

No. 1990-201

AN ACT

HB 251

Amending Titles 18 (Crimes and Offenses) and 42 (Judiciary and Judicial Procedure) of the Pennsylvania Consolidated Statutes, further providing for burglary; providing for intermediate punishment; and providing penalties.

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

Section 1. Section 3502(c) of Title 18 of the Pennsylvania Consolidated Statutes is amended to read:

§ 3502. Burglary.

* * *

(c) Grading.—[Burglary is a felony of the first degree.]

(1) *Except as provided in paragraph (2), burglary is a felony of the first degree.*

(2) *If the building, structure or portion entered is not adapted for overnight accommodation and if no individual is present at the time of entry, burglary is a felony of the second degree.*

* * *

Section 2. Title 42 is amended by adding a section to read:

§ 2154.1. *Adoption of guidelines for intermediate punishment.*

The commission shall adopt guidelines to identify offenders ~~who would be~~ eligible and appropriate for participation in intermediate punishment programs. These guidelines shall be considered by the sentencing court in determining whether to sentence an offender pursuant to section 9763 (relating to sentence of intermediate punishment). The guidelines shall:

(1) *Use the description of "eligible offender" provided in section 9729 (relating to intermediate punishment).*

(2) *Give primary consideration to protection of the public safety.*

Section 3. Section 9721(a) of Title 42 is amended to read:

§ 9721. Sentencing generally.

(a) General rule.—In determining the sentence to be imposed the court shall, except where a mandatory minimum sentence is otherwise provided by law, 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) *Intermediate punishment.*

* * *

Section 4. Title 42 is amended by adding sections to read:

§ 9729. Intermediate punishment.

(a) *General rule.*—The court may, pursuant to section 9763 (relating to sentence of intermediate punishment), sentence an eligible offender to a county intermediate punishment program. The court may at any time terminate a sentence of intermediate punishment or increase or lessen the conditions of sentence pursuant to section 9773 (relating to modification or revocation of intermediate punishment sentence). The court may impose reasonable costs of participation in the program upon the offender. The court shall not have the authority to sentence an offender under this section unless the county has established an intermediate punishment program which has been approved by the Pennsylvania Commission on Crime and Delinquency.

(b) *Eligibility.*—For the purposes of sentencing under this section, an eligible offender shall be a person convicted of an offense who would otherwise be sentenced to a county correctional facility, who does not demonstrate present or past violent behavior and who would otherwise be sentenced to partial confinement pursuant to section 9724 (relating to partial confinement) or total confinement pursuant to section 9725 (relating to total confinement).

(c) *Ineligibility.*—

(1) A person convicted of any of the following offenses shall be ineligible for sentencing under this section:

18 Pa. C.S. § 2502 (relating to murder).

18 Pa. C.S. § 2503 (relating to voluntary manslaughter).

18 Pa. C.S. § 2702 (relating to aggravated assault).

18 Pa. C.S. § 2703 (relating to assault by prisoner).

18 Pa. C.S. § 2704 (relating to assault by life prisoner).

18 Pa. C.S. § 2901 (relating to kidnapping).

18 Pa. C.S. § 3121 (relating to rape).

18 Pa. C.S. § 3122 (relating to statutory rape).

18 Pa. C.S. § 3123 (relating to involuntary deviate sexual intercourse).

18 Pa. C.S. § 3126 (relating to indecent assault).

18 Pa. C.S. § 3301 (relating to arson and related offenses).

18 Pa. C.S. § 3701 (relating to robbery).

18 Pa. C.S. § 3923 (relating to theft by extortion).

18 Pa. C.S. § 5121 (relating to escape).

(2) An offense under this subsection also includes a conviction under 18 Pa. C.S. § 3502 (relating to burglary) where the grading of the offense was a felony of the first degree under section 3502(c)(1).

(3) An offense under this subsection also includes a conviction under the act of April 14, 1972 (P.L. 233, No. 64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

§ 9763. Sentence of intermediate punishment.

(a) *General rule.*—In imposing a sentence of intermediate punishment, the court shall specify at the time of sentencing the length of the term for which the defendant is to be in an intermediate punishment program or a

combination of 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 an intermediate punishment program or a combination of 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.—A defendant convicted under 75 Pa.C.S. § 3731(e) (relating to driving under influence of alcohol or controlled substance) may only be sentenced to intermediate punishment:

- (1) in a residential inpatient program or in a residential rehabilitative center; or*
- (2) by house arrest or electronic surveillance combined with drug and alcohol treatment.*

(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.
§ 9773. *Modification or revocation of intermediate punishment sentence.*

(a) General rule.—The court may at any time terminate a sentence of intermediate punishment or increase or decrease the conditions of a sentence pursuant to section 9763 (relating to sentence of intermediate punishment).

(b) Revocation.—The court may revoke a sentence of intermediate punishment upon proof of a violation of specific conditions of the sentence. Upon revocation, the sentencing alternatives available to the court shall be the same as the alternatives available at the time of initial sentencing. Consideration shall be given to the time served in the intermediate punishment program.

(c) Hearing required.—A court shall not revoke or increase the conditions of a sentence of intermediate punishment without a hearing at which the court shall consider the record of the initial sentencing proceeding as well as the conduct of the defendant while serving a sentence of intermediate punishment. A hearing is not required to decrease the conditions of the sentence.

Section 5. This act shall take effect July 1, 1991.

APPROVED—The 19th day of December, A. D. 1990.

ROBERT P. CASEY