

W. Edward Sell American Inn of Court

Sentencing Presentation

January 19, 2017

§ 9716 Two or more mandatory minimum sentences applicable.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter B SENTENCING AUTHORITY

Current through P.A. Acts 2016-8

§ 9716 Two or more mandatory minimum sentences applicable

Where two or more sections requiring mandatory minimum sentences are applicable, the court shall be bound by that section requiring the greater penalty.

Cite as 42 Pa.C.S. § 9716

History. 1982, March 8, P.L. 169, No. 54, §3, effective in 90 days.

§ 303.13 Guideline sentence recommendations: Aggravated and mitigated circumstances.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Sentencing Guidelines

Current through P.A. Acts 2016-8

§ 303.13 Guideline sentence recommendations: Aggravated and mitigated circumstances

- (a) When the court determines that an aggravating circumstance(s) is present, it may impose an aggravated sentence as follows:
- (1) For the Offense Gravity Scores of 9, 10, 11, 12 and 13 the court may impose a sentence that is up to 12 months longer than the upper limit of the standard range.
 - (2) For the Offense Gravity Score of 8, the court may impose a sentence that is up to 9 months longer than the upper limit of the standard range.
 - (3) For the Offense Gravity Scores of 6 and 7, the court may impose a sentence that is up to 6 months longer than the upper limit of the standard range.
 - (4) For the Offense Gravity Scores of 1, 2, 3, 4, and 5, the court may impose a sentence that is up to 3 months longer than the upper limit of the standard range. When imposing a fine or community service pursuant to § 303.14(a)(4), the court may impose a sentence that is up to 25 hours longer than the upper limit of the standard range.
 - (5) When the standard range is Restorative Sanctions (RS), the aggravated sentence recommendation is RIP-3.
- (b) When the court determines that a mitigating circumstance(s) is present, it may impose a mitigated sentence as follows:
- (1) For the Offense Gravity Scores of 9, 10, 11, 12, 13, and 14 the court may impose a sentence that is up to 12 months shorter than the lower limit of the standard range.
 - (2) For the Offense Gravity Score of 8, the court may impose a sentence that is up to

9 months shorter than the lower limit of the standard range.

- (3) For the Offense Gravity Scores of 6 and 7, the court may impose a sentence that is up to 6 months shorter than the lower limit of the standard range.
 - (4) For the Offense Gravity Scores of 1, 2, 3, 4, and 5, the court may impose a sentence that is up to 3 months shorter than the lower limit of the standard range. When imposing a fine or community service pursuant to § 303.14(a)(4), the court may impose a sentence that is up to 25 hours shorter than the lower limit of the standard range.
 - (5) When the bottom of the standard range is less than or equal to 3 months of incarceration, the lower limit of the mitigated sentence recommendation is Restorative Sanctions (RS).
 - (6) In no case where a Deadly Weapon Enhancement is applied may the mitigated sentence recommendation be lower than 3 months.
- (c) When the court imposes an aggravated or mitigated sentence, it shall state the reasons on the record and on the Guideline Sentence Form, a copy of which is electronically transmitted to the Commission on Sentencing in the manner described in § 303.1(e).

Cite as 42 Pa.C.S. § 303.13

History. Amended Feb. 9, 2005, applicable to offenses committed on or after June 3, 2005, 35 Pa.B. 1508.

Readopted and amended Sept. 6, 2008, applicable to offenses committed on or after Dec. 5, 2008, 38 Pa.B. 4971.

§ 303.16 Basic Sentencing Matrix.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Sentencing Guidelines

Current through P.A. Acts 2016-8

§ 303.16 Basic Sentencing Matrix

TABULAR OR GRAPHIC MATERIAL SET FORTH AT THIS POINT IS NOT DISPLAYABLE.

Cite as 42 Pa.C.S. § 303.16

History. Amended Feb. 9, 2005, applicable to offenses committed on or after June 3, 2005, 35 Pa.B. 1508.

Readopted Sept. 6, 2008, applicable to offenses committed on or after Dec. 5, 2008, 38 Pa.B. 4971.

§ 106 Classes of offenses.

Pennsylvania Statutes

18 Pa.C.S. CRIMES AND OFFENSES

Part I PRELIMINARY PROVISIONS

Chapter 1 GENERAL PROVISIONS

Current through P.A. Acts 2016-8

§ 106 Classes of offenses

- (a) **General rule.**--An offense defined by this title for which a sentence of death or of imprisonment is authorized constitutes a crime. The classes of crime are:
- (1) Murder of the first degree, of the second degree or of the third degree, first degree murder of an unborn child, second degree murder of an unborn child or third degree murder of an unborn child.
 - (2) Felony of the first degree.
 - (3) Felony of the second degree.
 - (4) Felony of the third degree.
 - (5) Misdemeanor of the first degree.
 - (6) Misdemeanor of the second degree.
 - (7) Misdemeanor of the third degree.
- (b) **Classification of crimes.**--
- (1) A crime is a murder of the first degree, of the second degree or of the third degree if it is so designated in this title or if a person convicted of criminal homicide may be sentenced in accordance with the provisions of section 1102 (relating to sentence for murder and murder of an unborn child). A crime is first degree murder of an unborn child, second degree murder of an unborn child or third degree murder of an unborn child if it is so designated in this title or if a person convicted of criminal homicide of an unborn child may be sentenced in accordance with the provisions of section 1102.
 - (2) A crime is a felony of the first degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is more than ten years.

- (3) A crime is a felony of the second degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than ten years.
 - (4) A crime is a felony of the third degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than seven years.
 - (5) A crime declared to be a felony, without specification of degree, is of the third degree.
 - (6) A crime is a misdemeanor of the first degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than five years.
 - (7) A crime is a misdemeanor of the second degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than two years.
 - (8) A crime is a misdemeanor of the third degree if it is so designated in this title or if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than one year.
 - (9) A crime declared to be a misdemeanor, without specification of degree, is of the third degree.
- (c) **Summary offenses.**--An offense defined by this title constitutes a summary offense if:
- (1) it is so designated in this title, or in a statute other than this title; or
 - (2) if a person convicted thereof may be sentenced to a term of imprisonment, the maximum of which is not more than 90 days.
- (d) **Other crimes.**--Any offense declared by law to constitute a crime, without specification of the class thereof, is a misdemeanor of the second degree, if the maximum sentence does not make it a felony under this section.
- (e) **Section applicable to other statutes.**--An offense hereafter defined by any statute other than this title shall be classified as provided in this section.

Cite as 18 Pa.C.S. § 106

History. 1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1974, March 26, P.L. 213, No. 46, § 1, imd. effective; 1997, Oct. 2, P.L. 379, No. 44, §1, effective in 180 days.

§ 9761 Computation and order of service of sentences.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter E IMPOSITION OF SENTENCE

Current through P.A. Acts 2016-8

§ 9761 Computation and order of service of sentences

- (a) **Order of service of sentences.**--If a minimum sentence imposed by the court which is to run concurrently with one which has been previously imposed would expire later than the minimum of such a previously imposed sentence, or if the previously imposed sentence is terminated before the expiration of the minimum sentence of the last imposed sentence, the defendant shall be imprisoned at least until the last imposed minimum sentence has been served.
- (b) **Sentences imposed by other sovereigns.**--If the defendant is at the time of sentencing subject to imprisonment under the authority of any other sovereign, the court may indicate that imprisonment under such other authority shall satisfy or be credited against both the minimum and maximum time imposed under the court's sentence. If the defendant is released by such other authority before the expiration of the minimum time imposed by the court, he shall be returned to a correctional institution of the Commonwealth to serve the time which remains of the sentence. If the defendant is released after the minimum time has elapsed, he shall be considered for parole on the same basis as a prisoner who has served his minimum time in a correctional institution of the Commonwealth. If the defendant is released after the maximum time imposed under the sentence of imprisonment he shall be deemed to have served his sentence.

Cite as 42 Pa.C.S. § 9761

History. 1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Renumbered from 18 Pa.C.S. § 1361 by 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

§ 9757 Consecutive sentences of total confinement for multiple offenses.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter E IMPOSITION OF SENTENCE

Current through P.A. Acts 2016-8

§ 9757 Consecutive sentences of total confinement for multiple offenses

Whenever the court determines that a sentence should be served consecutively to one being then imposed by the court, or to one previously imposed, the court shall indicate the minimum sentence to be served for the total of all offenses with respect to which sentence is imposed. Such minimum sentence shall not exceed one-half of the maximum sentence imposed.

Cite as 42 Pa.C.S. § 9757

History. 1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Renumbered from 18 Pa.C.S. § 1357 by 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

§ 1109 Costs.

Pennsylvania Statutes

18 Pa.C.S. CRIMES AND OFFENSES

Part I PRELIMINARY PROVISIONS

Chapter 11 AUTHORIZED DISPOSITION OF OFFENDERS

Current through P.A. Acts 2016-8

§ 1109 Costs

In addition to any other sentence imposed, the court may order an offender to pay the cost of any reward paid for the apprehension and conviction of the offender.

Cite as 18 Pa.C.S. § 1109

History. 1995, Sept. 26, P.L. 1056, No. 20 (Spec. Sess. No. 1), § 1, effective in 60 days.

§ 9763 Sentence of county intermediate punishment.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter E IMPOSITION OF SENTENCE

Current through P.A. Acts 2016-8

§ 9763 Sentence of county intermediate punishment

- (a) **General rule.**--In imposing a sentence of county intermediate punishment, the court shall specify at the time of sentencing the length of the term for which the defendant is to be in a county intermediate punishment program established under Chapter 98 (relating to county intermediate punishment) or a combination of county intermediate punishment programs. The term may not exceed the maximum term for which the defendant could be confined and the program to which the defendant is sentenced. The court may order a defendant to serve a portion of the sentence under section 9755 (relating to sentence of partial confinement) or 9756 (relating to sentence of total confinement) and to serve a portion in a county intermediate punishment program or a combination of county intermediate punishment programs.
- (b) **Conditions generally.**--The court may attach any of the following conditions upon the defendant as it deems necessary:
- (1) To meet family responsibilities.
 - (2) To be devoted to a specific occupation or employment.
 - (3) To participate in a public or nonprofit community service program.
 - (4) To undergo individual or family counseling.
 - (5) To undergo available medical or psychiatric treatment or to enter and remain in a specified institution, when required for that purpose.
 - (6) To attend educational or vocational training programs.
 - (7) To attend or reside in a rehabilitative facility or other intermediate punishment program.
 - (8) To refrain from frequenting unlawful or disreputable places or consorting with

disreputable persons.

- (9) To not possess a firearm or other dangerous weapon unless granted written permission.
- (10) To make restitution of the fruits of the crime or to make reparations, in an affordable amount, for the loss or damage caused by the crime.
- (11) To be subject to intensive supervision while remaining within the jurisdiction of the court and to notify the court or designated person of any change in address or employment.
- (12) To report as directed to the court or the designated person and to permit the designated person to visit the defendant's home.
- (13) To pay a fine.
- (14) To participate in drug or alcohol screening and treatment programs, including outpatient and inpatient programs.
- (15) To do other things reasonably related to rehabilitation.
- (16) To remain within the premises of the defendant's residence during the hours designated by the court.
- (17) To be subject to electronic monitoring.

(c) **Restriction.--**

- (1) Any person receiving a penalty imposed pursuant to 75 Pa.C.S. § 1543(b) (relating to driving while operating privilege is suspended or revoked), former 75 Pa.C.S. § 3731 (relating to driving under influence of alcohol or controlled substance) or 75 Pa.C.S. § 3804 (relating to penalties) for a first, second or third offense under 75 Pa.C.S. Ch. 38 (relating to driving after imbibing alcohol or utilizing drugs) may only be sentenced to county intermediate punishment after undergoing an assessment under 75 Pa.C.S. § 3814 (relating to drug and alcohol assessments).
- (2) If the defendant is determined to be in need of drug and alcohol treatment, the defendant may only be sentenced to county intermediate punishment which includes participation in drug and alcohol treatment under 75 Pa.C.S. § 3815(c) (relating to mandatory sentencing). The defendant may only be sentenced to county intermediate punishment in:
 - (i) a residential inpatient program or a residential rehabilitative center;
 - (ii) house arrest with electronic surveillance;
 - (iii) a partial confinement program such as work release, work camp and

halfway facility; or

(iv) any combination of the programs set forth in this paragraph.

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

(i) house arrest with electronic surveillance;

(ii) partial confinement programs such as work release, work camps and halfway facilities; or

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

(d) **Sentence following violation of condition.**--The sentence to be imposed in the event of the violation of a condition under subsection (b) shall not be imposed prior to a finding on the record that a violation has occurred. Notwithstanding any other provision of law requiring notice prior to sentencing, in the event of a violation of a condition under subsection (b), the attorney for the Commonwealth may file notice at any time prior to resentencing of the Commonwealth's intention to proceed under an applicable provision of law requiring a mandatory minimum sentence.

Cite as 42 Pa.C.S. § 9763

History. 1990, Dec. 19, P.L. 1196, No. 201, § 4, effective July 1, 1991. Amended 2000, June 22, P.L. 345, No. 41, §5, effective in 60 days; 2003, Sept. 30, P.L. 120, No. 24, §5, effective Feb. 1, 2004; 2004, Nov. 19, P.L. 855, No. 112, §5, effective in 180 days [May 18, 2005].

§ 9730 Payment of court costs, restitution and fines.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Current through P.A. Acts 2016-8

§ 9730 Payment of court costs, restitution and fines

- (a) **Use of credit cards.--**The treasurer of each county may allow the use of credit cards and bank cards in the payment of court costs and fines.
- (b) **Procedures regarding default.--**
 - (1) If a defendant defaults in the payment of a fine, court costs or restitution after imposition of sentence, the issuing authority or a senior judge or senior magisterial district judge appointed by the president judge for the purposes of this section may conduct a hearing to determine whether the defendant is financially able to pay.
 - (2) If the issuing authority, senior judge or senior magisterial district judge determines that the defendant is financially able to pay the fine or costs, the issuing authority, senior judge or senior magisterial district judge may turn the delinquent account over to a private collection agency or impose imprisonment for nonpayment, as provided by law.
 - (3) If the issuing authority, senior judge or senior magisterial district judge determines that the defendant is without the financial means to pay the fine or costs immediately or in a single remittance, the issuing authority, senior judge or senior magisterial district judge may provide for payment in installments. In determining the appropriate installments, the issuing authority, senior judge or senior magisterial district judge shall consider the defendant's financial resources, the defendant's ability to make restitution and reparations and the nature of the burden the payment will impose on the defendant. If the defendant is in default of a payment or advises the issuing authority, senior judge or senior magisterial district judge that default is imminent, the issuing authority, senior judge or senior magisterial district judge may schedule a rehearing on the payment schedule. At the rehearing the defendant has the burden of proving changes of financial condition such that the defendant is without the means to meet the payment

schedule. The issuing authority, senior judge or senior magisterial district judge may extend or accelerate the schedule, leave it unaltered or sentence the defendant to a period of community service as the issuing authority, senior judge or senior magisterial district judge finds to be just and practicable under the circumstances.

- (4) A decision of the issuing authority, senior judge or senior magisterial district judge under paragraph (2) or (3) is subject to section 5105 (relating to right to appellate review).

Cite as 42 Pa.C.S. § 9730

History. 1992, Dec. 16, P.L. 1269, No. 167, § 3, imd. effective. Amended 1996, July 11, P.L. 607, No. 104, § 7, effective in 60 days; 2004, Nov. 30, P.L. 1618, No. 207, § 18, effective in 60 days [Jan. 31, 2005].

§ 3815 Mandatory sentencing.

Pennsylvania Statutes

75 Pa.C.S. VEHICLES

Part III OPERATION OF VEHICLES

Chapter 38 DRIVING AFTER IMBIBING ALCOHOL OR UTILIZING DRUGS

Current through P.A. Acts 2016-8

§ 3815 Mandatory sentencing

- (a) **County supervision.**--Notwithstanding the length of any maximum term of imprisonment imposed pursuant to sections 3803 (relating to grading) and 3804 (relating to penalties), and notwithstanding the provisions of section 17 of the act of August 6, 1941 (P.L. 861, No. 323), referred to as the Pennsylvania Board of Probation and Parole Law, the sentencing judge may grant parole under the supervision of the county parole system to any offender serving a sentence for a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) and, if applicable, serving any concurrent sentence of imprisonment for any misdemeanor offense arising from the same criminal episode as the violation of section 3802. The power of the sentencing judge to grant parole shall apply only to those offenders whose sentences are being served in a county prison pursuant to 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement) or section 3804(d). The sentencing judge shall declare his intention to retain parole authority and supervision at the time of sentencing in cases in which he would not otherwise have parole authority and supervision.
- (b) **Parole.**--
- (1) An offender who is determined pursuant to section 3814 (relating to drug and alcohol assessments) to be in need of drug and alcohol treatment shall be eligible for parole in accordance with the terms and conditions prescribed in this section following the expiration of the offender's mandatory minimum term of imprisonment.
 - (2) The following shall be conditions of parole:
 - (i) If the offender is not determined under the procedures set forth in section 3814 to be addicted to alcohol or another substance, the offender must refrain from:
 - (A) the use of illegal controlled substances; and
 - (B) the abuse of prescription drugs, over-the-counter drugs or any other

substances.

(ii) If the offender is determined under the procedures set forth in section 3814 to be addicted to alcohol or another substance, the offender must do all of the following:

(A) Refrain from:

(I) the use of alcohol or illegal controlled substances; and

(II) the abuse of prescription drugs, over-the-counter drugs or any other substances.

(B) Participate in and cooperate with drug and alcohol addiction treatment under subsection (c).

(c) **Treatment.--**

- (1) Treatment must conform to assessment recommendations made under section 3814.
- (2) Treatment must be conducted by a drug and alcohol addiction treatment program licensed by the Department of Health.
- (3) The treatment program shall report periodically to the assigned parole officer on the offender's progress in the treatment program. The treatment program shall promptly notify the parole officer if the offender:
 - (i) fails to comply with program rules and treatment expectations;
 - (ii) refuses to constructively engage in the treatment process; or
 - (iii) without authorization terminates participation in the treatment program.
- (4) Upon notification under paragraph (3), the parole officer shall report the offender's actions to the parole authority and to the department for compliance with section 1553(e) (relating to occupational limited license). The parole authority shall schedule a revocation hearing to consider recommendations of the parole officer and the treatment program.
- (5) Nothing in this subsection shall prevent a treatment program from refusing to accept an offender if the program administrator deems the offender to be inappropriate for admission to the program. A treatment program shall retain the right to immediately discharge into the custody of the assigned parole officer an offender who fails to comply with program rules and treatment expectations or refuses to constructively engage in the treatment process.

(d) **Enforcement.--**

- (1) This subsection applies to an offender ordered to participate in a treatment program under subsection (b)(2)(ii) who:
 - (i) fails to comply with program rules and treatment expectations;
 - (ii) refuses to constructively engage in the treatment process; or
 - (iii) terminates participation in the treatment program without authorization.
- (2) Notwithstanding any other provision of law, all of the following apply to an offender under paragraph (1):
 - (i) The offender's parole, prerelease, work release or any other release status shall be revoked.
 - (ii) The offender shall be ineligible for parole, prerelease, work release or any other release from the correctional facility prior to the expiration of the offender's maximum term unless the offender is permitted to be readmitted to a treatment program.
- (3) Nothing in this subsection shall be construed to grant a legal right to parole to an offender previously ineligible for parole, on the grounds that the offender is currently prepared to participate in, comply with and constructively engage in the treatment process. Under such circumstances, parole or reparole of the offender shall be at the parole authority's discretion.

(e) **Follow-up.--**After an offender has completed the treatment program under subsection (c), the parole officer shall take reasonable steps to ensure that the offender does not abuse alcohol, use illegal controlled substances or abuse prescription drugs, over-the-counter drugs or any other such substances. These reasonable steps include requiring chemical testing and periodic reassessment of the offender by the treatment program.

(f) **Fees.--**

- (1) Except as set forth in paragraph (2), the parole authority shall impose upon an offender subject to this section reasonable fees to cover the cost of any of the following:
 - (i) Chemical testing of the offender required under this section.
 - (ii) An assessment of the offender required under this section.
 - (iii) Drug or alcohol treatment provided in accordance with the assessment.
- (2) If the parole authority finds the offender to be unable to pay the full amount of the fees required by paragraph (1) and section 1541(d) (relating to period of

disqualification, revocation or suspension of operating privilege), it shall require the offender to pay as much of the fee as is consistent with the offender's ability to pay and shall direct the assigned parole officer to establish a reasonable payment schedule for the offender to pay as much of the remaining fees as is consistent with the offender's ability to pay.

(g) **Insurance.--**

- (1) This subsection shall only apply to a health insurance, health maintenance organization or other health plan required to provide benefits under section 602-A of the act of May 17, 1921 (P.L. 682, No. 284), known as The Insurance Company Law of 1921.
- (2) If an individual who is insured by a health insurance, a health maintenance organization or other health plan, that is doing business in this Commonwealth, the individual may not be deprived of alcohol and other drug abuse and addiction treatment or coverage within the scope of that plan due to the identification of an alcohol or other drug problem which occurs as a result of an assessment under this section.

- (h) **Additional funding.--**In order to support and augment the diagnostic assessment and treatment services provided under this section, the Department of Health, the department and the Pennsylvania Commission on Crime and Delinquency shall seek all available Federal funding, including funds available through the United States National Highway Traffic Safety Administration and the Department of Health and Human Services.

Cite as 75 Pa.C.S. § 3815

History. 2003, Sept. 30, P.L. 120, No. 24, §16, effective Feb. 1, 2004. Amended 2004, Nov. 29, P.L. 1369, No. 177, § 4, imd. effective.

§ 3804 Penalties.

Pennsylvania Statutes

75 Pa.C.S. VEHICLES

Part III OPERATION OF VEHICLES

Chapter 38 DRIVING AFTER IMBIBING ALCOHOL OR UTILIZING DRUGS

Current through P.A. Acts 2016-8

§ 3804 Penalties

- (a) **General impairment.**--Except as set forth in subsection (b) or (c), an individual who violates section 3802(a) (relating to driving under influence of alcohol or controlled substance) shall be sentenced as follows:
- (1) For a first offense, to:
 - (i) undergo a mandatory minimum term of six months' probation;
 - (ii) pay a fine of \$300;
 - (iii) attend an alcohol highway safety school approved by the department; and
 - (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 (relating to drug and alcohol assessments) and 3815 (relating to mandatory sentencing).
 - (2) For a second offense, to:
 - (i) undergo imprisonment for not less than five days;
 - (ii) pay a fine of not less than \$300 nor more than \$2,500;
 - (iii) attend an alcohol highway safety school approved by the department; and
 - (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.
 - (3) For a third or subsequent offense, to:
 - (i) undergo imprisonment of not less than ten days;
 - (ii) pay a fine of not less than \$500 nor more than \$5,000; and
 - (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

- (b) **High rate of blood alcohol; minors; commercial vehicles and school buses and school vehicles; accidents.**--Except as set forth in subsection (c), an individual who violates section 3802(a)(1) where there was an accident resulting in bodily injury, serious bodily injury or death of any person or damage to a vehicle or other property or who violates section 3802(b), (e) or (f) shall be sentenced as follows:
- (1) For a first offense, to:
 - (i) undergo imprisonment of not less than 48 consecutive hours;
 - (ii) pay a fine of not less than \$500 nor more than \$5,000;
 - (iii) attend an alcohol highway safety school approved by the department; and
 - (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.
 - (2) For a second offense, to:
 - (i) undergo imprisonment of not less than 30 days;
 - (ii) pay a fine of not less than \$750 nor more than \$5,000;
 - (iii) attend an alcohol highway safety school approved by the department; and
 - (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.
 - (3) For a third offense, to:
 - (i) undergo imprisonment of not less than 90 days;
 - (ii) pay a fine of not less than \$1,500 nor more than \$10,000; and
 - (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.
 - (4) For a fourth or subsequent offense, to:
 - (i) undergo imprisonment of not less than one year;
 - (ii) pay a fine of not less than \$1,500 nor more than \$10,000; and
 - (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.
- (c) **Incapacity; highest blood alcohol; controlled substances.**--An individual who violates section 3802(a)(1) and refused testing of blood or breath or an individual who violates section 3802(c) or (d) shall be sentenced as follows:

- (1) For a first offense, to:
 - (i) undergo imprisonment of not less than 72 consecutive hours;
 - (ii) pay a fine of not less than \$1,000 nor more than \$5,000;
 - (iii) attend an alcohol highway safety school approved by the department; and
 - (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

- (2) For a second offense, to:
 - (i) undergo imprisonment of not less than 90 days;
 - (ii) pay a fine of not less than \$1,500;
 - (iii) attend an alcohol highway safety school approved by the department; and
 - (iv) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

- (3) For a third or subsequent offense, to:
 - (i) undergo imprisonment of not less than one year;
 - (ii) pay a fine of not less than \$2,500; and
 - (iii) comply with all drug and alcohol treatment requirements imposed under sections 3814 and 3815.

(c.1) Violation involving minor occupant.--An individual who violates section 3803(b)(5) (relating to grading), in addition to any penalty imposed in this chapter, shall be sentenced as follows:

- (1) For a first offense, to:
 - (i) pay a fine of not less than \$1,000; and
 - (ii) complete 100 hours of community service.

- (2) For a second offense, to:
 - (i) pay a fine of not less than \$2,500; and
 - (ii) undergo imprisonment of not less than one month nor more than six months.

- (3) For a third or subsequent offense, undergo imprisonment of not less than six months nor more than two years.

- (d) **Extended supervision of court.**--If a person is sentenced pursuant to this chapter and, after the initial assessment required by section 3814(1), the person is determined to be in need of additional treatment pursuant to section 3814(2), the judge shall impose a minimum sentence as provided by law and a maximum sentence equal to the statutorily available maximum. A sentence to the statutorily available maximum imposed pursuant to this subsection may, in the discretion of the sentencing court, be ordered to be served in a county prison, notwithstanding the provisions of 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement).
- (e) **Suspension of operating privileges upon conviction.**--
- (1) The department shall suspend the operating privilege of an individual under paragraph (2) upon receiving a certified record of the individual's conviction of or an adjudication of delinquency for:
 - (i) an offense under section 3802 ; or
 - (ii) an offense which is substantially similar to an offense enumerated in section 3802 reported to the department under Article III of the compact in section 1581 (relating to Driver's License Compact).
 - (2) Suspension under paragraph (1) shall be in accordance with the following:
 - (i) Except as provided for in subparagraph (iii), 12 months for an ungraded misdemeanor or misdemeanor of the second degree under this chapter.
 - (ii) 18 months for a misdemeanor of the first degree under this chapter.
 - (iii) There shall be no suspension for an ungraded misdemeanor under section 3802(a) where the person is subject to the penalties provided in subsection (a) and the person has no prior offense.
 - (iv) For suspensions imposed under paragraph (1)(ii), notwithstanding any provision of law or enforcement agreement to the contrary, all of the following apply:
 - (A) Suspensions shall be in accordance with Subchapter D of Chapter 15 (relating to the Driver's License Compact).
 - (B) In calculating the term of a suspension for an offense that is substantially similar to an offense enumerated in section 3802, the department shall presume that if the conduct reported had occurred in this Commonwealth then the person would have been convicted under section 3802(a)(2).
 - (v) Notwithstanding any other provision of law or enforcement agreement to the contrary, the department shall suspend the operating privilege of a driver for

six months upon receiving a certified record of a consent decree granted under 42 Pa.C.S. Ch. 63 (relating to juvenile matters) based on section 3802.

- (f) **Community service assignments.**--In addition to the penalties set forth in this section, the sentencing judge may impose up to 150 hours of community service. Where the individual has been ordered to drug and alcohol treatment pursuant to sections 3814 and 3815, the community service shall be certified by the drug and alcohol treatment program as consistent with any drug and alcohol treatment requirements imposed under sections 3814 and 3815.
- (f.1) **Victim impact panels.**--
- (1) In addition to any other penalty imposed under this section, the court may order a person who violates section 3802 to attend a victim impact panel program.
 - (2) A victim impact panel program shall provide a nonconfrontational forum for driving under the influence crash victims, their family members, their friends or other pertinent persons to speak to driving under the influence offenders about the impact of the crash on victims' lives and on the lives of families, friends and neighbors.
 - (3) A victim impact panel shall be administrated through the local office of probation and parole or other office as the court shall determine and shall be operated in consultation with the Mothers Against Drunk Driving - Pennsylvania State Organization.
 - (4) A victim impact panel program may assess a reasonable participation fee to achieve program self-sufficiency but may not operate for profit. The department shall establish an acceptable range of fees.
 - (5) The department shall develop standards and incentives to encourage counties to establish victim impact panel programs. In developing these standards, the department shall establish and chair a coordinating committee among pertinent agencies and organizations, including the Department of Health, the Pennsylvania Commission on Crime and Delinquency, the Office of Victim Advocate, the Administrative Office of Pennsylvania Courts, county officials, the Mothers Against Drunk Driving - Pennsylvania State Organization and the Pennsylvania DUI Association. The standards shall address items including all of the following:
 - (i) Prototype design and structure standards for victim impact panels.
 - (ii) Training standards and curricula for presenters, facilitators and administrators.

- (iii) Operations policy and guidelines manual.
 - (iv) Evaluation standards, design and structure allowing for the tracking and analysis of recidivism data.
 - (v) Standards for counseling and debriefing activities for victim presenters.
 - (vi) Standards for reimbursing reasonable costs to victims for participation in panels.
 - (vii) Assistance to counties through coordinating potential Federal and State funding streams to carry out this subsection and to assist counties as may be needed.
- (g) **Sentencing guidelines.**--The sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory penalties of this section.
- (h) **Appeal.**--The Commonwealth has the right to appeal directly to the Superior Court any order of court which imposes a sentence for violation of this section which does not meet the requirements of this section. The Superior Court shall remand the case to the sentencing court for imposition of a sentence in accordance with the provisions of this section.
- (i) **First class cities.**--Notwithstanding the provision for direct appeal to the Superior Court, if, in a city of the first class, a person appeals from a judgment of sentence under this section from the municipal court to the common pleas court for a trial de novo, the Commonwealth shall have the right to appeal directly to the Superior Court from the order of the common pleas court if the sentence imposed is in violation of this section. If, in a city of the first class, a person appeals to the court of common pleas after conviction of a violation of this section in the municipal court and thereafter withdraws his appeal to the common pleas court, thereby reinstating the judgment of sentence of the municipal court, the Commonwealth shall have 30 days from the date of the withdrawal to appeal to the Superior Court if the sentence is in violation of this section.
- (j) **Additional conditions.**--In addition to any other penalty imposed under law, the court may sentence a person who violates section 3802 to any other requirement or condition consistent with the treatment needs of the person, the restoration of the victim to preoffense status or the protection of the public.
- (k) **Nonapplicability.**--Except for subsection (e), this section shall not apply to dispositions resulting from proceedings under 42 Pa.C.S. Ch. 63 .

Cite as 75 Pa.C.S. § 3804

History. Amended by P.L. 255 2012 No. 39, §2, eff. 7/7/2012.

2003, Sept. 30, P.L. 120, No. 24, §16, effective Feb. 1, 2004. Amended 2004, Nov. 29, P.L. 1369, No. 177, § 3, imd. effective; 2006, May 11, P.L. 155, No. 36, §3, imd. effective.

§ 1543 Driving while operating privilege is suspended or revoked.

Pennsylvania Statutes

75 Pa.C.S. VEHICLES

Part II TITLE, REGISTRATION AND LICENSING

Chapter 15 LICENSING OF DRIVERS

Subchapter B COMPREHENSIVE SYSTEM FOR DRIVER EDUCATION AND CONTROL

Current through P.A. Acts 2016-8

§ 1543 Driving while operating privilege is suspended or revoked

- (a) **Offense defined.**--Except as provided in subsection (b), any person who drives a motor vehicle on any highway or trafficway of this Commonwealth after the commencement of a suspension, revocation or cancellation of the operating privilege and before the operating privilege has been restored is guilty of a summary offense and shall, upon conviction, be sentenced to pay a fine of \$200.
- (b) **Certain offenses.**--
- (1) A person who drives a motor vehicle on a highway or trafficway of this Commonwealth at a time when the person's operating privilege is suspended or revoked as a condition of acceptance of Accelerated Rehabilitative Disposition for a violation of section 3802 (relating to driving under influence of alcohol or controlled substance) or the former section 3731, because of a violation of section 1547(b)(1) (relating to suspension for refusal) or 3802 or former section 3731 or is suspended under section 1581 (relating to Driver's License Compact) for an offense substantially similar to a violation of section 3802 or former section 3731 shall, upon conviction, be guilty of a summary offense and shall be sentenced to pay a fine of \$500 and to undergo imprisonment for a period of not less than 60 days nor more than 90 days.
- (1.1) (i) A person who has an amount of alcohol by weight in his blood that is equal to or greater than .02% at the time of testing or who at the time of testing has in his blood any amount of a Schedule I or nonprescribed Schedule II or III controlled substance, as defined in the act of April 14, 1972 (P.L.233, No.64) , known as The Controlled Substance, Drug, Device and Cosmetic Act, or its metabolite or who refuses testing of blood or breath and who drives a motor vehicle on any highway or trafficway of this Commonwealth at a time when the person's operating privilege is suspended or revoked as

a condition of acceptance of Accelerated Rehabilitative Disposition for a violation of section 3802 or former section 3731 or because of a violation of section 1547(b) (1) or 3802 or former section 3731 or is suspended under section 1581 for an offense substantially similar to a violation of section 3802 or former section 3731 shall, upon a first conviction, be guilty of a summary offense and shall be sentenced to pay a fine of \$1,000 and to undergo imprisonment for a period of not less than 90 days.

- (ii) A second violation of this paragraph shall constitute a misdemeanor of the third degree, and upon conviction thereof the person shall be sentenced to pay a fine of \$2,500 and to undergo imprisonment for not less than six months.
- (iii) A third or subsequent violation of this paragraph shall constitute a misdemeanor of the first degree, and upon conviction thereof the person shall be sentenced to pay a fine of \$5,000 and to undergo imprisonment for not less than two years.

(2) This subsection shall apply to any person against whom one of these suspensions has been imposed whether the person is currently serving this suspension or whether the effective date of suspension has been deferred under any of the provisions of section 1544 (relating to additional period of revocation or suspension). This provision shall also apply until the person has had the operating privilege restored. This subsection shall also apply to any revocation imposed pursuant to section 1542 (relating to revocation of habitual offender's license) if any of the enumerated offenses was for a violation of section 3802 or former section 3731 or for an out- of-State offense that is substantially similar to a violation of section 3802 or former section 3731, for which a revocation is imposed under section 1581.

(c) **Suspension or revocation of operating privilege.**--Upon receiving a certified record of the conviction of any person under this section, the department shall suspend or revoke that person's operating privilege as follows:

- (1) If the department's records show that the person was under suspension, recall or cancellation on the date of violation, and had not been restored, the department shall suspend the person's operating privilege for an additional one-year period.
- (2) If the department's records show that the person was under revocation on the date of violation, and had not been restored, the department shall revoke the person's operating privilege for an additional two-year period.

(d) **Citation of appropriate subsection.**--Prior to filing a citation for a violation of this section with the issuing authority named in the citation, the police officer shall verify the basis for

the suspension with the department. Upon receiving the verification, the officer shall cite the appropriate subsection of this section on the citation.

Cite as 75 Pa.C.S. § 1543

History. Amended by P.L. 914 2012 No. 93, §1, eff. 9/3/2012.

1976, June 17, P.L. 162, No. 81, §1, imd. effective. Amended 1982, Dec. 15, P.L. 1268, No. 289, § 4, effective in 30 days; 1986, Dec. 11, P.L. 1530, No. 166, § 4, effective in 60 days; 1987, Nov. 23, P.L. 399, No. 82, § 3, effective in 60 days; 1994, Dec. 12, P.L. 1048, No. 143, § 2, effective in nine months; 1998, Dec. 21, P.L. 1126, No. 151, § 18, imd. effective; 2002, Oct. 4, P.L. 845, No. 123, §3, effective in 60 days; 2003, Sept. 30, P.L. 120, No. 24, §9, effective Feb. 1, 2004.

§ 9726 Fine.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Current through P.A. Acts 2016-8

§ 9726 Fine

- (a) **Fine only.**--The court may, as authorized by law, sentence the defendant only to pay a fine, when, having regard to the nature and circumstances of the crime and to the history and character of the defendant, it is of the opinion that the fine alone suffices.
- (b) **Fine as additional sentence.**--The court may sentence the defendant to pay a fine in addition to another sentence, either involving total or partial confinement or probation, when:
- (1) the defendant has derived a pecuniary gain from the crime; or
 - (2) the court is of the opinion that a fine is specially adapted to deterrence of the crime involved or to the correction of the defendant.
- (c) **Exception.**--The court shall not sentence a defendant to pay a fine unless it appears of record that:
- (1) the defendant is or will be able to pay the fine; and
 - (2) the fine will not prevent the defendant from making restitution or reparation to the victim of the crime.
- (d) **Financial resources.**--In determining the amount and method of payment of a fine, the court shall take into account the financial resources of the defendant and the nature of the burden that its payment will impose.

Cite as 42 Pa.C.S. § 9726

History. 1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Renumbered from 18 Pa.C.S. § 1326 by 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

§ 1101 Fines.

Pennsylvania Statutes

18 Pa.C.S. CRIMES AND OFFENSES

Part I PRELIMINARY PROVISIONS

Chapter 11 AUTHORIZED DISPOSITION OF OFFENDERS

Current through P.A. Acts 2016-8

§ 1101 Fines

A person who has been convicted of an offense may be sentenced to pay a fine not exceeding:

- (1) \$50,000, when the conviction is of murder or attempted murder.
- (2) \$25,000, when the conviction is of a felony of the first or second degree.
- (3) \$15,000, when the conviction is of a felony of the third degree.
- (4) \$10,000, when the conviction is of a misdemeanor of the first degree.
- (5) \$5,000, when the conviction is of a misdemeanor of the second degree.
- (6) \$2,500, when the conviction is of a misdemeanor of the third degree.
- (7) \$300, when the conviction is of a summary offense for which no higher fine is established.
- (8) Any higher amount equal to double the pecuniary gain derived from the offense by the offender.
- (9) Any higher or lower amount specifically authorized by statute.

Cite as 18 Pa.C.S. § 1101

History. 1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1974, March 22, P.L. 210, No. 44, § 1, imd. effective; 1978, April 28, P.L. 202, No. 53, §7(4), effective June 27, 1978; 1988, March 25, P.L. 262, No. 31, §1, effective in 60 days; 1995, March 9, P.L. 964, No. 3 (Spec. Sess. No. 1), § 1, effective in 60 days; 1995, March 15, P.L. 970, No. 5 (Spec. Sess. No. 1), § 1, effective in 60 days.

§ 9752 Sentencing proceeding generally.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter E IMPOSITION OF SENTENCE

Current through P.A. Acts 2016-8

§ 9752 Sentencing proceeding generally

<This section is suspended by Pa.R.Crim.P. Rule 1101(6) as being inconsistent with Chapter 7 of the Rules of Criminal Procedure.>

- (a) **General rule.**--As soon as practicable after the determination of guilt and the examination of any presentence report, a proceeding shall be held at which the court shall:
- (1) Entertain submissions by the parties on the facts relevant to the sentence, including any facts with respect to negotiated pleas, as to the nature of the sentence.
 - (2) Afford to the defendant the right to make a statement.
 - (3) Hear argument by the defense on the applicability of the various sentencing alternatives to the facts of the case, and may hear argument by the prosecution.
- (b) **Evidence.**--Where the need for further evidence has not been eliminated by a presentence conference, evidence offered by the parties on the sentencing issue shall be presented in open court with the rights of confrontation, cross-examination, and representation by counsel.

Cite as 42 Pa.C.S. § 9752

History. 1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Renumbered from 18 Pa.C.S. § 1352 by 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

§ 303.2 Procedure for determining the guideline sentence.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Sentencing Guidelines

Current through P.A. Acts 2016-8

§ 303.2 Procedure for determining the guideline sentence

- (a) For each conviction offense of a judicial proceeding, the procedure for determining the guideline sentence shall be as follows:
- (1) Determine the Offense Gravity Score as described in § 303.3 and § 303.15.
 - (2) Determine the Prior Record Score as described in § 303.4--§ 303.8.
 - (3) Determine the guideline sentence recommendation as described in § 303.9--§ 303.14, including Deadly Weapon Enhancement and Youth/School Enhancement (§ 303.10), and aggravating or mitigating circumstances (§ 303.13).
- (b) **Judicial proceeding.** A judicial proceeding is a proceeding in which all offenses for which the offender has been convicted are pending before the court for sentencing at the same time. A judicial proceeding may include multiple offenses and transactions.

Cite as 42 Pa.C.S. § 303.2

History. Amended Feb. 9, 2005, applicable to offenses committed on or after June 3, 2005, 35 Pa.B. 1508.

Readopted Sept. 6, 2008, applicable to offenses committed on or after Dec. 5, 2008, 38 Pa.B. 4971.

§ 9723 Determination of guilt without further penalty.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Current through P.A. Acts 2016-8

§ 9723 Determination of guilt without further penalty

If in the light of all the circumstances, probation would be appropriate under section 9722 (relating to order of probation), but it appears that probation is unnecessary, the court may impose a sentence of guilty without further penalty.

Cite as 42 Pa.C.S. § 9723

History. 1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Renumbered from 18 Pa.C.S. § 1323 and amended by 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

§ 9727 Disposition of persons found guilty but mentally ill.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Current through P.A. Acts 2016-8

§ 9727 Disposition of persons found guilty but mentally ill

- (a) **Imposition of sentence.**--A defendant found guilty but mentally ill or whose plea of guilty but mentally ill is accepted under the provisions of 18 Pa.C.S. § 314 (relating to guilty but mentally ill) may have any sentence imposed on him which may lawfully be imposed on any defendant convicted of the same offense. Before imposing sentence, the court shall hear testimony and make a finding on the issue of whether the defendant at the time of sentencing is severely mentally disabled and in need of treatment pursuant to the provisions of the act of July 9, 1976 (P.L. 817, No. 143), known as the "Mental Health Procedures Act."
- (b) **Treatment.**--
- (1) An offender who is severely mentally disabled and in need of treatment at the time of sentencing shall, consistent with available resources, be provided such treatment as is psychiatrically or psychologically indicated for his mental illness. Treatment may be provided by the Bureau of Correction, by the county or by the Department of Public Welfare in accordance with the "Mental Health Procedures Act."
 - (2) The cost for treatment of offenders found guilty but mentally ill, committed to the custody of the Bureau of Correction and transferred to a mental health facility, shall be borne by the Commonwealth.
- (c) **Discharge report.**--When a treating facility designated by either the Bureau of Correction or the Department of Public Welfare discharges such a defendant from treatment prior to the expiration of his maximum sentence, that treating facility shall transmit to the Pennsylvania Board of Probation and Parole, the correctional facility or county jail to which the offender is being returned and the sentencing judge a report on the condition of the offender, together with the reasons for its judgments, which describes:

- (1) The defendant's behavior.
 - (2) The course of treatment.
 - (3) The potential for recurrence of the behavior.
 - (4) The potential for danger to himself or the public.
 - (5) Recommendations for future treatment.
- (d) **Parole conditions.**--An offender who is discharged from treatment may be placed on parole status under the same terms and laws applicable to any other offender. Psychological and psychiatric counseling and treatment may be required as a condition of such status. Failure to continue treatment, except by agreement of the supervising authority, shall be a basis for instituting parole violation hearings.
- (e) **Parole procedure.**--The paroling authority may consider the offender for parole pursuant to other law or administrative rules. When the paroling authority considers the offender for parole, it shall consult with the treating facility at which the offender is being treated or from which he was discharged.
- (f) **Probation.**--
- (1) If an offender who is found guilty but mentally ill is placed on probation, the court may, upon recommendation of the district attorney or upon its own initiative, make treatment a condition of probation.
 - (2) Reports as specified by the trial judge shall be filed with the probation officer and the sentencing court. Failure to continue treatment, including the refusal to take such drugs as may be prescribed, except by agreement of the sentencing court, shall be a basis for the institution of probation violation hearings. The period of probation shall be the maximum permitted by law and shall not be reduced without receipt and consideration by the court of a mental health status report like that required in subsection (c).
 - (3) Treatment shall be provided by an agency approved by the Department of Public Welfare or, with the approval of the sentencing court and at individual expense, by private agencies, private physicians or other mental health personnel. A mental health status report, containing the information set forth in subsection (c), shall be filed with the probation officer and the sentencing court every three months during the period of probation. If a motion on a petition to discontinue probation is made by the defendant, the probation officer shall request a report as specified from the treating facility.

History. 1982, Dec. 15, P.L. 1262, No. 286, § 2, effective in 90 days.

§ 303.11 Guideline sentence recommendation: Sentencing levels.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Sentencing Guidelines

Current through P.A. Acts 2016-8

§ 303.11 Guideline sentence recommendation: Sentencing levels

- (a) **Purpose of sentence.** In writing the sentencing guidelines, the Pennsylvania Commission on Sentencing strives to provide a benchmark for the judges of Pennsylvania. The sentencing guidelines provide sanctions proportionate to the severity of the crime and the severity of the offender's prior conviction record. This establishes a sentencing system with a primary focus on retribution, but one in which the recommendations allow for the fulfillment of other sentencing purposes including rehabilitation, deterrence, and incapacitation. To facilitate consideration of sentencing options consistent with the intent of the sentencing guidelines, the Commission has established five sentencing levels. Each level targets certain types of offenders, and describes ranges of sentencing options available to the court.
- (b) **Sentencing levels.** The sentencing level is based on the standard range of the sentencing recommendation. Refer to § 303.9 to determine which sentence recommendation (i.e.--Basic, Deadly Weapon Enhancement or Youth/School Enhancement) applies. When the individual or aggregate minimum sentence recommendation includes confinement in a county facility, county intermediate punishment should be considered in lieu of confinement for an eligible offender. When the individual or aggregate minimum sentence recommendation includes confinement in a state facility, county or state intermediate punishment should be considered in lieu of confinement for an eligible offender. The descriptions of the five sentencing levels are as follows:
- (1) Level 1--Level 1 provides sentence recommendations for the least serious offenders with no more than one prior misdemeanor conviction, such that the standard range is limited to Restorative Sanctions (RS). The primary purpose of this level is to provide the minimal control necessary to fulfill court-ordered obligations. The following sentencing option is available:

Restorative Sanctions (§ 303.9(f)) (also see § 303.14(a)(4) for Fines/Community Service Guidelines)

- (2) Level 2--Level 2 provides sentence recommendations for generally non-violent offenders and those with numerous less serious prior convictions, such that the standard range requires a county sentence but permits both incarceration and non-confinement. The standard range is defined as having an upper limit of less than 12 months and a lower limit of Restorative Sanctions (RS). The primary purposes of this level are control over the offender and restitution to victims. Treatment is recommended for drug dependent offenders. The following sentencing options are available:

Total confinement in a county facility under a county sentence (see 61 P.S. § 331.17).

Partial confinement in a county facility

County Intermediate Punishment (see § 303.12(a) for eligibility criteria)

Restorative Sanctions (§ 303.9(f)) (also see § 303.14(a)(4) for Fines/Community Service Guidelines)

- (3) Level 3--Level 3 provides sentence recommendations for serious offenders and those with numerous prior convictions, such that the standard range requires incarceration or County Intermediate Punishment, but in all cases permits a county sentence. The standard range is defined as having a lower limit of incarceration of less than 12 months. Included in Level 3 are those offenses for which a mandatory minimum sentence of less than 12 months applies and for which a state or county intermediate punishment sentence is authorized by statute. The primary purposes of this level are retribution and control over the offender. If eligible, treatment is recommended for drug dependent offenders in lieu of incarceration. The following sentencing options are available:

Total confinement in a state facility.

Total confinement in a state facility, with participation in the State Motivational Boot Camp (see § 303.12(b) for eligibility criteria)

State Intermediate Punishment (see § 303.12(c) for eligibility criteria)

Total confinement in a county facility under a state or county sentence (see 61 P.S. § 331.17).

Partial confinement in a county facility.

County Intermediate Punishment (see § 303.12(a) for eligibility criteria)

- (4) Level 4--Level 4 provides sentence recommendations for very serious offenders and those with numerous prior convictions, such that the standard range requires state incarceration but permits it to be served in a county facility. The standard range is defined as having a lower limit of incarceration of greater than 12 months but less than 30 months, but limited to offenses with an Offense Gravity Score of less than 9. Included in Level 4 are those offenses for which a mandatory minimum sentence of less than 30 months applies and for which a state or county intermediate punishment sentence is authorized by statute. The primary purposes of the sentencing options at this level are punishment and incapacitation. However, it is recognized that certain offenders at this level are permitted to serve a sentence of total confinement in a county facility, and some non-violent offenders may benefit from drug and alcohol treatment. If eligible, state or county intermediate punishment is recommended for drug dependent offenders. The following sentencing options are available:

Total confinement in a state facility.

Total confinement in a state facility, with participation in the State Motivational Boot Camp (see § 303.12(b) for eligibility criteria)

State Intermediate Punishment (see § 303.12(c) for eligibility criteria)

Total confinement in a county facility as a state offender. (see 61 P.S. § 331.17).

Partial confinement in a county facility.

County Intermediate Punishment (see § 303.12.(a) for eligibility criteria)

- (5) Level 5--Level 5 provides sentence recommendations for the most violent offenders and those with major drug convictions, such that the conviction has an Offense Gravity Score of 9 or greater or the standard range requires state incarceration in a state facility. The standard range in such a case is defined as having a lower limit of 12 months or greater. Included in Level 5 are those offenses for which a mandatory minimum sentence of 30 months or greater applies and for which a state or county intermediate punishment sentence is authorized by statute. The primary purposes of the sentencing options at this level are punishment commensurate with the seriousness of the criminal behavior and incapacitation to protect the public. If eligible, state or county intermediate punishment is recommended for drug dependent offenders. The following sentencing options are available:

Total confinement in a state facility.

Total confinement in a state facility, with participation in the State Motivational Boot Camp (see § 303.12(b) for eligibility criteria)

State Intermediate Punishment (see § 303.12(c) for eligibility criteria)

Total confinement in a county facility as a state offender. (see 61 P.S. § 331.17).

Partial confinement in a county facility.

County Intermediate Punishment (see § 303.12.(a) for eligibility criteria)

Cite as 42 Pa.C.S. § 303.11

History. Amended Feb. 9, 2005, applicable to offenses committed on or after June 3, 2005, 35 Pa.B. 1508.

Readopted and amended Sept. 6, 2008, applicable to offenses committed on or after Dec. 5, 2008, 38 Pa.B. 4971.

§ 9718 Sentences for offenses against infant persons.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter B SENTENCING AUTHORITY

Current through P.A. Acts 2016-8

§ 9718 Sentences for offenses against infant persons

(a) Mandatory sentence.--

(1) A person convicted of the following offenses when the victim is less than 16 years of age shall be sentenced to a mandatory term of imprisonment as follows:
18 Pa.C.S. § 2702(a)(1) and (4) (relating to aggravated assault)--not less than two years.

18 Pa.C.S. § 3121(a)(1), (2), (3), (4) and (5) (relating to rape)-- not less than ten years.

18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse)--not less than ten years.

18 Pa.C.S. § 3125(a)(1) through (6) (relating to aggravated indecent assault)--not less than five years.

(2) A person convicted of the following offenses when the victim is less than 13 years of age shall be sentenced to a mandatory term of imprisonment as follows:
18 Pa.C.S. § 2502(c) (relating to murder) - not less than 15 years.

18 Pa.C.S. § 2702(a)(1) --not less than five years.

(3) A person convicted of the following offenses shall be sentenced to a mandatory term of imprisonment as follows:
18 Pa.C.S. § 3121(c) and (d) --not less than ten years.

18 Pa.C.S. § 3125(a)(7) --not less than five years.

18 Pa.C.S. § 3125(b) --not less than ten years.

- (b) **Eligibility for parole.**--Parole shall not be granted until the minimum term of imprisonment has been served.
- (c) **Proof at sentencing.**--The provisions of this section shall not be an element of the crime, and notice of the provisions of this section to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider any evidence presented at trial and shall afford the Commonwealth and the defendant an opportunity to present any necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.
- (d) **Authority of court in sentencing.**--There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection (a) or to place the offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.
- (e) **Appeal by Commonwealth.**--If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Cite as 42 Pa.C.S. § 9718

History. Amended by P.L. 741 2014 No. 56, §3, eff. 8/17/2014.

1982, Dec. 30, P.L. 1472, No. 334, § 1, effective in 60 days. Amended 1995, March 31, P.L. 985, No. 10 (Spec. Sess. No. 1), § 17, effective in 60 days; 2004, Nov. 30, P.L. 1703, No. 217, § 4, imd. effective; 2006, Nov. 29, P.L. 1567, No. 178, § 4, effective Jan. 1, 2007.

§ 9765 Merger of sentences.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter E IMPOSITION OF SENTENCE

Current through P.A. Acts 2016-8

§ 9765 Merger of sentences

No crimes shall merge for sentencing purposes unless the crimes arise from a single criminal act and all of the statutory elements of one offense are included in the statutory elements of the other offense. Where crimes merge for sentencing purposes, the court may sentence the defendant only on the higher graded offense.

Cite as 42 Pa.C.S. § 9765

History. 2002, Dec. 9, P.L. 1705, No. 215, § 5, effective in 60 days.

§ 303.3 Offense Gravity Score-General.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Sentencing Guidelines

Current through P.A. Acts 2016-8

§ 303.3 Offense Gravity Score-General

- (a) **An Offense Gravity Score is given for each offense.** The Offense Gravity Scores are located in § 303.15.
- (b) **Subcategorized offenses.** Certain offenses are subcategorized and scored by the Commission according to the particular circumstances of the offense. The court determines which Offense Gravity Score, located in § 303. 15, applies. These offenses are designated by an asterisk [*].
- (c) **Inchoate offenses.** Inchoate offenses are scored as follows:
 - (1) Convictions for attempt, solicitation, or conspiracy to commit a Felony 1 offense receive an Offense Gravity Score of one point less than the offense attempted, solicited, or which was the object of the conspiracy.
 - (2) Convictions for attempt, solicitation, or conspiracy to commit any offense which is not a Felony 1 offense, receive the Offense Gravity Score of the offense attempted, solicited, or which was the object of the conspiracy.
 - (3) Convictions for attempt, solicitation, or conspiracy to commit any offense under The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. § 780-101 --§ 780-144) receive the Offense Gravity Score of the offense attempted, solicited, or which was the object of the conspiracy.
 - (4) Exception for inchoate murder convictions. Convictions for attempt, solicitation, or conspiracy to commit murder receive the Offense Gravity Score of 14 if there is serious bodily injury and 13 if there is no serious bodily injury.
- (d) **Ethnic Intimidation.** Convictions for Ethnic Intimidation (18 Pa.C.S. § 2710) receive an

Offense Gravity Score that is one point higher than the offense which was the object of the Ethnic Intimidation. When the object offense is murder of the third degree, a conviction for Ethnic Intimidation receives the highest Offense Gravity Score.

(e) **Violations of The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101 --780-144).** If any mixture or compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be deemed to be composed of the controlled substance. If a mixture or compound contains a detectable amount of more than one controlled substance, the mixture or compound shall be deemed to be composed entirely of the controlled substance which has the highest Offense Gravity Score.

(1) Exception for prescription pills. The exception to subsection (e) above is for violations of 35 P.S. § 780-113(a)(12), (a)(14), and (a)(30) when narcotic prescription pills of Schedule II are involved. For such violations it is the number of pills rather than the amount of the controlled substance which is considered in determining the Offense Gravity Score. (See § 303.15.)

(f) **Omnibus Offense Gravity Scores.** The Omnibus Offense Gravity Score is applied when the offense is not otherwise listed in § 303.15, or when the grade of an offense listed in § 303.15 has changed, unless application of this section would result in a lower Offense Gravity Score for an increased grading of the offense. The Omnibus Offense Gravity Scores are provided below and in the listing at § 303.15:

Felony 1 8

Felony 2 7

Felony 3 5

Felonies not subclassified by the

General Assembly 5

Misdemeanor 1 3

Misdemeanor 2 2

Misdemeanor 3 1

Misdemeanors not subclassified by the

General Assembly 1

Cite as 42 Pa.C.S. § 303.3

History. Amended Feb. 9, 2005, applicable to offenses committed on or after June 3, 2005, 35 Pa.B. 1508.

Readopted Sept. 6, 2008, applicable to offenses committed on or after Dec. 5, 2008, 38 Pa.B. 4971.

§ 1535 Schedule of convictions and points.

Pennsylvania Statutes

75 Pa.C.S. VEHICLES

Part II TITLE, REGISTRATION AND LICENSING

Chapter 15 LICENSING OF DRIVERS

Subchapter B COMPREHENSIVE SYSTEM FOR DRIVER EDUCATION AND CONTROL

Current through P.A. Acts 2016-8

§ 1535 Schedule of convictions and points

- (a) **General rule.**--A point system for driver education and control is hereby established which is related to other provisions for use, suspension and revocation of the operating privilege as specified under this title. Every driver licensed in this Commonwealth who is convicted of any of the following offenses shall be assessed points as of the date of violation in accordance with the following schedule:

Section Number	Offense	Points
1512	Violation of restriction on driver's license.	2
1571	Violation concerning license.	3
3102	Failure to obey policeman or authorized person.	2
3111.1	Obedience to traffic control devices warning of hazardous conditions.	2
3112(a)(3)(i) or (ii)	Failure to stop for a red light.	3

3114(a)(1)	Failure to stop for a flashing red light.	3
3302	Failure to yield half of roadway to oncoming vehicle.	3
3303	Improper passing.	3
3304	Other improper passing.	3
3305	Other improper passing.	3
3306(a)(1)	Other improper passing.	4
3306(a)(2)	Other improper passing.	3
3306(a)(3)	Other improper passing.	3
3307	Other improper passing.	3
3310	Following too closely.	3
3321	Failure to yield to driver on the right at intersection.	3
3322	Failure to yield to oncoming driver when making left turn.	3
3323(b)	Failure to stop for stop sign.	3
3323(c)	Failure to yield at yield sign.	3

3324	Failure to yield when entering or crossing roadway between inter-sections.	3
3332	Improper turning around.	3
3341(a)	Failure to obey signal indicating approach of train.	2
3341(b)	Failure to comply with crossing gate or barrier.	4
	(and 30 days' suspension)	
3342(b) or (e)	Failure to stop at railroad crossings.	4
3344	Failure to stop when entering from alley, driveway or building.	3
3345(a)	Failure to stop for school bus with flashing red lights.	5
	(and 60 days' suspension)	
3361	Driving too fast for conditions.	2
3362	Exceeding maximum speed.--Over Limit:	
	6-10	2

	11-15	3
	16-25	4
	26-30	5
	31-over	5
	(and departmental hearing and sanctions provided under section 1538(d))	
3365(b)	Exceeding special speed limit in school zone.	3
	(and 60 days' suspension for a second or subsequent offense)	
3365(c)	Exceeding special speed limit for trucks on downgrades.	3
3542(a)	Failure to yield to pedestrian in crosswalk.	2
3547	Failure to yield to pedestrian on sidewalk.	3
3549(a)	Failure to yield to blind pedestrian.	3
3702	Improper backing.	3
3714(a)	Careless driving.	3

3745

Leaving scene of accident 4
involving property damage
only.

- (b) **Multiple offenses from same act.**--If a driver is convicted of an offense under section 3361 (relating to driving vehicle at safe speed) or 3714 (relating to careless driving), in addition to being convicted of another offense committed at the same time and place, no points shall be assigned for violation of section 3361 or 3714 if points are assigned for the other offense.
- (c) **No points after six months.**--The department shall assign points to the record of any person within six months from the date of a conviction. Any points assigned after such six-month period shall be null and void.
- (d) **Exception.**--This section does not apply to a person who was operating a pedalcycle or an animal drawn vehicle.
- (e) **Suspension of operating privilege.**--In addition to other provisions of this title relating to the suspension or revocation of operating privileges, the department shall suspend for 15 days the operating privileges of any person who for a violation in an active work zone is convicted under:
- (1) section 3361 where the department has received an accident report submitted pursuant to section 3751 (relating to reports by police); or
 - (2) section 3362 (relating to maximum speed limits) by exceeding the posted speed limit by 11 miles per hour or more.
- A conviction report received by the department which indicates that the violation of section 3361 or 3362 occurred in an active work zone shall create a presumption that the violation occurred in an active work zone.

Cite as 75 Pa.C.S. § 1535

History. Amended by P.L. 1003 2012 No. 114, §1, eff. 9/3/2012.

1976, June 17, P.L. 162, No. 81, §1, imd. effective. Amended 1982, June 23, P.L. 605, No. 171, § 3, imd. effective; 1984, March 29, P.L. 155, No. 30, §2, effective in 60 days; 1986, Dec. 11, P.L. 1530, No. 166, § 4, effective in 60 days; 1990, May 30, P.L. 173, No. 42, §3, effective Nov. 1, 1990; 1994, Dec. 7, P.L. 820, No. 115, § 5, effective in 60 days; 1998, Dec. 21, P.L. 1126, No. 151, § 15, effective July 1, 1999; 2002, Dec. 23, P.L. 1982, No. 229, § 7, effective in 6 months; 2004, Dec. 8, P.L. 1791, No. 237, § 1, effective in 150 days [May 9, 2005].

§ 9724 Partial confinement.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Current through P.A. Acts 2016-8

§ 9724 Partial confinement

If in the light of all the circumstances, and when facilities are available, probation would be inappropriate, but it further appears that a sentence of total confinement would not be required in accordance with the criteria established in section 9725 (relating to total confinement), the court may impose a sentence involving partial confinement.

Cite as 42 Pa.C.S. § 9724

History. 1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Renumbered from 18 Pa.C.S. § 1324 and amended by 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

§ 9762 Sentencing proceeding; place of confinement.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter E IMPOSITION OF SENTENCE

Current through P.A. Acts 2016-8

§ 9762 Sentencing proceeding; place of confinement

- (a) **Sentences or terms of incarceration imposed before a certain date.**--For the three-year period beginning on the effective date of this subsection, all persons sentenced to total or partial confinement for the following terms shall be committed as follows:
- (1) Maximum terms of five or more years shall be committed to the Department of Corrections for confinement.
 - (2) Maximum terms of two years or more but less than five years may be committed to the Department of Corrections for confinement or may be committed to a county prison within the jurisdiction of the court.
 - (3) Maximum terms of less than two years shall be committed to a county prison within the jurisdiction of the court.
- (b) **Sentences or terms of incarceration imposed after a certain date.**--All persons sentenced three or more years after the effective date of this subsection to total or partial confinement shall be committed as follows:
- (1) Maximum terms of five or more years shall be committed to the Department of Corrections for confinement.
 - (2) Maximum terms of two years or more but less than five years shall be committed to the Department of Corrections for confinement, except upon a finding of all of the following:
 - (i) The chief administrator of the county prison, or the administrator's designee, has certified that the county prison is available for the commitment of persons sentenced to maximum terms of two or more years but less than five years.

- (ii) The attorney for the Commonwealth has consented to the confinement of the person in the county prison.
 - (iii) The sentencing court has approved the confinement of the person in the county prison within the jurisdiction of the court.
- (3) Maximum terms of less than two years shall be committed to a county prison within the jurisdiction of the court.
- (c) **Certification.**--The chief administrator of the county prison, or the administrator's designee, may issue a certification under subsection (b)(2)(i) if the county prison population is less than 110% of the rated capacity of the county prison. The chief administrator shall revoke any previously issued certification if the prison population exceed 110% of the rated capacity. The president judge of the court, the district attorney and the chief public defender of the county shall be served with a written copy of any certification or revocation.
- (d) **County intermediate punishment.**--Nothing in this section shall prevent a judge from sentencing an offender to county intermediate punishment which does not require confinement within county prison if otherwise authorized by law.
- (e) **Reimbursement.**--Beginning three years after the effective date of this subsection:
 - (1) The Department of Corrections shall reimburse to the counties the reasonable cost of confinement of every Level 4 or 5 offender as identified in the Basic Sentencing Matrix promulgated by the Pennsylvania Commission on Sentencing who is participating in an approved work release program. The reimbursement per prisoner shall not exceed the average per-prisoner cost of confinement paid by the Commonwealth for the confinement of prisoners in the Department of Corrections. No more than \$2,500,000 shall be expended annually for this purpose. Reimbursement shall be made on a pro rata basis if the total dollar amount of eligible confinement costs exceeds \$2,500,000. Nothing in this paragraph shall prevent more than \$2,500,000 being appropriated for this purpose. Reimbursement shall be made on a pro rata basis if the total dollar amount of eligible confinement costs exceeds any additional appropriation. A county shall not be reimbursed under this section for any offender participating in an approved work release program for whom the county is being or has been reimbursed from any other State funds regardless of their source.
 - (2) County prisons may require reimbursements from other county prisons or the Department of Corrections for inmates voluntarily accepted for incarceration at mutually agreeable rates. The Department of Corrections shall maintain a list of those counties willing to accept voluntary placement of out-of-county inmates.

- (f) **Aggregation.**--For purposes of this section, the sentences or terms of incarceration shall mean the entire continuous term of incarceration to which a person is subject, notwithstanding whether the sentence is the result of any of the following:
- (1) One or more sentences.
 - (2) Sentences imposed for violations of probation or intermediate punishment.
 - (3) Sentences to be served upon recommitment for violations of parole.
 - (4) Any other manner of sentence.
- (g) **Date of imposition.**--For purposes of this section, if a person is subject to multiple sentences or terms of incarceration or any combination of sentences or terms, the date of the last sentence imposed or the date of recommitment, whichever is later, shall determine the place of incarceration and whether reimbursement is required.
- (h) **Transfer of prisoners.**--Nothing in this section shall prohibit the transfer of prisoners otherwise authorized by law or prevent a judge from changing the place of confinement between State and county facilities to the extent that the judge would have such discretion at the time of imposition of sentence or recommitment.
- (i) Prohibition.**--Notwithstanding any other provision of law, no person sentenced to total or partial confinement after the effective date of this subsection shall be committed to the Department of Corrections unless:
- (1) The aggregate sentence consists of a conviction for an offense graded as a misdemeanor of the second degree or higher; or
 - (2) the Secretary of Corrections or the secretary's designee has consented to the commitment.
- (j) Applicability.**--18 Pa.C.S. § 106(b)(8) and (9) (relating to classes of offenses) applies to subsection (i).

Cite as 42 Pa.C.S. § 9762

History. Amended by P.L. 1050 2012 No. 122, §3, eff. 8/4/2012.

1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Renumbered from 18 Pa.C.S. § 1362 by 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days. Amended 2008, Sept. 25, P.L. 1026, No. 81, §7, effective in 60 days [Nov. 24, 2008].

§ 303.4 Prior Record Score-Categories.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Sentencing Guidelines

Current through P.A. Acts 2016-8

§ 303.4 Prior Record Score-Categories

- (a) **Prior Record Score categories.** Determination of the correct Prior Record Score category under this section is based on the type and number of prior convictions (§ 303.5) and prior juvenile adjudications (§ 303.6). There are eight Prior Record Score categories: Repeat Violent Offender [REVOC], Repeat Felony 1 and Felony 2 Offender [RFEL], and point-based categories of 0, 1, 2, 3, 4 and 5.
- (1) Repeat Violent Offender Category [REVOC]. Offenders who have two or more previous convictions or adjudications for four point offenses (§ 303.7(a)(1) and § 303.15) and whose current conviction carries an Offense Gravity Score of 9 or higher shall be classified in the Repeat Violent Offender Category.
 - (2) Repeat Felony 1 and Felony 2 Offender Category [RFEL]. Offenders who have previous convictions or adjudications for Felony 1 and/or Felony 2 offenses which total 6 or more in the prior record, and who do not fall within the Repeat Violent Offender Category, shall be classified in the repeat Felony 1 and Felony 2 Offender Category.
 - (3) Point-based Categories (0-5). Offenders who do not fall into the REVOC or RFEL categories shall be classified in a Point-based Category. The Prior Record Score shall be the sum of the points accrued based on previous convictions or adjudications, up to a maximum of five points.

Cite as 42 Pa.C.S. § 303.4

History. Amended Feb. 9, 2005, applicable to offenses committed on or after June 3, 2005, 35 Pa.B. 1508.

Readopted Sept. 6, 2008, applicable to offenses committed on or after Dec. 5, 2008, 38 Pa.B. 4971.

§ 9722 Order of probation.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Current through P.A. Acts 2016-8

§ 9722 Order of probation

The following grounds, while not controlling the discretion of the court, shall be accorded weight in favor of an order of probation:

- (1) The criminal conduct of the defendant neither caused nor threatened serious harm.
- (2) The defendant did not contemplate that his conduct would cause or threaten serious harm.
- (3) The defendant acted under a strong provocation.
- (4) There were substantial grounds tending to excuse or justify the criminal conduct of the defendant, though failing to establish a defense.
- (5) The victim of the criminal conduct of the defendant induced or facilitated its commission.
- (6) The defendant has compensated or will compensate the victim of his criminal conduct for the damage or injury that he sustained.
- (7) The defendant has no history of prior delinquency or criminal activity or has led a law-abiding life for a substantial period of time before the commission of the present crime.
- (8) The criminal conduct of the defendant was the result of circumstances unlikely to recur.
- (9) The character and attitudes of the defendant indicate that he is unlikely to commit another crime.
- (10) The defendant is particularly likely to respond affirmatively to probationary treatment.
- (11) The confinement of the defendant would entail excessive hardship to him or his dependents.
- (12) Such other grounds as indicate the desirability of probation.

Cite as 42 Pa.C.S. § 9722

History. 1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Renumbered from 18 Pa.C.S. § 1322 by 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

§ 9731 Requirement for presentence investigation and report.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter D INFORMATIONAL BASIS OF SENTENCE

Current through P.A. Acts 2016-8

§ 9731 Requirement for presentence investigation and report

<This section is suspended by Pa.R.Crim.P. Rule 1101(6) as being inconsistent with Chapter 7 of the Rules of Criminal Procedure.>

Before sentencing any defendant to one year or longer, a presentence investigation and report shall be made, unless the sentence is death or a mandatory sentence to life imprisonment, or unless the court specifically orders to the contrary. The report shall be made within 30 days from the date of conviction of defendant or within such greater period of time as the court shall direct.

Cite as 42 Pa.C.S. § 9731

History. 1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Renumbered from 18 Pa.C.S. § 1331 by 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

§ 9795.1 Registration.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter H REGISTRATION OF SEXUAL OFFENDERS

Current through P.A. Acts 2016-8

§ 9795.1 Registration

- (a) **Ten-year registration.**-- Except as set forth in subsection (a.1) or (b), the following individuals shall be required to register with the Pennsylvania State Police for a period of ten years:
- (1) Individuals convicted of any of the following offenses:
 - 18 Pa.C.S. § 2901 (relating to kidnapping) where the victim is a minor.
 - 18 Pa.C.S. § 2910 (relating to luring a child into a motor vehicle or structure).
 - 18 Pa.C.S. § 3124.2 (relating to institutional sexual assault).
 - 18 Pa.C.S. § 3126 (relating to indecent assault) where the offense is graded as a misdemeanor of the first degree or higher.
 - 18 Pa.C.S. § 4302 (relating to incest) where the victim is 12 years of age or older but under 18 years of age.
 - 18 Pa.C.S. § 5902(b) or (b.1) (relating to prostitution and related offenses) where the actor promotes the prostitution of a minor.
 - 18 Pa.C.S. § 5903(a)(3), (4), (5) or (6) (relating to obscene and other sexual materials and performances) where the victim is a minor.
 - 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).

- (2) Individuals convicted of an attempt, conspiracy or solicitation to commit any of the offenses under paragraph (1) or subsection (b)(2).
 - (3) Individuals who currently have a residence in this Commonwealth who have been convicted of offenses similar to the crimes cited in paragraphs (1) and (2) 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 or under a former law of this Commonwealth.
- (a.1) **Exception to ten-year registration.**--Except as provided under subsection (b), an individual considered to be an offender pursuant to section 9795.2(b) (relating to registration procedures and applicability) shall be required to register with the Pennsylvania State Police for a period less than life, the duration of which is to be determined under section 9795.2(b).
- (b) **Lifetime registration.**--The following individuals shall be subject to lifetime registration:
- (1) An individual with two or more convictions of any of the offenses set forth in subsection (a).
 - (2) Individuals convicted:
 - (i) in this Commonwealth of the following offenses:
 - 18 Pa.C.S. § 3121 (relating to rape).
 - 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).
 - 18 Pa.C.S. § 3124.1 (relating to sexual assault).
 - 18 Pa.C.S. § 3125 (relating to aggravated indecent assault).
 - 18 Pa.C.S. § 4302 (relating to incest) when the victim is under 12 years of age.
 - (ii) of offenses similar to the crimes cited in subparagraph (i) 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 or under a former law of this Commonwealth who currently reside in this Commonwealth.
 - (3) Sexually violent predators.
 - (4) An individual who is considered to be a sexually violent predator under section 9795.2(b) or who is otherwise required to register for life under section 9795.2(b).
- (c) **Natural disaster.**--The occurrence of a natural disaster or other event requiring

evacuation of residences shall not relieve an individual of the duty to register or any other duty imposed by this chapter.

(d) **Residents in group-based homes.--**

- (1) A group-based home may not provide concurrent residence in the group-based home to more than five individuals who are required to register under this chapter as sexually violent predators.
- (2) A group-based home that violates paragraph (1) shall be subject to a civil penalty in the amount of \$2,500 for a first violation and in the amount of \$5,000 for a second or subsequent violation.
- (3) The Pennsylvania State Police or local law enforcement agency of jurisdiction shall investigate compliance with this subsection, and the Attorney General or district attorney may commence a civil action in the court of common pleas of the county in which a group-based home is located to impose and collect from the group-based home the penalty under paragraph (2).
- (4) As used in this subsection, the term "group-based home" has the meaning given to it in 61 Pa.C.S. § 6124(c) (relating to certain offenders residing in group-based homes).

Cite as 42 Pa.C.S. § 9795.1

History. 2000, May 10, P.L. 74, No. 18, §3, effective in 60 days. Amended 2000, Dec. 20, P.L. 811, No. 113, §2, effective in 60 days; 2002, Nov. 20, P.L. 1104, No. 134, §3, effective in 60 days; 2004, Nov. 24, P.L. 1243, No. 152, § 8, effective in 60 days [Jan. 24, 2005]; 2006, Nov. 29, P.L. 1567, No. 178, § 6, effective Jan. 1, 2007; 2008, Oct. 9, P.L. 1352, No. 98, §7, effective in 60 days [Dec. 8, 2008]; 2011, Dec. 20, P.L. 446, No. 111, §9, imd. effective.

§ 1107.1 Restitution for identity theft.

Pennsylvania Statutes

18 Pa.C.S. CRIMES AND OFFENSES

Part I PRELIMINARY PROVISIONS

Chapter 11 AUTHORIZED DISPOSITION OF OFFENDERS

Current through P.A. Acts 2016-8

§ 1107.1 Restitution for identity theft

- (a) **General rule.**--The court shall, in addition to any other restitution sentence or order authorized by law, sentence a person convicted of a violation of section 4106 (relating to access device fraud) or 4120 (relating to identity theft) to make restitution for all reasonable expenses incurred by the victim or on the victim's behalf:
- (1) to investigate theft of the victim's identity;
 - (2) to bring or defend civil or criminal actions related to theft of the victim's identity; or
 - (3) to take other efforts to correct the victim's credit record or negative credit reports related to theft of the victim's identity.
- (b) **Types of expenses.**--The types of expenses recoverable under this section include, but are not limited to:
- (1) fees for professional services by attorneys or accountants;
 - (2) fees and costs imposed by credit bureaus, associated with efforts to correct the victim's credit record, incurred in private investigations or associated with contesting unwarranted debt collections; and
 - (3) court costs and filing fees.

Cite as 18 Pa.C.S. § 1107.1

History. 2009, Sept. 18, P.L. 391, No. 42, §1, effective in 60 days [Nov. 17, 2009].

§ 1106 Restitution for injuries to person or property.

Pennsylvania Statutes

18 Pa.C.S. CRIMES AND OFFENSES

Part I PRELIMINARY PROVISIONS

Chapter 11 AUTHORIZED DISPOSITION OF OFFENDERS

Current through P.A. Acts 2016-8

§ 1106 Restitution for injuries to person or property

- (a) **General rule.**--Upon conviction for any crime wherein property has been stolen, converted or otherwise unlawfully obtained, or its value substantially decreased as a direct result of the crime, or wherein the victim suffered personal injury directly resulting from the crime, the offender shall be sentenced to make restitution in addition to the punishment prescribed therefor.
- (b) **Condition of probation or parole.**--Whenever restitution has been ordered pursuant to subsection (a) and the offender has been placed on probation or parole, his compliance with such order may be made a condition of such probation or parole.
- (c) **Mandatory restitution.**--
 - (1) The court shall order full restitution:
 - (i) Regardless of the current financial resources of the defendant, so as to provide the victim with the fullest compensation for the loss. The court shall not reduce a restitution award by any amount that the victim has received from the Crime Victim's Compensation Board or other governmental agency but shall order the defendant to pay any restitution ordered for loss previously compensated by the board to the Crime Victim's Compensation Fund or other designated account when the claim involves a government agency in addition to or in place of the board. The court shall not reduce a restitution award by any amount that the victim has received from an insurance company but shall order the defendant to pay any restitution ordered for loss previously compensated by an insurance company to the insurance company.
 - (ii) If restitution to more than one person is set at the same time, the court shall set priorities of payment. However, when establishing priorities, the court shall order payment in the following order:
 - (A) The victim.

- (B) The Crime Victim's Compensation Board.
 - (C) Any other government agency which has provided reimbursement to the victim as a result of the defendant's criminal conduct.
 - (D) Any insurance company which has provided reimbursement to the victim as a result of the defendant's criminal conduct.
- (2) At the time of sentencing the court shall specify the amount and method of restitution. In determining the amount and method of restitution, the court:
- (i) Shall consider the extent of injury suffered by the victim, the victim's request for restitution as presented to the district attorney in accordance with paragraph (4) and such other matters as it deems appropriate.
 - (ii) May order restitution in a lump sum, by monthly installments or according to such other schedule as it deems just.
 - (iii) Shall not order incarceration of a defendant for failure to pay restitution if the failure results from the offender's inability to pay.
 - (iv) Shall consider any other preexisting orders imposed on the defendant, including, but not limited to, orders imposed under this title or any other title.
- (3) The court may, at any time or upon the recommendation of the district attorney that is based on information received from the victim and the probation section of the county or other agent designated by the county commissioners of the county with the approval of the president judge to collect restitution, alter or amend any order of restitution made pursuant to paragraph (2), provided, however, that the court states its reasons and conclusions as a matter of record for any change or amendment to any previous order.
- (4)
- (i) It shall be the responsibility of the district attorneys of the respective counties to make a recommendation to the court at or prior to the time of sentencing as to the amount of restitution to be ordered. This recommendation shall be based upon information solicited by the district attorney and received from the victim.
 - (ii) Where the district attorney has solicited information from the victims as provided in subparagraph (i) and has received no response, the district attorney shall, based on other available information, make a recommendation to the court for restitution.
 - (iii) The district attorney may, as appropriate, recommend to the court that the

restitution order be altered or amended as provided in paragraph (3).

- (d) **Limitations on district justices.**--Restitution ordered by a magisterial district judge shall be limited to the return of the actual property or its undisputed dollar amount or, where the claim for restitution does not exceed the civil jurisdictional limit specified in 42 Pa.C.S. § 1515(a)(3) (relating to jurisdiction) and is disputed as to amount, the magisterial district judge shall determine and order the dollar amount of restitution to be made.
- (e) **Restitution payments and records.**--Restitution, when ordered by a judge, shall be made by the offender to the probation section of the county in which he was convicted or to another agent designated by the county commissioners with the approval of the president judge of the county to collect restitution according to the order of the court or, when ordered by a magisterial district judge, shall be made to the magisterial district judge. The probation section or other agent designated by the county commissioners of the county with the approval of the president judge to collect restitution and the magisterial district judge shall maintain records of the restitution order and its satisfaction and shall forward to the victim the property or payments made pursuant to the restitution order.
- (f) **Noncompliance with restitution order.**--Whenever the offender shall fail to make restitution as provided in the order of a judge, the probation section or other agent designated by the county commissioners of the county with the approval of the president judge to collect restitution shall notify the court within 20 days of such failure. Whenever the offender shall fail to make restitution within 20 days to a magisterial district judge, as ordered, the magisterial district judge shall declare the offender in contempt and forward the case to the court of common pleas. Upon such notice of failure to make restitution, or upon receipt of the contempt decision from a magisterial district judge, the court shall order a hearing to determine if the offender is in contempt of court or has violated his probation or parole.
- (g) **Preservation of private remedies.**--No judgment or order of restitution shall debar the owner of the property or the victim who sustained personal injury, by appropriate action, to recover from the offender as otherwise provided by law, provided that any civil award shall be reduced by the amount paid under the criminal judgment.
- (h) **Definitions.**--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:
 - "**Crime.**" Any offense punishable under this title or by a magisterial district judge.
 - "**Injury to property.**" Loss of real or personal property, including negotiable instruments, or decrease in its value, directly resulting from the crime.
 - "**Offender.**" Any person who has been found guilty of any crime.

"Personal injury." Actual bodily harm, including pregnancy, directly resulting from the crime.

"Property." Any real or personal property, including currency and negotiable instruments, of the victim.

"Restitution." The return of the property of the victim or payments in cash or the equivalent thereof pursuant to an order of the court.

"Victim." As defined in section 479.1 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929. The term includes the Crime Victim's Compensation Fund if compensation has been paid by the Crime Victim's Compensation Fund to the victim and any insurance company that has compensated the victim for loss under an insurance contract.

Cite as 18 Pa.C.S. § 1106

History. 1976, June 18, P.L. 394, No. 86, §1, effective in 60 days. Amended 1978, April 28, P.L. 202, No. 53, §7(5), effective June 27, 1978; 1995, May 3, P.L. 999, No. 12 (Spec. Sess. No. 1), § 1, effective in 60 days; 1998, Dec. 3, P.L. 933, No. 121, §1, imd. effective; 2004, Nov. 30, P.L. 1618, No. 207, § 3, effective Jan. 31, 2005.

§ 9714 Sentences for second and subsequent offenses.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter B SENTENCING AUTHORITY

Current through P.A. Acts 2016-8

§ 9714 Sentences for second and subsequent offenses

(a) Mandatory sentence.--

- (1) Any person who is convicted in any court of this Commonwealth of a crime of violence shall, if at the time of the commission of the current offense the person had previously been convicted of a crime of violence, be sentenced to a minimum sentence of at least ten years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon a second conviction for a crime of violence, the court shall give the person oral and written notice of the penalties under this section for a third conviction for a crime of violence. Failure to provide such notice shall not render the offender ineligible to be sentenced under paragraph (2).
- (2) Where the person had at the time of the commission of the current offense previously been convicted of two or more such crimes of violence arising from separate criminal transactions, the person shall be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Proof that the offender received notice of or otherwise knew or should have known of the penalties under this paragraph shall not be required. Upon conviction for a third or subsequent crime of violence the court may, if it determines that 25 years of total confinement is insufficient to protect the public safety, sentence the offender to life imprisonment without parole.

- (a.1) Mandatory maximum.--**An offender sentenced to a mandatory minimum sentence under this section shall be sentenced to a maximum sentence equal to twice the mandatory minimum sentence, notwithstanding 18 Pa.C.S. § 1103 (relating to sentence of imprisonment for felony) or any other provision of this title or other statute to the contrary.

- (b) Deleted by Acts 2000, Dec. 20, P.L. 811, No. 113, §2, effective in 60 days.
- (c) Deleted by Acts 2000, Dec. 20, P.L. 811, No. 113, §2, effective in 60 days.
- (d) **Proof at sentencing.**--Provisions of this section shall not be an element of the crime and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The sentencing court, prior to imposing sentence on an offender under subsection (a), shall have a complete record of the previous convictions of the offender, copies of which shall be furnished to the offender. If the offender or the attorney for the Commonwealth contests the accuracy of the record, the court shall schedule a hearing and direct the offender and the attorney for the Commonwealth to submit evidence regarding the previous convictions of the offender. The court shall then determine, by a preponderance of the evidence, the previous convictions of the offender and, if this section is applicable, shall impose sentence in accordance with this section. Should a previous conviction be vacated and an acquittal or final discharge entered subsequent to imposition of sentence under this section, the offender shall have the right to petition the sentencing court for reconsideration of sentence if this section would not have been applicable except for the conviction which was vacated.
- (e) **Authority of court in sentencing.**--There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsections (a) and (a.1) or to place such offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.
- (f) **Appeal by Commonwealth.**--If a sentencing court shall refuse to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for the imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.
- (g) **Definition.**--As used in this section, the term "crime of violence" means murder of the third degree, voluntary manslaughter, manslaughter of a law enforcement officer as defined in 18 Pa.C.S. § 2507(c) or (d) (relating to criminal homicide of law enforcement officer), murder of the third degree involving an unborn child as defined in 18 Pa.C.S. § 2604(c) (relating to murder of unborn child), aggravated assault of an unborn child as defined in 18 Pa.C.S. § 2606 (relating to aggravated assault of unborn child), aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) or (2) (relating to aggravated assault), assault of law enforcement officer as defined in 18 Pa.C.S. § 2702.1 (relating to assault of law enforcement officer), use of weapons of mass destruction as defined in 18 Pa.C.S. §

2716(b) (relating to weapons of mass destruction), terrorism as defined in 18 Pa.C.S. § 2717(b)(2) (relating to terrorism), trafficking of persons when the offense is graded as a felony of the first degree as provided in 18 Pa.C.S. § 3002 (relating to trafficking of persons), rape, involuntary deviate sexual intercourse, aggravated indecent assault, incest, sexual assault, arson endangering persons or aggravated arson as defined in 18 Pa.C.S. § 3301(a) or (a.1) (relating to arson and related offenses), ecoterrorism as classified in 18 Pa.C.S. § 3311(b)(3) (relating to ecoterrorism), kidnapping, burglary as defined in 18 Pa.C.S. § 3502(a)(1) (relating to burglary), robbery as defined in 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to robbery), or robbery of a motor vehicle, drug delivery resulting in death as defined in 18 Pa.C.S. § 2506(a) (relating to drug delivery resulting in death), or criminal attempt, criminal conspiracy or criminal solicitation to commit murder or any of the offenses listed above, or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction.

Cite as 42 Pa.C.S. § 9714

History. Amended by P.L. 33 2014 No. 16, §3, eff. 4/26/2014.

Amended by P.L. 1655 2012 No. 204, §9, eff. 12/24/2012.

Amended by P.L. 1050 2012 No. 122, §1.2, eff. 9/3/2012.

1982, March 8, P.L. 169, No. 54, §3, effective in 90 days. Amended 1982, June 15, P.L. 512, No. 141, § 5, imd.

effective; 1986, Dec. 11, P.L. 1521, No. 165, § 9, effective in 60 days; 1995, Oct. 11, P.L. 1058, No. 21 (Spec. Sess.

No. 1), § 4, effective in 60 days; 2000, May 10, P.L. 74, No. 18, §2, effective in 60 days; 2000, Dec. 20, P.L. 811, No.

113, §2, effective in 60 days; 2011, July 7, P.L. 220, No. 40, §2, effective in 60 days [Sept. 6, 2011].

§ 9795.3 Sentencing court information.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter H REGISTRATION OF SEXUAL OFFENDERS

Current through P.A. Acts 2016-8

§ 9795.3 Sentencing court information

The sentencing court shall inform offenders and sexually violent predators at the time of sentencing of the provisions of this subchapter. The court shall:

- (1) Specifically inform the offender or sexually violent predator of the duty to register and provide the information required for each registration, including verification as required in section 9796(a) (relating to verification of residence).
- (2) Specifically inform the offender or sexually violent predator of the duty to inform the Pennsylvania State Police within 48 hours if the offender or sexually violent predator changes residence or establishes an additional residence or residences, changes employer or employment location for a period of time that will exceed 14 days or for an aggregate period of time that will exceed 30 days during any calendar year or terminates employment or changes institution or location at which the person is enrolled as a student or terminates enrollment. In order to fulfill the requirements of this paragraph, the sentencing court shall specifically inform the offender or sexually violent predator of the duty to inform the Pennsylvania State Police of:
 - (i) the location of a temporary habitat or other temporary place of abode or dwelling, including a homeless shelter or park, where the individual is lodged;
 - (ii) the places the individual eats, frequents and engages in leisure activities and any planned destinations, including those outside this Commonwealth; and
 - (iii) the place the individual receives mail, including a post office box, if the individual fails to establish a residence as defined in paragraph (1) of the definition of "residence" set forth in section 9792 (relating to definitions).
- (2.1) Specifically inform the offender or sexually violent predator of the duty to inform the Pennsylvania State Police within 48 hours of becoming employed or enrolled as a student

if the person has not previously provided that information to the Pennsylvania State Police.

- (3) Specifically inform the offender or sexually violent predator of the duty to register with a new law enforcement agency if the offender or sexually violent predator moves to another state no later than 48 hours after establishing residence in another state.
- (4) Order the fingerprints and photograph of the offender or sexually violent predator to be provided to the Pennsylvania State Police upon sentencing.
- (5) Specifically inform the offender or sexually violent predator of the duty to register with the appropriate authorities in any state in which the offender or sexually violent predator is employed, carries on a vocation or is a student if the state requires such registration.
- (6) Require the offender or sexually violent predator to read and sign a form stating that the duty to register under this subchapter has been explained. Where the offender or sexually violent predator is incapable of reading, the court shall certify the duty to register was explained to the offender or sexually violent predator and the offender or sexually violent predator indicated an understanding of the duty.

Cite as 42 Pa.C.S. § 9795.3

History. 2000, May 10, P.L. 74, No. 18, §3, effective in 60 days. Amended 2002, Oct. 17, P.L. 880, No. 127, §4, effective in 60 days; 2011, Dec. 20, P.L. 446, No. 111, §9.1, effective in 60 days [Feb. 21, 2012].

§ 303.10 Guideline sentence recommendations: Enhancements.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Sentencing Guidelines

Current through P.A. Acts 2016-8

§ 303.10 Guideline sentence recommendations: Enhancements

(a) Deadly Weapon Enhancement.

- (1) When the court determines that the offender possessed a deadly weapon during the commission of the current conviction offense, the court shall consider the DWE/Possessed Matrix (§ 303.17). An offender has possessed a deadly weapon if any of the following were on the offender's person or within his immediate physical control:
 - (i) Any firearm, (as defined in 42 Pa.C.S. § 9712) whether loaded or unloaded, or
 - (ii) Any dangerous weapon (as defined in 18 Pa.C.S. § 913), or
 - (iii) Any device, implement, or instrumentality designed as a weapon or capable of producing death or serious bodily injury where the court determines that the defendant intended to use the weapon to threaten or injure another individual.

- (2) When the court determines that the offender used a deadly weapon during the commission of the current conviction offense, the court shall consider the DWE/Used Matrix (§ 303.18). An offender has used a deadly weapon if any of the following were employed by the offender in a way that threatened or injured another individual:
 - (i) Any firearm, (as defined in 42 Pa.C.S. § 9712) whether loaded or unloaded, or
 - (ii) Any dangerous weapon (as defined in 18 Pa.C.S. § 913), or

(iii) Any device, implement, or instrumentality capable of producing death or serious bodily injury.

(3) There shall be no Deadly Weapon Enhancement for the following offenses:

(i) Possessing Instruments of Crime

(ii) Prohibited Offensive Weapons

(iii) Possession of Weapon on School Property

(iv) Possession of Firearm or Other Dangerous Weapon in Court Facility

(v) Simple Assault (18 Pa.C.S. § 2701(a)(2))

(vi) Aggravated Assault (18 Pa.C.S. § 2702(a)(4))

(vii) Theft when property stolen is a firearm (18 Pa.C.S. Chapter 39)

(viii Violations of the Pennsylvania Uniform Firearms Act
)

(ix) Any other offense for which possession of a deadly weapon is an element of the statutory definition.

(4) The Deadly Weapon Enhancement shall apply to each conviction offense for which a deadly weapon is possessed or used.

(b) Youth/School Enhancement

(1) When the court determines that the offender either distributed a controlled substance to a person or persons under the age of 18 in violation of 35 P.S. § 780-114, or manufactured, delivered or possessed with intent to deliver a controlled substance within 1000 feet of the real property on which is located a public or private elementary or secondary school, the court shall consider the range of sentences described in § 303.9(c).

(2) The Youth/School Enhancement only applies to violations of 35 P.S. § 780-113(a)(14) and (a)(30).

(3) The Youth/School Enhancement shall apply to each violation which meets the criteria above.

Cite as 42 Pa.C.S. § 303.10

History. Amended Feb. 9, 2005, applicable to offenses committed on or after June 3, 2005, 35 Pa.B. 1508.

Readopted Sept. 6, 2008, applicable to offenses committed on or after Dec. 5, 2008, 38 Pa.B. 4971.

§ 1103 Sentence of imprisonment for felony.

Pennsylvania Statutes

18 Pa.C.S. CRIMES AND OFFENSES

Part I PRELIMINARY PROVISIONS

Chapter 11 AUTHORIZED DISPOSITION OF OFFENDERS

Current through P.A. Acts 2016-8

§ 1103 Sentence of imprisonment for felony

Except as provided in 42 Pa.C.S. § 9714 (relating to sentences for second and subsequent offenses), a person who has been convicted of a felony may be sentenced to imprisonment as follows:

- (1) In the case of a felony of the first degree, for a term which shall be fixed by the court at not more than 20 years.
- (2) In the case of a felony of the second degree, for a term which shall be fixed by the court at not more than ten years.
- (3) In the case of a felony of the third degree, for a term which shall be fixed by the court at not more than seven years.

Cite as 18 Pa.C.S. § 1103

History. 1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1995, Oct. 11, P.L. 1058, No. 21 (Spec. Sess. No. 1) § 1, effective in 60 days.

§ 1104 Sentence of imprisonment for misdemeanors.

Pennsylvania Statutes

18 Pa.C.S. CRIMES AND OFFENSES

Part I PRELIMINARY PROVISIONS

Chapter 11 AUTHORIZED DISPOSITION OF OFFENDERS

Current through P.A. Acts 2016-8

§ 1104 Sentence of imprisonment for misdemeanors

A person who has been convicted of a misdemeanor may be sentenced to imprisonment for a definite term which shall be fixed by the court and shall be not more than:

- (1) Five years in the case of a misdemeanor of the first degree.
- (2) Two years in the case of a misdemeanor of the second degree.
- (3) One year in the case of a misdemeanor of the third degree.

Cite as 18 Pa.C.S. § 1104

History. 1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973.

§ 1102 Sentence for murder, murder of unborn child and murder of law enforcement officer.

Pennsylvania Statutes

18 Pa.C.S. CRIMES AND OFFENSES

Part I PRELIMINARY PROVISIONS

Chapter 11 AUTHORIZED DISPOSITION OF OFFENDERS

Current through P.A. Acts 2016-8

§ 1102 Sentence for murder, murder of unborn child and murder of law enforcement officer

(a) **First degree.--**

- (1) Except as provided under section 1102.1 (relating to sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer), a person who has been convicted of a murder of the first degree or of murder of a law enforcement officer of the first degree shall be sentenced to death or to a term of life imprisonment in accordance with 42 Pa.C.S. § 9711 (relating to sentencing procedure for murder of the first degree).
- (2) The sentence for a person who has been convicted of first degree murder of an unborn child shall be the same as the sentence for murder of the first degree, except that the death penalty shall not be imposed. This paragraph shall not affect the determination of an aggravating circumstance under 42 Pa.C.S. § 9711(d)(17) for the killing of a pregnant woman.

(b) **Second degree.--** Except as provided under section 1102.1, a person who has been convicted of murder of the second degree, of second degree murder of an unborn child or of second degree murder of a law enforcement officer shall be sentenced to a term of life imprisonment.

(c) **Attempt, solicitation and conspiracy.--**Notwithstanding section 1103(1) (relating to sentence of imprisonment for felony), a person who has been convicted of attempt, solicitation or conspiracy to commit murder , murder of an unborn child or murder of a law enforcement officer where serious bodily injury results may be sentenced to a term of imprisonment which shall be fixed by the court at not more than 40 years. Where serious bodily injury does not result, the person may be sentenced to a term of imprisonment which shall be fixed by the court at not more than 20 years.

(d) **Third degree.--**Notwithstanding section 1103, a person who has been convicted of murder of the third degree or of third degree murder of an unborn child shall be sentenced to a term which shall be fixed by the court at not more than 40 years.

Cite as 18 Pa.C.S. § 1102

History. Amended by P.L. 1655 2012 No. 204, §1, eff. 10/25/2012.

1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973. Amended 1974, March 26, P.L. 213, No. 46, § 2, imd. effective; 1995, March 9, P.L. 964, No. 3 (Spec. Sess. No. 1), § 1, effective in 60 days; 1995, March 15, P.L. 970, No. 5 (Spec. Sess. No. 1), § 1, effective in 60 days; 1997, Oct. 2, P.L. 379, No. 44, §1, effective in 180 days; 2008, Oct. 17, P.L. 1628, No. 131, §1, effective in 60 days [Dec. 16, 2008].

§ 1105 Sentence of imprisonment for summary offenses.

Pennsylvania Statutes

18 Pa.C.S. CRIMES AND OFFENSES

Part I PRELIMINARY PROVISIONS

Chapter 11 AUTHORIZED DISPOSITION OF OFFENDERS

Current through P.A. Acts 2016-8

§ 1105 Sentence of imprisonment for summary offenses

A person who has been convicted of a summary offense may be sentenced to imprisonment for a term which shall be fixed by the court at not more than 90 days.

Cite as 18 Pa.C.S. § 1105

History. 1972, Dec. 6, P.L. 1482, No. 334, § 1, effective June 6, 1973.

§ 1102.1 Sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer.

Pennsylvania Statutes

18 Pa.C.S. CRIMES AND OFFENSES

Part I PRELIMINARY PROVISIONS

Chapter 11 AUTHORIZED DISPOSITION OF OFFENDERS

Current through P.A. Acts 2016-8

§ 1102.1 Sentence of persons under the age of 18 for murder, murder of an unborn child and murder of a law enforcement officer

(a) First degree murder.--A person who has been convicted, after June 24, 2012, of a murder of the first degree, first degree murder of an unborn child or of murder of a law enforcement officer of the first degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:

- (1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 35 years to life.
- (2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of life imprisonment without parole, or a term of imprisonment, the minimum of which shall be at least 25 years to life.

(b) Notice.--Reasonable notice to the defendant of the Commonwealth's intention to seek a sentence of life imprisonment without parole under subsection (a) shall be provided after conviction and before sentencing.

(c) Second degree murder.--A person who has been convicted, after June 24, 2012, of a murder of the second degree, second degree murder of an unborn child or of murder of a law enforcement officer of the second degree and who was under the age of 18 at the time of the commission of the offense shall be sentenced as follows:

- (1) A person who at the time of the commission of the offense was 15 years of age or older shall be sentenced to a term of imprisonment the minimum of which shall be at least 30 years to life.
- (2) A person who at the time of the commission of the offense was under 15 years of age shall be sentenced to a term of imprisonment the minimum of which shall be at least 20 years to life.

(d) Findings.--In determining whether to impose a sentence of life without parole under subsection (a), the court shall consider and make findings on the record regarding the following:

- (1) The impact of the offense on each victim, including oral and written victim impact statements made or submitted by family members of the victim detailing the physical, psychological and economic effects of the crime on the victim and the victim's family. A victim impact statement may include comment on the sentence of the defendant.
- (2) The impact of the offense on the community.
- (3) The threat to the safety of the public or any individual posed by the defendant.
- (4) The nature and circumstances of the offense committed by the defendant.
- (5) The degree of the defendant's culpability.
- (6) Guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing.
- (7) Age-related characteristics of the defendant, including:
 - (i) Age.
 - (ii) Mental capacity.
 - (iii) Maturity.
 - (iv) The degree of criminal sophistication exhibited by the defendant.
 - (v) The nature and extent of any prior delinquent or criminal history, including the success or failure of any previous attempts by the court to rehabilitate the defendant.
 - (vi) Probation or institutional reports.
 - (vii) Other relevant factors.

) **(e) Minimum sentence.**--Nothing under this section shall prevent the sentencing court from imposing a minimum sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing may not supersede the mandatory minimum sentences provided under this section.

(f) Appeal by Commonwealth.--If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The

appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Cite as 18 Pa.C.S. § 1102.1

History. Added by P.L. 1655 2012 No. 204, §2, eff. 10/25/2012.

§ 9718.2 Sentences for sex offenders.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter B SENTENCING AUTHORITY

Current through P.A. Acts 2016-8

§ 9718.2 Sentences for sex offenders

<Section effective until Dec. 20, 2012. See also, section effective Dec. 20, 2012.>

(a) Mandatory sentence.--

- (1) Any person who is convicted in any court of this Commonwealth of an offense set forth in section 9795.1(a) or (b) (relating to registration) shall, if at the time of the commission of the current offense the person had previously been convicted of an offense set forth in section 9795.1(a) or (b) or an equivalent crime under the laws of this Commonwealth in effect at the time of the commission of that offense or an equivalent crime in another jurisdiction, be sentenced to a minimum sentence of at least 25 years of total confinement, notwithstanding any other provision of this title or other statute to the contrary. Upon such conviction, the court shall give the person oral and written notice of the penalties under paragraph (2) for a third conviction. Failure to provide such notice shall not render the offender ineligible to be sentenced under paragraph (2).
- (2) Where the person had at the time of the commission of the current offense previously been convicted of two or more offenses arising from separate criminal transactions set forth in section 9795.1(a) or (b) or equivalent crimes under the laws of this Commonwealth in effect at the time of the commission of the offense or equivalent crimes in another jurisdiction, the person shall be sentenced to a term of life imprisonment, notwithstanding any other provision of this title or other statute to the contrary. Proof that the offender received notice of or otherwise knew or should have known of the penalties under this paragraph shall not be required.

- (b) Mandatory maximum.--**An offender sentenced to a mandatory minimum sentence under this section shall be sentenced to a maximum sentence equal to twice the mandatory minimum sentence, notwithstanding 18 Pa.C.S. § 1103 (relating to sentence of

imprisonment for felony) or any other provision of this title or other statute to the contrary.

- (c) **Proof of sentencing.**--The provisions of this section shall not be an element of the crime, and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The sentencing court, prior to imposing sentence on an offender under subsection (a), shall have a complete record of the previous convictions of the offender, copies of which shall be furnished to the offender. If the offender or the attorney for the Commonwealth contests the accuracy of the record, the court shall schedule a hearing and direct the offender and the attorney for the Commonwealth to submit evidence regarding the previous convictions of the offender. The court shall then determine, by a preponderance of the evidence, the previous convictions of the offender and, if this section is applicable, shall impose sentence in accordance with this section. Should a previous conviction be vacated and an acquittal or final discharge entered subsequent to imposition of sentence under this section, the offender shall have the right to petition the sentencing court for reconsideration of sentence if this section would not have been applicable except for the conviction which was vacated.
- (d) **Authority of court in sentencing.**--Notice of the application of this section shall be provided to the defendant before trial. If the notice is given, there shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsections (a) and (b) or to place the offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.
- (e) **Appeal by Commonwealth.**--If a sentencing court shall refuse to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for the imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Cite as 42 Pa.C.S. § 9718.2

History. 2006, Nov. 29, P.L. 1567, No. 178, § 5, effective Jan. 1, 2007.

§ 9718.3 Sentence for failure to comply with registration of sexual offenders.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter B SENTENCING AUTHORITY

Current through P.A. Acts 2016-8

§ 9718.3 Sentence for failure to comply with registration of sexual offenders

(a) **Mandatory sentence.**--Mandatory sentencing shall be as follows:

(1) Sentencing upon conviction for a first offense shall be as follows:

(i) Not less than two years for an individual who:

(A) was subject to section 9795.1(a) or (a.1) (relating to registration) or a similar provision from another jurisdiction or former section 9793 (relating to registration of certain offenders for ten years); and

(B) violated 18 Pa.C.S. § 4915(a)(1) or (2) (relating to failure to comply with registration of sexual offenders requirements).

(ii) Not less than three years for an individual who:

(A) was subject to section 9795.1(a) or (a.1) or a similar provision from another jurisdiction or former section 9793 ; and

(B) violated 18 Pa.C.S. § 4915(a)(3).

(iii) Not less than three years for an individual who:

(A) was subject to section 9795.1(b) or a similar provision from another jurisdiction; and

(B) violated 18 Pa.C.S. § 4915(a)(1) or (2).

(iv) Not less than five years for an individual who:

(A) was subject to section 9795.1(b) or a similar provision from another jurisdiction; and

(B) violated 18 Pa.C.S. § 4915(a)(3).

(2) Sentencing upon conviction for a second or subsequent offense shall be as follows:

(i) Not less than five years for an individual who:

(A) was subject to section 9795.1 or a similar provision from another jurisdiction or former section 9793 ; and

(B) violated 18 Pa.C.S. § 4915(a)(1) or (2).

(ii) Not less than seven years for an individual who:

(A) was subject to section 9795.1 or a similar provision from another jurisdiction or former section 9793 ; and

(B) violated 18 Pa.C.S. § 4915(a)(3).

(b) **Proof at sentencing.**--The provisions of this section shall not be an element of the crime, and notice thereof to the defendant shall not be required prior to conviction, but reasonable notice of the Commonwealth's intention to proceed under this section shall be provided after conviction and before sentencing. The applicability of this section shall be determined at sentencing. The court shall consider any evidence presented at trial and shall afford the Commonwealth and the defendant an opportunity to present any necessary additional evidence and shall determine, by a preponderance of the evidence, if this section is applicable.

(c) **Authority of court in sentencing.**--There shall be no authority in any court to impose on an offender to which this section is applicable any lesser sentence than provided for in subsection (a) or to place such offender on probation or to suspend sentence. Nothing in this section shall prevent the sentencing court from imposing a sentence greater than that provided in this section. Sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing shall not supersede the mandatory sentences provided in this section.

(d) **Appeal by Commonwealth.**--If a sentencing court refuses to apply this section where applicable, the Commonwealth shall have the right to appellate review of the action of the sentencing court. The appellate court shall vacate the sentence and remand the case to the sentencing court for imposition of a sentence in accordance with this section if it finds that the sentence was imposed in violation of this section.

Cite as 42 Pa.C.S. § 9718.3

History. 2006, Nov. 29, P.L. 1567, No. 178, § 5, effective Jan. 1, 2007. Amended 2008, Sept. 25, P.L. 1026, No. 81, §5, effective in 60 days [Nov. 24, 2008]; 2011, Dec. 20, P.L. 446, No. 111, §5, effective in 60 days [Feb. 21, 2012].

§ 9720.5 Sentencing for offenses involving sexual abuse of children.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter B SENTENCING AUTHORITY

Current through P.A. Acts 2016-8

§ 9720.5 Sentencing for offenses involving sexual abuse of children

The Pennsylvania Commission on Sentencing, in accordance with section 2154 (relating to adoption of guidelines for sentencing), shall provide for a sentence enhancement within its guidelines for an offense under 18 Pa.C.S. § 6312 (relating to sexual abuse of children), specifying variations from the range of sentences applicable based on such aggravating circumstances as the age of the child or a determination of prepubescence, the number of images possessed by the defendant and the nature and character of the abuse depicted in the images.

History. Added by P.L. 1163 2013 No. 105, §3, eff. 1/1/2014.

§ 9721 Sentencing generally.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Current through P.A. Acts 2016-8

§ 9721 Sentencing generally

- (a) **General rule.**--In determining the sentence to be imposed the court shall, except as provided in subsection (a.1), consider and select one or more of the following alternatives, and may impose them consecutively or concurrently:
- (1) An order of probation.
 - (2) A determination of guilt without further penalty.
 - (3) Partial confinement.
 - (4) Total confinement.
 - (5) A fine.
 - (6) County intermediate punishment.
 - (7) State intermediate punishment.
- (a.1) **Exception.**--
- (1) Unless specifically authorized under section 9763 (relating to a sentence of county intermediate punishment) or 61 Pa.C.S. Ch. 41 (relating to State intermediate punishment), subsection (a) shall not apply where a mandatory minimum sentence is otherwise provided by law.
 - (2) An eligible offender may be sentenced to State intermediate punishment pursuant to subsection (a)(7) and as described in 61 Pa.C.S. Ch. 41 or to State motivational boot camp as described in 61 Pa.C.S. Ch. 39 (relating to motivational boot camp) , even if a mandatory minimum sentence would otherwise be provided by law.
 - (3) An eligible offender may be sentenced to total confinement pursuant to subsection

(a)(4) and a recidivism risk reduction incentive minimum sentence pursuant to section 9756(b.1) (relating to sentence of total confinement), even if a mandatory minimum sentence would otherwise be provided by law.

- (b) **General standards.**--In selecting from the alternatives set forth in subsection (a), the court shall follow the general principle that the sentence imposed should call for confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the defendant. The court shall also consider any guidelines for sentencing and resentencing adopted by the Pennsylvania Commission on Sentencing and taking effect under section 2155 (relating to publication of guidelines for sentencing, resentencing and parole and recommitment ranges following revocation). In every case in which the court imposes a sentence for a felony or misdemeanor, modifies a sentence, resents an offender following revocation of probation, county intermediate punishment or State intermediate punishment or resents following remand, the court shall make as a part of the record, and disclose in open court at the time of sentencing, a statement of the reason or reasons for the sentence imposed. In every case where the court imposes a sentence or resentence outside the guidelines adopted by the Pennsylvania Commission on Sentencing under sections 2154 (relating to adoption of guidelines for sentencing), 2154.1 (relating to adoption of guidelines for county intermediate punishment), 2154.2 (relating to adoption of guidelines for State intermediate punishment), 2154.3 (relating to adoption of guidelines for fines), 2154.4 (relating to adoption of guidelines for resentencing) and 2154.5 (relating to adoption of guidelines for parole) and made effective under section 2155, the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines to the commission, as established under section 2153(a)(14) (relating to powers and duties). Failure to comply shall be grounds for vacating the sentence or resentence and resentencing the defendant.
- (c) **Mandatory restitution.**-- In addition to the alternatives set forth in subsection (a) of this section the court shall order the defendant to compensate the victim of his criminal conduct for the damage or injury that he sustained. For purposes of this subsection, the term "victim" shall be as defined in section 479.1 of the act of April 9, 1929 (P.L. 177, No. 175), known as The Administrative Code of 1929.
- (c.1) **Mandatory payment of costs.**--Notwithstanding the provisions of section 9728 (relating to collection of restitution, reparation, fees, costs, fines and penalties) or any provision of law to the contrary, in addition to the alternatives set forth in subsection (a), the court shall order the defendant to pay costs. In the event the court fails to issue an order for costs pursuant to section 9728, costs shall be imposed upon the defendant under this section. No court order shall be necessary for the defendant to incur liability for costs under this section. The provisions of this subsection do not alter the court's discretion under Pa.R.Crim.P. No. 706(C) (relating to fines or costs).

- (d) **Detailed criteria.**--With respect to each alternative the criteria to be considered by the court are set forth in this subchapter.
- (e) **Term of imprisonment.**--All sentences of imprisonment imposed under this chapter shall be for a definite term.

Cite as 42 Pa.C.S. § 9721

History. Amended by P.L. 1050 2012 No. 122, §2, eff. 9/3/2012.

1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Amended 1978, Nov. 26, P.L. 1316, No. 319, § 1, effective Jan. 1, 1979. Renumbered from 18 Pa.C.S. § 1321 and amended 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days. Amended 1990, Dec. 19, P.L. 1196, No. 201, § 3, effective July 1, 1991; 1991, July 11, P.L. 76, No. 13, §2, imd. effective; 1995, May 3, P.L. 999, No. 12 (Spec. Sess. No. 1), § 3, effective in 60 days; 2004, Nov. 19, P.L. 855, No. 112, §5, effective in 180 days [May 18, 2005]; 2008, Sept. 25, P.L. 1026, No. 81, §5, effective in 60 days [Nov. 24, 2008]; 2010, Oct. 27, P.L. 931, No. 95, §3, imd. effective; 2010, Oct. 27, P.L. 949, No. 96, §2, effective in 60 days [Dec. 27, 2010].

§ 303.12 Guideline sentence recommendations: Sentencing programs.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Sentencing Guidelines

Current through P.A. Acts 2016-8

§ 303.12 Guideline sentence recommendations: Sentencing programs

(a) County intermediate punishment (CIP).

(1) Eligibility.

- (i) The following regulations and statutes govern operation of and eligibility for county intermediate punishment programs:

37 Pa.Code § 451.1 et seq.

42 Pa.C.S. § 9729, § 9763, § 9773 and Chapter 98.

204 Pa.Code § 303.8 and § 303.9.

- (ii) Sentence recommendations which include an option of County Intermediate Punishment for certain offenders are designated as shaded cells in the guideline matrices.

- (2) The county intermediate punishment plan provides a mechanism to advise the court of the extent and availability of services and programs authorized in the county. This plan includes information on the appropriate classification and use of county programs based on program-specific requirements.

- (3) County intermediate punishments classifications. In order to incorporate county intermediate punishment programs into the sentencing levels, the Commission has classified county intermediate punishment programs as Restrictive Intermediate Punishments (RIP) and restorative sanction programs. Additionally, specific county intermediate punishment programs have been identified in legislation (42 Pa.C.S. §§ 9763(c) and 9804 (b)) and regulation (37 Pa. Code § 451.52) as authorized

sentences for convictions relating to Operating a Watercraft Under the Influence of Alcohol or a Controlled Substance, Driving While Operating Privilege is Suspended or Revoked, Driving Under the Influence of Alcohol or Controlled Substance and Illegally Operating a Motor Vehicle Not Equipped with Ignition Interlock; the Commission has classified these programs as Qualified Restrictive Intermediate Punishments.

- (4) Restrictive Intermediate Punishments (RIP). Restrictive Intermediate Punishments are defined as programs that provide for strict supervision of the offender. The county intermediate punishment board is required to develop assessment and evaluation procedures to assure the appropriate targeting of offenders. All programs must meet the minimum standards provided in the Pennsylvania Commission on Crime and Delinquency regulations (37 Pa.Code Chapter 451) for county intermediate punishments.
 - (i) Restrictive Intermediate Punishments (RIP) either:
 - (A) house the offender full or part time; or
 - (B) significantly restrict the offender's movement and monitor the offender's compliance with the program(s); or
 - (C) involve a combination of programs that meet the standards set forth above.
 - (ii) An offender under consideration for Restrictive Intermediate Punishments at Level 4 or Level 3 shall have a diagnostic assessment of dependency on alcohol or other drugs conducted by one of the following: the Pennsylvania Department of Health's Bureau of Drug and Alcohol Programs (BDAP) or a designee; the county authority on drugs and alcohol or a designee; or clinical personnel of a facility licensed by the Bureau of Drug and Alcohol Programs.
 - (iii) An offender assessed to be dependent shall be evaluated for purposes of a treatment recommendation by one of the above listed assessors. The evaluation shall take into account the level of motivation of the offender. If sentenced to a Restrictive Intermediate Punishment, the sentence shall be consistent with the level of care and length of stay prescribed in the treatment recommendation, regardless of the standard range sentencing recommendation.
 - (iv) An offender assessed as not in need of drug or alcohol treatment may be placed in any approved Restrictive Intermediate Punishment program. Each day of participation in a Restrictive Intermediate Punishment program or combination of programs shall be considered the equivalent of one day of

total confinement for guideline sentence recommendations.

- (v) The court may impose a Qualified Restrictive Intermediate Punishment in lieu of incarceration for certain convictions under 75 Pa.C.S. § 3802 (relating to Driving Under the Influence of Alcohol or Controlled Substance).
- (5) Restorative sanction programs. Restorative sanction programs are the least restrictive, non-confinement intermediate punishments. Restorative sanction programs are generally used in conjunction with Restrictive Intermediate Punishments as the level of supervision is reduced, but may also be used as separate sanctions under any of the non-confinement sentencing alternatives provided in the statute (see § 303.9(f)).
 - (i) Restorative sanction programs:
 - (A) are the least restrictive in terms of constraint of offender's liberties;
 - (B) do not involve the housing of the offender (either full or part time);
and
 - (C) focus on restoring the victim to pre-offense status.
- (6) Qualified Restrictive Intermediate Punishments. In accordance with 42 Pa.C.S. §§ 9763(c), 9804 (b) and 37 Pa. Code § 451, Qualified Restrictive Intermediate Punishment programs may be used to satisfy the mandatory minimum sentencing requirements of certain convictions under 30 Pa.C.S. § 5502 (c.1) for a first, second or third offense under 30 Pa.C.S. § 5502 , 75 Pa.C.S. § 1543(b), former 75 Pa.C.S. § 3731, 75 Pa.C.S. § 3804 for a first, second or third offense under 75 Pa.C.S. Chapter 38, or 75 Pa.C.S. § 3808(a)(2) (Illegally Operating a Motor Vehicle Not Equipped with Ignition Interlock).
 - (i) Unless otherwise provided in statute, Qualified Restrictive Intermediate Punishment programs include:
 - (A) if the defendant is determined to be in need of drug and alcohol treatment, and receives a penalty imposed under 75 Pa.C.S. § 1543(b), former 75 Pa.C.S. § 3731, 75 Pa.C.S. § 3804, or 75 Pa.C.S. § 3808(a)(2) a sentence to county intermediate punishment shall include participation in drug and alcohol treatment under 75 Pa.C.S. § 3815(c), and may be combined with:
 1. a residential inpatient program or residential rehabilitative center;
 2. house arrest with electronic surveillance;

3. a partial confinement program such as work release, a work camp or a halfway facility; or
4. any combination of Qualified Restrictive Intermediate Punishment programs.

(B) if the defendant is determined not to be in need of drug and alcohol treatment, or if the defendant receives a penalty imposed under 30 Pa.C.S. § 5502 (c.1), a sentence to county intermediate punishment may only include:

1. house arrest with electronic surveillance; or
2. partial confinement programs such as work release, a work camp or a halfway facility; or
3. any combination of Qualified Restrictive Intermediate Punishment programs.

(b) State Motivational Boot Camp (BC).

(1) Eligibility.

- (i) The following statute governs operation of and eligibility for the State Motivational Boot Camp: 61 P.S. § 1121 --§ 1129
- (ii) Sentence recommendations which include boot camp eligible offenders are designated by the letters BC in the cells of the Basic Sentencing Matrix (§ 303.16).

(2) The court shall indicate on the offender's commitment order and the Guideline Sentence Form if the offender is authorized as eligible for the boot camp program. The Department of Corrections makes the final determination as to whether the offender will be accepted into the boot camp program.

(c) State Intermediate Punishment (SIP).

(1) Eligibility.

- (i) The following statute governs operation of and eligibility for State Intermediate Punishment: 42 Pa.C.S. Chapter 99
- (ii) Any person convicted of a drug-related offense for which the sentence recommendation includes total confinement in a state facility may be considered for state intermediate punishment.

- (2) The court may, upon motion of the Commonwealth and agreement of the defendant, commit a defendant to the custody of the Department of Corrections for the purpose of evaluating whether the defendant would benefit from a drug offender treatment program and whether treatment in a drug offender treatment program is appropriate.
- (3) Upon receipt of a recommendation for placement in a drug offender treatment program and an individualized treatment plan from the Department of Corrections, and agreement of the attorney for the Commonwealth and the defendant, the court may sentence an eligible offender to a period of 24 months of state intermediate punishment.
- (4) The court may impose a consecutive period of probation. The total duration of a sentence of state intermediate punishment and consecutive probation may not exceed the maximum term for which the eligible offender could otherwise be sentenced.

Cite as 42 Pa.C.S. § 303.12

History. Amended Feb. 9, 2005, applicable to offenses committed on or after June 3, 2005, 35 Pa.B. 1508.

Readopted and amended Sept. 6, 2008, applicable to offenses committed on or after Dec. 5, 2008, 38 Pa.B. 4971.

§ 9795.2 Registration procedures and applicability.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter H REGISTRATION OF SEXUAL OFFENDERS

Current through P.A. Acts 2016-8

§ 9795.2 Registration procedures and applicability

(a) Registration.--

- (1) Offenders and sexually violent predators shall be required to register with the Pennsylvania State Police upon release from incarceration, upon parole from a State or county correctional institution or upon the commencement of a sentence of intermediate punishment or probation. For purposes of registration, offenders and sexually violent predators shall provide the Pennsylvania State Police with all current or intended residences, all information concerning current or intended employment and all information concerning current or intended enrollment as a student.
- (2) Offenders and sexually violent predators shall inform the Pennsylvania State Police within 48 hours of:
 - (i) Any change of residence or establishment of an additional residence or residences. In the case of an individual who has a residence as defined in paragraph (2) of the definition of "residence" set forth in section 9792 (relating to definitions), the individual shall inform the Pennsylvania State Police of the following:
 - (A) the location of a temporary habitat or other temporary place of abode or dwelling, including a homeless shelter or park, where the individual is lodged;
 - (B) a list of places the individual eats, frequents and engages in leisure activities and any planned destinations, including those outside this Commonwealth; and
 - (C) the place the individual receives mail, including a post office box.
The duty to provide the information set forth in this subparagraph

shall apply until the individual establishes a residence as defined in paragraph (1) of the definition of "residence" set forth in section 9792. If the individual who has a residence as defined in paragraph (2) of the definition of "residence" set forth in section 9792 changes or adds to the places listed in this subparagraph during a 30-day period, the individual shall list these when re-registering during the next 30-day period.

- (ii) Any change of employer or employment location for a period of time that will exceed 14 days or for an aggregate period of time that will exceed 30 days during any calendar year, or termination of employment.
 - (iii) Any change of institution or location at which the person is enrolled as a student, or termination of enrollment.
 - (iv) Becoming employed or enrolled as a student if the person has not previously provided that information to the Pennsylvania State Police.
- (2.1 Registration with a new law enforcement agency shall occur no later than 48 hours) after establishing residence in another state.
- (3) The registration period required in section 9795.1(a) and (a.1) (relating to registration) shall be tolled when an offender is recommitted for a parole violation or sentenced to an additional term of imprisonment. In such cases, the Department of Corrections or county correctional facility shall notify the Pennsylvania State Police of the admission of the offender.
- (4) This paragraph shall apply to all offenders and sexually violent predators:
- (i) Where the offender or sexually violent predator was granted parole by the Pennsylvania Board of Probation and Parole or the court or is sentenced to probation or intermediate punishment, the board or county office of probation and parole shall collect registration information from the offender or sexually violent predator and forward that registration information to the Pennsylvania State Police. The Department of Corrections or county correctional facility shall not release the offender or sexually violent predator until it receives verification from the Pennsylvania State Police that it has received the registration information. Verification by the Pennsylvania State Police may occur by electronic means, including e-mail or facsimile transmission. Where the offender or sexually violent predator is scheduled to be released from a State correctional facility or county correctional facility because of the expiration of the maximum term of incarceration, the Department of Corrections or county correctional facility shall collect the information from the offender or sexually violent predator no later than ten

days prior to the maximum expiration date. The registration information shall be forwarded to the Pennsylvania State Police.

- (ii) Where the offender or sexually violent predator scheduled to be released from a State correctional facility or county correctional facility due to the maximum expiration date refuses to provide the registration information, the Department of Corrections or county correctional facility shall notify the Pennsylvania State Police or police department with jurisdiction over the facility of the failure to provide registration information and of the expected date, time and location of the release of the offender or sexually violent predator.

(b) **Individuals convicted or sentenced by a court or adjudicated delinquent in jurisdictions outside this Commonwealth or sentenced by court martial.--**

- (1) Deleted by 2004, Nov. 24, P.L. 1243, No. 152, § 8, effective Jan. 24, 2005.
- (2) Deleted by 2004, Nov. 24, P.L. 1243, No. 152, § 8, effective Jan. 24, 2005.
- (3) Deleted by 2004, Nov. 24, P.L. 1243, No. 152, § 8, effective Jan. 24, 2005.
- (4) An individual who has a residence, is employed or is a student in this Commonwealth and who has been convicted of or sentenced by a court or court martial for a sexually violent offense or a similar 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, or who was required to register under a sexual offender statute in the jurisdiction where convicted, sentenced or court martial, shall register at an approved registration site within 48 hours of the individual's arrival in this Commonwealth. The provisions of this subchapter shall apply to the individual as follows:
 - (i) If the individual has been classified as a sexually violent predator as defined in section 9792 (relating to definitions) or determined under the laws of the other jurisdiction or by reason of court martial to be subject to active notification and lifetime registration on the basis of a statutorily authorized administrative or judicial decision or on the basis of a statute or administrative rule requiring active notification and lifetime registration based solely on the offense for which the individual was convicted, sentenced or court martial, the individual shall, notwithstanding section 9792, be considered a sexually violent predator and subject to lifetime registration pursuant to section 9795.1(b) (relating to registration). The individual shall also be subject to the provisions of this section and sections 9796 (relating to verification of residence), 9798 (relating to other notification) and 9798.1(c)(1) (relating to information made available on the

Internet and electronic notification), except that the individual shall not be required to receive counseling unless required to do so by the other jurisdiction or by reason of court martial.

- (ii) Except as provided in subparagraphs (i) and (iv), if the individual has been convicted or sentenced by a court or court martial for an offense listed in section 9795.1(b) or an equivalent offense, the individual shall, notwithstanding section 9792, be considered an offender and be subject to lifetime registration pursuant to 9795.1(b). The individual shall also be subject to the provisions of this section and sections 9796 and 9798.1(c)(2).
- (iii) Except as provided in subparagraphs (i), (ii), (iv) and (v), if the individual has been convicted or sentenced by a court or court martial for an offense listed in section 9795.1(a) or an equivalent offense, the individual shall be, notwithstanding section 9792, considered an offender and subject to registration pursuant to this subchapter. The individual shall also be subject to the provisions of this section and sections 9796 and 9798.1(c)(2). The individual shall be subject to this subchapter for a period of ten years or for a period of time equal to the time for which the individual was required to register in the other jurisdiction or required to register by reason of court martial, whichever is greater, less any credit due to the individual as a result of prior compliance with registration requirements.
- (iv) Except as provided in subparagraph (i) and notwithstanding subparagraph (v), if the individual is subject to active notification in the other jurisdiction or subject to active notification by reason of court martial, the individual shall, notwithstanding section 9792, be considered an offender and subject to this section and sections 9796, 9798 and 9798.1(c)(1). If the individual was convicted of or sentenced in the other jurisdiction or sentenced by court martial for an offense listed in section 9795.1(b) or an equivalent offense, the individual shall be subject to this subchapter for the individual's lifetime. If the individual was convicted of or sentenced in the other jurisdiction or sentenced by court martial for an offense listed in section 9795.1(a) or an equivalent offense, the individual shall be subject to this subchapter for a period of ten years or for a period of time equal to the time for which the individual was required to register in the other jurisdiction or required to register by reason of court martial, whichever is greater, less any credit due to the individual as a result of prior compliance with registration requirements. Otherwise, the individual shall be subject to this subchapter for a period of time equal to the time for which the individual was required to register in the other jurisdiction or required to register by reason of court martial, less any credit due to the individual as a result of prior compliance

with registration requirements.

- (v) Except as provided in subparagraphs (i), (ii), (iii) and (iv), if the individual is subject to passive notification in the other jurisdiction or subject to passive notification by reason of court martial, the individual shall, notwithstanding section 9792, be considered an offender and subject to this section and sections 9796 and 9798.1(c)(2). The individual shall be subject to this subchapter for a period of time equal to the time for which the individual was required to register in the other jurisdiction or required to register by reason of court martial, less any credit due to the individual as a result of prior compliance with registration requirements.
- (5) Notwithstanding the provisions of Chapter 63 (relating to juvenile matters) and except as provided in paragraph (4), an individual who has a residence, is employed or is a student in this Commonwealth and who is required to register as a sex offender 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 as a result of a juvenile adjudication shall register at an approved registration site within 48 hours of the individual's arrival in this Commonwealth. The provisions of this subchapter shall apply to the individual as follows:
- (i) If the individual has been classified as a sexually violent predator as defined in section 9792 or determined under the laws of the other jurisdiction to be subject to active notification and lifetime registration on the basis of a statutorily authorized administrative or judicial decision or on the basis of a statute or administrative rule requiring active notification and lifetime registration based solely on the offense for which the individual was adjudicated, the individual shall, notwithstanding section 9792, be considered a sexually violent predator and subject to lifetime registration pursuant to section 9795.1(b). The individual shall also be subject to the provisions of this section and sections 9796 and 9798.1(c)(1), except that the individual shall not be required to receive counseling unless required to do so by the other jurisdiction.
 - (ii) Except as provided in subparagraph (i), if the individual is subject to active notification in the other jurisdiction, the individual shall, notwithstanding section 9792, be considered an offender and subject to registration pursuant to this subchapter. The individual shall also be subject to the provisions of this section and sections 9796, 9798 and 9798.1(c)(1). The individual shall be subject to this subchapter for a period of time equal to the time for which the individual was required to register in the other jurisdiction, less any credit due to the individual as a result of prior compliance with

registration requirements.

- (iii) Except as provided in subparagraphs (i) and (ii), if the individual is subject to passive notification in the other jurisdiction, the individual shall, notwithstanding section 9792, be considered an offender and be subject to this section and sections 9796 and 9798.1(c)(2). The individual shall be subject to this subchapter for a period of time equal to the time for which the individual was required to register in the other jurisdiction, less any credit due to the individual as a result of prior registration compliance.

(c) **Registration information to local police.--**

- (1) The Pennsylvania State Police shall provide the information obtained under this section and sections 9795.3 (relating to sentencing court information) and 9796 (relating to verification of residence) to the chief law enforcement officers of the police departments of the municipalities in which the individual will establish a residence or be employed or enrolled as a student. In addition, the Pennsylvania State Police shall provide this officer with the address at which the individual will establish a residence or be employed or enrolled as a student following his release from incarceration, parole or probation.
- (2) The Pennsylvania State Police shall provide notice to the chief law enforcement officers of the police departments of the municipalities notified pursuant to paragraph (1) when an individual fails to comply with the registration requirements of this section or section 9796, and request, as appropriate, that these police departments assist in locating and apprehending the individual.
- (3) The Pennsylvania State Police shall provide notice to the chief law enforcement officers of the police departments of the municipalities notified pursuant to paragraph (1) when they are in receipt of information indicating that the individual will no longer have a residence or be employed or be enrolled as a student in the municipality.

(d) **Penalty.--**An individual subject to registration under section 9795.1(a) or (b) who fails to register with the Pennsylvania State Police as required by this section may be subject to prosecution under 18 Pa.C.S. § 4915 (relating to failure to comply with registration of sexual offenders requirements).

(e) **Registration sites.--**An individual subject to section 9795.1 shall register and submit to fingerprinting and photographing as required by this subchapter at approved registration sites.

History. 2000, May 10, P.L. 74, No. 18, §3, effective in 60 days. Amended 2000, Dec. 20, P.L. 811, No. 113, §2, effective in 60 days; 2002, Oct. 17, P.L. 880, No. 127, §4, effective in 60 days; 2004, Nov. 24, P.L. 1243, No. 152, § 8; 2006, Nov. 29, P.L. 1567, No. 178, § 7, effective Jan. 1, 2007; 2011, Dec. 20, P.L. 446, No. 111, §9.1, effective in 60 days [Feb. 21, 2012].

§ 9718.1 Sexual offender treatment.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter B SENTENCING AUTHORITY

Current through P.A. Acts 2016-8

§ 9718.1 Sexual offender treatment

<Section effective until Dec. 20, 2012. See also, section effective Dec. 20, 2012.>

- (a) **General rule.**--A person, including an offender designated as a "sexually violent predator" as defined in section 9792 (relating to definitions), shall attend and participate in a Department of Corrections program of counseling or therapy designed for incarcerated sex offenders if the person is incarcerated in a State institution for any of the following provisions under 18 Pa.C.S. (relating to crimes and offenses):
- (1) Any of the offenses enumerated in Chapter 31 (relating to sexual offenses) if the offense involved a minor under 18 years of age.
 - (2) Section 4304 (relating to endangering welfare of children) if the offense involved sexual contact with the victim.
 - (3) Section 6301 (relating to corruption of minors) if the offense involved sexual contact with the victim.
 - (4) Open lewdness, as defined in section 5901 (relating to open lewdness), if the offense involved a minor under 18 years of age.
 - (5) Prostitution, as defined in section 5902 (relating to prostitution and related offenses), if the offense involved a minor under 18 years of age.
 - (6) Obscene and other sexual materials and performances, as defined in section 5903 (relating to obscene and other sexual materials and performances), if the offense involved a minor under 18 years of age.
 - (7) Sexual abuse of children, as defined in section 6312 (relating to sexual abuse of children).

- (8) Section 6318 (relating to unlawful contact with minor).
 - (9) Section 6320 (relating to sexual exploitation of children).
 - (10) Section 4302 (relating to incest) if the offense involved a minor under 18 years of age.
 - (11) An attempt or solicitation to commit any of the offenses listed in this subsection.
- (b) **Eligibility for parole.**--For an offender required to participate in the program under subsection (a), all of the following apply:
- (1) The offender shall not be eligible for parole unless the offender has:
 - (i) served the minimum term of imprisonment;
 - (ii) participated in the program under subsection (a); and
 - (iii) agreed to comply with any special conditions of parole imposed for therapy or counseling for sex offenders, including sexually violent predators.
 - (2) Notwithstanding paragraph (1)(iii), an offender who is a sexually violent predator is subject to section 9799.4 (relating to counseling of sexually violent predators).
- (c) **Department.**--The department shall develop and provide the program of counseling or therapy for offenders as provided in subsection (a). The department shall have the sole discretion with respect to counseling or therapy program contents and administration, including the scheduling of an offender's attendance and participation.
- (d) **No right of action created.**--Notwithstanding any other provision of law to the contrary, this section shall not be construed to confer any legal right upon any individual, including an individual required to participate in the department's programs of counseling or therapy for incarcerated offenders, seeking to:
- (1) participate and attend the program provided in subsection (a) at a time of the individual's own choosing;
 - (2) modify the contents of the program provided in subsection (a);
 - (3) be paroled; or
 - (4) file any other cause of action in any court regarding the program provided in subsection (a).

Cite as 42 Pa.C.S. § 9718.1

History. 2000, Dec. 20, P.L. 721, No. 98, §2, imd. effective. Amended 2002, Nov. 20, P.L. 1104, No. 134, §3, effective in 60 days.

§ 9725 Total confinement.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter C SENTENCING ALTERNATIVES

Current through P.A. Acts 2016-8

§ 9725 Total confinement

The court shall impose a sentence of total confinement if, having regard to the nature and circumstances of the crime and the history, character, and condition of the defendant, it is of the opinion that the total confinement of the defendant is necessary because:

- (1) there is undue risk that during a period of probation or partial confinement the defendant will commit another crime;
- (2) the defendant is in need of correctional treatment that can be provided most effectively by his commitment to an institution; or
- (3) a lesser sentence will depreciate the seriousness of the crime of the defendant.

Cite as 42 Pa.C.S. § 9725

History. 1974, Dec. 30, P.L. 1052, No. 345, § 1, effective in 90 days. Renumbered from 18 Pa.C.S. § 1325 by 1980, Oct. 5, P.L. 693, No. 142, § 401(a), effective in 60 days.

§ 9738 Victim impact statements.

Pennsylvania Statutes

42 Pa.C.S. JUDICIARY AND JUDICIAL PROCEDURE

Part VIII CRIMINAL PROCEEDINGS

Chapter 97 SENTENCING

Subchapter D INFORMATIONAL BASIS OF SENTENCE

Current through P.A. Acts 2016-8

§ 9738 Victim impact statements

- (a) **General rule.**--Notwithstanding any other statute, rule or provision of law to the contrary, in the trial of a defendant accused of an offense, including an offense subject to sentence under section 9711 (relating to sentencing procedure for murder of the first degree), a court shall not order the exclusion of any victim of the offense from the trial on the basis that the victim may, during the sentencing phase of the proceedings:
- (1) make a victim impact statement or present any victim impact information in relation to the sentence to be imposed on the defendant; or
 - (2) testify as to the effect of the offense on the victim or the family of the victim.
- (b) **Definition.**--As used in this section, the term "victim" shall mean a "victim" as defined in:
- (1) section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act; or
 - (2) 18 Pa.C.S. § 3001 (relating to definitions).

Cite as 42 Pa.C.S. § 9738

History. Amended by P.L. 2014 No. 105, §8, eff. 8/31/2014.

1997, June 25, P.L. 293, No. 28, §2, imd. effective.