

No. 2008-81

AN ACT

HB 4

Amending Titles 42 (Judiciary and Judicial Procedure) and 44 (Law and Justice) of the Pennsylvania Consolidated Statutes, imposing a central or regional booking fee on criminal convictions to fund the start-up, operation or maintenance of a central or regional booking center; providing for a countywide booking center plan; providing for definitions of "board" and "department"; further providing for composition of the Pennsylvania Commission on Sentencing, for powers and duties and for adoption of guidelines for sentencing; providing for adoption of guidelines for resentencing, adoption of guidelines for parole and adoption of recommitment ranges following revocation of parole by the Pennsylvania Board of Probation and Parole; further providing for publication of guidelines, for sentencing generally, for sentence of total confinement, for sentencing proceeding and place of confinement and for information required upon commitment and subsequent disposition and for referral to State intermediate punishment program; providing for work release or other court order and for recidivism risk reduction incentive; and making a related repeal.

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

Section 1. Title 42 of the Pennsylvania Consolidated Statutes is amended by adding sections to read:

§ 1725.5. Booking center fee.

(a) Imposition.—Following the adoption of a countywide booking center plan, a person may, in addition to any other fines, penalties or costs imposed by law, be required by the court to pay a booking center fund fee of no more than \$300 if the person:

(1) Is placed on probation without verdict pursuant to section 17 of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act.

(2) Receives Accelerated Rehabilitative Disposition for, pleads guilty to or nolo contendere to or is convicted of a crime under the following:

(i) 18 Pa.C.S. § 106(a) (relating to classes of offenses).

(ii) 75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under influence).

(iii) 75 Pa.C.S. § 3802 (relating to driving under influence of alcohol or controlled substance).

(iv) A violation of The Controlled Substance, Drug, Device and Cosmetic Act.

(b) Disposition.—The fee under subsection (a) shall be paid to the county and deposited into a special central or regional booking center fund established in the county. Moneys in the special fund shall be used solely for the implementation of a countywide booking center plan under section

1725.6 (relating to countywide booking center plan) and the start-up, operation or maintenance of a booking center.

(c) *Other laws.*—The booking center fee shall be imposed notwithstanding any other provision of law to the contrary.

§ 1725.6. *Countywide booking center plan.*

(a) *Development.*—

(1) *A court in a county that has developed and adopted a countywide booking center plan may impose the fee established under section 1725.5 (relating to booking center fee).*

(2) *A county with a criminal justice advisory board shall develop the plan in conjunction with the criminal justice advisory board.*

(3) *A county that does not have a criminal justice advisory board shall develop the plan in conjunction with the district attorney, local police departments and municipalities within the county.*

(b) *Requirements.*—The plan adopted under subsection (a) shall do all of the following:

(1) *Ensure coordination and collaboration of all criminal justice agencies within the county.*

(2) *Comply with all applicable Federal and State technology standards for the collection and transmission of offender identification information.*

(3) *Make recommendations regarding the number, funding and operations of booking centers within the county. The plan shall prioritize the recommendations.*

(c) *Submission.*—

(1) *The plan shall be submitted to the Pennsylvania Commission on Crime and Delinquency for review and certification that the plan complies with the requirements of subsection (b)(2).*

(2) *The Pennsylvania Commission on Crime and Delinquency shall provide a list of all certified county plans to the Administrative Office of Pennsylvania Courts upon each county's certification. The Pennsylvania Commission on Crime and Delinquency shall update this list and provide it to the Administrative Office of Pennsylvania Courts whenever a county is added or subtracted from the list.*

(d) *Duties of commission.*—The Pennsylvania Commission on Crime and Delinquency shall do all of the following:

(1) *Determine and certify if a countywide booking center plan submitted by a county criminal justice advisory board or the county commissioners complies with subsection (b)(2).*

(2) *Adopt guidelines within 90 days of the effective date of this section relating to technology standards for the collection and transmission of offenders' identification. The guidelines shall be published in the Pennsylvania Bulletin.*

(e) *Implementation.*—Following certification by the Pennsylvania Commission on Crime and Delinquency under subsection (d), the county

may appropriate moneys in the special central or regional booking center fund to implement the plan to the greatest extent possible.

(f) Limitation.—No more than 5% of moneys in the special central or regional booking center fund may be appropriated by the county for the county's administrative costs related to the collection of the fee under section 1725.5.

(g) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Booking center.” A facility utilized for the processing and identification of individuals arrested, charged or accused of a crime.

“County criminal justice advisory board.” A county criminal justice planning board which meets the minimum standard for those boards established by the Pennsylvania Commission on Crime and Delinquency.

“Countywide booking center plan.” A written plan that includes a comprehensive strategy to improve the collection, transfer and maintenance of electronic offender identification information.

Section 1.1. Section 2151.1 of Title 42 is amended by adding definitions to read:

§ 2151.1. Definitions.

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

“Board.” The Pennsylvania Board of Probation and Parole.

* * *

“Department.” The Department of Corrections of the Commonwealth.

Section 2. Section 2152 of Title 42 is amended by adding a subsection to read:

§ 2152. Composition of commission.

* * *

(a.1) Ex officio members.—The Secretary of Corrections, the victim advocate appointed under section 301 of the act of November 24, 1998 (P.L. 882, No. 111), known as the Crime Victims Act, and the chairman of the board, during their tenure in their respective positions, shall serve as ex officio nonvoting members of the commission.

* * *

Section 3. Section 2153(a)(7), (9), (10), (11), (12), (13) and (14) of Title 42 are amended and the subsection is amended by adding a paragraph to read:

§ 2153. Powers and duties.

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

* * *

(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, *resentencing and parole* practices.

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

* * *

(9) Publish data concerning the sentencing *and parole* processes.

(10) Collect systematically and disseminate information concerning *parole dispositions and sentences* actually imposed[.], *including initial sentences and any subsequent modification of sentences or resentences following revocation or remand, and parole and reparole decisions by the board and any other paroling authority*.

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

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

(13) Establish a plan and timetable to collect and disseminate information relating to incapacitation, recidivism, deterrence and overall effectiveness of sentences *and parole dispositions* imposed.

(14) Establish a program to systematically monitor compliance with the guidelines, *with recommitment ranges* and with mandatory sentencing laws *to document eligibility for and releases pursuant to a county reentry plan, to document eligibility for and imposition of recidivism risk reduction incentive minimum sentences and to document all parole and reparole decisions by the board and any other paroling authority* by:

(i) Promulgating forms which document the application of [*the*] *sentencing, resentencing and parole* guidelines, mandatory sentencing laws, [*or both.*] *releases pursuant to a county reentry plan, recommitment ranges and recidivism risk reduction incentive minimum sentences and collecting information on all parole and reparole decisions by the board and any other paroling authority*.

(ii) Requiring the timely completion and *electronic* submission of such forms to the commission.

(15) *Prior to adoption of changes to guidelines for sentencing, resentencing and parole and recommitment ranges following revocation, use a correctional population simulation model to determine:*

(i) *Resources that are required under current guidelines and ranges.*

(ii) Resources that would be required to carry out any proposed changes to the guidelines and ranges.

* * *

Section 3.1. Section 2154(a) of Title 42 is amended by adding a paragraph to read:

§ 2154. Adoption of guidelines for sentencing.

(a) General rule.—The commission 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 defendants who plead guilty or nolo contendere to, or who were found guilty of, felonies and misdemeanors. The guidelines shall:

* * *

(5) Consider the impact of any amendments to section 9756 (relating to sentence of total confinement).

* * *

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

§ 2154.4. *Adoption of guidelines for resentencing.*

The commission shall adopt guidelines that shall be considered by the court when resentencing an offender following revocation of probation, county intermediate punishment or State intermediate punishment. The guidelines shall take into account factors considered in adopting the sentencing guidelines, the seriousness of the violation and the rehabilitative needs of the defendant.

§ 2154.5. *Adoption of guidelines for parole.*

(a) *Adoption.—The commission shall adopt guidelines that shall be considered by the board and any other paroling entity when exercising its power to parole and reparole all persons sentenced by any court in this Commonwealth to imprisonment in any State or county penitentiary, prison or penal institution. The guidelines shall do all of the following:*

(1) Give primary consideration to the protection of the public and to victim safety.

(2) Provide for due consideration of victim input.

(3) Be designed to encourage inmates and parolees to conduct themselves in accordance with conditions and rules of conduct set forth by the department or other prison facilities and the board.

(4) Be designed to encourage inmates and parolees to participate in programs that have been demonstrated to be effective in reducing recidivism, including appropriate drug and alcohol treatment programs.

(5) Provide for prioritization of incarceration, rehabilitation and other criminal justice resources for offenders posing the greatest risk to public safety.

(6) Use validated risk assessment tools, be evidence based and take into account available research relating to the risk of recidivism, minimizing the threat posed to public safety and factors maximizing the success of reentry.

(b) Discretionary authority.—Notwithstanding any other provision of law, this section shall not remove the discretionary parole authority of the board and any other paroling entity when exercising its power to parole and reparole.

§ 2154.6. Adoption of recommitment ranges following revocation of parole by board.

(a) Reccommitment ranges.—The commission shall adopt recommitment ranges that shall be considered by the board when exercising its power to reparole, commit and recommit for violations of parole any person sentenced by a court in this Commonwealth to imprisonment in any prison or penal institution of this Commonwealth, including State or county penitentiaries, prisons or penal institutions. The recommitment ranges shall take into account the seriousness of the initial conviction offense, the level of seriousness of the violation and the rehabilitative needs of the defendant. At the end of the recommitment period, the parole violator shall be reviewed for parole or, without further review, shall be reparoled.

(b) Deviation.—In every case in which the board deviates from the recommitment ranges, the board shall provide a contemporaneous written statement of the reasons for the deviation from the recommitment ranges to the commission as established under section 2153(a)(14) (relating to powers and duties).

(c) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

“Recommitment range.” A range of time within which a parole violator may be recommitted to serve an additional part of the term the parole violator would have been compelled to serve had the parole violator not been paroled.

Section 5. Sections 2155, 9718.3(a)(2)(i) and 9721(b) of Title 42 are amended to read:

§ 2155. Publication of guidelines for sentencing[,], resentencing and parole and recommitment ranges following revocation.

(a) General rule.—The commission shall:

(1) Prior to adoption, publish in the Pennsylvania Bulletin all proposed sentencing guidelines, *resentencing guidelines following revocation of probation, county intermediate punishment and State intermediate punishment, parole guidelines and recommitment ranges following revocation by the board of paroles granted*, 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] Department of Corrections.**
- (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 person or organization.

(2) Publish in the Pennsylvania Bulletin sentencing guidelines as adopted by the commission.

(b) Rejection by General Assembly.—Subject to gubernatorial review pursuant to section 9 of Article III of the Constitution of Pennsylvania, the General Assembly may by concurrent resolution reject in their entirety any guidelines *or recommitment ranges* adopted by the commission within 90 days of their publication in the Pennsylvania Bulletin pursuant to subsection (a)(2).

(c) Effective date.—Sentencing guidelines, *resentencing guidelines following revocation of probation, county intermediate punishment and State intermediate punishment, parole guidelines and recommitment ranges following revocation by the board of paroles granted*, adopted by the commission shall become effective 90 days after publication in the Pennsylvania Bulletin pursuant to subsection (a)(2) unless disapproved pursuant to subsection (b) *and shall apply to sentences and resentences and parole decisions made after the effective date of the guidelines*. If not disapproved, the commissioners shall conduct training and orientation for trial court judges *and board members* prior to the effective date of the guidelines *and recommitment ranges*.

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

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

(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(a)] 9795.1** or a similar provision from another jurisdiction; and

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

§ 9721. Sentencing generally.

(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 [pursuant to] *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, resentsences an offender following revocation of probation, county intermediate punishment or State intermediate punishment or resentsences 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 [sentencing] guidelines adopted by the Pennsylvania Commission on Sentencing [pursuant to section] *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 [pursuant to] *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.

* * *

Section 6. Section 9756(b) of Title 42 is amended and the section is amended by adding subsections to read:

§ 9756. Sentence of total confinement.

* * *

(b) Minimum sentence.—

(1) The court shall impose a minimum sentence of confinement which shall not exceed one-half of the maximum sentence imposed.

(2) *The minimum sentence imposed under this section may not be reduced through parole prior to the expiration of the minimum sentence unless otherwise authorized by this section or other law.*

(3) *Except where the maximum sentence imposed is two years or more, and except where a mandatory minimum sentence of imprisonment or total confinement is required by law, the court shall, at the time of sentencing, state whether or not the defendant is eligible to participate in a reentry plan at any time prior to the expiration of the minimum sentence or at the expiration of a specified portion of the minimum sentence. For maximum sentences of less than two years as defined under section 9762(f) (relating to sentencing proceeding; place of confinement), a court may parole a defendant prior to the expiration of the minimum sentence only if the defendant was made eligible to*

participate in a reentry plan at the time of sentencing. The court shall provide at least ten days' written notice and an opportunity to be heard, pursuant to the act of June 19, 1911 (P.L.1059, No.813), referred to as the County Jail and Workhouse Parole Law, to the prosecuting attorney before granting parole pursuant to this subsection. The reentry plan eligibility shall be considered a part of the sentence and subject to the requirements relating to the entry, recording and reporting of sentences.

(b.1) Recidivism risk reduction incentive minimum sentence.—The court shall determine if the defendant is eligible for a recidivism risk reduction incentive minimum sentence under 44 Pa.C.S. Ch. 53 (relating to recidivism risk reduction incentive). If the defendant is eligible, the court shall impose a recidivism risk reduction incentive minimum sentence in addition to a minimum sentence and maximum sentence except, if the defendant was previously sentenced to two or more recidivism risk reduction incentive minimum sentences, the court shall have the discretion to impose a sentence with no recidivism risk reduction incentive minimum.

* * *

(e) Definitions.—As used in this section, the term “reentry plan” is a release plan that may include drug and alcohol treatment, behavioral health treatment, job training, skills training, education, life skills or any other conditions deemed relevant by the court.

Section 7. Section 9762 of Title 42 is amended to read:

§ 9762. Sentencing proceeding; place of confinement.

[All persons sentenced to total or partial confinement for:

(1) maximum terms of five or more years shall be committed to the Bureau of Correction for confinement;

(2) maximum terms of two years or more but less than five years may be committed to the Bureau of Correction 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 except that as facilities become available on dates and in areas designated by the Governor in proclamations declaring the availability of State correctional facilities, such persons may be committed to the Bureau of Correction for 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.

Section 8. Section 9764 of Title 42 is amended to read:

§ 9764. Information required upon commitment and subsequent disposition.

(a) General rule.—Upon commitment of an [offender] inmate to the custody of the Department of Corrections, the sheriff or transporting official shall provide to the institution's records officer or duty officer, in addition to [the court commitment order] a copy of the court commitment form DC-300B generated from the Common Pleas Criminal Court Case Management System of the unified judicial system, the following information:

(1) Record of adjustment in the county correctional facility, including, but not limited to, misconducts and escape history.

(2) Any current medical or psychological condition requiring treatment, including, but not limited to, suicide attempts.

(3) **[Any medical admission testing performed by the county and the results of those tests, including, but not limited to, hepatitis, HIV/AIDS, tuberculosis or other infectious disease testing. Any release of medical information relating to HIV/AIDS shall be in accordance with the act of November 29, 1990 (P.L.585, No.148), known as the Confidentiality of HIV-Related Information Act.] All medical records of the county correctional institution relating to the inmate to the extent that those records may be disclosed under Federal and State law. The records shall include admission testing performed by the county and the results of those tests and any testing related to hepatitis, HIV/AIDS, tuberculosis or other infectious disease testing.**

(4) Notice of current or previously administered medications.

(5) A 48-hour supply of current medications.

(6) *A written statement by the county correctional institution relating to any sentencing credit to which the inmate may be entitled.*

(7) *A written statement by the county correctional institution setting forth all of the following:*

(i) *The dates on which the inmate was incarcerated.*

(ii) *The charges pending against the inmate with the offense tracking number.*

(iii) *The date on which the inmate was released on bail, if any, and a copy of the bail order.*

(8) *A copy of the sentencing order and any detainers filed against the inmate which the county has notice.*

(b) Additional information.—Within ten days from the date sentence is imposed, the court shall provide to the county correctional facility the following information pertaining to the **[offender] inmate**:

(1) A copy of the presentence investigation report. Where a presentence investigation report was not ordered by the court, the official version of the crime for which the **[offender] inmate** was convicted or a copy of the guilty plea transcript or preliminary hearing transcript.

(2) The criminal complaint or affidavit of probable cause accompanying the arrest warrant.

[(3) Where available, the police report summarizing the facts of the crime.]

(4) A copy of the *completed* guideline sentence form [issued by the Pennsylvania Commission on Sentencing].

(5) *All of the following:*

(i) *A written, sealed sentencing order from the county.*

(ii) *The sentencing colloquy sealed by the court.*

(iii) *Court commitment orders.*

(iv) *The Court Commitment Form DC-300B generated from the Common Pleas Criminal Court Case Management System of the unified judicial system.*

(v) *Any detainees filed against the inmate of which the county has notice.*

(c) [Transfer of offender.—Where an offender is transferred from a county correctional facility to a State correctional facility for any reason, the information specified in subsection (b) shall be transmitted to the State correctional facility within 20 calendar days from the date on which the offender is transferred.] *Transmittal of additional inmate documentation.—If a document provided by the court under subsection (b) is received by the county correctional institution after the inmate is transferred to the custody of the Department of Corrections, the document shall be transmitted to the Department of Corrections within 20 calendar days of its receipt.*

(c.1) *Implementation.—*

(1) *The Department of Corrections may refuse to accept custody of an inmate for whom the sheriff or transporting official does not provide the information under subsection (a) under the following circumstances:*

(i) *The county correctional facility has a pattern or practice of not providing the information mandated under this section.*

(ii) *The Department of Corrections has previously notified the chief administrator of the county correctional facility, the county commissioners, the county sheriff and the president judge of the county of the specific deficiencies that constitute a pattern or practice.*

(iii) *The Department of Corrections has provided the county with a reasonable period of time to provide the documentation.*

(iv) *The Department of Corrections has notified the officials designated under subparagraph (ii) of the intent to refuse to accept inmates without documentation as of a specified date that shall be no sooner than 30 days after the service of the notification.*

(2) *In cases of a refusal to accept custody of an inmate under this subsection, the sheriff or transporting official shall return the inmate to the sending county correctional institution, which shall accept custody of the inmate. The inmate may be recommitted to the custody of the Department of Corrections upon provision of the documentation required under subsection (a).*

(3) *The Department of Corrections, board and a county correctional facility shall not be liable for compensatory, punitive or other damages for relying in good faith on any sentencing order or court commitment form DC-300B generated from the Common Pleas Criminal Court Case Management System of the unified judicial system or otherwise transmitted to them.*

(c.2) Effect of electronic transfer of information.—Notwithstanding any electronic transfer of information which may occur, the Department of Corrections, in its discretion, may require actual sealed court orders to the extent that they relate to the commitment, term of sentence or other matter that may affect the fact or duration of confinement.

(d) Transfer to county facility.—Upon transfer of an inmate from a State correctional institution to a county correctional facility, the Department of Corrections shall provide to the county facility, unless the facility prior to the time of transfer agrees to accept the inmate without the information, the record of the inmate's institutional adjustment, including, but not limited to, misconducts and/or escape history, and written notice of any current medical or psychological condition requiring treatment, including, but not limited to, suicide attempts, notice of current or previously ordered medication and a 48-hour supply of current medication.

(e) Release by Department of Corrections.—Prior to the release of an inmate from the Department of Corrections to State parole supervision, the Department of Corrections shall provide to the Board of Probation and Parole the information contained in subsections (a)(1) and (2) and (b).

(f) Release from county correctional facility to State probation or parole.—

(1) Prior to the release of an inmate from a county correctional facility to State probation or parole supervision, the facility shall provide to the Board of Probation and Parole the information contained in subsections (a)(1) through (4) and (b).

(2) Prior to the release of an inmate from a county correctional facility to State probation or parole supervision, the facility shall provide to the inmate his current medications as prescribed and any customary and necessary medical supplies as determined by the prescribing physician.

(g) Release from county correctional facility to county probation or parole.—

(1) Prior to the release of an inmate from a county correctional facility to county probation or parole supervision, the facility shall provide to the county probation department the information contained in subsections (a)(1) through (4) and (b).

(2) Prior to the release of an inmate from a county correctional facility to county probation or parole supervision, the facility shall provide to the inmate his current medications as prescribed and any customary and necessary medical supplies as determined by the prescribing physician.

(h) Record of inmate moneys.—Prior to the release of an inmate from the Department of Corrections to State parole supervision, the department shall provide to the Board of Probation and Parole a record of any moneys paid by the inmate and any balance remaining towards satisfaction of restitution or any other court-ordered financial obligations. Prior to the release of an inmate from a county correctional facility to State parole supervision, the county correctional facility shall provide to the Board of Probation and

Parole a record of any moneys paid by the inmate and any balance remaining towards the satisfaction of restitution or any other court-ordered financial obligations. Prior to the release of an inmate from a county correctional facility to county parole supervision, the facility shall provide to the county probation department or other agent designated by the county commissioners of the county with the approval of the president judge of the county a record of any moneys paid by the inmate and any remaining balance towards the satisfaction of restitution and any other court-ordered financial obligations.

(i) Continuing payments.—The Board of Probation and Parole shall require as a condition of parole that any inmate released to their supervision shall make continuing payments on restitution or any other court-ordered financial obligations. The sentencing court shall require as a condition of county parole that any inmate released to the supervision of the county probation department shall make continuing payments of restitution or any other court-ordered financial obligations.

(j) Release after maximum sentence.—Upon release of an inmate from the Department of Corrections at the expiration of his maximum sentence, the Department of Corrections shall transmit to the county probation department or other agent designated by the county commissioners of the county with the approval of the president judge of the county in which the inmate was convicted a record of any moneys paid by the inmate and any outstanding amounts owed by the inmate towards satisfaction of restitution or any other court-ordered financial obligations.

(k) Procedures.—The Department of Corrections and the Pennsylvania Board of Probation and Parole shall develop procedures to implement the provisions of this section.

(l) Application.—This section shall apply to offenders transferred to or released from a State or county correctional facility after the effective date of this section.

Section 8.1. Title 42 is amended by adding a section to read:

§ 9813. Work release or other court order and purposes.

(a) *Generally.*—Notwithstanding any provision of law, if any offender has been sentenced to undergo imprisonment in a county jail for a term of less than five years, the court, at the time of sentence or at any time thereafter upon application made in accordance with this section, may enter an order making the offender eligible to leave the jail during necessary and reasonable hours for the purpose of working at his employment, conducting his own business or other self-employed occupation, including housekeeping and attending to the needs of family, seeking employment, attending an educational institution, securing medical treatment or for other lawful purposes as the court shall consider necessary and appropriate.

(b) *Procedure.*—At the time of imposition of a county jail sentence, a crime victim receiving notice of the sentence imposed shall be informed that the offender may be eligible for an order under this section. An

application for an order under this section shall be served on the attorney for the Commonwealth. Prior to granting any order under this section, the court shall ensure that the attorney for the Commonwealth and a registered crime victim have received notice of the application and had a reasonable opportunity to be heard on the application.

(c) Revocation or modification of previously entered order.—The county jail officials may detain and recommit the offender or preclude the offender from leaving the county jail if the offender violates the conditions set by the jail officials or the court, or if allowing the offender to leave the county jail poses a risk to community safety or the orderly and safe management of the jail. The jail officials shall notify the court of such action. In addition, the order of court may be revoked or modified at any time with notice to the prisoner.

Section 8.2. Section 9904 of Title 42 is amended by adding a subsection to read:

§ 9904. Referral to State intermediate punishment program.

* * *

(d.1) Resentencing.—The department may make a written request to the sentencing court that an offender who is otherwise eligible but has not been referred for evaluation or originally sentenced to State intermediate punishment be sentenced to State intermediate punishment. The court may resentence the offender to State intermediate punishment if all of the following apply:

(1) The department has recommended placement in a drug offender treatment program.

(2) The attorney for the Commonwealth and the offender have agreed to the placement and modification of sentence.

(3) The court makes the findings set forth under subsection (d).

(4) The resentencing has occurred within 365 days of the date of the defendant's admission to the custody of the department.

(5) The court has otherwise complied with all other requirements for the imposition of sentence including victim notification under the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act.

* * *

Section 9. Title 44 is amended by adding a part to read:

PART III INCARCERATION

Chapter

51. Preliminary Provisions (Reserved)

53. Recidivism Risk Reduction Incentive

CHAPTER 51 PRELIMINARY PROVISIONS (Reserved)

CHAPTER 53
RECIDIVISM RISK REDUCTION INCENTIVE

Sec.

5301. Scope of chapter.

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§ 5301. Scope of chapter.

This chapter relates to recidivism risk reduction incentive.

§ 5302. Purpose.

This chapter seeks to create a program that ensures appropriate punishment for persons who commit crimes, encourages prisoner participation in evidence-based programs that reduce the risks of future crime and ensures the openness and accountability of the criminal justice process while ensuring fairness to crime victims.

§ 5303. Definitions.

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

“Board.” The Pennsylvania Board of Probation and Parole.

“Commission.” The Pennsylvania Commission on Sentencing.

“Court.” The trial judge exercising sentencing jurisdiction over an eligible offender under this chapter or the president judge or the president judge’s designee if the original trial judge is no longer serving as a judge of the sentencing court.

“Defendant.” An individual charged with a criminal offense.

“Department.” The Department of Corrections of the Commonwealth.

“Eligible offender.” A defendant or prisoner convicted of a criminal offense who will be committed to the custody of the department and who meets all of the following eligibility requirements:

(1) Does not demonstrate a history of present or past violent behavior.

(2) Has not been subject to a sentence the calculation of which includes an enhancement for the use of a deadly weapon as defined under law or the sentencing guidelines promulgated by the Pennsylvania Commission on Sentencing or the attorney for the

Commonwealth has not demonstrated that the defendant has been found guilty of or was convicted of an offense involving a deadly weapon or offense under 18 Pa.C.S. Ch. 61 (relating to firearms and other dangerous articles) or the equivalent 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.

(3) Has not been found guilty or previously convicted or adjudicated delinquent for an attempt or conspiracy to commit a personal injury crime as defined under section 103 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act, or an equivalent 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.

(4) Has not been found guilty or previously convicted or adjudicated delinquent for violating any of the following provisions or an equivalent 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:

- (i) 18 Pa.C.S. § 4302 (relating to incest).*
- (ii) 18 Pa.C.S. § 5901 (relating to open lewdness).*
- (iii) 18 Pa.C.S. § 6312 (relating to sexual abuse of children).*
- (iv) 18 Pa.C.S. § 6318 (relating to unlawful contact with minor).*
- (v) 18 Pa.C.S. § 6320 (relating to sexual exploitation of children).*
- (vi) 18 Pa.C.S. Ch. 76 Subch. C (relating to Internet child pornography).*
- (vii) Received a criminal sentence pursuant to 42 Pa.C.S. § 9712.1 (relating to sentences for certain drug offenses committed with firearms).*
- (viii) Any offense listed under 42 Pa.C.S. § 9795.1 (relating to registration).*

(5) Is not awaiting trial or sentencing for additional criminal charges, if a conviction or sentence on the additional charges would cause the defendant to become ineligible under this definition.

(6) Has not been found guilty or previously convicted of violating section 13(a)(14), (30) or (37) of the act of April 14, 1972 (P.L.233, No.64), known as The Controlled Substance, Drug, Device and Cosmetic Act, where the sentence was imposed pursuant to 18 Pa.C.S. § 7508(a)(1)(iii), (2)(iii), (3)(iii), (4)(iii), (7)(iii) or (8)(iii) (relating to drug trafficking sentencing and penalties).

“Program plan.” An individualized plan recommended by the Department of Corrections that contains approved treatment and other approved programs designed to reduce recidivism risk of a specific prisoner.

§ 5304. Recidivism risk reduction incentive programs.

(a) *Authorization.*—Subject to the provisions of this chapter, the department is authorized to create or otherwise designate treatment or other programs as recidivism risk reduction incentive programs.

(b) *Intent.*—This chapter is intended to encourage eligible offenders committed to the custody of the department to participate in and successfully complete evidence-based programs under this chapter that reduce the likelihood of recidivism and improve public safety.

(c) *Program requirements.*—In accordance with the provisions of this chapter, the department may designate a treatment program or other program as a recidivism risk reduction incentive program if there is appropriate scientific research that demonstrates that the proposed program would likely reduce overall recidivism rates or serious crime rates of program participants. A recidivism risk reduction incentive program designed to provide treatment in the form of a therapeutic community for drug abuse or addiction shall meet the requirements of an institutional therapeutic community as defined under 42 Pa.C.S. § 9903 (relating to definitions).

(d) *Consultation.*—The department shall consult with appropriate research and technical assistance organizations, such as the National Institute of Justice, the National Institute of Corrections and the American Correctional Association, concerning evidence-based programs that reduce recidivism risks of prisoners and the scientific research relating to those programs.

(e) *Program approval process.*—

(1) The department shall publish, in a manner reasonably calculated to inform, a detailed description of the program, the types of offenders who will be eligible to participate in the program, the name and citation of research reports that demonstrate the effectiveness of the proposed program and the name and address of a department contact person responsible for receiving public comments. On the same date as publication, the department shall also deliver a copy of the list to the Judiciary Committee of the Senate, the Judiciary Committee of the House of Representatives, the board, the commission and the victim advocate.

(2) Upon consideration of the public comments and the expiration of at least 60 days from the date of publication required under paragraph (1), the department may designate any program published as approved for inclusion in the recidivism risk reduction incentive program.

§ 5305. Sentencing.

(a) *Generally.*—At the time of sentencing, the court shall make a determination whether the defendant is an eligible offender.

(b) *Waiver of eligibility requirements.*—The prosecuting attorney, in the prosecuting attorney's sole discretion, may advise the court that the Commonwealth has elected to waive the eligibility requirements of this

chapter if the victim has been given notice of the prosecuting attorney's intent to waive the eligibility requirements and an opportunity to be heard on the issue. The court, after considering victim input, may refuse to accept the prosecuting attorney's waiver of the eligibility requirements.

(c) Recidivism risk reduction incentive minimum sentence.—If the court determines that the defendant is an eligible offender or the prosecuting attorney has waived the eligibility requirements under subsection (b), the court shall enter a sentencing order that does all of the following:

(1) Imposes the minimum and maximum sentences as required under 42 Pa.C.S. § 9752 (relating to sentencing proceeding generally).

(2) Imposes the recidivism risk reduction incentive minimum sentence. The recidivism risk reduction incentive minimum shall be equal to three-fourths of the minimum sentence imposed when the minimum sentence is three years or less. The recidivism risk reduction incentive minimum shall be equal to five-sixths of the minimum sentence if the minimum sentence is greater than three years. For purposes of these calculations, partial days shall be rounded to the nearest whole day. In determining the recidivism risk reduction incentive minimum sentence, the aggregation provisions of 42 Pa.C.S. §§ 9757 (relating to consecutive sentences of total confinement for multiple offenses) and 9762(d) (relating to sentencing proceeding; place of confinement) shall apply.

(3) Notwithstanding paragraph (2), if the defendant was previously sentenced to two or more recidivism risk reduction incentive minimum sentences, the court shall have the discretion, with the approval of the prosecuting attorney, to impose the recidivism risk reduction incentive minimum sentence as provided for in paragraph (2).

(4) Complies with all other applicable sentencing provisions, including provisions relating to victim notification and the opportunity to be heard.

§ 5306. Recidivism risk reduction incentive minimum.

(a) Generally.—The board or its designee shall issue a decision to parole, without further review by the board, a prisoner who has been sentenced to a recidivism risk reduction incentive minimum sentence at the expiration of that recidivism risk reduction incentive minimum sentence upon a determination that all of the following apply:

(1) The department certified that it has conducted an appropriate assessment of the treatment needs and risks of the prisoner using nationally recognized assessment tools that have been normed and validated.

(2) The department has certified that it developed a program plan based on the assessment conducted under paragraph (1) that is designed to reduce the risk of recidivism through the use of recidivism

risk reduction incentive programs authorized and approved under this chapter that are appropriate for that particular prisoner.

(3) The department advised the prisoner that the prisoner is required to successfully complete the program plan.

(4) The prisoner has successfully completed all required recidivism risk reduction incentive programs or other programs designated in the program plan.

(5) The prisoner has maintained a good conduct record following the imposition of the recidivism risk reduction incentive minimum sentence.

(6) The reentry plan for the prisoner is adequate.

(7) Individual conditions and requirements for parole have been established.

(8) Notice and opportunity to be heard was provided by the board to the sentencing court and the prosecuting attorney in a manner consistent with section 21(b.2) of the act of August 6, 1941 (P.L.861, No.323), referred to as the Pennsylvania Board of Probation and Parole Law.

(9) The department has certified that the prisoner continues to be an eligible offender. In the event that a recidivism risk reduction minimum sentence was imposed under section 5305(b) (relating to sentencing), the department certifies that it has not received additional information demonstrating a history of past or present violent behavior which was not available at the time of sentencing and the prosecuting attorney was unaware of that information at the time of sentencing.

(10) There is no reasonable indication that the prisoner poses a risk to public safety.

(b) Funding.—The department shall make all reasonable efforts to seek appropriate funding and resources in order to implement the recidivism risk reduction program.

(c) Program content.—Nothing in this section shall do any of the following:

(1) Require the department to include recidivism risk reduction programs in an individual program plan where the risk assessment indicates that such a program is unlikely to reduce recidivism for that particular prisoner.

(2) Prohibit the department from including appropriate community works or public service projects as part of the program plan.

(3) Prohibit the department from making modifications to the program plan at any time in order to ensure appropriate treatment and recidivism risk reduction incentive program placement.

(d) Adjudication.—Nothing in this section shall be interpreted as granting a right to be paroled to any person, and any decision by the board and its designees or the department, under this section, shall not be considered an adjudication under 2 Pa.C.S. Ch. 5 Subch. A (relating to

practice and procedure of Commonwealth agencies) and Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

§ 5307. Authority of board.

If a prisoner has been sentenced by a court to a recidivism risk reduction incentive minimum sentence and the prisoner is not paroled under this chapter, the board shall have exclusive authority to grant parole. Except as otherwise provided under this chapter, the board shall retain its power and authority to parole, commit and reparole prisoners committed to the department.

§ 5308. Written guidelines and regulations.

The department, upon consultation with the board, shall develop written interim guidelines to assist in the implementation of the provisions of this chapter. The interim guidelines shall not be subject to the requirements of the act of June 25, 1982 (P.L.633, No.181), known as the Regulatory Review Act, and shall be effective for a period of two years after publication in the Pennsylvania Bulletin. The interim guidelines shall be replaced by regulations promulgated by the department consistent with the Regulatory Review Act on or before the date of expiration of the interim guidelines.

§ 5309. Evaluation.

The department, the board and the commission shall monitor and evaluate the recidivism risk reduction incentive programs. Evaluations under this section should be scientifically rigorous and seek to determine the effectiveness of the programs, including whether specific recidivism risk reduction incentive programs have reduced the recidivism rates of the program participants as compared to previously incarcerated and similarly situated prisoners. The department, the board and the commission shall make evaluations conducted under this section and underlying data available to the public. The publicly available data and evaluations shall comply with generally accepted practices of the research community, including expectations relating to subject privacy and identifying information.

§ 5310. Reports.

(a) Recidivism risk reduction.—The department, the board and the commission shall monitor and evaluate the recidivism risk reduction incentive programs to ensure that the goals and objectives of this chapter are met. Reports to the General Assembly shall be as follows:

(1) In odd-numbered years, the department shall present a report of its evaluation to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives no later than February 1. The report shall include all of the following:

(i) The number of offenders determined by the department to be eligible offenders under this chapter and the offenses for which the offenders were committed to the custody of the department.

(ii) *The number of prisoners committed to the custody of the department who were subject to a recidivism risk reduction incentive minimum sentence.*

(iii) *The number of prisoners paroled at the recidivism risk reduction incentive minimum date.*

(iv) *Any potential changes that would make the program more effective.*

(v) *The six-month, one-year, three-year and five-year recidivism rates for prisoners released at the recidivism risk reduction incentive minimum sentence.*

(vi) *Any other information the department deems relevant.*

(2) *In even-numbered years, the commission shall present a report of its evaluation to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives no later than February 1. The report shall include all of the following:*

(i) *Whether the goals of this chapter could be achieved through amendments to parole or sentencing guidelines.*

(ii) *The various options for parole or sentencing guidelines under subparagraph (i).*

(iii) *The status of any proposed or implemented guidelines designed to implement the provisions of this chapter.*

(iv) *Any potential changes to the program that would be likely to reduce the risk of recidivism of prisoners and improve public safety.*

(v) *Any other information the commission deems relevant.*

(b) *Educational plan.—The Pennsylvania Commission on Crime and Delinquency shall publish a report of a proposed educational program plan within one year of the effective date of this section. The proposed educational program plan shall be developed in consultation with the department, commission, board, the Pennsylvania District Attorneys Association, the victim advocate and representatives of the judiciary and the criminal defense bar and other criminal justice stakeholders. The plan shall seek to provide cost-effective training or information through electronic means, publications or continuing educational programs that address the following topics:*

(1) *The treatment programs available through the board and the department.*

(2) *The availability of programs and eligibility requirements that can reduce recidivism risk, including State intermediate punishment, the motivational boot camp and recidivism risk reduction incentives programs.*

(3) *The calculation of sentencing credit and practices that could inadvertently prevent an inmate from receiving sentence credit.*

(4) *Recent statutory changes relating to sentencing, place of confinement, medical releases, transfer of inmates and parole.*

§ 5311. *Construction.*

Notwithstanding any other provision of law, this chapter shall not be construed to do any of the following:

(1) Confer any legal right upon any individual, including an individual participating in or seeking to participate in a recidivism risk reduction incentive program, to do any of the following:

(i) Participate in a recidivism risk reduction incentive program.

(ii) Continue participation in a recidivism risk reduction incentive program.

(iii) Modify the contents of the recidivism risk reduction incentive program.

(iv) File any cause of action in any Federal or State court challenging the department's determination that a participant be suspended or expelled from or that a participant has successfully completed or failed to successfully complete any recidivism risk reduction incentive program.

(2) Confer any legal right on any individual to be released on parole under this act.

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

§ 5312. Applicability.

This chapter shall apply to persons incarcerated under the supervision of the department.

Section 10. Repeals are as follows:

(1) The General Assembly declares that the repeal under paragraph (2) is necessary to effectuate the addition of 42 Pa.C.S. § 9813.

(2) Section 1 of the act of August 13, 1963 (P.L.774, No.390), referred to as the County Jail Prisoner Temporary Release Law, is repealed.

Section 11. This act shall take effect as follows:

(1) The addition of 42 Pa.C.S. §§ 1725.5 and 1725.6 shall take effect in 180 days.

(2) This section shall take effect immediately.

(3) The remainder of this act shall take effect in 60 days.

APPROVED—The 25th day of September, A.D. 2008.

EDWARD G. RENDELL