

No. 1978-319

AN ACT

SB 195

Amending Title 18 (Crimes and Offenses) of the Pennsylvania Consolidated Statutes, further providing for sentencing and providing for alteration of identification marks on personal property.

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

Section 1. Section 1321(b) of Title 18, act of November 25, 1970 (P.L.707, No.230), known as the Pennsylvania Consolidated Statutes, is amended to read:

§ 1321. Sentencing generally.

* * *

(b) General standards.—In selecting from the alternatives set forth in subsection (a) **[of this section]** the court shall follow the general principle that the sentence imposed should call for **[the minimum amount of]** 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 adopted by the Pennsylvania Commission on Sentencing and taking effect pursuant to section 1385 (relating to publication of guidelines for sentencing). In every case in which the court imposes a sentence for a felony or misdemeanor, 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 outside the sentencing guidelines adopted by the Pennsylvania Commission on Sentencing pursuant to section 1384 (relating to adoption of guidelines for sentencing) and made effective pursuant to section 1385, the court shall provide a contemporaneous written statement of the reason or reasons for the deviation from the guidelines. Failure to comply shall be grounds for vacating the sentence and resentencing the defendant.*

* * *

Section 2. Subchapter G of Chapter 13 of Title 18 is repealed.

Section 3. Chapter 13 of Title 18 is amended by adding a subchapter to read:

SUBCHAPTER G
PENNSYLVANIA COMMISSION ON SENTENCING

Sec.

- 1381. Composition and organization of commission.
- 1382. Powers and duties of commission.
- 1383. Commonwealth agency cooperation.

- 1384. Adoption of guidelines for sentencing.
- 1385. Publication of guidelines for sentencing.
- 1386. Appellate review of sentence.

§ 1381. Composition and organization of commission.

(a) **Composition.**—The Pennsylvania Commission on Sentencing is hereby created. It shall consist of 11 members, two to be appointed by the Speaker of the House of Representatives, two to be appointed by the President pro tempore of the Senate, four to be appointed by the Chief Justice of the Supreme Court and three to be appointed by the Governor. The appointments made by the Speaker of the House of Representatives shall be members of the House of Representatives no more than one of which shall be of the same political party. The appointments made by the President pro tempore shall be members of the Senate no more than one of which shall be of the same political party. The appointments by the Chief Justice shall be a justice or judge of a court of record. The appointments made by the Governor shall be a district attorney, a defense attorney and either a professor of law or a criminologist. The terms of the members of the commission shall be two years except that of those members first appointed by the Speaker and the President pro tempore, half shall be appointed for two years and half for one year. In the case of the members appointed by the Chief Justice, two shall be appointed for two years and two shall be appointed for one year. In the case of the members appointed by the Governor, two shall be appointed for two years and one shall be appointed for one year.

(b) **Chairman and executive director.**—The commission, by majority vote, shall select a chairman from its membership and select an executive director. The chairman shall:

(1) Preside at meetings of the commission.

(2) Direct the preparation of requests for appropriations for the commission and the use of funds made available to the commission.

(c) **Meetings and quorum.**—

(1) The commission shall meet not less frequently than quarterly to establish its general policies and rules.

(2) The commission shall be deemed an “agency” within the meaning of the act of July 19, 1974 (P.L.486, No.175), referred to as the Public Agency Open Meeting Law.

(3) Nine commissioners shall constitute a quorum.

(4) Minutes of meetings shall be kept by the executive director and filed at the executive office of the commission.

(d) **Records of action.**—Except as otherwise provided by law, the commission shall maintain and make available for public inspection a record of the final vote of each member on any action taken by it.

(e) **Expenses.**—Each commissioner shall be entitled to reimbursement for his accountable expenses incurred while engaged in the commission’s business.

§ 1382. Powers and duties of commission.

(a) General rule.—The commission, by majority vote and pursuant to rules and regulations, shall have the power to:

(1) Establish general policies and promulgate such rules and regulations for the commission as are necessary to carry out the purposes of this subchapter.

(2) Utilize, with their consent, the services, equipment, personnel, information and facilities of Federal, State, local and private agencies and instrumentalities with or without reimbursement therefor.

(3) Enter into and perform such contracts, leases, cooperative agreements and other transactions as may be necessary in the conduct of the functions of the commission, with any public agency or with any person, firm, association, corporation, educational institution or nonprofit organization.

(4) Request such information, data and reports from any Commonwealth agency or judicial officer as the commission may from time to time require and as may be produced consistent with other law.

(5) Arrange with the head of any other Commonwealth agency for the performance by that agency of any function of the commission, with or without reimbursement.

(6) Issue invitations requesting the attendance and testimony of witnesses and the production of any evidence that relates directly to a matter with respect to which the commission or any commissioner of the commission is empowered to make a determination under this subchapter.

(7) Establish a research and development program within the commission for the purpose of:

(i) Serving as a clearinghouse and information center for the collection, preparation and dissemination of information on Commonwealth sentencing practices.

(ii) Assisting and serving in a consulting capacity to State courts, departments and agencies in the development, maintenance and coordination of sound sentencing practices.

(8) Collect systematically the data obtained from studies, research and the empirical experience of public and private agencies concerning the sentencing processes.

(9) Publish data concerning the sentencing processes.

(10) Collect systematically and disseminate information concerning sentences actually imposed.

(11) Collect systematically and disseminate information regarding effectiveness of sentences imposed.

(12) Make recommendations to the General Assembly concerning modification or enactment of sentencing and correctional statutes which the commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy.

(b) Annual reports.—The commission shall report annually to the General Assembly, the Administrative Office of Pennsylvania Courts and the Governor on the activities of the commission.

(c) Additional powers and duties.—The commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this subchapter or as may be provided under any other provisions of law and may delegate to any commissioner or designated person such powers as may be appropriate other than the power to establish general policies, guidelines, rules and factors under subsection (a)(1).

§ 1383. Commonwealth agency cooperation.

Upon the request of the commission, each Commonwealth agency is authorized and directed to make its services, equipment, personnel, facilities and information available to the greatest practical extent to the commission in the execution of its functions.

§ 1384. Adoption of guidelines for sentencing.

The commission by majority vote shall adopt guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for felonies and misdemeanors committed by a defendant. The guidelines shall:

- (1) Specify the range of sentences applicable to crimes of a given degree of gravity.
- (2) Specify a range of sentences of increased severity for defendants previously convicted of a felony or felonies or convicted of a crime involving the use of a deadly weapon.
- (3) Prescribe variations from the range of sentences applicable on account of aggravating or mitigating circumstances.

§ 1385. Publication of guidelines for sentencing.

(a) General rule.—The commission shall:

(1) Prior to adoption, publish in the Pennsylvania Bulletin all proposed initial and subsequent sentencing guidelines and hold public hearings not earlier than 30 days and not later than 60 days thereafter to afford an opportunity for the following persons and organizations to testify:

- (i) Pennsylvania District Attorneys Association.
- (ii) Chiefs of Police Associations.
- (iii) Fraternal Order of Police.
- (iv) Public Defenders Organization.
- (v) Law school faculty members.
- (vi) State Board of Probation and Parole.
- (vii) Bureau of Correction.
- (viii) Pennsylvania Bar Association.
- (ix) Pennsylvania Wardens Association.
- (x) Pennsylvania Association on Probation, Parole and Corrections.
- (xi) Pennsylvania Conference of State Trial Judges.

(xii) Any other interested persons or organizations.

(2) Publish in the Pennsylvania Bulletin all initial and subsequent sentencing guidelines as adopted by the commission.

(3) Adopt and publish in the Pennsylvania Bulletin pursuant to subsection (a)(2) the initial sentencing guidelines within 18 months of the first meeting of the Pennsylvania Commission on Sentencing.

(b) Rejection by General Assembly.—The General Assembly may by concurrent resolution reject in their entirety any initial or subsequent guidelines adopted by the commission within 90 days of their publication in the Pennsylvania Bulletin pursuant to subsection (a)(2).

(c) Effective date.—Initial and any subsequent guidelines adopted by the commission shall become effective 90 days after publication in the Pennsylvania Bulletin pursuant to subsection (a)(2) unless rejected in their entirety by the General Assembly by a concurrent resolution.

§ 1386. Appellate review of sentence.

(a) Right to appeal.—The defendant or the Commonwealth may appeal as of right the legality of the sentence.

(b) Allowance of appeal.—The defendant or the Commonwealth may file a petition for allowance of appeal of the discretionary aspects of a sentence for a felony or a misdemeanor to the appellate court that has initial jurisdiction for such appeals. Allowance of appeal may be granted at the discretion of the appellate court where it appears that there is a substantial question that the sentence imposed is not appropriate under this chapter.

(c) Determination on appeal.—The appellate court shall vacate the sentence and remand the case to the sentencing court with instructions if it finds:

(1) the sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously;

(2) the sentencing court sentenced within the sentencing guidelines but the case involves circumstances where the application of the guidelines would be clearly unreasonable; or

(3) the sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.

In all other cases the appellate court shall affirm the sentence imposed by the sentencing court.

(d) Review of record.—In reviewing the record the appellate court shall have regard for:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant.

(2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation.

(3) The findings upon which the sentence was based.

(4) The guidelines promulgated by the commission.

(e) Right to bail not enlarged.—Nothing in this chapter shall be construed to enlarge the defendant's right to bail pending appeal.

(f) Limitation on additional appellate review.—No appeal of the discretionary aspects of the sentence shall be permitted beyond the appellate court that has initial jurisdiction for such appeals.

(g) Implementing rules of court.—The Supreme Court shall by rule prescribe procedures to implement the provisions of this section.

Section 4. Section 4104 of Title 18 is amended to read:

§ 4104. Tampering with records or identification.

(a) *Writings.*—A person commits a misdemeanor of the first degree if, knowing that he has no privilege to do so, he falsifies, destroys, removes or conceals any writing or record, or distinguishing mark or brand or other identification with intent to deceive or injure anyone or to conceal any wrongdoing.

(b) *Personal property.*—A person commits a summary offense if he knowingly buys, sells or moves in commerce any personal property from which the manufacturer's name plate, serial number or any other distinguishing number or identification mark has been removed, defaced, covered, altered or destroyed unless the alterations have been customarily made or done as an established practice in the ordinary and regular conduct of business by the original manufacturer or under specific authorization and direction from the original manufacturer. Personal property as set forth in this subsection shall not include firearms, motor vehicles or insurance company salvage recoveries.

(c) *Innocent alterations.*—If property subject to the provisions of this section has had its identifying marks defaced or eliminated ~~innocently~~ and is in the possession of its rightful owner, the owner may, notwithstanding the provisions of subsection (a) or (b), dispose of the property by sale or otherwise if he delivers to the acquirer a notarized statement that the property was innocently altered and that the person disposing of it is its rightful owner.

Section 5. Pursuant to this section, there is established an interim guideline for the minimum sentencing of certain repeat offenders.

(a) Until sentencing guidelines adopted by the Pennsylvania Commission on Sentencing and relating to the offenses set out in this subsection become effective pursuant to 18 Pa.C.S. § 1385 (relating to publication of guidelines for sentencing), when any person is convicted in any court of this Commonwealth of murder of the third degree, voluntary manslaughter, rape, involuntary deviate sexual intercourse, robbery, aggravated assault as defined in 18 Pa.C.S. § 2702(a)(1) (relating to aggravated assault) involving the use of a firearm, arson or kidnapping, or of attempt to commit any of these crimes, and when that person has been previously convicted in this Commonwealth, or any other state or the District of Columbia, or any Federal court, of any of the offenses set forth in this section or their equivalent, the sentencing court shall consider as a guideline in imposing sentence that such person be sentenced to a minimum term of not less than four years imprisonment.

(b) In any case where a court sentences a person subject to the provisions of subsection (a), to a term of less than four years imprisonment, the court shall provide a contemporaneous written statement of the reason or reasons for the sentence.

(c) The defendant or the Commonwealth may appeal as of right the legality of a sentence imposed pursuant to the provisions of subsection (a).

(d) The defendant or the Commonwealth may file a petition for allowance of appeal of the discretionary aspects of a sentence imposed pursuant to the provisions of subsection (a) to the appellate court that has initial jurisdiction for such appeals. Allowance of appeal may be granted at the discretion of the appellate court where it appears that there is a substantial question that the sentence imposed is not appropriate under this section.

(e) The appellate court shall vacate the sentence and remand the case to the sentencing court with instructions if it finds:

(1) the sentencing court purported to sentence within the sentencing guideline provided in subsection (a) but applied the guideline erroneously;

(2) the sentencing court sentenced within the sentencing guideline provided in subsection (a) but the case involves circumstances where the application of the guideline would be clearly unreasonable; or

(3) the sentencing court sentenced outside the sentencing guideline provided in subsection (a) and the sentence is unreasonable.

In all other cases the appellate court shall affirm the sentence imposed by the sentencing court.

(f) In reviewing the record the appellate court shall have regard for:

(1) The nature and circumstances of the offense and the history and characteristics of the defendant.

(2) The opportunity of the sentencing court to observe the defendant, including any presentence investigation.

(3) The findings upon which the sentence was based.

(4) The guideline provided in subsection (a).

(g) Nothing in this section shall be construed to enlarge the defendant's right to bail pending appeal.

(h) No appeal of the discretionary aspects of the sentence pursuant to this section shall be permitted beyond the appellate court that has initial jurisdiction for such appeals.

(i) The Supreme Court shall by rule prescribe procedures to implement the provisions of this section.

(j) This section shall expire and be deemed null and void upon the effective date of sentencing guidelines adopted by the Pennsylvania Commission on Sentencing relating to the offenses set out in subsection (a).

Section 6. The sum of \$100,000, or as much thereof as may be necessary, is hereby appropriated to the Pennsylvania Commission on Sentencing to carry out its duties as prescribed by this act.

Section 7. The provisions of section 3 are not severable and if any provision thereof or the application thereof to any person or circumstance is held invalid, the remainder of section 3 and section 6 shall be invalid.

Section 8. (a) Except as provided in subsections (b) and (c), this act shall take effect January 1, 1979.

(b) The provisions of 18 Pa.C.S. § 1386 (relating to appellate review of sentence) shall take effect upon the effective date of the initial guidelines adopted by the Pennsylvania Commission on Sentencing and taking effect pursuant to 18 Pa.C.S. § 1385 (relating to publication of guidelines for sentencing).

(c) The amendatory provisions of section 1 insofar as such provisions relate to the functions and authority of the Pennsylvania Commission on Sentencing and the provisions of sections 3, 6 and 7 of this amendatory act shall expire and be deemed null and void four years from the date on which the initial guidelines are adopted pursuant to 18 Pa.C.S. § 1385.

APPROVED—The 26th day of November, A. D. 1978.

MILTON J. SHAPP