

DRUG OFFENSES INVOLVING MINORS

A person 18 years of age or older commits a felony of the second degree (punishable by up to 20 years and a \$25,000 fine) if such person solicits a person who is less than 18 years of age to engage in a violation of the provision relating to the unlawful dispensing, delivery, or prescription of a controlled substance by a practitioner, or the provision relating to the unlawful manufacture of a controlled substance, or delivers or conspires to deliver a controlled substance to such a person, intending, knowing, or having reason to know that the person intends to engage in such a violation with the controlled substance. Such a person commits a felony of the first degree if he or she intends, knows, or has reason to know that the person under 18 years of age intends to commit this offense in a drug-free school zone.

It is unlawful to manufacture methamphetamine or phencyclidine or their salts, isomers, and salts of isomers, whenever the existence of such salts, isomers, or salts of isomers is possible within the specific chemical designation: (1) in a structure where any child under 18 years of age is present; or (2) where the manufacturing of methamphetamine or phencyclidine causes any child under 18 years of age to suffer bodily injury.

DRUG COURT

Treatment in lieu of trial or criminal punishment

Under the drug dependent provision of the Controlled Substance, Drug, Device, and Cosmetic Act, a person charged with a nonviolent crime who claims to be drug dependent or a drug abuser may, prior to trial, request appropriate rehabilitative treatment in lieu of criminal prosecution. The choice to pursue a pretrial disposition under this statute is subject to the discretion of the prosecuting attorney, and a post-conviction determination as to whether to permit treatment in lieu of incarceration is a part of the sentencing procedure left to the sound discretion of the trial judge. The appointment of a physician to evaluate a defendant's status is not mandated by the statute, and a court has complete discretion as to the appointment of a physician. Disposition under this provision is not a fundamental constitutional right. Com. v. Chilcote, 396 Pa. Super. 106, 578 A.2d 429 (1990).

Disposition under the drug dependent statute is not available to a defendant who commits an offense within the scope of the provisions relating to the mandatory minimum sentencing for drug trafficking offenses, nor does it apply to persons who commit an offense that is within the scope of the mandatory minimum sentencing and penalties for drug trafficking to minors.

SENTENCING ALTERNATIVES FOR DRUG OFFENDERS

State intermediate punishment

Many persons commit crimes while under the influence of drugs or alcohol even though they are not addicted to such substances in a clinical sense. The Department of Corrections must establish and administer a drug offender treatment program as a state intermediate punishment. The program must be designed to address the individually assessed drug and alcohol abuse and addiction needs of a participant and must address other issues essential to the participant's successful reintegration into the community, including, but not limited to, educational and employment issues.

Prior to imposing a sentence, the court may, upon motion of the Commonwealth and agreement of the defendant, commit a defendant to the custody of the Department of Corrections for the purpose of evaluating whether the defendant would benefit from a drug offender treatment program and whether placement in the drug offender treatment program is appropriate. The department must conduct an assessment of the addiction and other treatment needs of a defendant and determine whether the defendant would benefit from a drug offender treatment program. The department must also conduct risk and other assessments it deems appropriate and must provide a report of its assessment to the court, the defendant, the attorney for the Commonwealth, and the commission **within 60 days** of the court's commitment of the defendant to the custody of the department. If the department in its discretion believes a defendant would benefit from a drug offender treatment program and placement in the drug offender treatment program is appropriate, the department must provide the court, the defendant, the attorney for the Commonwealth, and the commission with a proposed drug offender treatment program detailing the type of treatment proposed. Upon receipt of a recommendation for placement in a drug offender treatment program from the department and agreement of the attorney for the Commonwealth and the defendant, the court may sentence an eligible offender to a period of **twenty-four months of state intermediate punishment** if the court finds that the eligible offender is likely to benefit from state intermediate punishment, public safety would be enhanced by the eligible offender's participation in state intermediate punishment, and sentencing the eligible offender to state intermediate punishment would not depreciate the seriousness of the offense. Nothing in the state **Intermediate Punishment Act** will prohibit the court from sentencing an eligible offender to a consecutive period of probation. The total duration of the sentence may not exceed the maximum term for which the eligible offender could otherwise be sentenced. The court may not modify or alter the terms of the department's proposed individualized drug offender treatment plan without the agreement of the department and the attorney for the Commonwealth.

Notwithstanding any credit to which the defendant may be entitled to for time served, the duration of the drug offender treatment program **must be 24 months** and **must include the following**:

- (1) **a period in a state correctional institution of not less than seven months**, included the time during which the defendants are being evaluated by the department and four months in an institutional therapeutic community;
- (2) **a period of treatment in a community-based therapeutic community of at least two months**;
- (3) **a period of at least six months' treatment through an outpatient addiction treatment facility**; and
- (4) **a period of supervised reintegration into the community** for the balance of the drug offender treatment program, during which the participant must continue to be supervised by the department and comply with any conditions imposed by the department.

Consistent with the minimum time requirements, the department may transfer, at its discretion, a participant between a state correctional institution, an institutional therapeutic community, a community-based therapeutic community, an outpatient addiction treatment program, and an approved transitional residence. The department may also transfer a participant back and forth between less restrictive and more restrictive settings based upon the participant's progress or regression in treatment or for medical, disciplinary, or other administrative reasons.

The administrator of a community-based therapeutic community or outpatient addiction treatment facility may refuse to accept a participant whom the administrator deems to be inappropriate for admission and may immediately discharge to the custody of the department any participant who fails to comply with facility rules and treatment expectations or refuses to constructively engage in the treatment process. A participant may be expelled from the drug offender treatment program at any time in accordance with guidelines established by the department, including failure to comply with administrative or disciplinary procedures or requirements set forth by the department. The department must promptly notify the court, the defendant, the attorney for the Commonwealth and the commission of the expulsion of a participant from the drug offender treatment program and the reason for such expulsion. Upon expulsion, the participant must be housed in a state correctional institution or county jail pending action by the court. The court must schedule a prompt state intermediate punishment revocation hearing.

Notwithstanding any other provision of law to the contrary, the state Intermediate Punishment Act **must not be construed to confer any legal right upon any individual**, including an individual participating in the drug offender treatment program, to:

- (1) participate in a drug offender treatment program;
- (2) continue participation in a drug offender treatment program;
- (3) modify the contents of the drug offender treatment program; or
- (4) file any cause of action in any court challenging the department's determination that a participant be suspended or expelled from the program or that a participant has successfully completed or failed to successfully complete treatment to be provided during any portion of a drug offender treatment program.

Furthermore, the Act may not be construed to enlarge or limit the right of a participant to appeal the participant's sentence.
