

ACT 115 OF THE JUSTICE REINVESTMENT INITIATIVE AN OVERVIEW OF THE GOOD, THE BAD, AND THE UGLY



Notes

¹ See 2019 Pa. Legis. Serv. Act 2019-115 (S.B. 501) (Purdon's). The accompanying Act 114 amends the Pennsylvania Commission on Crime and Delinquency Law, sections 6.1, 6.2, 9.1, 10.1, and 10.2 to establish a County Adult Probation and Parole Advisory Committee, establish the committee as the county probation officers' firearm education and training commission under 61 Pa.C.S.A. Ch. 63, and address phase two of Justice Reinvestment grants, grant appropriations, and continue funding for intermediate sentencing, respectively.

² Justice Reinvestment in Pennsylvania: Policy Framework, Justice Center, The Council of State Governments (June 2017); available at <https://csgjusticecenter.org/jr/pennsylvania/publications/justice-reinvestment-in-pennsylvania-policy-framework/>.

³ 42 Pa.C.S.A. § 9718 (e).

⁴ 42 Pa.C.S.A. § 9721 (a.1)(2) ("A person may be eligible for the State drug treatment program or State motivational boot camp, even if a mandatory minimum sentence would otherwise be provided by law.").

⁵ See *Alleyne v. United States*, 455 A.2d 887 (D.D.C. 1983); *Commonwealth v. Hopkins*, 98 MAP 2013 (M.D. Pa. 2015).

⁶ 42 Pa.C.S.A. § 9718 (c).

⁷ See 42 Pa.C.S.A. § 9718 (c).

⁸ *Commonwealth v. Neiman*, 84 A.3d 603, 611–12 (Pa. 2013) quoting *Pennsylvanians Against Gambling Expansion Fund Inc. v. Com.*, 877 A.2d 383 (Pa. 2005); see generally Pa. Const. art. 3 § 3.

⁹ 61 Pa.C.S.A. § 6137.1 (a).

¹⁰ See generally 61 Pa.C.S.A. § 6137.1.

¹¹ 61 Pa.C.S.A. § 6137.1 (b.1).

¹² 61 Pa.C.S.A. § 4105 (f)(1).

¹³ 61 Pa.C.S.A. § 6137.1 (9).

¹⁴ See generally, 61 Pa.C.S.A. § 6137.1.

¹⁵ 61 Pa.C.S.A. § 6137.1 (a)(9)(i) and (ii).

¹⁶ 61 Pa.C.S.A. § 4105 (f)(1).

¹⁷ 61 Pa.C.S.A. § 6137.2 (excluding those not eligible for parole and those facing mandatory probationary provisions under 42 Pa.C.S.A. § 9718.5).

¹⁸ 61 Pa.C.S.A. § 6137.2 (c).

¹⁹ See, 42 Pa.C.S.A. § 9721 (a).

²⁰ See generally 61 Pa.C.S.A. §§ 4104, 4105, and 4107.

²¹ 61 Pa.C.S.A. § 4104.

²² 61 Pa.C.S.A. § 4103, Definitions, "Eligible person".

²³ *Id.*

²⁴ *Id.*

²⁵ 61 Pa.C.S.A. § 4104 (a)(1).

²⁶ *Id.*

²⁷ 61 Pa.C.S.A. § 4104 (b).

²⁸ 61 Pa.C.S.A. § 4105 (c)(1).

²⁹ 61 Pa.C.S.A. § 4103, Definitions, "Eligible person".

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ 61 Pa.C.S.A. § 4104 (a)(2)(i).

³⁴ 61 Pa.C.S.A. § 4104 (a)(2)(ii).

³⁵ See 42 Pa.C.S.A. § 9804 (a) "County intermediate punishment programs are restrictive conditions of probation imposed under section 9763(c) or (d) (relating to conditions of probation), which may be subject to guidelines adopted under section 2154.1 (relating to adoption of guidelines for restrictive conditions)."; see also 42 Pa.S.C.A. § 2154.1.

³⁶ See 42 Pa.C.S.A. § 2154.1 (a) and 42 Pa.C.S.A. § 9763 (a).
³⁷ 42 Pa.C.S.A. § 9763 (c) and (d).
³⁸ 42 Pa.C.S.A. § 9755 (h).
³⁹ 42 Pa.C.S.A. § 9804 (b)(i) “Eligibility. Upon adoption of guidelines for imposing restrictive conditions adopted by the Pennsylvania Commission on Sentencing under section 2154.1, only eligible persons may have restrictive conditions imposed.”
⁴⁰ 42 Pa.C.S.A. § 9804 (b)(ii – iii).
⁴¹ See 42 Pa.C.S.A. § 9763 (c)(2) and (c)(3).
⁴² 42 Pa.C.S.A. § 9763 (c)(4) (emphasis added).
⁴³ Although the terminology of 42 Pa.C.S.A. § 9763(c)(4) only refers to a “maximum sentence,” the location of this language within the overall statutory framework should serve to make clear that the sentence at issue is one of probation, not one of total incarceration.
⁴⁴ These are the Department of Health or designee, “the county agency with responsibility for county drug and alcohol programs or its designee,” and clinicians of approved facilities. 75 Pa.C.S.A. § 3814 (3).
⁴⁵ See 42 Pa.C.S.A. § 9763.
⁴⁶ 42 Pa.C.S.A. § 9763 (b)(2).
⁴⁷ 42 Pa.C.S.A. § 9763. (b)(10).
⁴⁸ See 42 Pa.S.C.A. §§ 2154, 2154.1 and 42 Pa.C.S.A § 9754 (a).
⁴⁹ 42 Pa.S.C.A. § 9771 (a).
⁵⁰ See <https://www.aclupa.org/en/campaigns/modern-debtors-prisons-fines-costs-and-restitution>.
⁵¹ 42 Pa.S.C.A. § 9771.1.
⁵² 42 Pa.S.C.A. § 9771.1 (2012).
⁵³ 42 Pa.S.C.A. § 9771.1. Note the inclusion of the word “specified.” Relevant here is the Pennsylvania Supreme Court’s recent holding in *Pennsylvania v. Foster*, 214 A.3d 1240 (Pa. 2019) (rejecting revocation of probation where the alleged violative behavior did not pertain to a specific condition of the order of probation).
⁵⁴ *Id.*
⁵⁵ 42 Pa.S.C.A. § 9771.1 (f).
⁵⁶ See 42 Pa.C.S.A. § 2154.7.
⁵⁷ See generally 204 Pa. Code 305. According to the Pennsylvania Commission on Sentencing’s website, the Commission will conduct a six-month training on risk assessment for judges and practitioners. See <http://pcs.la.psu.edu/guidelines/sentence-risk-assessment-instrument>.
⁵⁸ See 42 Pa.C.S.A. § 2154.7; see also 42 Pa. C.S. § 9721 (b) (referring to section 2155).
⁵⁹ See, e.g., Testimony of Pennsylvania Association of Criminal Defense Lawyers Before the Pennsylvania Sentencing Commission, Bradley A. Winnick, (Dec. 6, 2018) available at <https://www.pacdl.org/files/2018-12-05%20Sentence%20Risk%20Assessment%20Instrument%20final%2012%206%202018.pdf>; Samantha Melamed *Pa. officials spent 8 years developing an algorithm for sentencing. Now, lawmakers want to scrap it*, THE PHILADELPHIA INQUIRER, (Dec. 12, 2018), available at <https://www.inquirer.com/news/risk-assessment-sentencing-pennsylvania--20181212.html>.
⁶⁰ 61 Pa.C.S.A. § 6138 (a)(1.1.).
⁶¹ *Id.*
⁶² 61 Pa.C.S.A. § 3903.
⁶³ 61 Pa.C.S.A. § 4503.
⁶⁴ 61 Pa.C.S.A. § 6161.
⁶⁵ 42 Pa.C.S.A. § 2154.1(a).
⁶⁶ 61 Pa.C.S.A. § 4103.
⁶⁷ 42 Pa.C.S.A. § 9810.
⁶⁸ 42 Pa.C.S.A. § 2153.
⁶⁹ 42 Pa. C.S.A. § 9764.