

SUMMARY OF SENATE BILL 100, PRINTER'S NO. 1668

Synopsis: This bill amends the Crimes Code, Title 18 of the Pennsylvania Consolidated Statutes, the Judicial Code, Title 42, and the Prisons and Parole Code, Title 61, to make changes relating to the powers and duties of the Pennsylvania Commission on Sentencing; the definitions of “burglary” and “crime of violence;” the county intermediate punishment program; sanctions for probation violators; the definition of “official visitor;” prerelease program criteria; eligibility of offenders for alternative sentencing; and reentry programs.

Summary:

Sentencing commission

The bill amends the powers and duties of the Pennsylvania Commission on Sentencing. 2010 Act 95 (Senate Bill 1161) directed the sentencing commission to develop a risk assessment tool as part of the sentencing guidelines. In retrospect that legislation should have referenced the risk assessment tool in the provisions of law requiring the sentencing commission to publish the guidelines for review and, once adopted, to monitor compliance with the guidelines. The bill makes these references in sections 2153 and 2155 of the Judicial Code.

Crime of violence

The bill amends section 9714 of the Judicial Code by adding to the definition of “crime of violence” several recently enacted major felony offenses including manslaughter of a law enforcement officer, murder of the third degree involving an unborn child, aggravated assault of an unborn child, assault of a law enforcement officer, use of weapons of mass destruction, terrorism, trafficking of persons, and ecoterrorism.

Burglary

Currently burglary is a “crime of violence” under section 9714 if it is burglary of a structure adapted for overnight accommodation in which at the time of the offense any person is present. However, this description of burglary is inconsistent with the definition of burglary in 18 Pa.C.S. §3502 (relating to burglary). Because this bill already amends section 9714, this legislation is being used to make the two definitions of burglary consistent. The definition of the criminal offense of burglary in section 3502 of the Crimes Code is broken down into the different types of burglary. A crime of violence only applies to the most serious type of burglary which will now correspond to 18 Pa.C.S. §3502(a)(1). The Pennsylvania Commission on Sentencing proposed this amendment and it will make the definitions consistent with the sentencing guidelines.

County intermediate punishment

Sections 9763 and 9804 of the Judicial Code, relating to county intermediate punishment (CIP) programs, are amended to allow certain offenders convicted of low-level drug dealing to be eligible for CIP but only if the offender undergoes a diagnostic assessment for dependency on drugs or alcohol. If the offender is determined to be in need of drug and alcohol treatment, the defendant may only be sentenced to a CIP program which includes participation in clinically prescribed drug and alcohol treatment and includes a residential inpatient program, house arrest with electronic surveillance or a partial confinement program (work release, work camp, and halfway facility).

While the bill makes no changes in section 9804 to the eligibility criteria for CIP, it does allow the district attorney to waive the eligibility requirements for CIP. The district attorney may agree to make someone eligible who would have otherwise have been ineligible. However, the court, after consideration of victim input, may refuse to accept the prosecuting attorney’s waiver of the eligibility requirements.

Sanctions for probation violators

The bill adds section 9771.1 to the Judicial Code authorizing each county court of common pleas to establish a program that will impose swift, predictable and immediate sanctions on offenders who violate their probation. Section 9771.1 directs the county court of common pleas to work with probation administrators and officers, jail administrators, prosecutors, public defenders, and law enforcement to develop this program. The court may determine which offenders are eligible to participate in the program. The focus of the program should be on those offenders who have committed drug-related crimes. The legislation provides that violent offenders and sex offenders are not eligible.

The court shall hold a warning hearing for each participant to clearly communicate program expectations and consequences and to encourage the participant's compliance and success. The court shall emphasize that the participant must remain drug-free and comply with any treatment or services ordered by the court as a condition of the participant's probation. The program shall include random drug-testing. The court shall put the participant on notice that each probation violation, including missed appointments and positive drug tests, will result in jail time.

If a participant commits a probation violation, the participant shall promptly be arrested and a hearing shall be held no later than two business days after the arrest date. For a first violation, the court may impose a sanction of up to three days of jail time; a second violation, up to seven days; a third violation, up to 14 days; and a fourth or subsequent violation, up to 21 days.

Anytime after a third violation, the court may revoke the order of probation. Following the revocation, the court shall have the same sentencing alternatives that were available at the initial sentencing but the court should give consideration to time spent serving the order of probation. For employed probationers who commit their first or second violation, the court may allow the term of imprisonment to be served on weekends or other nonwork days. If the participant is able to provide a compelling reason for the violation, the court may waive the sanction.

The court of common pleas may adopt local rules that are not inconsistent with this legislation or any rules adopted by the Supreme Court.

The County Commissioners Association of Pennsylvania approves of the program because it is optional but proposed that the bill provide county judges with more flexibility in terms of the sanctions available for violations of the conditions of the program. The bill was amended to authorize the county court to adopt local rules that are inconsistent with the sanctioning provisions of program as provided for in the legislation so that the county may structure its own terms of imprisonment or other sanctions or conditions of probation as it deems appropriate.

Official visitors

When 2009 Act 33 (Senate Bill 112) consolidated provisions of law relating to prison visitation into Chapter 35 of the Prisons and Parole Code, Title 61 of the Pennsylvania Consolidated Statutes, Subchapter A contained "General Provisions" drawn from laws enacted in 1867, 1903 and 1909, and Subchapter B contained the Official Visitation of Correctional Institutions Act enacted in 1990. While not specifically repealed by the 1990 act, it has been determined that the provisions of the 1990 act superseded the older acts and the provisions in Subchapter A are obsolete, inconsistent with Subchapter B, and causing confusion in Pennsylvania prisons and jails as to who is considered an "official visitor." The bill repeals Subchapter A (sections 3501, 3502 and 3503). The subchapter and sections will be marked as "Reserved."

Subchapter B will govern prison visitation. Section 3512 of Subchapter B defines "official visitor" as follows:

"Official visitor." The Governor, Lieutenant Governor, President pro tempore and members of the Senate, Speaker and members of the House of Representatives, justices and judges of the courts of record, General Counsel, Attorney General and his deputies and authorized members of the Pennsylvania Prison Society who have been designated as official visitors, whose names shall be given to a chief administrator, in writing, together with the terms of their appointment under its corporate seal.

The Pennsylvania Prison Society proposed this clarification of the provisions relating to official visitors.

Prerelease program criteria

Section 3705 of the Prisons and Parole Code is added to address time eligibility for the prerelease program operated by the Department of Corrections (DOC). Following discussions with the DOC and other agencies and groups, the bill was amended to make sure that offenders who begin their sentence in county jail and are then transferred to State prison are credited with their county time. The amendment makes an offender who is otherwise eligible for prerelease eligible if he has continuously served for a total of at least nine months in a county jail or in a State correctional institution for that sentence. At the DOC's request, this change in law takes effect in one year.

However, no inmate shall be eligible for the prerelease program if the inmate is serving a term of imprisonment for a crime of violence or a crime requiring registration under Megan's Law.

Eligibility for alternative sentencing programs

State motivational boot camp

The bill amends section 3903 of the Prisons and Parole Code to increase the age limit for the State motivational boot camp program from 35 to 40 years of age and to add a 10-year look-back period regarding ineligibility based on a prior conviction. Section 3904 is amended to allow the district attorney to waive the eligibility requirements for the State boot camp. The district attorney may agree to make someone eligible who would have otherwise have been ineligible. However, the court, after consideration of victim input, may refuse to accept the prosecuting attorney's waiver of the eligibility requirements

Section 9721 of the Judicial Code is amended to authorize a judge to sentence an eligible offender to boot camp even if a mandatory sentence would otherwise be provided by law.

State intermediate punishment

The definition of "defendant" in section 4103 of the Prisons and Parole Code is amended to include certain offenders convicted of low-level drug dealing. These defendants still would have to undergo an assessment to determine whether the defendant is in need of drug and alcohol addiction treatment and meets other requirements in order to become eligible for State intermediate punishment (SIP). A 10-year look-back period is added regarding ineligibility based on a prior conviction.

Prior to imposing a sentence, the court may commit an offender with or without the district attorney's approval to the DOC for an evaluation to determine whether the offender would benefit from SIP. Once the evaluation is received the district attorney may still refuse to approve sending the offender to SIP but at least the district attorney will have the benefit of the evaluation as part of the decision making process.

Section 4104 is amended to allow the district attorney to waive the eligibility requirements for SIP. The district attorney may agree to make someone eligible who would have otherwise have been ineligible. However, the court, after consideration of victim input, may refuse to accept the prosecuting attorney's waiver of the eligibility requirements.

Recidivism risk reduction incentive

The bill amends 4503 of the Prisons and Parole Code relating to the eligibility requirements for the recidivism risk reduction incentive (RRRI). Because the RRRI program is automatic (the district attorney does not need to approve participation in the program; if the offender meets the eligibility requirements, the offender gets a RRRI sentence) and because the DOC is already having difficulty in processing the current number of RRRI offenders in a timely manner, the amendment goes back to using “personal injury crime” but with an exception for simple assault when it is a third degree misdemeanor. The exception allows an offender who was involved in a “mutual fight” to be eligible for RRRI.

Under RRRI a judge must sentence an eligible offender to a shorter minimum sentence and if the offender completes programming and meets other requirements, the offender will be paroled on that minimum. Section 9721 of the Judicial Code allows an eligible defendant to receive a RRRI minimum sentence even if a mandatory sentence would otherwise be provided by law.

Safe Community Reentry Program

Chapter 49 is added to the Prisons and Parole Code to establish a comprehensive program to reduce recidivism and ensure the successful reentry and reintegration of offenders into the community.

The Safe Community Reentry Program provides offenders with access to a full continuum of services during incarceration and upon release during their transition and reintegration into the community. The DOC shall assess each offender entering the State correctional system to determine which treatment services, programs and skills the offender needs to develop to be successful in the community following release. The DOC shall assist each offender in developing a reentry plan. The DOC shall coordinate the specifics of the offender’s reentry plan with the educational, vocational training, and treatment services that will be provided to the offender during incarceration.

The DOC and the Pennsylvania Board of Probation and Parole (board) shall use community organizations to assist in meeting the needs of offenders reentering the community. “Community organization” is defined as including community, faith-based or other private charitable organizations. The DOC and the board must develop a list of community organizations that are available to provide services such as education, vocational training, follow-up treatment services, and support with finding housing and employment. The DOC and the board may refer offenders to the community organizations on the list.

The bill authorizes the DOC and the board to contract with private vendors, including community organizations, units of government and other entities to provide reintegration and transitional programs and services. These services may include institutional-based and community-based programs. The DOC and the board may share information about offenders with the entities that enter into these contracts. However, personal health information may not be disclosed without the offender’s consent. Any contract entered into shall contain specific performance measures that shall be used to evaluate compliance. The DOC and the board may issue rules and regulations to implement this legislation.

The department shall conduct research to determine whether the Safe Community Reentry Program reduces recidivism rates. A report evaluating the program shall be issued by February 1 of each even-numbered year. The report shall be presented to the House and Senate judiciary committees.

Effective date

Except for the prerelease provisions which takes effect in one years, this act takes effect in 60 days.

Background:

Legislative history

During the 2009-2010 legislative session the Senate Judiciary Committee held a public hearing on prison overcrowding. Witnesses made innovative recommendations for reducing the prison population and bringing down prison costs without jeopardizing public safety. In response to these recommendations, seven bills were introduced to address the prison population crisis (Senate Bills 1145, 1161, 1193, 1198, 1275, 1298 and 1299). The Senate passed three of these bills (Senate Bill 1145, 1161 and 1275). The House of Representatives took concepts from the three bills and combined them into Senate Bill 1161, which was signed into law as 2010 Act 95.

Senate Bill 100, the Criminal Justice Reform Act, amends the Judicial Code, Title 42, and the Prisons and Parole Code, Title 61 of the Pennsylvania Consolidated Statutes, to include proposals from the seven bills that were not included in Act 95. On June 14, 2011, the Senate Judiciary Committee reported Senate Bill 100 from committee as amended. On June 27, 2011, the Senate re-referred Senate Bill 100 to the Senate Appropriations Committee. The Senate Appropriations Committee re-reported Senate Bill 100 on September 20, 2011. Senate Bill 100 was amended on third consideration.