons to
12 address their drug [or], alcohol or gambling addiction or
13 abuse and thereby reduce the incidents of recidivism and
14 enhance public safety.

15 Section 2. The definitions of "defendant," "drug offender
16 treatment program," "eligible person," "expulsion,"
17 "individualized drug offender treatment plan," "institutional
18 therapeutic community" and "transitional residence" in section
19 4103 of Title 61, amended December 18, 2019 (P.L.776, No.115),
20 are amended and the section is amended by adding definitions to
21 read:

22 § 4103. Definitions.

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

26 "Addicted offender treatment program." An individualized
27 treatment program established by the Department of Corrections
28 consisting primarily of drug and alcohol or gambling addiction
29 treatment that satisfies the terms and conditions listed in
30 section 4105 (relating to addicted offender treatment program).

1 * * *

2 "Defendant." An individual charged with:

3 (1) a drug-related offense, including an individual
4 convicted of violating section 13(a)(14), (30) or (37) of the
5 act of April 14, 1972 (P.L.233, No.64), known as The
6 Controlled Substance, Drug, Device and Cosmetic Act, where
7 the sentence was imposed pursuant to 18 Pa.C.S. § 7508(a)(1)
8 (i), (2)(i), (3)(i), (4)(i) or (7)(i) (relating to drug
9 trafficking sentencing and penalties) [.]; or

10 (2) a gambling-related offense.

11 * * *

12 ["Drug offender treatment program." An individualized
13 treatment program established by the Department of Corrections
14 consisting primarily of drug and alcohol addiction treatment
15 that satisfies the terms and conditions listed in section 4105
16 (relating to drug offender treatment program).]

17 * * *

18 "Eligible person."

19 (1) A person who has not been designated by the
20 sentencing court as ineligible and is a person convicted of a
21 drug-related offense or gambling-related offense who:

22 (i) Has undergone an assessment performed by the
23 Department of Corrections, which assessment has concluded
24 that the person is in need of drug and alcohol or
25 gambling addiction treatment and would benefit from
26 commitment to [the State drug] an addicted offender
27 treatment program and that placement in [the State drug]
28 an addicted offender treatment program would be
29 appropriate.

30 (ii) Does not demonstrate a history of present or

1 past violent behavior.

2 (iii) Is a person sentenced to a term of confinement
3 under the jurisdiction of the department, the minimum of
4 which is not more than two years, or a person who is
5 serving a term of confinement, the minimum of which is
6 not more than five years where the person is within two
7 years of completing the person's minimum term.

8 (iv) Provides written consent permitting release of
9 information pertaining to the person's participation in
10 [the State drug] an addicted offender treatment program.

11 (2) The term shall not include a person who is subject
12 to a sentence the calculation of which includes an
13 enhancement for the use of a deadly weapon, as defined
14 pursuant to law or the sentencing guidelines promulgated by
15 the Pennsylvania Commission on Sentencing, a person who has
16 been convicted or adjudicated delinquent of any crime listed
17 under 42 Pa.C.S. Ch. 97 Subch. H (relating to registration of
18 sexual offenders) or I (relating to continued registration of
19 sexual offenders) or a person with a current conviction or a
20 prior conviction within the past ten years for 18 Pa.C.S. §
21 2502 (relating to murder), drug trafficking as defined in
22 this section or a crime of violence as defined in 42 Pa.C.S.
23 § 9714(g) (relating to sentences for second or subsequent
24 offenses) or criminal attempt, criminal solicitation or
25 criminal conspiracy to commit any of these offenses.

26 "Expulsion." The permanent removal of a participant from [a
27 drug] an addicted offender treatment program.

28 "Gambling-related offense." A criminal offense for which a
29 defendant is convicted and that the court determines was
30 motivated by the defendant's addiction to gambling.

1 * * *

2 ["Individualized drug offender treatment plan." An
3 individualized addiction treatment plan within the framework of
4 the drug offender treatment program.]

5 "Individualized addicted offender treatment plan." An
6 individualized addiction treatment plan within the framework of
7 the addicted offender treatment program.

8 "Institutional therapeutic community." A residential [drug]
9 addicted offender treatment program in a State correctional
10 institution, accredited as a therapeutic community for treatment
11 of drug and alcohol abuse and addiction or gambling addiction by
12 the American Correctional Association or other nationally
13 recognized accreditation organization for therapeutic community
14 drug and alcohol or gambling addiction treatment.

15 * * *

16 "Transitional residence." A residence investigated and
17 approved by the Department of Corrections as appropriate for
18 housing a participant in [a drug] an addicted offender treatment
19 program.

20 Section 3. Sections 4104 heading, (a) (1), (b) and (c) and
21 4105 heading, (a), (b) introductory paragraph, (1) (i) and (5),
22 (c) (2), (e) and (f) of Title 61, amended December 18, 2019
23 (P.L.776, No.115), are amended to read:

24 § 4104. Selection for [the State drug] addicted offender
25 treatment program.

26 (a) Duties of commission and sentencing judge.--

27 (1) Through the use of sentencing guidelines, the
28 commission shall employ the term "eligible person" as defined
29 in this chapter to further identify persons who would be
30 potentially appropriate for participation in the [State drug]

1 addicted offender treatment program. The sentencing judge
2 shall employ the sentencing guidelines to identify persons
3 who are eligible for participation in the [State drug]
4 addicted offender treatment program. The judge shall consider
5 the position of a victim of the crime, as advised by the
6 prosecuting attorney, on whether to exclude the person from
7 eligibility for placement in the [State drug] addicted
8 offender treatment program. The judge shall exclude the
9 person from eligibility if the prosecuting attorney opposes
10 eligibility. The judge shall note on the sentencing order if
11 a person has been excluded from eligibility for the [State
12 drug] addicted offender treatment program. If the person is
13 not excluded from eligibility, the minimum sentence imposed
14 shall operate as the minimum for parole eligibility purposes
15 if the person is not placed in the program by the department
16 under subsection (c) or if the person is expelled from the
17 program under section 4105(f) (relating to [State drug]
18 addicted offender treatment program).

19 * * *

20 (b) Assessment of addiction.--The department shall conduct
21 an assessment of the addiction and other treatment needs of an
22 eligible person and determine whether the person would benefit
23 from the [State drug] addicted offender treatment program,
24 public safety would be enhanced by the person's participation in
25 the [State drug] addicted offender treatment program, and
26 placement of the person in the [State drug] addicted offender
27 treatment program would not depreciate the seriousness of the
28 offense. The assessment shall be conducted using a nationally
29 recognized assessment instrument or an instrument that has been
30 normed and validated on the department's inmate population by a

1 recognized expert in such matters. The assessment instrument
2 shall be administered by persons skilled in the treatment of
3 drug and alcohol or gambling addiction and trained to conduct
4 assessments. The assessments shall be reviewed and approved by a
5 supervisor with at least three years of experience providing
6 drug and alcohol or gambling counseling services.

7 (c) Placement in [the State drug] addicted offender
8 treatment program.--If the department in its discretion believes
9 an eligible person would benefit from the [State drug] addicted
10 offender treatment program and placement in the program is
11 appropriate, the department shall make the placement and notify
12 the court, the eligible person, the commission and the attorney
13 for the Commonwealth of the placement.

14 * * *

15 § 4105. [State drug] Addicted offender treatment program.

16 (a) Establishment.--The department shall establish and
17 administer the [State drug] addicted offender treatment program.
18 The program shall be designed to address the individually
19 assessed drug [and] or alcohol or gambling abuse and addiction
20 needs of a participant and shall address other issues essential
21 to the participant's successful reintegration into the
22 community, including, but not limited to, educational and
23 employment issues.

24 (b) Duration and components.--Notwithstanding any credit to
25 which the defendant may be entitled under 42 Pa.C.S. § 9760
26 (relating to credit for time served), the duration of the [State
27 drug] addicted offender treatment program is 24 months, but if
28 the participant is unable to complete the program within 24
29 months and is otherwise compliant with the program, subject to
30 the discretion of the department, the program duration may be

1 extended up to 30 months total in order for the participant to
2 successfully complete the program. The program shall include the
3 following:

4 (1) A period in a State correctional institution of not
5 less than seven months. This period shall include:

6 (i) The time during which the eligible person is
7 being evaluated by the department under section 4104(b)
8 (relating to selection for [the State drug] addicted
9 offender treatment program).

10 * * *

11 (5) Upon certification by the department of the
12 participant's successful completion of the program, the
13 entire term of confinement that rendered the participant
14 eligible to participate in the [State drug] addicted offender
15 treatment program shall be deemed to have been served.

16 (c) Program management.--

17 * * *

18 (2) This subsection shall be construed to provide the
19 department with the maximum flexibility to administer the
20 [State drug] addicted offender treatment program both as a
21 whole and for individual participants.

22 * * *

23 (e) Notice to court of completion of program.--When the
24 department determines that a participant has successfully
25 completed the [State drug] addicted offender treatment program,
26 it shall notify the sentencing court, the attorney for the
27 Commonwealth and the commission.

28 (f) Expulsion from program.--

29 (1) A participant may be expelled from the [State drug]
30 addicted offender treatment program at any time in accordance

1 with guidelines established by the department, including
2 failure to comply with administrative or disciplinary
3 procedures or requirements set forth by the department. An
4 expelled participant shall be housed in a State correctional
5 institution to serve the remainder of the participant's
6 sentence. The expelled participant shall be eligible for
7 parole at the minimum sentence but may not be eligible for
8 short sentence parole under section 6137.1 (relating to short
9 sentence parole).

10 (1.1) A police officer commissioned under section 1 of
11 the act of May 21, 1943 (P.L.469, No.210), entitled "An act
12 providing for commissioning as police officers certain
13 employes of institutions maintained in whole or in part by
14 the Commonwealth; conferring upon them the powers of
15 constables in certain cases; and imposing duties on wardens
16 and keepers of jails, police stations and lock-ups," shall
17 have the authority to issue a warrant for the return of a
18 participant who is not in compliance with the terms of the
19 [drug] addicted offender treatment program to the custody of
20 the department.

21 (2) The department shall promptly notify the court, the
22 participant, the attorney for the Commonwealth and the
23 commission of the expulsion of a participant from the [State
24 drug] addicted offender treatment program and the reason for
25 such expulsion.

26 Section 4. Section 4106 of Title 61 is amended to read:

27 § 4106. Written guidelines and regulations.

28 The department shall develop written guidelines for
29 participant selection criteria and the establishment of [drug]
30 addicted offender treatment program selection committees within

1 each diagnostic and classification center of the department and
2 shall address suspensions and expulsions from the drug offender
3 treatment program. The guidelines shall not be subject to the
4 act of June 25, 1982 (P.L.633, No.181), known as the Regulatory
5 Review Act, and shall be effective for a period of two years
6 upon publication in the Pennsylvania Bulletin. The guidelines
7 shall be replaced by regulations promulgated by the department
8 consistent with the Regulatory Review Act within the two-year
9 period during which the guidelines are effective. The
10 regulations shall include a requirement that community-based
11 therapeutic communities utilized in the [drug] addicted offender
12 treatment program be accredited as a therapeutic community for
13 treatment of drug and alcohol or gambling abuse and addiction by
14 the Commission on Accreditation of Rehabilitation Facilities or
15 other nationally recognized accreditation organization for
16 community-based therapeutic communities for drug and alcohol or
17 gambling addiction treatment.

18 Section 5. Section 4107 of Title 61, amended December 18,
19 2019 (P.L.776, No.115), is amended to read:

20 § 4107. Evaluation.

21 (b) Evaluation and report to General Assembly.--The
22 department shall monitor and evaluate the [State drug] addicted
23 offender treatment program to ensure that the programmatic
24 objectives are met. Every three years, the department shall
25 present a report of its evaluation to the Judiciary Committee of
26 the Senate and the Judiciary Committee of the House of
27 Representatives no later than February 1. The report shall
28 include:

29 (1) The number of persons evaluated for the [State drug]
30 addicted offender treatment program.

1 (2) The number of persons placed into the [State drug]
2 addicted offender treatment program.

3 (3) The number of persons sentenced to a State
4 correctional institution who may have been eligible for the
5 [State drug] addicted offender treatment program.

6 (4) The number of persons successfully completing the
7 [State drug] addicted offender treatment program.

8 (5) The six-month, one-year, three-year and five-year
9 recidivism rates for persons who have completed the [State
10 drug] addicted offender treatment program and for a
11 comparison group of persons who were not placed in the [State
12 drug] addicted offender treatment program.

13 (6) Any changes the department believes will make the
14 [State drug] addicted offender treatment program more
15 effective.

16 Section 6. Section 4108 of Title 61 is amended to read:

17 § 4108. Construction.

18 Notwithstanding any other provision of law to the contrary,
19 this chapter shall not be construed to:

20 (1) Confer any legal right upon any individual,
21 including an individual participating in the [drug] addicted
22 offender treatment program, to:

23 (i) participate in [a drug] an addicted offender
24 treatment program;

25 (ii) continue participation in [a drug] an addicted
26 offender treatment program;

27 (iii) modify the contents of the [drug] addicted
28 offender treatment program; or

29 (iv) file any cause of action in any court
30 challenging the department's determination that a

1 participant is to be suspended or expelled from or that a
2 participant has successfully completed or failed to
3 successfully complete treatment to be provided during any
4 portion of [a drug] an addicted offender treatment
5 program.

6 (2) Enlarge or limit the right of a participant to
7 appeal the participant's sentence.

8 Section 7. This act shall take effect in six months.