

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 193 Session of 2019

INTRODUCED BY HUGHES, FONTANA, BREWSTER, GORDNER, SCHWANK, COSTA AND FARNESE, FEBRUARY 1, 2019

REFERRED TO JUDICIARY, FEBRUARY 1, 2019

AN ACT

1 Amending Title 61 (Prisons and Parole) of the Pennsylvania  
 2 Consolidated Statutes, in State intermediate punishment,  
 3 further providing for findings and purpose, for definitions,  
 4 for referral to State intermediate punishment program, for  
 5 drug offender treatment program, for written guidelines and  
 6 regulations, for reports and for construction.

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

9 Section 1. Section 4102 of Title 61 of the Pennsylvania  
 10 Consolidated Statutes is amended to read:

11 § 4102. Findings and purpose.

12 The General Assembly finds as follows:

13 (1) Many crimes are committed by persons who, because of  
 14 their addiction to drugs [or], alcohol or gambling, are  
 15 unable to maintain gainful employment.

16 (2) These persons often commit crimes as a means of  
 17 obtaining the funds necessary to purchase drugs or alcohol or  
 18 for gambling.

19 (3) Many persons commit crimes while under the influence  
 20 of drugs or alcohol even though they are not addicted to such

1 substances in a clinical sense.

2 (4) Punishing persons who commit crimes is an important  
3 aspect of recognizing the harm that criminals visit upon  
4 their victims.

5 (5) Many people who commit crimes will be able to become  
6 law-abiding, contributing members of society if they are able  
7 to obtain treatment for their drug [or], alcohol or gambling  
8 addiction or abuse.

9 (6) The purpose of this chapter is to create a program  
10 that punishes persons who commit crimes, but also provides  
11 treatment that offers the opportunity for those persons to  
12 address their drug [or], alcohol or gambling addiction or  
13 abuse and thereby reduce the incidents of recidivism and  
14 enhance public safety.

15 Section 2. The definitions of "defendant," "drug offender  
16 treatment program," "eligible offender," "expulsion,"  
17 "individualized drug offender treatment plan," "institutional  
18 therapeutic community" and "transitional residence" in section  
19 4103 of Title 61 are amended and the section is amended by  
20 adding definitions to read:

21 § 4103. Definitions.

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

25 "Addicted offender treatment program." An individualized  
26 treatment program established by the Department of Corrections  
27 consisting primarily of drug and alcohol or gambling addiction  
28 treatment that satisfies the terms and conditions listed in  
29 section 4105 (relating to addicted offender treatment program).

30 \* \* \*

1 "Defendant." An individual charged with:

2 (1) a drug-related offense, including an individual  
3 convicted of violating section 13(a)(14), (30) or (37) of the  
4 act of April 14, 1972 (P.L.233, No.64), known as The  
5 Controlled Substance, Drug, Device and Cosmetic Act, where  
6 the sentence was imposed pursuant to 18 Pa.C.S. § 7508(a)(1)  
7 (i), (2)(i), (3)(i), (4)(i) or (7)(i) (relating to drug  
8 trafficking sentencing and penalties) [.]; or

9 (2) a gambling-related offense.

10 \* \* \*

11 ["Drug offender treatment program." An individualized  
12 treatment program established by the Department of Corrections  
13 consisting primarily of drug and alcohol addiction treatment  
14 that satisfies the terms and conditions listed in section 4105  
15 (relating to drug offender treatment program).]

16 \* \* \*

17 "Eligible offender." Subject to 42 Pa.C.S. § 9721(a.1)  
18 (relating to sentencing generally), a defendant designated by  
19 the sentencing court as a person convicted of a drug-related  
20 offense or gambling-related offense who:

21 (1) Has undergone an assessment performed by the  
22 Department of Corrections, which assessment has concluded  
23 that the defendant is in need of drug and alcohol or gambling  
24 addiction treatment and would benefit from commitment to [a  
25 drug] an addicted offender treatment program and that  
26 placement in [a drug] an addicted offender treatment program  
27 would be appropriate.

28 (2) Does not demonstrate a history of present or past  
29 violent behavior.

30 (3) Would be placed in the custody of the department if

1 not sentenced to State intermediate punishment.

2 (4) Provides written consent permitting release of  
3 information pertaining to the defendant's participation in [a  
4 drug] an addicted offender treatment program.

5 The term shall not include a defendant who is subject to a  
6 sentence the calculation of which includes an enhancement for  
7 the use of a deadly weapon, as defined pursuant to law or the  
8 sentencing guidelines promulgated by the Pennsylvania Commission  
9 on Sentencing, a defendant who has been convicted or adjudicated  
10 delinquent of any crime requiring registration under 42 Pa.C.S.  
11 Ch. 97 Subch. H (relating to registration of sexual offenders)  
12 or a defendant with a current conviction or a prior conviction  
13 within the past ten years for any of the following offenses:

14 18 Pa.C.S. § 2502 (relating to murder).

15 18 Pa.C.S. § 2503 (relating to voluntary manslaughter).

16 18 Pa.C.S. § 2506 (relating to drug delivery resulting in  
17 death).

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

19 18 Pa.C.S. § 3301(a)(1)(i) (relating to arson and related  
20 offenses).

21 18 Pa.C.S. § 3502 (relating to burglary), in the case of  
22 burglary of a structure adapted for overnight accommodation  
23 in which at the time of the offense any person is present.

24 18 Pa.C.S. § 3701(a)(1)(i), (ii) or (iii) (relating to  
25 robbery).

26 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle).

27 18 Pa.C.S. § 7508 (a)(1)(iii), (2)(iii), (3)(iii) or (4)  
28 (iii) (relating to drug trafficking sentencing and  
29 penalties).

30 "Expulsion." The permanent removal of a participant from [a

1 [drug] an addicted offender treatment program.

2 "Gambling-related offense." A criminal offense for which a  
3 defendant is convicted and that the court determines was  
4 motivated by the defendant's addiction to gambling.

5 \* \* \*

6 ["Individualized drug offender treatment plan." An  
7 individualized addiction treatment plan within the framework of  
8 the drug offender treatment program.]

9 "Individualized addicted offender treatment plan." An  
10 individualized addiction treatment plan within the framework of  
11 the addicted offender treatment program.

12 "Institutional therapeutic community." A residential [drug]  
13 addicted offender treatment program in a State correctional  
14 institution, accredited as a therapeutic community for treatment  
15 of drug and alcohol abuse and addiction or gambling addiction by  
16 the American Correctional Association or other nationally  
17 recognized accreditation organization for therapeutic community  
18 drug and alcohol or gambling addiction treatment.

19 \* \* \*

20 "Transitional residence." A residence investigated and  
21 approved by the Department of Corrections as appropriate for  
22 housing a participant in [a drug] an addicted offender treatment  
23 program.

24 Section 3. Sections 4104, 4105, 4106, 4107 and 4108 of Title  
25 61 are amended to read:

26 § 4104. Referral to State intermediate punishment program.

27 (a) Referral for evaluation.--

28 (1) Prior to imposing a sentence, the court may, upon  
29 motion of the Commonwealth, commit a defendant to the custody  
30 of the department for the purpose of evaluating whether the

1 defendant would benefit from [a drug] an addicted offender  
2 treatment program and whether placement in the [drug]  
3 addicted offender treatment program is appropriate.

4 (1.1) (i) The prosecuting attorney, in the prosecuting  
5 attorney's sole discretion, may advise the court that the  
6 Commonwealth has elected to waive the eligibility  
7 requirements of this chapter if the victim has been given  
8 notice of the prosecuting attorney's intent to waive the  
9 eligibility requirements and an opportunity to be heard  
10 on the issue.

11 (ii) The court, after considering victim input, may  
12 refuse to accept the prosecuting attorney's waiver of the  
13 eligibility requirements.

14 (2) Upon committing a defendant to the department, the  
15 court shall forward to the department:

16 (i) A summary of the offense for which the defendant  
17 has been convicted.

18 (ii) Information relating to the defendant's history  
19 of delinquency or criminality, including the information  
20 maintained by the court under 42 Pa.C.S. Ch. 63 (relating  
21 to juvenile matters), when available.

22 (iii) Information relating to the defendant's  
23 history of drug or alcohol or gambling abuse or  
24 addiction, when available.

25 (iv) A presentence investigation report, when  
26 available.

27 (v) Any other information the court deems relevant  
28 to assist the department with its assessment of the  
29 defendant.

30 (b) Assessment of addiction.--

1           (1) The department shall conduct an assessment of the  
2 addiction and other treatment needs of a defendant and  
3 determine whether the defendant would benefit from [a drug]  
4 an addicted offender treatment program. The assessment shall  
5 be conducted using a nationally recognized assessment  
6 instrument or an instrument that has been normed and  
7 validated on the department's inmate population by a  
8 recognized expert in such matters. The assessment instrument  
9 shall be administered by persons skilled in the treatment of  
10 drug and alcohol addiction or gambling addiction and trained  
11 to conduct assessments. The assessments shall be reviewed and  
12 approved by a supervisor with at least three years of  
13 experience providing drug and alcohol or gambling counseling  
14 services.

15           (2) The department shall conduct risk and other  
16 assessments it deems appropriate and shall provide a report  
17 of its assessments to the court, the defendant, the attorney  
18 for the Commonwealth and the commission within 60 days of the  
19 court's commitment of the defendant to the custody of the  
20 department.

21           (c) Proposed [drug] addicted offender treatment program.--If  
22 the department in its discretion believes a defendant would  
23 benefit from [a drug] an addicted offender treatment program and  
24 placement in the [drug] addicted offender treatment program is  
25 appropriate, the department shall provide the court, the  
26 defendant, the attorney for the Commonwealth and the commission  
27 with a proposed [drug] addicted offender treatment program  
28 detailing the type of treatment proposed.

29           (d) Prerequisites for commitment.--Upon receipt of a  
30 recommendation for placement in [a drug] an addicted offender

1 treatment program from the department and agreement of the  
2 attorney for the Commonwealth, the court may sentence an  
3 eligible offender to a period of 24 months of State intermediate  
4 punishment if the court finds that:

5 (1) The eligible offender is likely to benefit from  
6 State intermediate punishment.

7 (2) Public safety would be enhanced by the eligible  
8 offender's participation in State intermediate punishment.

9 (3) Sentencing the eligible offender to State  
10 intermediate punishment would not depreciate the seriousness  
11 of the offense.

12 (e) Resentencing.--The department may make a written request  
13 to the sentencing court that an offender who is otherwise  
14 eligible but has not been referred for evaluation or originally  
15 sentenced to State intermediate punishment be sentenced to State  
16 intermediate punishment. The court may resentence the offender  
17 to State intermediate punishment if all of the following apply:

18 (1) The department has recommended placement in [a drug]  
19 an addicted offender treatment program.

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

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

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

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



1 (f) Consecutive probation.--Nothing in this chapter shall  
2 prohibit the court from sentencing an eligible offender to a  
3 consecutive period of probation. The total duration of the  
4 sentence may not exceed the maximum term for which the eligible  
5 offender could otherwise be sentenced.

6 (g) Applicability and program limitations.--The court may  
7 not modify or alter the terms of the department's proposed  
8 individualized [drug] addicted offender treatment plan without  
9 the agreement of the department and the attorney for the  
10 Commonwealth.

11 (h) Videoconferencing.--The department shall make  
12 videoconferencing facilities available to allow the court to  
13 conduct proceedings necessary under this section when the  
14 eligible offender has been committed to the custody of the  
15 department pursuant to subsection (b).

16 (i) Victims.--Victims of personal injury crimes shall be  
17 given the opportunity to receive notice of and to provide prior  
18 comment on any recommendation by the department under subsection  
19 (b) or (d) that the offender participate in the State  
20 Intermediate Punishment Program.

21 (j) Definitions.--As used in this section, the term  
22 "personal injury crime" shall be defined as in section 103 of  
23 the act of November 24, 1998 (P.L.882, No.111), known as the  
24 Crime Victims Act.

25 § 4105. [Drug] Addicted offender treatment program.

26 (a) Establishment.--The department shall establish and  
27 administer [a drug] an addicted offender treatment program as a  
28 State intermediate punishment. The program shall be designed to  
29 address the individually assessed drug [and] or alcohol or  
30 gambling abuse and addiction needs of a participant and shall

1 address other issues essential to the participant's successful  
2 reintegration into the community, including, but not limited to,  
3 educational and employment issues.

4 (b) Duration and components.--Notwithstanding any credit to  
5 which the defendant may be entitled under 42 Pa.C.S. § 9760  
6 (relating to credit for time served), the duration of the [drug]  
7 addicted offender treatment program shall be 24 months and shall  
8 include the following:

9 (1) A period in a State correctional institution of not  
10 less than seven months. This period shall include:

11 (i) The time during which the defendants are being  
12 evaluated by the department under section 4104(b)  
13 (relating to referral to State intermediate punishment  
14 program).

15 (ii) Following evaluation under subparagraph (i),  
16 not less than four months shall be in an institutional  
17 therapeutic community.

18 (2) A period of treatment in a community-based  
19 therapeutic community of at least two months.

20 (3) A period of at least six-months' treatment through  
21 an outpatient addiction treatment facility. During the  
22 outpatient addiction treatment period of the [drug] addicted  
23 offender treatment program, the participant may be housed in  
24 a community corrections center or group home or placed in an  
25 approved transitional residence. The participant must comply  
26 with any conditions established by the department regardless  
27 of where the participant resides during the outpatient  
28 addiction treatment portion of the [drug] addicted offender  
29 treatment program.

30 (4) A period of supervised reintegration into the

1 community for the balance of the [drug] addicted offender  
2 treatment program, during which the participant shall  
3 continue to be supervised by the department and comply with  
4 any conditions imposed by the department.

5 (c) Program management.--

6 (1) Consistent with the minimum time requirements set  
7 forth in subsection (b), the department may transfer, at its  
8 discretion, a participant between a State correctional  
9 institution, an institutional therapeutic community, a  
10 community-based therapeutic community, an outpatient  
11 addiction treatment program and an approved transitional  
12 residence. The department may also transfer a participant  
13 back and forth between less restrictive and more restrictive  
14 settings based upon the participant's progress or regression  
15 in treatment or for medical, disciplinary or other  
16 administrative reasons.

17 (2) This subsection shall be construed to provide the  
18 department with the maximum flexibility to administer the  
19 [drug] addicted offender treatment program both as a whole  
20 and for individual participants.

21 (d) Right of refusal to admit.--The administrator of a  
22 community-based therapeutic community or outpatient addiction  
23 treatment facility may refuse to accept a participant whom the  
24 administrator deems to be inappropriate for admission and may  
25 immediately discharge to the custody of the department any  
26 participant who fails to comply with facility rules and  
27 treatment expectations or refuses to constructively engage in  
28 the treatment process.

29 (e) Notice to court of completion of program.--When the  
30 department determines that a participant has successfully

1 completed the [drug] addicted offender treatment program, it  
2 shall notify the sentencing court, the attorney for the  
3 Commonwealth and the commission.

4 (f) Expulsion from program.--

5 (1) A participant may be expelled from the [drug]  
6 addicted offender treatment program at any time in accordance  
7 with guidelines established by the department, including  
8 failure to comply with administrative or disciplinary  
9 procedures or requirements set forth by the department.

10 (2) The department shall promptly notify the court, the  
11 defendant, the attorney for the Commonwealth and the  
12 commission of the expulsion of a participant from the [drug]  
13 addicted offender treatment program and the reason for such  
14 expulsion. The participant shall be housed in a State  
15 correctional institution or county jail pending action by the  
16 court.

17 (3) The court shall schedule a prompt State intermediate  
18 punishment revocation hearing pursuant to 42 Pa.C.S. § 9774  
19 (relating to revocation of State intermediate punishment  
20 sentence).

21 § 4106. Written guidelines and regulations.

22 The department shall develop written guidelines for  
23 participant selection criteria and the establishment of [drug]  
24 addicted offender treatment program selection committees within  
25 each diagnostic and classification center of the department and  
26 shall address suspensions and expulsions from the drug offender  
27 treatment program. The guidelines shall not be subject to the  
28 act of June 25, 1982 (P.L.633, No.181), known as the Regulatory  
29 Review Act, and shall be effective for a period of two years  
30 upon publication in the Pennsylvania Bulletin. The guidelines

1 shall be replaced by regulations promulgated by the department  
2 consistent with the Regulatory Review Act within the two-year  
3 period during which the guidelines are effective. The  
4 regulations shall include a requirement that community-based  
5 therapeutic communities utilized in the [drug] addicted offender  
6 treatment program be accredited as a therapeutic community for  
7 treatment of drug and alcohol or gambling abuse and addiction by  
8 the Commission on Accreditation of Rehabilitation Facilities or  
9 other nationally recognized accreditation organization for  
10 community-based therapeutic communities for drug and alcohol or  
11 gambling addiction treatment.

12 § 4107. Reports.

13 (a) Final report.--The department shall provide a final  
14 report to the court, the defendant, the attorney for the  
15 Commonwealth and the commission on a participant's progress in  
16 the [drug] addicted offender treatment program.

17 (b) Evaluation and report to General Assembly.--The  
18 department and the commission shall monitor and evaluate the  
19 drug offender treatment program to ensure that the programmatic  
20 objectives are met. In odd-numbered years, the department shall  
21 present a report of its evaluation to the Judiciary Committee of  
22 the Senate and the Judiciary Committee of the House of  
23 Representatives no later than February 1. In even-numbered  
24 years, the commission shall present a report of its evaluation  
25 to the Judiciary Committee of the Senate and the Judiciary  
26 Committee of the House of Representatives no later than February  
27 1. The report shall include:

28 (1) The number of offenders evaluated for the [drug]  
29 addicted offender treatment program.

30 (2) The number of offenders sentenced to the [drug]

1 addicted offender treatment program.

2 (3) The number of offenders sentenced to a State  
3 correctional institution who may have been eligible for the  
4 [drug] addicted offender treatment program.

5 (4) The number of offenders successfully completing the  
6 [drug] addicted offender treatment program.

7 (5) The six-month, one-year, three-year and five-year  
8 recidivism rates for offenders who have completed the [drug]  
9 addicted offender treatment program and for a comparison  
10 group of offenders who were not placed in the [drug] addicted  
11 offender treatment program.

12 (6) Any changes the department or the commission  
13 believes will make the [drug] addicted offender treatment  
14 program more effective.

15 § 4108. Construction.

16 Notwithstanding any other provision of law to the contrary,  
17 this chapter shall not be construed to:

18 (1) Confer any legal right upon any individual,  
19 including an individual participating in the [drug] addicted  
20 offender treatment program, to:

21 (i) participate in [a drug] an addicted offender  
22 treatment program;

23 (ii) continue participation in [a drug] an addicted  
24 offender treatment program;

25 (iii) modify the contents of the [drug] addicted  
26 offender treatment program; or

27 (iv) file any cause of action in any court  
28 challenging the department's determination that a  
29 participant is to be suspended or expelled from or that a  
30 participant has successfully completed or failed to

1           successfully complete treatment to be provided during any  
2           portion of [a drug] an addicted offender treatment  
3           program.

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

6           Section 4. This act shall take effect in six months.