

**§303.1 SENTENCING
GUIDELINES STANDARDS**

§303.1 (a)

GUIDELINE TEXT:

§303.1 (a) The court shall consider the sentencing guidelines in determining the appropriate sentence for offenders convicted of, or pleading guilty or nolo contendere to, felonies and misdemeanors. Where crimes merge for sentencing purposes, the court shall consider the sentencing guidelines only on the higher graded offense.

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.1(a)). The text of this section was amended to exclude crimes that merge for sentencing purposes.

DESCRIPTION:

- * Guidelines must be considered when imposing a sentence for a misdemeanor or felony.
- * Guidelines must be considered in determining the appropriate sentence for offenders who plead or are found “guilty but mentally ill” pursuant to 18 Pa.C.S. §314.
- * Guidelines apply only when sentences are imposed. Guidelines do not apply to certain diversion programs, contempt, or revocations (see §303.1(b)).
- * Guidelines do not apply to convictions for lesser offenses which merge for sentencing purposes into greater offenses (see 42 Pa.C.S. §9765).
- * Guidelines do not apply to summary convictions, to violations of local ordinances, or to current juvenile adjudications of delinquency. Guidelines apply only to misdemeanor and felony convictions.
- * Guidelines must be considered by all courts when imposing sentences on misdemeanors and felonies, including Courts of Common Pleas, Philadelphia’s Municipal Court, and sentences imposed by Magisterial District Judges. Although the Commission has determined that only courts of record are required to submit completed guideline sentence forms, all courts are required by statute to consider the guidelines prior to imposing a sentence.
- * The guidelines do not restrict the court’s discretion to impose a fine, restitution or other economic sanctions in addition to any other sentence that may be imposed.

GUIDELINE FORM/SGS WEB APPLICATION:

- * A specific Guideline Sentence Form has been designed to accompany each edition of the sentencing guidelines. It is necessary to choose the correct form and edition of the sentencing guidelines based on the date of the offense. The 5th and 6th Edition electronic guideline sentence forms are to be completed and submitted using the JNET-based *SGS Web* application. Forms relating to previous editions of the sentencing guidelines are available from the Commission upon request.

COMMENTARY:

This subsection paraphrases 42 Pa. C.S. §9721(b) which states, in part, that: "The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing." This was a provision of Act 319 of 1978, which established the Commission and authorized the guidelines.

The Commission included in previous *Sentencing Guidelines Implementation Manuals* commentary regarding the merger of sentences, advising courts that the guidelines do not apply to convictions for lesser offenses which merge for sentencing purposes into greater offenses. Consistent with this long-standing policy, and in light of the recent enactment of a merger statute, 42 Pa.C.S. §9765, the Commission included a specific reference to merger of sentences in this section.

§303.1 (b)

GUIDELINE TEXT:

§303.1 (b) The sentencing guidelines do not apply to sentences imposed as a result of the following: accelerated rehabilitative disposition; disposition in lieu of trial; direct or indirect contempt of court; violations of protection from abuse orders; revocation of probation, intermediate punishment or parole.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.1(b)).

DESCRIPTION:

- * These guidelines apply only when sentences are imposed. They do not apply to diversion programs such as accelerated rehabilitative dispositions under Pa.R.Crim. P. Chapter 3, to probation without verdict dispositions under 35 P.S. §780-117, or to dispositions in lieu of trial or criminal punishment under 35 P.S. §780-118.
- * These guidelines do not apply in contempt proceedings, to violations of protection from abuse orders, or for failure to pay fines.
- * These guidelines do not apply during re-sentencing for violations of probation, county intermediate punishment or state intermediate punishment.
- * These guidelines do not apply to revocations of parole.
- * In construing this subsection, it does not matter whether the original sentence conformed or departed from the guidelines.

GUIDELINE FORM/SGS WEB APPLICATION:

- * No Guideline Sentence Form is required for sentences imposed under this subsection.

COMMENTARY:

The guidelines are designed to structure the discretion of the sentencing court without denying the court the power to craft sentences to the particular needs of the defendant and the interests of justice. The Commission thought that sentencing under this subsection required the court to consider factors not included in the guidelines, such as the seriousness of the violation and other unique circumstances often present in such cases.

§303.1 (c)
EFFECTIVE DATES OF GUIDELINES

GUIDELINE TEXT:

§303.1 (c) The sentencing guidelines shall apply to all offenses committed on or after the effective date of the guidelines. Amendments to the guidelines shall apply to all offenses committed on or after the date the amendment becomes part of the guidelines.

(1) When there are current multiple convictions for offenses that overlap two sets of guidelines, the former guidelines shall apply to offenses that occur prior to the effective date of the amendment and the later guidelines shall apply to offenses that occur on or after the effective date of the amendment. If the specific dates of the offenses cannot be determined, then the later guidelines shall apply to all offenses.

(2) The initial sentencing guidelines went into effect on July 22, 1982 and applied to all crimes committed on or after that date. Amendments to the guidelines went into effect in June 1983, January 1986 and June 1986. On October 7, 1987 the Pennsylvania Supreme Court invalidated the guidelines due to a procedural error that occurred in 1981 when the legislature rejected the first set of guidelines. New guidelines were drafted and became effective on April 25, 1988. Amendments to the guidelines went into effect August 9, 1991 and December 20, 1991. Revised sets of guidelines became effective August 12, 1994 and June 13, 1997.

PRIOR GUIDELINES:

A similar provision was included in previous guidelines (§303.1(c)). The text of this section was amended to include the date of the 5th Edition guidelines.

DESCRIPTION:

* The effective dates of the applicable guidelines, based on the date of the offense, are found below. All amendments to the guidelines apply prospectively.

<u>Date of Offense(s)</u>	<u>Applicable Guidelines</u>
<i>On or after...</i>	
07/22/82	1st Edition
06/03/83	1st Edition, Amend. 1
01/02/86	1st Edition, Amend. 2
06/05/86	2nd Edition
10/07/87	SESSOMS DECISION (invalidated previous guidelines)
04/25/88	3rd Edition
08/09/91	3rd Ed. Revised
12/20/91	3rd Ed. Revised, Amend. 1
08/12/94	4th Edition
06/13/97	5th Edition
06/03/05	6th Edition

* The current edition of the sentencing guidelines became effective June 3, 2005 and applies to all offenses committed on or after that date.

- * The sentencing guidelines have legal force only when sentencing crimes committed on or after April 25, 1988.
- * The guidelines which apply in a case are the guidelines which were in effect at the time the crime was committed. When offenses overlap two sets of guidelines, and the specific dates of the offenses cannot be determined, the more recent of the two sets of guidelines shall be used. Courts may, but are not required to, consider the applicable guidelines when imposing sentences for crimes committed prior to April 25, 1988.
- * Upon submission by the Commission of proposed amendments to the guidelines, the General Assembly has 90 days to consider the proposals. Unless the proposed amendments are rejected in their entirety by a concurrent resolution which is signed by the governor, amendments to the guidelines become effective 90 days after their submission. The 6th Edition Guidelines were submitted to the General Assembly on March 5, 2005.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.1(a).

COMMENTARY:

This guideline section has always reproduced the key statutory features governing guideline promulgation, with the exception of the "prospectiveness" of the guidelines' application. The Commission determined that the guidelines should apply prospectively. This decision was based on principles of fairness and constitutionality. The procedure for promulgating guidelines is prescribed by 42 Pa. C.S. §§2151--2156.

All Pennsylvania sentencing guidelines relating to offenses committed prior to April 25, 1988 were invalidated by the Pennsylvania Supreme Court in *Commonwealth v. Sessoms*, 516 Pa. 365, 532 A.2d 775 (1987). While these earlier guidelines may be considered by the court when sentencing of offenses which occurred when they were in effect, they have no legal force. Only the sentencing guidelines pertaining to offenses committed on or after April 25, 1988 have legal force.

The Commission adopted changes which resulted in this 6th Edition to the sentencing guidelines for the following reasons:

- (1) During the seven years since the promulgation of the 5th Edition Guidelines, the General Assembly enacted, amended or repealed more than 120 statutes that impact on the sentencing guidelines. In addition, the Commission received requests from practitioners to change the sentence recommendations for a number of offenses, including violations of the Uniform Firearms Act, crimes of violence, weapons of mass destruction, controlled substances, and driving under the influence of alcohol or controlled substance. As a result, the Commission undertook a comprehensive review of all Offense Gravity Score (OGS) and Prior Record Score (PRS) point assignments for offenses covered under the sentencing guidelines.
- (2) The Commission has received feedback that the 'totally concurrent' Prior Record Score policy, adopted in 1997, has been difficult to implement due to the complexity of the policy and missing or incomplete prior conviction and sentencing information.
- (3) The Commission was required, pursuant to Act 2002-229, to provide a sentencing enhancement for the offense of homicide by vehicle when the violation occurs in an active work zone.
- (4) The Commission sought to clarify several issues raised by the appellate courts and relating to the sentencing guidelines, such as the definition of school zone for purposes of the Youth/School Enhancement and the use of a previous court-martial in the Prior Record Score calculation.

§303.1 (d)

GUIDELINE TEXT:

§303.1 (d) In every case in which a court of record imposes a sentence for a felony or misdemeanor, 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 a court of record imposes a sentence outside the sentencing guidelines, the reason or reasons for the deviation from the guidelines shall be recorded on the Guideline Sentence Form, a copy of which shall be electronically transmitted to the Pennsylvania Commission on Sentencing in the manner described in §303.1(e).

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.1(d)). The text of this section was amended to limit the reporting requirement to courts of record, and to require the electronic transmission of completed guideline sentence forms to the Commission.

DESCRIPTION:

- * A statement of the reason or reasons for the sentence imposed must be disclosed in open court and made part of the record whenever a sentence is imposed for a felony or misdemeanor. This is the general requirement for any sentence, regardless of its conformity to the guidelines.
- * The statement of reasons must be contemporaneous with the imposition of sentence.
- * When a sentence departs from the guidelines such that the sentence is longer than that recommended as an aggravated sentence or shorter than that recommended as a mitigated sentence, the fact that the sentence is a departure must be stated on the record.
- * In addition to the general requirement that a reason be given for any sentence, a written statement of the reason or reasons for any sentence that departs from the guidelines must be provided on the guideline sentence form.
- * The guidelines cannot be circumvented by use of a "suspended sentence". The court must either impose a sentence consistent with the guidelines or depart from the guidelines, and state the reasons for the sentence on the record.
- * All courts of record are required to complete and submit a guideline sentence form for each conviction offense consistent with the provisions of §303.1(e).

GUIDELINE FORM/SGS WEB APPLICATION:

- * A specific Guideline Sentence Form has been designed to accompany each edition of the sentencing guidelines. It is necessary to choose the correct form and edition of the sentencing guidelines based on the date of the offense. The 5th and 6th Edition electronic guideline sentence forms are to be completed and submitted using the JNET-based *SGS Web* application. Forms relating to previous editions of the sentencing guidelines are available from the Commission upon request.
- * When a sentence departs from the guidelines such that the sentence is longer than that recommended as an aggravated sentence or shorter than that recommended as a mitigated sentence, the reason(s) for a departure sentence as well as any other comments regarding the sentence must be indicated on the guideline sentence form.

- * *SGS Web* provides three options for providing reason(s) for a departure sentence as well as other comments for sentences imposed under the 5th and 6th Edition guidelines: (1) a pull-down list of common reasons submitted to the Commission; (2) a text box labeled 'Other Reasons' for brief reasons or comments; and (3) a text box labeled 'Narrative' for longer, more detailed reasons or comments.
- * For previous editions of the guidelines, a space is provided on the guideline sentence form for recording departure reasons as well as other comments.

COMMENTARY:

This subsection incorporates into the guidelines the statutory language of 42 Pa. C.S. §9721(b). When sentencing an offender, the court is limited to use of the sentencing alternatives described in 42 Pa. C.S. §9721, which includes: an order of probation, a determination of guilt without further penalty, partial confinement, total confinement, a fine, county intermediate punishment, and state intermediate punishment, as well as restitution (see §303.9(e), §303.9(f), §303.12 and §303.14 for further Commentary). The Judicial Code also provides that multiple sentencing alternatives may be ordered to be served concurrently or consecutively (see §303.2(a) and §303.11(a)).

The Commission discourages the use of an indefinitely suspended sentence, as such a sentence is not provided for in the Sentencing Code (*Com. v. Hamilton*, 488 A.2d 277, Pa.Super. 1985). Any other suspension of a sentence of incarceration in which conditions are placed on the defendant has been held to be the equivalent of probation (*Com. v. Duffy*, 681 A.2d 219, Pa.Super. 1996).

It is essential that the sentencing court determine the correct guideline ranges for each offense, and state those ranges on the record. This is advisable whether the defendant has pleaded guilty or whether he has been found guilty at trial. It should be done even if the court chooses to depart from the guidelines. This provides a clear record for a higher court in the event of an appeal.

Where the sentencing court departs from the guidelines, the reasons supporting the departure should be detailed. These reasons should not include aspects of the case that are incorporated in the guidelines. The Commission relies on the written statement of reasons on the form for information on conformance with the guidelines and the possible need to revise particular aspects of the guidelines. The Commission requires that the reasons for departure be provided on the form to facilitate this evaluation. The Commission also encourages, but does not require, courts to provide reasons for aggravated and mitigated sentences on the form.

As required by statute, 42 Pa.C.S. §9721(b), all courts must consider the guidelines when imposing sentences for felonies and misdemeanors. While this requirement to consider the guidelines has consistently been interpreted by the Commission to apply to the minor judiciary, the Commission has only required the completion and submission of guideline sentence forms, as required by 42 Pa.C.S. §2153(a)(14), from courts of record. The amendments to this section clarify this policy: the guidelines should be considered by all courts when imposing sentences for felonies and misdemeanors, but only courts of record are required to complete and submit guideline sentence forms.

§303.1 (e)
SGS WEB REPORTING REQUIREMENT

GUIDELINE TEXT:

§303.1 (e) Unless otherwise provided by the Commission, the JNET-based Sentencing Guidelines Software Web application (SGS Web) shall be used at the court's direction to prepare all guideline-required sentencing information. The completed Guideline Sentence Form shall be made a part of the record and the information electronically submitted to the Commission via SGS Web no later than 30 days after the date of sentencing.

PRIOR GUIDELINES:

A similar reporting provision was included in previous guidelines (§303.1(e)). The text of this section was amended to include a new requirement that the JNET-based *SGS Web* application be used to prepare and submit all guideline sentence forms under the 6th Edition guidelines.

DESCRIPTION:

- * The court is responsible for submitting required information to the Commission, and therefore for determining the process by which guideline sentence forms are prepared and submitted via *SGS Web*. In most judicial districts, the president judge has specified the procedures for completing the form.
- * The 30-day time period for submission of a guideline sentence form is consistent with 42 Pa.C.S. §5505 (Modification of Orders) and Pa.R.Crim.P. Rule 720 (Post-Sentence Procedures; Appeal).
- * A Guideline Sentence Form is required for all felony and misdemeanor sentences. This includes all sentences for DUI and any other cases subject to a mandatory minimum sentence. And while the sentencing guidelines do not apply to Murder 1 or Murder 2, courts are encouraged to use the guideline form to report all such sentences so that the Commission can meet its statutory obligation to systematically monitor mandatory sentencing laws.
- * Since there have been several versions of the guideline form, it is necessary to use the Guideline Sentence Form which corresponds with the edition of the sentencing guidelines. See §303.1(c).
- * For offenses committed on or after June 3, 2005, an electronic 6th Edition Guideline Sentence Form should be completed using the JNET-based *SGS Web* application. 6th Edition forms are offense-based, meaning that one form is completed for each offense in the judicial proceeding.
- * For offenses committed on or after June 13, 1997 but prior to June 3, 2005, the 5th Edition Guideline Sentence Form available via *SGS Web* or in paper form should be used. 5th Edition forms are offense-based, meaning that one form is completed for each offense. If multiple offenses are sentenced during a single judicial proceeding, complete a form for each offense, staple all forms together, and indicate the cumulative sentence from the judicial proceeding on the bottom of the first form in the space provided.
- * For offenses committed on or after August 12, 1994 but prior to June 13, 1997, the 4th Edition Guideline Sentence Form should be used, following the instructions found with that form. The 4th Edition form is offender-based, meaning that one set of forms is completed for all offenses sentenced during a judicial proceeding.
- * For offenses committed prior to August 12, 1994, use the form which corresponds to the applicable guidelines based on the date of the offense. These forms are transaction-based, meaning that one set of forms is completed for all offenses which occurred at the same time.

GUIDELINE FORM/SGS WEB APPLICATION:

- * OFFENDER/JUDICIAL PROCEEDING. For all offenses committed on or after June 3, 2005, guidelines must be prepared and submitted using the JNET-based *SGS Web* application described in this section. One case is created using *SGS Web* for each Judicial Proceeding. A Judicial Proceeding is defined as a proceeding in which all offenses for which an offender has been convicted are pending before the court for sentencing at the same time. Within each Judicial Proceeding, information for each offense for which a defendant has been convicted is obtained separately. Sentence recommendations are provided through *SGS Web* for each offense, based on the Offense Gravity Score (OGS), Prior Record Score (PRS), and other relevant information.
- * Only registered Justice Network (JNET) users authorized by the Court and assigned an *SGS Web* user role may use the application. For information on becoming a JNET and *SGS Web* user, consult your agency's JNET Registrar and/or contact the Commission.
- * In order to prepare a guideline sentence form using *SGS Web*, an offender record must first be created. This may be done in one of three ways: offender information may be entered into the system directly by the user; offender information may be copied from a previously existing case; or offender information may be imported from the Administrative Office of Pennsylvania Courts (AOPC) using the 'Advanced Search' option.
- * The following offender information is required by the *SGS Web* application as part of the offender record: name, date of birth, gender, and race. Other information is requested but not required: social security number, state identification number, and other identifiers.
- * Upon completion of the offender information screen, add the offender to a new judicial proceeding and save the information entered. Enter the judicial proceeding information, which includes judge, docket number, and county contact, and save the information. At this point, the offender and judicial proceeding information has been completed. Remaining steps for preparation and completion of guideline sentence forms include: Prior Record Section; Offense Module; and Sentence Module.
- * For previous editions of the guidelines, the appropriate paper guideline sentence form developed for that edition of the guidelines must be prepared and submitted to the Commission.

COMMENTARY:

The Commission is authorized to promulgate and require the completion of a Guideline Sentence Form:

- "(a) General Rule.--The Commission, pursuant to rules and regulations, shall have the power to:...
- (14) Establish a program to systematically monitor compliance with the guidelines and with mandatory sentencing laws by:
 - (i) Promulgating forms which document the application of the guidelines or mandatory sentencing laws, or both.
 - (ii) Requiring the timely completion and submission of such forms to the Commission." (42 Pa. C.S. §2153).

The form is essential for the Commission to meet its statutory responsibilities 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 practices.
 - (ii) Assisting and serving in a consulting capacity to state courts, departments and agencies in the development, maintenance and coordination of sound sentencing practices...
 - (10) Collect systematically and disseminate information concerning sentences actually imposed.
 - (11) Collect systematically and disseminate information regarding the effectiveness of sentences imposed.

(12) Make recommendations to the General Assembly concerning modification or enactment of sentencing and correctional statutes which the Commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy." (42 Pa. C.S. §2153).

The Guideline Sentence Form serves as part of the official record on how the court applied the guidelines in a case, and has been used by appellate courts when deciding appeals. The form also serves as a work sheet in applying the guidelines. The Commission uses the form to assess the impact and effectiveness of the guidelines and other sentencing statutes, and in evaluating proposed changes in the guidelines and other sentencing law. Information contained on the form is disseminated in the Commission's *Annual Report* and in other reports to the judiciary and to the legislature, and is available for public dissemination consistent with the Commission's *Release of Information Policy*.

In January 2002 the Commission launched *SGS Web*, a JNET-based sentencing application that allows authorized users to prepare sentencing guidelines and submit completed forms electronically using the secure JNET infrastructure. The Commission notified all courts of record in February 2004 of a requirement that *SGS Web* be used to report all sentences beginning in January 2005, and incorporated that requirement into this section of the 6th Edition guidelines. By mandating the use of *SGS Web* to prepare and submit required guideline sentence forms, the Commission enhances the quality and timeliness of sentencing data, advances the virtual integration of sentencing records with other criminal justice data, and substantially improves the availability of detailed sentencing information, including information on concurrent and consecutive sentences, required for the calculation of the prior record score consistent with the guidelines.

§303.2. PROCEDURE FOR DETERMINING THE GUIDELINE SENTENCE.

§303.2 (a)

GUIDELINE TEXT:

§303.2 (a) For each conviction offense of a judicial proceeding, the procedure for determining the guideline sentence shall be as follows:

- (1) Determine the Offense Gravity Score as described in §303.3 and §303.15.**
- (2) Determine the Prior Record Score as described in §303.4 - §303.8.**
- (3) Determine the guideline sentence recommendation as described in §303.9 - §303.14, including Deadly Weapon Enhancement and Youth/School Enhancement (§303.10), and aggravating or mitigating circumstances (§303.13).**

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.2(a)). The text of this section was amended to include reference to a judicial proceeding, a term used to describe a hearing in which all offenses for which an offender has been convicted are pending before the court for sentencing at the same time.

DESCRIPTION:

- * This section specifies the procedural steps in applying the guidelines to each offense of a judicial proceeding.
- * Each step in applying the guidelines is discussed in detail under the appropriate guideline section.
- * Upon determination of the correct guideline sentence recommendation, the court must consider the recommendation before imposing a sentence on each conviction offense. The court may sentence an offender to one or more of the sentencing alternatives provided in 42 Pa.C.S. §9721, and may impose those alternatives either concurrently or consecutively.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.1(e).

COMMENTARY:

This section was included in order to make clear how the guidelines should be applied, and to highlight the relationship between various aspects of the guidelines.

During the development of the 4th Edition guidelines in 1994, the Commission adopted the term ‘judicial proceeding’ to describe a hearing in which all offenses for which an offender has been convicted are pending before the court for sentencing at the same time. The judicial proceeding is used to group offenses sentenced during the same sentencing hearing into a single case for the determination of prior record score and the preparation of guideline sentence forms using *SGS Web*.

During each judicial proceeding, the court should first consider the most serious of all offenses pending before it for sentencing. If the offender is serving any other sentence, the court must indicate whether the new sentence is concurrent with or consecutive to the previous sentence. Since a previous sentence may be the result of two or more

aggregated consecutive sentences, it is necessary to have information on all prior convictions that contributed to the previous sentence. After the imposition of the sentence on the most serious offense, the court should then impose sentences individually on each of the remaining offenses pending before it, indicating after each sentence whether it is to be served concurrently or consecutively to the previous sentence(s).

Pursuant to Pa.R.Crim.P. Rule 705 (Imposition of Sentence), when more than one sentence is imposed, or when a sentence is imposed on a defendant who is sentenced for another offense, the court must state whether the sentences shall run concurrently or consecutively; if concurrent, the sentence shall commence from the date of imposition unless otherwise ordered by the court. When imposing a sentence to imprisonment, the court shall state the date the sentence is to commence. “There is simply no statutory provision which would permit a sentencing judge to either commence a second sentence retroactively, *i.e.*, to have it commence at the same time as a prior sentence, or to provide credit for the time served on a prior unrelated charge.” *Wassell v. Com.*, 658 A.2d 466 (Pa.Cmwlth, 1995). Relevant case law requires that consecutive sentences be automatically aggregated, even if imposed by different judges, even if imposed by different courts, and even if imposed at different times, and that, where the total aggregate sentence carries a maximum of two years or more, exclusive parole authority lies with the Pennsylvania Board of Probation and Parole. *Com. v. Miller*, 770 A.2d 362 (PA Super., 2001).

§303.2 (b)

GUIDELINE TEXT:

§303.2 (b) Judicial proceeding. A judicial proceeding is a proceeding in which all offenses for which the offender has been convicted are pending before the court for sentencing at the same time. A judicial proceeding may include multiple offenses and transactions.

PRIOR GUIDELINES:

This is a new provision of the guidelines which provides for the grouping of offenses by ‘judicial proceeding’ in order to determine the prior record score and prepare guideline sentence forms via *SGS Web*.

DESCRIPTION:

- * This section defines the term ‘judicial proceeding’ as a hearing in which all offenses for which an offender has been convicted are pending before the court for sentencing at the same time, even if previous convictions occurred on different dates or before different judges.
- * The judicial proceeding is used to group offenses sentenced during the same proceeding into a single case for the determination of prior record score. The most serious offense of each judicial proceeding, and any other offense for which a sentence of supervision or confinement is imposed consecutive to another offense in the judicial proceeding, is included in the calculation of the prior record score.
- * The judicial proceeding is used to group offenses sentenced during the same proceeding into a single case for preparation of guideline sentence forms using *SGS Web*.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.1(e).

COMMENTARY:

During the development of the 4th Edition guidelines in 1994, the Commission adopted the term ‘judicial proceeding’ to describe a hearing in which all offenses for which an offender has been convicted are pending before the court for sentencing at the same time. While this term was used in describing the procedure for completing a guideline sentence form, it was not defined in the text of the guidelines. The Commission has added this term and definition to the text of the guidelines to both highlight the importance of this grouping of offenses for purposes of completing guideline sentence forms, and to correspond with the revised prior record score policies. Under these revised policies, the most serious offense of each judicial proceeding is included in the calculation of the prior record score. Additionally, an offense for which a sentence is imposed consecutive to another in the judicial proceeding is also included in the calculation of the prior record score (see §303.5).

**§303.3 OFFENSE GRAVITY SCORE
- GENERAL -**

§303.3 (a)

GUIDELINE TEXT:

§303.3 (a) An Offense Gravity Score is given for each offense. The Offense Gravity Scores are located in §303.15.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.3(a)). The listing in §303.15 has been updated to reflect any changes in offense gravity score assignments through the end of the 2003-2004 Session of the General Assembly.

DESCRIPTION:

- * The Offense Gravity Score measures the seriousness of the current conviction. It is the primary determinant of the suggested guideline sentence ranges. The Offense Gravity Score ranges from 1, the lowest score possible, to 14 the highest score possible.
- * The sentencing guidelines apply only to misdemeanor and felony convictions. As a result, the following do not have Offense Gravity Scores: Murder of the First Degree, Murder of the Second Degree and summary offenses.
- * An Offense Gravity Score is assigned to the offense for which the defendant was actually convicted, not the offense charged. All scores are assigned at §303.15.
- * There is a single correct Offense Gravity Score for each conviction offense. If an offense is not listed in §303.15, refer to the Omnibus Offense Gravity Score, §303.3(f). Special rules apply to Inchoate Offenses, §303.3(c), and Ethnic Intimidation, §303.3(d).
- * Offense Gravity Scores are assigned by the Commission. The court has no discretion to set the Offense Gravity Score for a crime. However, when there is a dispute about which score the Commission has assigned to a particular offense, the court must decide which score is correct.
- * Many offenses with the same name have different Offense Gravity Scores depending on the statutory grade of the conviction or on particular facts related to the crime (see Subcategorized Offenses §303.3(b)). In order to assign the correct score to these offenses, it is necessary to know specifically the grade of the offense and certain facts related to it.
- * Reflecting the substantial re-drafting of the statutes relating to driving after imbibing alcohol or utilizing drugs (75 Pa.C.S. Chapter 38), many Vehicle Code offenses have received new OGS assignments. These scores are found in the listing at §303.15.
- * Although theft of a firearm is generally a felony of the second degree and assigned an OGS 8, this only applies in the case of Theft by Receiving Stolen Property (18 Pa.C.S. §3925) when the defendant is in the business of buying or selling stolen property and a firearm is involved; otherwise, theft of a firearm under §3925 is a misdemeanor of the first degree and assigned an OGS 3.
- * For the purposes of the 6th Edition guidelines, theft of any amount of anhydrous ammonia, a felony of the second degree, is assigned the omnibus offense gravity score of OGS 7.

GUIDELINE FORM/SGS WEB APPLICATION:

- * **OFFENSE MODULE.** Gather current offense information, including a complete citation of the offense of plea or conviction, the grade of the offense, the date of the offense, the docket/count number and offense-specific details (e.g.-object offense if conviction offense is an inchoate; type and amount of controlled substance if conviction offense is a drug offense; amount of loss if conviction offense is a property offense). Determine the correct Offense Gravity Score (OGS) as provided in §303.3 and §303.15.
- * From the Offense Module, enter the date of the offense, whether it was an inchoate or completed offense, and choose whether it was a controlled substance offense, a DUI offense, or a non-controlled substance offense. Choose whether to search by statutory citation or description, enter all appropriate information, and click 'Find.'
- * From the returned list of offenses, choose one by clicking on the underlined description that reflects the conviction offense and enter outstanding offense information, including: docket number (if different from the number entered when creating the judicial proceeding); count number (based on county preference for tracking offenses); offense tracking number (OTN - this is a required field); and victim age, if known and applicable. Violations of the Controlled Substances Act require information on the type and quantity of the drug involved.
- * Choose any applicable mandatory minimum provision. For mandatory provisions requiring prosecutorial notice, the mandatory should only be selected if notice has been given, and should be removed if notice has been withdrawn.
- * Choose any applicable enhancement. The enhancement provision must be selected if the court has determined that the specific sentencing factor related to the enhancement (e.g., deadly weapon possessed, deadly weapon used, drugs to minor or in school zone) was present during the commission of the crime.
- * Repeat process for each offense. After all conviction offenses are entered, click 'Module Complete' button.

COMMENTARY:

Statute requires that the guidelines: "Specify the range of sentences applicable to crimes of a given degree of gravity." (42 Pa. C.S. §2154(a)(1)).

The Commission decided that the gravity of the current offense should be the primary determinant of the guideline sentence ranges. Discussions with legislators, judges, and others, confirmed that this view was nearly universal. Analysis of sentencing patterns in Pennsylvania reveals that the courts have traditionally given more weight to the seriousness of the current conviction offense than to such factors as prior record, social status of the defendant or the victim, or predictions about the defendant's future conduct or need for treatment.

The Offense Gravity Score is based on the legal offense for which the defendant has actually been convicted. This decision was based on principles of fairness to the defendant and concern about the legality of guidelines if they were based primarily on "real offense behavior." There are some offenses, listed in §303.3(b) and discussed below, in which additional, specified features of the crime that are associated with dangerousness or with injury to the victim play a role in determining the Offense Gravity Score. These features include such things as whether the victim suffered serious bodily injury or the actual dollar amount of stolen property.

Act 319 spoke of "crimes of a given degree of gravity" rather than crimes of the same statutory grade or classification (42 Pa. C.S. §2154(a)(1)). The Commission decided that more than the six statutory grades (felony 1, 2, 3; misdemeanor 1, 2, 3) were necessary to distinguish reasonably among offenses. In the 1994 revisions the Commission chose to include all offenses on one thirteen category numeric scale. This was done to ensure

proportionality in the sentence recommendations for all offenses. This scale was expanded in 1997 to include OGS 14 for offenses with a 40-year statutory maximum. OGS 14 has been modified under the 6th Edition guidelines to take into account those offenses with a statutory maximum of life.

Most of the scores are based on the statutory classification of the offense in addition to the level of harm involved in the offense. Not all offenses of the same statutory classification are assigned the same Offense Gravity Score. Assigning offenses an Offense Gravity Score by statutory classification, when rigidly applied, resulted in inequitable scores being assigned to some offenses. This occurred, not because the statutory grade of the crime was too low or too high, but rather because when the legislature assigned the statutory grade, it was assigning the maximum penalty. The legislature had to grade the crime based on the most serious possible instance of the offense. The Commission, on the other hand, had to assign a score to the crime based on the seriousness of the average, typical instance of the offense. In addition, the statutory classifications were the same for some offenses which are generally thought to be of different seriousness levels. For example, both robbery inflicting serious bodily injury and robbery threatening injury are felony 1s. Finally, some statutory definitions are necessarily broad, and give all forms of the crime the same classification. Greater specificity is desirable for purposes of imposing sentence.

While rejecting the exclusive use of statutory classifications as the measure of the gravity of the offense, the Commission nevertheless consciously balanced the need to adhere as closely as possible to the legislature's statutory grades with the need to differentiate crimes as much as was practical and necessary in the guidelines. The Commission therefore took the initial, statutory grade-based scores, examined each crime carefully, and modified the score based on the following factors: the physical injury or potential physical injury to the victim; the harm or potential harm to the victim and to the community; the culpability of the offender; and the proportionality of the score assigned to this offense when compared to the scores of other offenses.

The Commission also chose to specifically assign an Offense Gravity Score to all of the Crimes Code offenses and most other offenses from other codes that the Commission receives information on regularly. The guidelines still contain omnibus Offense Gravity Scores based upon the grading of the offense that are to be used when the Commission has not specifically ranked an offense.

In preparing the 6th edition guidelines, the Commission conducted a comprehensive review of the previous OGS assignments as well as recently enacted legislation. During the seven years since the promulgation of the 5th Edition Guidelines, the General Assembly enacted, amended or repealed more than 120 statutes that impact on the sentencing guidelines. In addition, the Commission received requests from practitioners to change the sentence recommendations for a number of offenses, including violations of the Uniform Firearms Act, crimes of violence, weapons of mass destruction, controlled substances, and driving under the influence of alcohol or controlled substance.

To provide some consistency between the 'Three strikes' legislation and the guideline recommendations, the Commission continues to include the offenses designated as completed "crimes of violence" under the 'Three strikes' legislation in the upper tier of the guidelines (OGS 9 - OGS 14), thereby recommending state incarceration in all cases. Three additional crimes of violence have been added to this tier as part of the 6th Edition amendments: sexual assault, aggravated indecent assault, and incest. Also, several additional felony offenses have been assigned statutory maxima of 40 years or life. These offenses have been assigned an OGS 14, which includes in the standard range recommendation the statutory limit, the longest minimum sentence permitted by statute.

§303.3 (b)
SUBCATEGORIZED OFFENSES

GUIDELINE TEXT:

§303.3 (b) Subcategorized offenses. Certain offenses are subcategorized and scored by the Commission according to the particular circumstances of the offense. The court determines which Offense Gravity Score, located in §303.15, applies. These offenses are designated by an asterisk (*).

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.3(b)). An updated listing of the subcategorized offenses is included below in the descriptive section.

DESCRIPTION:

- * The Offense Gravity Score for most offenses can be found in the Offense Listing at §303.15. For offenses with multiple grades, multiple OGS assignments may apply. Offenses further subcategorized by the Commission are identified with an asterisk in the Offense Listing.
- * Certain offenses are subcategorized by the Commission beyond statute, based on certain factors determined by the court (by a preponderance of the evidence) at sentencing to be present. For these offenses, in order to identify the correct OGS, certain facts about the offense must be known, in addition to the citation and name of the crime and its statutory grade. These subcategorized offenses are listed below:
- * Involuntary Manslaughter (18 Pa. C.S. §2504) is subcategorized on the basis of whether or not there is a conviction for Driving Under the Influence (DUI) (75 Pa. C.S. §3802) arising from the same incident. (OGS=6, 8).
- * Aggravated Assault of an Unborn Child (18 Pa. C.S. §2606) is subcategorized on the basis of whether the defendant attempted or caused serious bodily injury. Aggravated Assault of an Unborn Child includes attempts within the statutory definition; as a result, the subcategorized OGS assignment for attempt is the same as that for an inchoate (OGS=10, 11).
- * Aggravated Assault (18 Pa. C.S. §2702(a)(1) and (2), a Felony 1) is subcategorized on the basis of whether the defendant attempted or caused serious bodily injury. Aggravated Assault includes attempts within the statutory definition; as a result, the subcategorized OGS assignment for attempt is the same as that for an inchoate (OGS=10, 11).
- * Arson Endangering Persons (18 Pa.C.S. §3301(a)) is subcategorized on the basis of whether a person was inside the structure when the fire was started or bodily injury resulted (OGS=9, 10).
- * Burglary (18 Pa. C.S. §3502, when a Felony 1) is subcategorized on the basis of the type of structure burglarized and whether a person was present at the time of the offense (OGS=6, 7, 9).
- * Robbery of a Motor Vehicle (18 Pa. C.S. §3702) is subcategorized based upon whether or not the defendant inflicted serious bodily injury upon the victim (OGS=9, 12).
- * Theft offenses (18 Pa. C.S. §3921 through §3927 and §3932, when a Felony 3) have been subcategorized based upon the amount involved in the offense:
Over \$100,000 OGS 8
> \$50,000 - \$100,000 OGS 7
- * Theft offenses (continued from previous page)

> \$25,000 - \$ 50,000 OGS 6
 > \$ 2,000 - \$ 25,000 OGS 5

* Escape (18 Pa. C.S. §5121, when a Felony 3) is subcategorized based upon the type of facility from which the offender escaped (OGS=5, 6).

* Firearms offenses (18 Pa.C.S. §§6105, 6106, 6108, and 6110.2 only) are subcategorized based on whether the firearm was "loaded or ammunition (was) in possession of the defendant" or whether the firearm was "unloaded and ammunition (was) not in possession or control of defendant" as noted below:

§6105	Person Not to Possess, etc.	F2	OGS = 9, 10
§6105	Person Not to Possess, etc.	M1	OGS = 4, 5
§6106(a)(1)	Firearms Not to be Carried	F3	OGS = 7, 9
§6106(a)(2)	Firearms Not to be Carried	M1	OGS = 3, 4
§6108	Carrying Firearms, Philadelphia	M1	OGS = 4, 5
§6110.2	Possession of Firearm, Altered #	M1	OGS = 4, 5

Although the labeling in the text of the guidelines is inconsistent (i.e., subcategorization of §6105 listed as 'loaded' vs. 'unloaded'), the intent of the subcategorization under this section is to include as 'loaded' ammunition in possession or control of defendant.

* Corruption of Minors (18 Pa.C.S. §6301(a)(1)) is subcategorized based upon whether the corruption was of a sexual nature (OGS=4, 5).

* Violations of the Controlled Substance, Drug, Device, and Cosmetic Act (when 35 P.S. §780-113(a)(12), (a)(14), and (a)(30)) are subcategorized based on the type and amount of drug involved in the offense. Under the 6th Edition, new assignments have been added for MDMA, etc. (35 P.S. §780-113(o)), a new top category has been added for marijuana (1,000 pounds or greater), and the prescription pill exception has been restricted to narcotics of Schedule II but expanded so as to apply to violations of 35 P.S. §780-113(a)(12), (a)(14), and (a)(30). See §303.3(c) for more information on OGS assignments for drug offenses, and §303.15 for a complete offense listing including all subcategorizations.

Although the labeling in the text of the guidelines contains a typographical error, the intent of the subcategorization of 35 P.S. §780-113(a)(12), (a)(14), and (a)(30) under this section as related to MDMA, etc. (35 P.S. §780-113(o)), was to provide the following categories consistent with 18 Pa.C.S. §7508(a)(8):

<i>MDMA (Ecstasy)(Schedule I, non-narcotic) (1000 pills or more)</i>	<i>OGS = 10</i>	<i>PRS Points = 3</i>
<i>MDMA (Ecstasy)(Schedule I, non-narcotic) (100 - < 1000 pills)</i>	<i>OGS = 7</i>	<i>PRS Points = 2</i>

* Homicide by Vehicle (75 Pa. C.S. §3732) is subcategorized on the basis of whether or not there is a conviction for Driving Under the Influence (DUI) (75 Pa. C.S. §3802) arising from the same incident, and whether or not the offense occurred in an active work zone:

Homicide by vehicle	OGS = 6
Homicide by vehicle, with conviction for DUI	OGS = 8
Homicide by vehicle, that occurs in active work zone	OGS = 8
Homicide by vehicle, with conviction for DUI and occurs in active work zone	OGS = 10

Homicide by Vehicle While DUI (75 Pa.C.S. §3735), which includes a 3 year mandatory minimum sentence, is assigned an OGS 10. See §303.9(i) for more information on DUI and related offenses.

* Accidents Involving Death or Personal Injury While Not Properly Licensed (75 Pa.C.S. §3742.1(b)(2)) is subcategorized on the basis of whether the accident resulted in serious bodily injury or death (OGS= 5, 6).

GUIDELINE FORM/SGS WEB APPLICATION:

* See §303.3(a).

COMMENTARY:

The statutory definitions of some crimes are very broad and prohibit behaviors of very different levels of seriousness. It therefore would have been unfair to assign a single Offense Gravity Score to all instances of such crimes. These offenses are subcategorized on the basis of objective aspects of the crime which are related to the seriousness of the crime, the potential for injury to the victim, or the culpability of the defendant. The criteria on which the crime is subcategorized are easily discoverable in every instance of the offense.

The burglary subcategories were designed to differentiate crimes with different potential for injury and impact on the life of the victim. Burglaries "of a structure adapted for overnight accommodation" include homes, hotels, motels, camp structures, house trailers, etc. The phrase "structure adapted for overnight accommodation" is taken from the Crimes Code's definition of "occupied structure" in 18 Pa. C.S. §3501. Burglaries "in which at the time of the offense any person is present" include burglaries where the defendant did not know when he entered the structure that someone was present, and burglaries where someone such as a returning resident or a police officer enters the structure while the defendant was still inside.

The Commission received a specific mandate to provide for a sentencing enhancement for Robbery of a Motor Vehicle (18 Pa. C.S. §3702). The Commission addressed this mandate by subcategorizing the offense based upon whether or not the defendant inflicted serious bodily injury upon the victim.

The subcategorization of escape (18 Pa. C.S. §5121) was intended to distinguish between escapes which involve violence or a high potential for violence from escapes which are simply "walk-offs" or failures to return from furlough. This subcategorization, which was made in 1986, was made after examination of the high rate of departures below the guidelines for this offense.

The firearms offenses are subcategorized to differentiate between defendants whose illegal weapon possession had the immediate potential of danger and defendants whose illegal weapon possession had no potential immediate danger. For this reason, although the labeling in the text of the guidelines is inconsistent (i.e., subcategorization of §6105 listed as 'loaded' vs. 'unloaded'), the intent of the subcategorization under this section is to include as 'loaded' ammunition in possession or control of defendant.

The primary drug felony offenses are subcategorized based upon the type and amount of drug involved in the offense. For most narcotics of Schedule I and II, cocaine, PCP, and methamphetamine, there are six rankings of the offenses ranging from delivery of under 2.5 grams to over 1,000 grams. A lower threshold of <1 gram was established for Heroin to take into account its greater impact relative to its weight. The Commission specifically rejected a proposal that the lower threshold for cocaine be increased to <5 grams. Marijuana has five categories, including a new category of > 1,000 pounds, based upon either the weight of the drug or the number of plants involved in the offense.

The Commission was required, pursuant to Act 2002-229, to provide a sentencing enhancement for the offense of homicide by vehicle when the violation occurs in an active work zone. The Commission decided to expand the previous enhancement related to homicide by vehicle and DUI to create four categories: homicide by vehicle; homicide by vehicle with conviction for DUI; homicide by vehicle that occurs in active work zone; and homicide by vehicle with conviction for DUI and occurs in active work zone.

§303.3 (c)
INCHOATE OFFENSES

GUIDELINE TEXT:

§303.3 (c) Inchoate offenses. Inchoate offenses are scored as follows:

- (1) Convictions for attempt, solicitation, or conspiracy to commit a Felony 1 offense receive an Offense Gravity Score of one point less than the offense attempted, solicited, or which was the object of the conspiracy.
- (2) Convictions for attempt, solicitation, or conspiracy to commit any offense which is not a Felony 1 offense, receive the Offense Gravity Score of the offense attempted, solicited, or which was the object of the conspiracy.
- (3) Convictions for attempt, solicitation, or conspiracy to commit any offense under The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §780-101 -- §780-144) receive the Offense Gravity Score of the offense attempted, solicited, or which was the object of the conspiracy.
- (4) Exception for inchoate murder convictions. Convictions for attempt, solicitation, or conspiracy to commit murder receive the Offense Gravity Score of 14 if there is serious bodily injury and 13 if there is no serious bodily injury.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.3(c)).

DESCRIPTION:

- * This section assigns the Offense Gravity Scores for inchoate offenses. In order to determine the Offense Gravity Score for an attempt, conspiracy, or solicitation offense, it is necessary to know which offense was attempted, conspired to or solicited in order to determine the correct OGS assignment.
- * The Offense Gravity Score for attempt, conspiracy, or solicitation to commit any felony 1 offense is one point less than the object offense unless otherwise provided.
- * The Offense Gravity Score for attempt, conspiracy, or solicitation to commit any other offense receives the same Offense Gravity Score as the completed offense.
- * The Offense Gravity Score for attempt, conspiracy, or solicitation to commit any drug act offense receives the same Offense Gravity Score as the completed offense.
- * Previous Commission policy paralleled the statutory requirements in 18 Pa.C.S. §905 (relating to the grading of criminal attempt, solicitation, and conspiracy), which at the time held that any attempt, solicitation or conspiracy to commit Murder or a Felony of the First Degree was a Felony of the Second Degree. Notwithstanding amendments which increased the grading of such offenses to a Felony of the First Degree, the Commission has retained the policy that the OGS assigned to an inchoate to a Felony of the First Degree is one point less than the OGS of the object offense.
- * An inchoate to Murder or Murder of an Unborn Child is assigned an Offense Gravity Score based on whether serious bodily injury occurred (OGS 13, 14). The statutory maximum for these offenses when resulting in serious bodily injury is 40 years (20 year statutory limit).
- * Aggravated Assault of an Unborn Child (18 Pa. C.S. §2606, F1) includes attempt to cause serious bodily

injury in the statutory definition. The Commission subcategorized this offense consistent with inchoate OGS and PRS policies. As a result, aggravated assault of an unborn child causing serious bodily injury is assigned an OGS 11 and four prior record points; attempt to cause serious bodily injury, or any other inchoate to aggravated assault of an unborn child is assigned an OGS 10, and three prior record points.

* *Aggravated Assault (18 Pa. C.S. §2702(a)(1) and (2), a Felony 1) includes attempt to cause serious bodily injury in the statutory definition. The Commission subcategorized this offense consistent with inchoate OGS and PRS policies. As a result, aggravated assault causing serious bodily injury is assigned an OGS 11 and four prior record points; attempt to cause serious bodily injury, or any other inchoate to F1 aggravated assault, is assigned an OGS 10, and three prior record points. The original text of the guidelines found in §303.15 incorrectly listed the prior record point value for attempt as four.*

* *Aggravated Indecent Assault (18 Pa. C.S. §3125) is a Felony 1 if the victim is under 13 years of age; otherwise, it is a Felony 2. Consistent with OGS and PRS policies, an inchoate to F1 aggravated indecent assault is assigned an OGS 11 and three prior record points; an inchoate to F2 aggravated indecent assault is assigned an OGS 10 and three prior record points. The original text of the guidelines found in §303.15 failed to provide this differentiation based on the grade of the object offense.*

GUIDELINE FORM/SGS WEB APPLICATION:

* See §303.3(a).

COMMENTARY:

This section assigns the Offense Gravity Scores to inchoate or unfinished crimes. Act 1995-3 (SS1) increased the grade of any attempt, solicitation or conspiracy to an F1 offense to an F1. Previously, these inchoates to F1 offenses were F2 offenses. As a result, with the exception of inchoates to murder, all inchoates to felonies and misdemeanors are assigned the same grade and maximum penalty as the completed object offense. During the Special Session on Crime, the General Assembly also increased the statutory maximum for inchoate to murder to 40 years if the victim suffered serious bodily injury.

Notwithstanding these changes, the Commission decided to retain the previous distinction which assigned a lower Offense Gravity Score to attempts, solicitations, or conspiracies to Felony 1 offenses due to the inherent seriousness of a completed Felony 1 offense that may not be present in an inchoate. Inchoates to murder are assigned specific Offense Gravity Scores based on whether serious bodily injury occurred. Inchoate offenses for convictions of the Controlled Substance, Drug, Device and Cosmetic Act receive the same Offense Gravity Score as the object offense.

§303.3 (d)
ETHNIC INTIMIDATION

GUIDELINE TEXT:

§303.3 (d) Ethnic Intimidation. Convictions for Ethnic Intimidation (18 Pa. C.S. §2710) receive an Offense Gravity Score that is one point higher than the offense which was the object of the Ethnic Intimidation. When the object offense is Murder of the Third Degree, a conviction for Ethnic Intimidation receives the highest Offense Gravity Score.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.3(d)).

DESCRIPTION:

- * This section assigns an Offense Gravity Score to convictions for ethnic intimidation that is one point higher than the object offense.
- * By statute (18 Pa. C.S. §2710 (a)) "a person commits the offense of ethnic intimidation if, with malicious intention toward the actual or perceived race, color, religion, national origin, ancestry, mental or physical disability, sexual orientation, gender or gender identity of another individual or group of individuals, he commits an offense under any other provision of this article (Article B) or under Chapter 33 (relating to arson, criminal mischief and other property destruction) exclusive of section 3307 (relating to institutional vandalism) or under section 3503 (relating to criminal trespass) with respect to such individual or his or her property or with respect to one or more members of such group to their property."
- * The offender must be convicted of one of the offenses in the sections listed above in order to also be convicted of Ethnic Intimidation. Conviction for Ethnic Intimidation necessarily requires conviction for one of the underlying offenses listed.
- * Grading of Ethnic Intimidation is based upon the statutory classification of the offense that involved the Ethnic Intimidation. By statute, (18 Pa. C.S. §2710 (b)) "an offense under this section (Ethnic Intimidation) shall be classified as a misdemeanor of the third degree if the other offense is classified as a summary offense. Otherwise, an offense under this section (Ethnic Intimidation) shall be classified one degree higher in the classification specified in section 106 (relating to classes of offenses) than the classification of the other offense."
- * It is necessary to know what offense was involved in the Ethnic Intimidation in order to determine the Offense Gravity Score for the Ethnic Intimidation.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.3(a).

COMMENTARY:

The Commission specifically assigns Ethnic Intimidation an Offense Gravity Score that is one point higher than the Offense Gravity Score for the object offense. This was done to ensure that convictions of Ethnic Intimidation are assigned an Offense Gravity Score that reflects the increased culpability of the defendant and the increased seriousness of the victimization.

§303.3 (e)
VIOLATIONS OF THE CONTROLLED
SUBSTANCE, DRUG, DEVICE AND
COSMETIC ACT (35 P.S. §§780-101 -- 780-144)

GUIDELINE TEXT:

§303.3 (e) Violations of The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§780-101 -- 780-144). If any mixture or compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be deemed to be composed of the controlled substance. If a mixture or compound contains a detectable amount of more than one controlled substance, the mixture or compound shall be deemed to be composed entirely of the controlled substance which has the highest Offense Gravity Score.

(1) Exception for prescription pills. The exception to subsection (e) above is for violations of 35 P.S. §780-113 (a)(12), (a)(14), and (a)(30) when narcotic prescription pills of Schedule II are involved. For such violations it is the number of pills rather than the amount of the controlled substance which is considered in determining the Offense Gravity Score. (See §303.15.)

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.3(e)). The text of this section was amended to limit the exception for prescription pills to narcotic prescription pills of Schedule II, while at the same time expanding this exception to 35 P.S. §780-113(a)(14) and (30).

DESCRIPTION:

- * When the current conviction is for a violation of 35 P.S. §§780-113(a)(12), (14), or (30), and the drug is a narcotic of schedules I or II, PCP (phencyclidine), cocaine, methamphetamine, or marijuana, the guideline ranges are dependent upon the quantity of the drug involved. This subsection indicates how to determine the Offense Gravity Score when the offense involves more than one substance.
- * To measure the quantity of the drug, the entire mixture is weighed, including any substance in which the drug is mixed or with which it is combined.
- * When more than one illegal substance is contained within a mixture or compound, the Offense Gravity Score is assigned based upon the controlled substance that has the highest Offense Gravity Score.
- * Violations of 35 P.S. §780-113(a)(12), (a)(14), and (a)(30) are subcategorized based on the type and amount of drug involved in the offense. Under the 6th Edition, new assignments have been added for MDMA, etc. (35 P.S. §780-113(o)), a new top category has been added for marijuana (1,000 pounds or greater), and the prescription pill exception has been restricted to narcotics of Schedule II but expanded so as to apply to violations of 35 P.S. §780-113(a)(12), (a)(14), and (a)(30). See §303.3(c) for more information on OGS assignments for drug offenses, and §303.15 for a complete offense listing including all subcategorizations.

Although the labeling in the text of the guidelines contains a typographical error, the intent of the subcategorization of 35 P.S. §780-113(a)(12), (a)(14), and (a)(30) under this section as related to MDMA, etc. (35 P.S. §780-113(o)), was to provide the following categories consistent with 18 Pa.C.S. §7508(a)(8):

<i>MDMA (Ecstasy)(Schedule I, non-narcotic) (1000 pills or more)</i>	<i>OGS = 10</i>	<i>PRS Points = 3</i>
<i>MDMA (Ecstasy)(Schedule I, non-narcotic) (100 - < 1000 pills)</i>	<i>OGS = 7</i>	<i>PRS Points = 2</i>

- * When the current conviction is for a violation of 35 P.S. §780-113(a)(12) (relating to fraudulent prescriptions), (a)(14) (relating to delivery by a practitioner), or (a)(30) (relating to possession with intent to

deliver, etc.) and the offense involves narcotic prescription pills of Schedule II, the Offense Gravity Score is based upon the number of pills rather than the total weight, regardless of the dosage. A narcotic lollipop is considered a prescription pill for purposes of this exception. This exception does not apply to non-prescription or look-alike drugs. (See §303.15.).

- * When the current conviction is for a violation of 35 P.S. §780-113(a)(16) (relating to Simple Possession), the type and quantity of the drug involved are not relevant. The Offense Gravity Score for all simple possession offenses is 3.
- * Mandatory minimum sentencing provisions or sentencing guideline enhancements may apply to convictions under this section. See §303.9(h) for information on Mandatory Sentences and §303.10 for information on Enhancements.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.3(a).

COMMENTARY:

In 1988, specific Offense Gravity Scores were assigned to drug offenses based on the legal penalties assigned to these offenses, the proposals of various guideline critics and proponents, and the harmfulness of the particular drug or schedule of drugs. Narcotics of Schedules I and II, methamphetamine, cocaine, phencyclidine, and marijuana were specifically assigned Offense Gravity Scores. This was modeled on the distinction of these offenses in the statute assigning maximum penalties (35 P.S. §780-113(f)). All other drugs were grouped according to drug schedule, or according to maximum penalty. Again, this followed the statutory framework. The Offense Gravity Scores for violations of the Controlled Substance, Drug, Device and Cosmetic Act 35 P.S. §780-113 sections (a)(12) (relating to Fraudulent Prescriptions), (a)(14) (relating to Delivery by a Practitioner), and (a)(30) (relating to Possession with Intent to Deliver) are determined by the type and weight of the drug involved in the offense. This section requires that the total weight of any mixture be used in determining the Offense Gravity Score. The total weight includes both the weight of the controlled substance and the weight of any compound with which the substance is mixed.

In 1994, the Commission adopted a prescription pill exception for convictions under (a)(12) (relating to Fraudulent Prescriptions), in which the number of prescription pills rather than the weight of the substance would be used to subcategorize the OGS. The Commission chose to limit this exception to (a)(12) since it was considered less serious than (a)(14), which represented a breach of authority or trust, or (a)(30) which involved manufacture, delivery and possession with intent to deliver.

In 1997, the Commission decided to limit the prescription pill exception to Schedule II drugs. The original exception policy covered all drug schedules. It was intended to counter the overrepresentation of the weight of a small amount of controlled substance in a prescription pill due to the density of the pill. However, for drugs of Schedules III, IV, and V, the result ran counter to the policy. In addition to restricting the policy to Schedule II, the pill categories have been re-aligned to correspond more closely with the weight categories for other drugs.

In 2005, the Commission further limited the prescription pill exception to narcotics of Schedule II, since application of the exception to non-narcotic pills of Schedule II, much like the earlier application of this exception to drugs of Schedule III, IV, and V, resulted in an unintentional increase in the sentence recommendation counter to the intent of the policy. As a result of this change, non-narcotic pills of Schedule II not otherwise listed in the guidelines are assigned an OGS 5. At the same time the Commission narrowed this exception to narcotic pills of Schedule II, it expanded the application to include violations of 35 P.S. §780-113 (a)(14) and (a)(30). This change was intended to address the increase in convictions and sentences for violations of these sections involving narcotic prescription pills, including but not limited to Oxycodone, OxyContin and Percocet.

§303.3 (f)
OMNIBUS OFFENSE GRAVITY SCORES

GUIDELINE TEXT:

§303.3 (f) Omnibus Offense Gravity Scores. The Omnibus Offense Gravity Score is applied when the offense is not otherwise listed in §303.15, or when the grade of an offense listed in §303.15 has changed, unless application of this section would result in a lower Offense Gravity Score for an increased grading of the offense. The Omnibus Offense Gravity Scores are provided below and in the listing at §303.15:

Felony 1	8
Felony 2	7
Felony 3	5
Felonies not subclassified by the General Assembly	5
Misdemeanor 1	3
Misdemeanor 2	2
Misdemeanor 3	1
Misdemeanors not subclassified by the General Assembly	1

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.3(f)).

DESCRIPTION:

- * This section is used to score any crime which has not yet been assigned a specific Offense Gravity Score in §303.15.
- * It is always necessary to check §303.15 before using the omnibus scores in this section. Do not assume that all crimes of the same grade receive the same Offense Gravity Score.
- * Most offenses are now specifically scored in §303.15. Thus, only on rare occasions will it be necessary to use the omnibus scores of this section.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.3(a).

COMMENTARY:

In order to simplify the procedure for determining the correct Offense Gravity Score, the Commission chose to specifically assign Offense Gravity Scores to most offenses. Specifically included in §303.15 are Offense Gravity Scores for most Crimes Code offenses, drug act offenses, select vehicle offenses, and select environmental offenses. The Omnibus Scores of §303.3(f) were retained to apply to any offense not scored in §303.15. The Omnibus Scores should be utilized for offenses which are not otherwise assigned an OGS, or when the legislature creates a new crime or changes the grade of an offense. However, where the definition of the crime is changed, but the grade or statutory maximum sentence is not changed, the previously assigned Offense Gravity Score still applies.

The Commission intends that this subsection not apply when the legislature has changed the penalty subsection applicable to a crime to another penalty subsection, but has not changed the grade of the crime. In such cases, the

proper Offense Gravity Score is that which applies to other crimes already covered by the newly assigned penalty subsection. This issue arose when the legislature changed the applicable statutory subsection which assigned penalties to cocaine offenses, but did not redefine the crime or assign a new grade. The Commission decided in 1985 that after the statutory change, the Offense Gravity Score assigned to cocaine should be the score that was already assigned to other drugs covered by the new penalty subsection of the drug act until the guidelines could be amended to reflect the new statute. This interpretation was necessary because applying the omnibus scores would have resulted in *shorter* guideline ranges after the legislature *increased* the maximum penalty applicable to the offense. This would obviously contravene the legislative intent.

During the 1995 Special Session on Crime, the General Assembly increased the statutory grading of some offenses (e.g.- Attempted Murder was changed from a Felony 2 to a Felony 1 that ended up resulting in a lower recommendation based upon the Omnibus Score. To address this type of problem, the Commission adopted a change to the omnibus policy to assure that when the statutory grading for an offense is raised, the Offense Gravity Score will not be reduced.

**§303.4 PRIOR RECORD SCORE
- CATEGORIES -**

**§303.4 (a)
PRIOR RECORD SCORE CATEGORIES**

GUIDELINE TEXT:

§303.4 (a) Prior Record Score categories. Determination of the correct Prior Record Score category under this section is based on the type and number of prior convictions (§303.5) and prior juvenile adjudications (§303.6). There are eight Prior Record Score categories: Repeat Violent Offender (REVOC), Repeat Felony 1 and Felony 2 Offender (RFEL), and point-based categories of 0, 1, 2, 3, 4 and 5.

(1) Repeat Violent Offender Category (REVOC). Offenders who have two or more previous convictions or adjudications for four point offenses (§303.7(a)(1) and §303.15) and whose current conviction carries an Offense Gravity Score of 9 or higher shall be classified in the Repeat Violent Offender Category.

(2) Repeat Felony 1/ Felony 2 Offender Category (RFEL). Offenders who have previous convictions or adjudications for Felony 1 and/or Felony 2 offenses which total 6 or more in the prior record, and who do not fall within the Repeat Violent Offender Category, shall be classified in the Repeat Felony 1/ Felony 2 Offender Category.

(3) Point-based Categories (0-5). Offenders who do not fall into the REVOC or RFEL categories shall be classified in a Point-based Category. The Prior Record Score shall be the sum of the points accrued based on previous convictions or adjudications, up to a maximum of five points.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.4(a)).

DESCRIPTION:

- * The Prior Record Score must be computed in all cases. Some previous editions of the guidelines did not require the calculation of a Prior Record Score for Driving Under the Influence of Alcohol or Controlled Substance or Homicide by Vehicle While Driving Under the Influence. Recent guidelines incorporate these offenses into the guidelines and thus the Prior Record Score is calculated for these offense the same as all other offenses.
- * The Prior Record Score reflects both the number and the severity of prior convictions and some juvenile adjudications of delinquency.
- * The Prior Record Score is not a separate punishment, but rather a reflection of the seriousness of previous offenses.
- * The Repeat Violent Offender Category (REVOC) includes the most heinous, repeat, violent offenders. The REVOC category applies when at least two of the prior convictions and/or adjudications are for offenses that are assigned four points in the Prior Record Score, and when the current offense of conviction is a serious or violent offense. The Commission has defined such serious or violent offenses as those assigned an OGS of 9 or greater. Consistent with this, completed 'crimes of violence' have been assigned an OGS of 9 or greater.

- * The minimum sentence recommendation for offenders in the REVOC category is the statutory limit. In most cases, convictions to which REVOC may be applied are Felony 1 offenses, with a statutory limit of 120 months. For Murder of the Third Degree and inchoate to Murder where serious bodily injury results, the statutory limit is 240 months. Any case in which the REVOC sentence recommendation exceeds the statutory limit for the conviction offense, the statutory limit is the minimum sentence recommendation for that offense.
- * The Repeat Felony 1/Felony 2 Offender Category (RFEL) includes serious repeat felony offenders who have previous convictions and/or adjudications for F1 and F2 offenses that total 6 points or more, and who are not classified in the REVOC category.
- * Prior convictions and adjudications for any drug offenses, Felony 3 offenses and misdemeanor offenses are not included in the RFEL category.
- * The Point-based Categories are used for all other offenders. The Prior Record Score total can vary between 0 and 5, with 5 reflecting the most serious prior record. When the points scored under this section exceed 5, the Prior Record Score is 5.

GUIDELINE FORM/SGS WEB APPLICATION:

- * **PRIOR RECORD SECTION.** Gather all possible prior record information, including a detailed record of all prior juvenile adjudications and adult convictions, including the date(s) on which they occurred, the dates of adjudication or conviction, and the sentence imposed, including whether the sentence was imposed concurrently or consecutively to any other sentence.
- * Identify the applicable prior adjudications or convictions to be used in determining the prior record score as provided in §303.5, and based on the date of the commission of the current offense and the age of the defendant during the commission of the current offense, pursuant to §303.6 and §303.8. The age of the defendant is calculated by *SGS Web* based on the date of birth and the date of the offense.
- * Since the prior record score is calculated for and applied to each conviction offense, when two offenses are sentenced on the same date but the offenses were committed on different dates, the prior record score may change. This is possible if the age of the defendant during the commission of each offense is different based on the date of the offense.
- * Enter all applicable prior convictions in the 6th Edition Prior Record section of *SGS Web* in the categories and spaces provided. *SGS Web* assigns prior record points automatically based on §303.7 and determines potential Prior Record Scores. If the judicial proceeding also includes offenses which are to be imposed under the 5th Edition guidelines, switch to the separate 5th Edition prior record score worksheet.
- * Once all prior record information has been entered, click on ‘Save’ and ‘PRS Compete’ buttons.

COMMENTARY:

Statute requires that the guidelines "Specify a range of sentences of increased severity for defendants previously convicted of or adjudicated delinquent for one or more misdemeanor or felony offenses committed prior to the current offense." (42 Pa. C.S. §2154(a)(2)).

The Commission chose not to include factors related to social status and stability in the Prior Record Score, even though other jurisdictions have included these factors in their guidelines' "Defendant's Score". These factors include educational achievement, current employment and employment history, and residential stability.

The Commission excluded these factors for three reasons. First, unlike the guidelines of some other jurisdictions, the

Pennsylvania Guidelines contain relatively wide guideline sentence ranges. The judge can use status and stability factors -- when appropriate -- to decide the specific sentence which should be imposed from the available ranges. It seemed fairer to exclude these factors from the Prior Record Score and permit their use as reasons to sentence within a given guideline sentence range. Second, these factors are highly correlated with race, ethnicity, and gender. Including them in the guidelines might well have resulted in a systematic sentencing system which had invidious results. Third, offender's employment status may be a factor used to determine whether to incarcerate or not due to loss of job.

The Commission also chose not to include factors related to violations of court orders and supervision status in the Prior Record Score. The Commission thinks that the best means of acting on violations of probation, intermediate punishment, parole, or violations of the bail agreement, is through revocation proceedings against the defendant or by increasing the bail amount. Defendants who have escaped or absconded while on bail should be prosecuted for those crimes.

Including such factors in the guidelines would have had two undesirable effects. Some defendants, who had already forfeited their bail, had their probation or parole revoked, or had been prosecuted for escape or default in required appearance, would be penalized twice for the same behavior. This would have violated the Commission's precept against "double counting". The prohibition against double counting was adopted by the Commission because it was concerned with the appearance of unfairness, and the potential for actual unfairness, which such double counting engendered. In addition, including legal status factors in the guidelines could discourage prosecutors from pursuing other courses of action against the defendant on the theory that these factors would be included in determining the sentence on new crimes.

An equitable Prior Record Score must measure both the number and the seriousness of prior convictions. During the 1994 revisions to the guidelines, the Commission decided to expand the number of Prior Record Score categories from seven to eight, and to reserve two of the categories (REVOC and RFEL) for the most serious offenders. The targeting of serious offenders in these two Prior Record Score categories allowed the Commission to make more appropriate sentence recommendations and in some cases call for the most severe sentence allowed by law.

The Commission created the Repeat Violent Offender Category (REVOC) as a means of isolating offenders who have demonstrated repeated violent criminal activity against the person. The category provides the Commission with the opportunity to recommend the imposition of the longest minimum sentence allowed by law when the offender's current conviction is for a violent offense and the offender also has a violent criminal history. This recommendation is consistent with the Commission's desire to increase severity in order to incapacitate violent offenders and to impose severe sentences to reflect the seriousness of the victimization and the culpability of the defendant.

Prior guidelines allowed any combination of Prior Record Score points to count toward reaching a score of six, which was the highest Prior Record Score category. The Commission decided to reserve the Prior Record Score of six for the most serious felonies to help isolate serious repeat offenders and in so doing, renamed the category to RFEL (Repeat Felony 1/Felony 2) to reflect the type of offender in this category. This allowed the Commission to establish incapacitative sentence recommendations for those offenders who have demonstrated continued dangerousness.

**§303.5 PRIOR RECORD SCORE
- PRIOR CONVICTIONS -**

**§303.5 (a)
SINGLE OFFENSE IN JUDICIAL PROCEEDING**

GUIDELINE TEXT:

§303.5 (a) If there is a single offense in the judicial proceeding, that offense shall be counted in the calculation of the Prior Record Score.

PRIOR GUIDELINES:

This is a new provision in the guidelines consistent with recent efforts to consider each offense separately for purposes of prior record score calculation and sentence recommendation.

DESCRIPTION:

- * It is important that all possible information regarding previous convictions and sentences, including that available through *SGS Web*, be gathered in order for the court to make a correct determination.
- * The definition and description of prior conviction is found at §303.8(a). In order for a previous offense to be included in the calculation of the Prior Record Score, the commission of and conviction for the previous offense must occur prior to the commission of the current offense.
- * As a general policy, the most serious offense of each previous judicial proceeding is included in the calculation of the prior record score. If there is a single offense in the judicial proceeding, it is counted in the Prior Record Score.
- * The former policies of considering only the most serious offense of a previous transaction or considering all offenses except for those imposed or served totally concurrently do not apply under these guidelines.
- * Technical violations of probation, intermediate punishment or parole are not new convictions and therefore are not counted in the Prior Record Score.
- * The guidelines do not include factors related to the legal status of the defendant at the time of the current offense, such as whether he was on bail, probation, intermediate punishment or parole, or whether he had escaped from custody or was in default of bail at the time of the current offense. Some other jurisdictions have included such factors in the "Defendant's Score" in their guidelines.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

The Commission encourages courts to obtain all possible information on prior convictions as part of its fact-finding role. If necessary, the court may wish to adopt local policies to deal with incomplete information relating to prior convictions and sentences. Whenever a question exists regarding prior convictions, the court is required to make a determination based upon a preponderance of the evidence, the same standard of proof used for all sentencing issues. Detailed information on sentences reported via *SGS Web* is available to the court to assist in this determination.

Prior to the 1997, all editions of the sentencing guidelines utilized the concept of transaction to determine how the prior record was applied to multiple offenses and how current multiple offenses were counted in future Prior Record Scores. The definition of transaction was important as it influenced current and future sentence recommendations. A transaction was defined as a crime or crimes which were committed by a defendant at a single time or in temporally continuous actions that are part of the same episode, event, or incident, or which are conspiracy and the object of offense. Spree crimes were not considered part of the same transaction unless they occurred as continuous actions not separated in time by law-abiding behavior. Under transaction-based guidelines, only the most serious offense of a previous transaction was included in the calculation of the PRS, and the PRS was only used to determine the sentence recommendation for the most serious offense of the current transaction. The intent of this former policy was to prevent the defendant's prior record from counting against him/her more than once when computing guidelines for multiple offenses within one criminal transaction. This was consistent with the Commission's general policy against the "double counting" of the same behavior in the guidelines.

Unfortunately, there was inconsistent application of transaction from county to county and from judge to judge. As the Commission studied this issue, it found several fundamental problems with the transaction policy. First, the court was required to make a determination regarding whether multiple offenses were part of the same or different transaction based on whether 'law abiding behavior' separated the offenses, but such specific information on the timing of multiple offenses was often not available. Second, even if the court had the necessary information on the timing of the offenses, it was not clear what constituted 'law abiding behavior.' And third, many previous convictions were excluded from the Prior Record Score based solely on the grouping of offenses at sentencing. The Commission considered a number of alternate approaches for grouping offenses (e.g.- criminal episode, date of offense, date of conviction/sentencing, exceptions to existing transaction for crimes of violence, etc.). However, all of the alternatives considered would have resulted in inconsistent application or inappropriate groupings of offenses.

As part of the 5th Edition guidelines, the Commission adopted a policy that eliminated any grouping of offenses and instead considered each offense individually. The effect of this policy change was that the sentence recommendation for every offense was based on the combination of the Offense Gravity Score and the Prior Record Score. Under these offense-based guidelines, the presumption was that all previous convictions were included in the calculation of the PRS, and that the PRS was used to determine the sentence recommendation for each current offense. However, the Commission decided that such a policy, without any exceptions, could result in disproportionate sentence recommendations. Since the original sentencing court was in the best position to determine the seriousness of those previous convictions, the Commission decided to link the Prior Record Score to that sentence. If the original sentencing court felt that an additional penalty was required for a conviction (represented by a concurrent or consecutive sentence that extended the period of incarceration or supervision), the Commission would include that conviction in future Prior Record Scores. However, if the original court felt that the no further penalty was required (represented by no sentence imposed or a concurrent sentence that did not extend the period of incarceration or supervision), the Commission would not include that conviction in the Prior Record Score. The Commission developed the definition of totally concurrent to distinguish between those sentences that included an additional penalty and those that did not. This policy placed greater significance on the court's decision to impose a new sentence consecutively or concurrently to another sentence, and on the order of imposition of sentences. The court's use of a consecutive or concurrent sentence to increase an existing sentence reflected the seriousness of that offense and was therefore reflected in the future in the Prior Record Score.

Several persistent problems with the totally concurrent policy led to changes in the prior record score policies under the 6th Edition guidelines. First, the offense-specific information required regarding the previous sentences imposed was often not available, or not of sufficient detail to determine the prior record score consistent with the totally concurrent policy. Second, in cases where all sentences imposed during a judicial proceeding were concurrent to previous sentences, no additional points were reflected in the prior record score. And third, subsequent sentencing decisions and credit for time served could undermine an earlier court's intent related to prior record point assignments.

The 6th Edition guidelines attempt to address some of these concerns while streamlining the policy. Under these guidelines, the most serious offense of each judicial proceeding is included in the calculation of the PRS, as well as

any other offense from the judicial proceeding for which a consecutive sentence of supervision or confinement within the proceeding has been imposed. Consistent with the 5th Edition policy, the PRS continues to be used to determine the sentence recommendation for each current offense. The requirement for courts to use *SGS Web* for the preparation and submission of guideline sentence forms, the development of the *SGS Web* application to provide accurate information on the details of the sentence for each offense of a judicial proceeding, and the ability for authorized *SGS Web* users to obtain previous sentencing information for preparation of prior record scores, should substantially improve compliance with and implementation of this policy.

§303.5 (b)
MULTIPLE OFFENSES IN JUDICIAL PROCEEDING

GUIDELINE TEXT:

§303.5 (b) If there are multiple offenses in the judicial proceeding:

- (1) The most serious offense of the judicial proceeding shall be counted in the calculation of the Prior Record Score.**
- (2) Any offense for which a sentence of supervision or confinement is imposed consecutive to a sentence for another offense in the judicial proceeding shall be counted in the calculation of the Prior Record Score.**

PRIOR GUIDELINES:

This is a new provision in the guidelines consistent with recent efforts to consider each offense separately for purposes of prior record score calculation and sentence recommendation.

DESCRIPTION:

- * It is important that all possible information regarding previous convictions and sentences, including that available through *SGS Web*, be gathered in order for the court to make a correct determination.
- * The definition and description of prior conviction is found at §303.8(a). In order for a previous offense to be included in the calculation of the Prior Record Score, the commission of and conviction for the previous offense must occur prior to the commission of the current offense.
- * The most serious offense of each previous judicial proceeding is included in the Prior Record Score.
- * The former policies of considering only the most serious offense of a previous transaction or considering all offenses except for those imposed or served totally concurrently do not apply under these guidelines.
- * Since offenses with the same grade and citation may be assigned a different number of points in the Prior Record Score, the court is responsible for determining the appropriate point value for prior convictions. It is important that all possible information regarding previous convictions and sentences be gathered in order for the court to make a correct determination.
- * Except as provided in §303.5(a) and §303.5(b)(1), an offense for which a sentence is imposed concurrent to another sentence, or for which a sentence is imposed consecutive to another sentence but does include supervision or incarceration (e.g., guilt without further penalty, a fine, restitution, or other economic sanctions), is not included in the Prior Record Score.
- * An offense for which a sentence of probation, county intermediate punishment, state intermediate punishment, partial confinement or total confinement is imposed consecutive to a sentence for another offense in the same judicial proceeding is included in the Prior Record Score.
- * An offense for which a sentence of probation, county intermediate punishment, state intermediate punishment, partial confinement or total confinement is imposed consecutive to a sentence for another offense in the same judicial proceeding, but concurrent to the sentence for an offense in another judicial proceeding, is included in the Prior Record Score.
- * Except as provided in §303.5(a) and §303.5(b)(1), an offense for which a sentence of probation, county

intermediate punishment, state intermediate punishment, partial confinement or total confinement is imposed concurrent to a sentence for another offense in the same judicial proceeding, but consecutive to the sentence for an offense in another judicial proceeding, is not included in the Prior Record Score.

- * An offense for which a split sentence is imposed (e.g., multiple sentencing alternatives, such as confinement and intermediate punishment, or confinement and probation, or intermediate punishment and probation, are imposed consecutively for a single offense) consecutive to a sentence for another offense in the same judicial proceeding is included in the Prior Record Score.
- * Except as provided in §303.5(a) and §303.5(b)(1), an offense for which a split sentence is imposed (e.g., multiple sentencing alternatives, such as confinement and intermediate punishment, or confinement and probation, or intermediate punishment and probation, are imposed consecutively for a single offense) concurrent to a sentence for another offense in the same judicial proceeding, but consecutive to the sentence for an offense in another judicial proceeding, is not included in the Prior Record Score.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

The Commission encourages courts to obtain all possible information on prior convictions as part of its fact-finding role. If necessary, the court may wish to adopt local policies to deal with incomplete information relating to prior convictions and sentences. Whenever a question exists regarding prior convictions, the court is required to make a determination based upon a preponderance of the evidence, the same standard of proof used for all sentencing issues. Detailed information on sentences reported via *SGS Web* is available to the court to assist in this determination.

The sentencing alternatives described in 42 Pa.C.S. §9721 are limited to an order of probation, a determination of guilt without further penalty, partial confinement, total confinement, a fine, county intermediate punishment and state intermediate punishment, as well as restitution. (See §303.9(e), §303.9(f), §303.12(a) and §303.14 for further Commentary.) This statute also provides that multiple sentencing alternatives may be ordered to be served concurrently or consecutively.

During each judicial proceeding, the court should first consider the most serious of all offenses pending before it for sentencing. If the offender is serving any other sentence, the court must indicate whether the new sentence is concurrent or consecutive to the previous sentence. Since a previous sentence may be the result of two or more aggregated consecutive sentences, it is necessary to have information on all prior convictions that contributed to the previous sentence. After sentence is imposed on this most serious offense, the court should then impose sentence individually on each of the remaining offenses pending before it, indicating after each sentence whether it is to be served concurrently or consecutively to the previous sentence(s).

Pursuant to Pa.R.Crim.P. Rule 705 (Imposition of Sentence), when more than one sentence is imposed, or when a sentence is imposed on a defendant who is sentenced for another offense, the court must state whether the sentences shall run concurrently or consecutively; if concurrent, the sentence shall commence from the date of imposition unless otherwise ordered by the court. When imposing a sentence to imprisonment, the court shall state the date the sentence is to commence. "There is simply no statutory provision which would permit a sentencing judge to either commence a second sentence retroactively, *i.e.*, to have it commence at the same time as a prior sentence, or to provide credit for the time served on a prior unrelated charge." *Wassell v. Com.*, 658 A.2d 466 (Pa.Cmwlth, 1995). Relevant case law requires that consecutive sentences be automatically aggregated, even if imposed by different judges, even if imposed by different courts, and even if imposed at different times, and that, where the total aggregate sentence carries a maximum of two years or more, exclusive parole authority lies with the Pennsylvania Board of Probation and Parole. *Com. v. Miller*, 770 A.2d 362 (PA Super., 2001).

There are two instances under the guidelines in which concurrent or consecutive sentences come into play. In the first instance, the court may consider one or more of the sentencing alternatives and may impose them concurrently or consecutively for a given offense. The court must consider the sentencing guidelines in fashioning this sentence, and the total sentence imposed may not exceed the statutory maximum of the conviction offense. In the second instance, whenever more than one sentence is imposed at the same time, or a sentence is imposed on an offender already sentenced for another offense, the court must impose the new sentence either concurrently or consecutively to the other. The court's decision to impose sentences for multiple offenses concurrently or consecutively has a significant impact on a future Prior Record Score.

Prior to 1997, the fact that a sentence was imposed concurrently or consecutively to another sentence had no bearing on the Prior Record Score. However, under the 5th Edition guidelines, when a sentence was imposed or served totally concurrent to any other sentence, only the more serious of the two offenses was counted in the Prior Record Score. The most serious offense was that offense assigned the highest number of points for Prior Record Score purposes. Under the 6th Edition guidelines, the most serious offense of each judicial proceeding, and any other offense for which a sentence of confinement or supervision is imposed consecutive to a sentence for another offense in the judicial proceeding, is included in the calculation of the Prior Record Score.

In most cases under the 6th Edition guidelines, if the sentence for an offense is imposed concurrently to the sentence for another offense in the judicial proceeding, it is not counted in the Prior Record Score; if imposed consecutively to a sentence for another offense in the judicial proceeding, and the sentence includes confinement or supervision, it is included in the Prior Record Score. Exceptions to this policy include stand-alone offenses (e.g., a single offense in a judicial proceeding) and the most serious offense of a judicial proceeding, both of which always count in the Prior Record Score; and consecutive sentences that do not include confinement or supervision (e.g., guilt without further penalty, fines, restitution, costs, fees), which do not count in the Prior Record Score.

The requirement for courts to use *SGS Web* for the preparation and submission of guideline sentence forms, the development of the *SGS Web* application to provide accurate information on the details of the sentence for each offense of a judicial proceeding, and the ability of authorized *SGS Web* users to obtain previous sentencing information for preparation of prior record scores, should substantially improve compliance with and implementation of this policy.

§303.5 (c)
UN-SENTENCED CONVICTIONS

GUIDELINE TEXT:

§303.5 (c) Un-sentenced convictions. If no sentence has yet to be imposed on an offense, the offense shall not be counted in the calculation of the Prior Record Score.

PRIOR GUIDELINES:

This is a new provision in the guidelines consistent with recent efforts to consider each offense separately for purposes of prior record score calculation and sentence recommendation.

DESCRIPTION:

- * It is important that all possible information regarding previous convictions and sentences, including that available through *SGS Web*, be gathered in order for the court to make a correct determination.
- * The definition and description of prior conviction is found at §303.8(a). In order for a previous offense to be included in the calculation of the Prior Record Score, the commission of and conviction for the previous offense must occur prior to the commission of the current offense.
- * Under the 6th Edition guidelines, in order for a previous offense to be included in the calculation of the Prior Record Score, a sentence for the previous offense must be imposed prior to the sentence for the current offense. However, the court may consider such previous convictions at sentencing (see §303.5(d)).
- * If a sentence for a previous offense(s) was imposed prior to the sentence for the current offense, but the details of the previous sentence are unknown, the most serious offense of the previous judicial proceeding is included in the calculation of the Prior Record Score.
- * Considering together this policy and that found at §303.8 (a), the following criteria must be met in order for a prior conviction or adjudication to be included in the calculation of the prior record score: (a) the previous offense must have been committed prior to the current offense; (b) the conviction on the prior offense must have occurred prior to the commission of the current offense; and (c) the sentence for the previous offense must have been imposed prior to the sentence for the current offense. However, the court may consider prior adjudications or convictions not included in the calculation of the prior record score, along with any other legally permissible factors, when imposing a sentence (see §303.5(d)).

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

The Commission encourages courts to obtain all possible information on prior convictions as part of its fact-finding role. If necessary, the court may wish to adopt local policies to deal with incomplete information relating to prior convictions and sentences. Whenever a question exists regarding prior convictions, the court is required to make a determination based upon a preponderance of the evidence, the same standard of proof used for all sentencing issues. Detailed information on sentences reported via *SGS Web* is available to the court to assist in this determination.

The sentencing guidelines provide that any offense resulting in a conviction prior to the commission of the current offense should be included in the calculation of the prior record score. However, both the 5th and 6th Edition guidelines contain prior record score policies that take into account information on the nature of the previous sentence

imposed. Although previous un-sentenced convictions are not included in the calculation of the prior record score under the 6th Edition guidelines, they may nonetheless be considered by the court at sentencing.

§303.5 (d)
ADEQUACY OF THE PRIOR RECORD SCORE

GUIDELINE TEXT:

§303.5 (d) Adequacy of the Prior Record Score. The court may consider at sentencing previous convictions, juvenile adjudications or dispositions not counted in the calculation of the Prior Record Score, in addition to other factors deemed appropriate by the court.

PRIOR GUIDELINES:

This is a new provision in the guidelines consistent with recent efforts to consider each offense separately for purposes of prior record score calculation and sentence recommendation.

DESCRIPTION:

- * It is important that all possible information regarding previous convictions and sentences, including that available through *SGS Web*, be gathered in order for the court to make a correct determination.
- * The definition and description of prior conviction is found at §303.8(a). In order for a previous offense to be included in the calculation of the Prior Record Score, the commission of and conviction for the previous offense must occur prior to the commission of the current offense.
- * Under the 6th Edition guidelines, in order for a previous offense to be included in the calculation of the Prior Record Score, a sentence for the previous offense must be imposed prior to the sentence for the current offense.
- * The court may also consider any other legally permissible factors not otherwise included in the calculation of the Prior Record Score. These include, but are not limited to, previous convictions that are not reflected in the Prior Record Score (e.g., one prior ‘Other misdemeanor’ conviction; numerous prior misdemeanor and felony 3 convictions beyond the PRS 5 limits; numerous prior F1 and F2 convictions beyond PRS RFEL limits, juvenile adjudications not otherwise included in the calculation of the prior record score, etc.).

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

The Commission encourages courts to obtain all possible information on prior convictions as part of its fact-finding role. If necessary, the court may wish to adopt local policies to deal with incomplete information relating to prior convictions and sentences. Whenever a question exists regarding prior convictions, the court is required to make a determination based upon a preponderance of the evidence, the same standard of proof used for all sentencing issues. Detailed information on sentences reported via *SGS Web* is available to the court to assist in this determination.

The sentencing guidelines provide that any offense resulting in a conviction prior to the commission of the current offense should be included in the calculation of the prior record score. However, both the 5th and 6th Edition guidelines contain prior record score policies that take into account information on the nature of the previous sentence imposed. Although previous un-sentenced convictions are not included in the calculation of the prior record score under the 6th Edition guidelines, they may nonetheless be considered by the court at sentencing. Additionally, prior sentenced convictions not adequately reflected in the Prior Record Score, and other legally permissible factors not otherwise considered in the guidelines, may be considered by the court. (Also see: *COMMENTARY*, § 303.4(a))

**§303.6 PRIOR RECORD SCORE
PRIOR JUVENILE ADJUDICATION**

**§303.6 (a)
JUVENILE ADJUDICATION CRITERIA**

GUIDELINE TEXT:

§303.6 Prior Record Score - prior juvenile adjudications.

(a) Juvenile adjudication criteria. Prior juvenile adjudications are counted in the Prior Record Score when the following criteria are met:

(1) The juvenile offense occurred on or after the offender's 14th birthday, and

(2) There was an express finding by the juvenile court that the adjudication was for a felony or one of the Misdemeanor 1 offenses listed in §303.7(a)(4).

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.6(a)).

DESCRIPTION:

- * Previous juvenile offenses that occurred prior to age 14 are excluded from the Prior Record Score.
- * Previous juvenile offenses for which there is no record of adjudication are excluded from the Prior Record Score.
- * Except for those Misdemeanor 1 offenses listed in §303.7(a)(4), previous juvenile misdemeanor offenses are excluded from the Prior Record Score.
- * If an offender is less than 28 years of age at the time of the current offense, all previous juvenile offenses not otherwise excluded are counted in the Prior Record Score pursuant to §303.6(b).
- * If an offender is 28 years of age or older at the time of the current offense, only the previous juvenile offenses listed in §303.7(a)(1) and not otherwise excluded are counted in the Prior Record Score pursuant to §303.6(b). Also see Lapsing of Juvenile Adjudications (§303.6(c)).
- * The Juvenile Act provides that juvenile adjudications may be considered in criminal proceedings (see 42 Pa.C.S. §6354(b)(4)).

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

The Commission decided that some juvenile adjudications of delinquency should be included in the Prior Record Score. It concluded that it would be inequitable for defendants with serious juvenile records to be treated the same as defendants who were first offenders. This decision was made after extensive discussions with the Juvenile Court Judges Commission, individual judges, legislators, attorneys and other criminal justice professionals, and after several public hearings.

The juvenile adjudications of delinquency which may be counted in the Prior Record Score are strictly limited. The Commission concluded that it would be unfair to count prior juvenile crimes committed by the offender when the juvenile was very young, or when the juvenile crimes were not very serious. In addition, there was testimony at the Commission's public hearings that some juvenile adjudication orders are ambiguous. Apparently, in some jurisdictions the petitions alleging delinquency contain numerous charges and the adjudication order does not make clear which of these offenses the court found the juvenile had committed.

To accommodate these concerns, the guidelines require that adjudication of delinquency orders must expressly have found that the juvenile had committed a felony or one of the misdemeanors listed in §303.7(a)(4). This list has been expanded from previous editions of the guidelines. Further, the delinquent act must have occurred on or after the defendant's 14th birthday. A previous requirement that the current adult offense must be a felony was removed consistent with amendments to 42 Pa. C.S. §6354. The inclusion of prior juvenile adjudications of delinquency in the guidelines was upheld in *Com. v. Woodward*, 368 Pa. Super. 363, 534 A.2d 478 (1987).

During the comprehensive review conducted prior to the adoption of the 6th Edition guidelines, the Commission received a recommendation from the Defender Association of Philadelphia that previous juvenile adjudications of delinquency be removed from the calculation of the prior record score, although these previous adjudications could be considered by the court in considering an appropriate sentence. The Commission had received similar recommendations from others, with many concerned that the varying practices in Juvenile Courts from county to county could lead to the inconsistent consideration of previous adjudications in the prior record score calculation. The Commission consulted with the Juvenile Court Judges Commission (JCJC) and solicited comments from legislators and practitioners. The JCJC voted unanimously to recommend that the Commission make no modification to the existing (5th Edition) policy, and offered their assistance in encouraging courts to enter specific findings regarding the particular offense and counts thereof which an alleged delinquent child is found to have committed. Subsequently, 42 Pa.C.S. §6341(b) was amended to require juvenile courts to "... specify the particular offenses including the grading and counts thereof which the child is found to have committed." The House Judiciary Committee also wrote to the Commission cautioning against a change in policy. The Commission voted to retain the existing policy.

§303.6 (b)
MOST SERIOUS JUVENILE ADJUDICATION

GUIDELINE TEXT:

§303.6 (b) Only the most serious juvenile adjudication of each prior disposition is counted in the Prior Record Score. No other prior juvenile adjudication shall be counted in the Prior Record Score.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.6(b)).

DESCRIPTION:

- * Only the most serious adjudicated offense from each Juvenile Court Disposition hearing is counted in the Prior Record Score.
- * The most serious adjudicated offense is that offense assigned the most points under §303.7.
- * Certain previous juvenile offenses are excluded from the Prior Record Score (see §303.6(a)).

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

The Commission decided that only the most serious offense of each Juvenile Court Disposition should be included in the Prior Record Score. By limiting the use of previous juvenile adjudications in this manner, it most closely reflected the pattern of sentencing in Criminal Court where most less serious convictions during a Judicial Proceeding are sentenced concurrently to the most serious offense of the proceeding.

In earlier editions of the guidelines, only the most serious juvenile adjudication or adult conviction of each prior transaction was counted in the Prior Record Score. With the elimination of transaction as a means of grouping offenses under these guidelines in 1997, the Commission developed a policy based on a totally concurrent sentence for counting prior adult convictions. However, since dispositions in Juvenile Court differ significantly from sentencing procedures in Criminal Court, this new policy for juvenile adjudications was developed. The streamlining of the prior record score policies in 2005 to eliminate 'totally concurrent' and to always consider the most serious offense of each judicial proceeding provides greater consistency with the practice of considering only the most serious adjudication for a juvenile court dispositional hearing.

§303.6 (c)
LAPSING OF JUVENILE ADJUDICATIONS

GUIDELINE TEXT:

§303.6 (c) Lapsing of juvenile adjudications. Prior juvenile adjudications for four point offenses listed in §303.7(a)(1) shall always be included in the Prior Record Score, provided the criteria in subsection (a) above are met:

(1) All other juvenile adjudications not identified above in subsection (a) lapse and shall not be counted in the Prior Record Score if the offender was 28 years of age or older at the time the current offense was committed.

(2) Nothing in this section shall prevent the court from considering lapsed prior adjudications at the time of sentencing.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.6).

DESCRIPTION:

- * Completed crimes of violence and certain other serious offenses have been assigned 4 points each in the Prior Record Score. Prior adjudications for these offenses always count in the Prior Record Score when the criteria in §303.6(a), relating to juvenile adjudication criteria, are met.
- * If the offender is age 28 or older at the time the current offense is committed, no other prior adjudications count in the Prior Record Score.
- * The lapsing provision applies only to certain juvenile adjudications. The lapsing provision does not apply to adult convictions.
- * Though lapsed adjudications do not count in the Prior Record Score, the judge may still consider them in the sentencing of offenders.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

The Commission policy on lapsing was adopted in 1994 for a variety of reasons. First, counties often do not have 'stale' juvenile records for defendants. The unavailability of records makes the scoring of prior juvenile adjudications haphazard and this introduces disparity. Second, it is often difficult to access juvenile adjudications across counties and rarely are they accessed across state lines. This also results in disparity. Third, the Commission had concern that stale juvenile adjudications are no longer relevant as a predictor of future criminal activity.

Support for this policy also came from those who utilize the sentencing guidelines. A Commission questionnaire conducted prior to the 1994 revisions found support (64% of respondents) for a juvenile lapsing provision. Furthermore, Commission data indicated that judges often stated that a stale prior record was a reason for mitigating a sentence.

The Commission originally proposed age 25 as an appropriate age for the lapsing provision. This was changed to age 28

to reflect the fact that juveniles can be under the jurisdiction of juvenile authorities until age 21. Age 28 would allow for the seven year period to be consistent with other recidivist statutes (e.g. 75 Pa.C.S. §3731, relating to mandatory penalties for Driving Under the Influence and 42 Pa. C.S. §9714, relating to mandatory penalties for repeat violent offenders).

**§303.7
PRIOR RECORD SCORE
GUIDELINE POINTS SCORING**

**§303.7 (a)
SCORING OF PRIOR CONVICTIONS AND ADJUDICATIONS**

GUIDELINE TEXT:

§303.7 (a) (a) Scoring of prior convictions and adjudications is provided below and in the listing of offenses at §303.15:

- (1) Four Point Offenses.** Four points are added for each prior conviction or adjudication for the following offenses:
- Murder, and attempt, solicitation or conspiracy to commit Murder**
 - All other completed crimes of violence, as defined in 42 Pa.C.S. §9714(g), excluding inchoates.**
 - Murder of an Unborn Child, and attempt, solicitation or conspiracy to commit Murder of Unborn Child**
 - Offenses with OGS 11 or greater, excluding inchoates and Violations of the Controlled Substance Act**
 - Ethnic Intimidation to any Felony 1 offense**
- (2) Three Point Offenses.** Three points are added for each prior conviction or adjudication for the following offenses:
- All other Felony 1 offenses not listed in §303.7 (a)(1).**
 - All other inchoates to offenses listed in §303.7 (a)(1).**
 - Violation of 35 P.S. §§780-113(a)(12)(14) or (30) involving 50 grams or more, including inchoates involving 50 grams or more.**
- (3) Two Point Offenses.** Two points are added for each prior conviction or adjudication for the following offenses:
- All other Felony 2 offenses not listed in §303.7 (a)(1) or (a)(2).**
 - All felony drug violations not listed in §303.7 (a)(2), including inchoates.**
- (4) One Point Offenses.** One point is added for each prior conviction or adjudication for the following offenses:
- All other felony offenses not listed in §303.7 (a)(1), (a)(2) or (a)(3).**
 - Any of the following Misdemeanor 1 offenses that involve weapons:**
 - Possessing Instruments of Crime (possession of a weapon)**
 - Prohibited Offensive Weapons**
 - Use or Possession of Electric or Electronic Incapacitation Device**
 - Possession of Weapon on School Property**
 - Possession of Firearm or Other Dangerous Weapon in Court Facility**
 - Violations of the Pennsylvania Uniform Firearms Act**
 - Any of the following Misdemeanor 1 offenses that involve death or danger to children:**
 - Involuntary Manslaughter**
 - Simple Assault (against child under 12 years of age by adult 21 years of age or older)**
 - Luring a Child into a Vehicle**
 - Indecent Assault ([involving minors] complainant is less than 13 years of age)**
 - Indecent Exposure (persons present are less than age 16 [present])**

**Endangering Welfare of Children
Dealing in Infant Children
Corruption of Minors (of a sexual nature)
Unlawful contact or communication with minor
Driving Under the Influence of Alcohol or Controlled Substance, except for a first offense.**

(5) Other Misdemeanor Offenses. All other misdemeanor offenses are designated by an “m” in the offense listing at §303.15, and are scored as follows:

(i) One point is added if the offender was previously convicted of two or three misdemeanors.

(ii) Two points are added if the offender was previously convicted of four to six misdemeanors.

(iii) Three points are added if the offender was previously convicted of seven or more misdemeanors.

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.7(a)). The listing in this section and in section 303.15 has been updated to reflect any changes in prior record point assignments.

DESCRIPTION:

- * The point value assigned to each offense is found in the listing under §303.15.
- * The specific value assigned to each offense as describe under §303.15 applies whether the offense is included as a juvenile adjudication or an adult conviction. The standards governing prior juvenile adjudications are found in §303.6. The standards governing prior adult convictions are found in §303.5.
- * Murder and murder of an unborn child, and attempts, solicitation, or conspiracy to these offenses, are assigned four points, as is Ethnic intimidation to a felony of the first degree, and any completed offense which is a felony of the first degree with an OGS 11 or greater.
- * Any completed crime of violence, excluding inchoates, is also assigned four points. The crimes of violence, as defined in 42 Pa.C.S. §9714(g), include:
 - Murder of the Third Degree;
 - Voluntary manslaughter;
 - Aggravated assault (F1);(cause SBI is assigned 4 points; attempt to cause SBI is assigned 3 points)
 - Rape;
 - Involuntary deviate sexual intercourse;
 - Aggravated indecent assault;
 - Incest;
 - Sexual assault;
 - Arson (F1);
 - Kidnapping;
 - Burglary (OGS 9);
 - Robbery (F1);
 - Robbery of a motor vehicle.

- * Unless otherwise assigned a higher point value, a felony of the first degree is assigned three points, a felony of the second degree is assigned two points, and a felony of the third degree is assigned one point.
- * Felony drug violations with an OGS 10 or greater are assigned three points in the Prior Record Score; all other felony drug violations are assigned two points. The same number of points are assigned to an inchoate to a drug offense as assigned to the completed drug offense.
- * Certain misdemeanors of the first degree are assigned one point in the Prior Record Score. These include Misdemeanor 1 offenses that involve weapons, death or danger to children, and DUI (see further discussion of DUI below).
- * Under the 5th Edition guidelines, only a third or subsequent adjudication or conviction for driving under the influence (DUI), a Misdemeanor 1 offense, was assigned one point in the Prior Record Score. A first or second lifetime adjudication or conviction for DUI, a Misdemeanor 2 offense, was assigned points as an Other Misdemeanor based on the formula below.
- * Under the 6th Edition guidelines, only a first lifetime adjudication or conviction for DUI or equivalent offense in another jurisdiction is assigned points as an Other Misdemeanor based on the formula below. All other previous adjudications or convictions for DUI or equivalent offenses in another jurisdiction are assigned one point in the Prior Record Score. Under Pennsylvania statute, these subsequent DUI convictions may be classified as M1, M2, or ungraded misdemeanors.
- * Other misdemeanor convictions are assigned points based on the following formula:
 - 1 prior misdemeanor = 0 points
 - 2-3 prior misdemeanors = 1 point
 - 4-6 prior misdemeanors = 2 points
 - 7 or more prior misdemeanors = 3 points

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

Because different prior offenses have different levels of seriousness, the Prior Record Score points assigned to a crime is based on the statutory grade of the crime and the Commission's view of the harmfulness of a typical instance of the crime. So that the number of points assigned a prior conviction more closely reflects the seriousness of that previous offense, the Commission decided to link the prior record points to the OGS assignments. Therefore, an offense which is subcategorized for OGS purposes may have multiple point values for Prior Record Score purposes. As an example, a prior Burglary conviction may be assigned two, three or four points in the Prior Record Score depending on the circumstances surrounding the Burglary.

A single comprehensive list of prior record point assignments, included as part of §303.15, was developed to provide clarity for specific assignments. This list is incorporated into the *SGS Web* application for the electronic preparation of the guideline sentence form. The Commission has attempted through recent modifications of the guidelines to provide greater consistency between the offense gravity score assignments and the prior record point assignments. Generally, completed crimes of violence are assigned four points for Prior Record Score calculations; inchoates to Crimes of Violence, other Felony 1 offenses, certain other serious offenses and major drug offenses are assigned three points; all other Felony 2 offenses and other felony drug offenses are assigned two points; and all other felonies receive one point.

The listed Misdemeanor offenses are also assigned one point each. The Commission felt that these misdemeanors

were equal in seriousness to Felony 3 offenses that receive one point in the Prior Record Score. The M1 offenses listed, chosen due to the serious nature of the offenses, fall into two categories: M1 offenses involving weapons, and M1 offenses involving death or danger to children. The remaining one-point misdemeanors apply to Driving Under the Influence for all but the initial lifetime adjudication or conviction, resulting in a one-point assignment for an offense that could be an M1, M2 or ungraded misdemeanor. All other misdemeanors, including M2 or M3 weapons misdemeanors and the initial DUI, are designated as “Other Misdemeanors” and scored collectively based upon the total number of misdemeanors involved. Misdemeanors other than those listed in §303.7(a)(4) are assigned one point for two or three prior convictions, two points for four to six prior convictions, and three points for seven or more prior convictions. The inclusion of all prior misdemeanor convictions in the Prior Record Score has been upheld by the Pennsylvania Supreme Court in *Com. v. Samuels*, 516 Pa. 365, 532 A.2d 404 (1987), *reversing* 354 Pa. Super. 128, 511 A.2d 221 (1986). The guidelines contain a limit of three points for non-weapons misdemeanors because, in the Commission's view, even a long record of comparatively minor offenses does not equal in seriousness a record of violent crime. No points are assigned if the defendant has been previously convicted of only one prior misdemeanor. This scoring system avoids having to assign one point to both a prior Felony 3 conviction and a prior non-weapons misdemeanor conviction.

The 6th Edition guidelines provide new categorical definitions for certain point assignments, and contain several new prior record point assignments. As one example of a categorical change, instead of listing all completed crimes of violence as four point offenses in the text of the guidelines, the Commission has replaced this list with the category ‘completed crimes of violence.’ As a result, if the General Assembly enacts legislation that expands the list of crimes of violence, as it did following the enactment of the 5th Edition guidelines by adding sexual assault, aggravated indecent assault, and incest, the new offenses are automatically assigned four points. Two other examples of categorical definitions under the 6th Edition guidelines include: the assignment of four points to all prior adjudications or convictions for offenses with a current OGS 11 or greater, excluding inchoates and drug felonies; and the assignment of one point to all prior DUI adjudications or convictions, except for the individual’s first DUI.

A number of changes in point assignments resulted from enactment of new legislation or amendments to existing statutes, while other changes were made as part of the Commission’s comprehensive review of OGS and prior record point assignments. Some of the changes include:

- Increases to four-point offenses, including: Murder of an Unborn Child, and attempt, solicitation or conspiracy to commit Murder of an Unborn Child; sexual assault; aggravated indecent assault; arson endangering persons (all F1); Robbery (all F1); Robbery of a motor vehicle (all F1); incest; and any other offenses with OGS 11 or greater, excluding inchoates and violations of the Controlled Substance Act.
- Increases to one-point offenses, including: use or possession of electric or electronic incapacitation device (M1); weapons on school property; possession of firearm or other dangerous weapon in court facility (M1); possession of firearm with altered manufacturer’s number; unlawful contact or communication with minor; driving under the influence of alcohol or controlled substance, except for the first offense in a lifetime.
- The assignments for possessing instruments of crime (criminal instrument, M1) was reduced to Other Misdemeanor; possessing instruments of crime (weapon, M1) retains the one-point assignment.

§303.8
PRIOR RECORD SCORE
MISCELLANEOUS

§303.8 (a)
PRIOR CONVICTIONS AND ADJUDICATIONS OF DELINQUENCY

GUIDELINE TEXT:

§303.8 (a) Prior convictions and adjudications of delinquency. A prior conviction means "previously convicted" as defined in 42 Pa. C.S. §2154(a)(2). A prior adjudication of delinquency means "previously adjudicated delinquent" as defined in 42 Pa. C.S. §2154(a)(2). In order for an offense to be considered in the Prior Record Score, both the commission of and conviction for the previous offense must occur before the commission of the current offense.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.8(a)).

DESCRIPTION:

- * This subsection refers the reader to the statutory definition of "previously convicted or adjudicated delinquent". This definition was contained in Act 1986, No. 165, Section 3, P.L. 1521 (effective February 9, 1987), and is quoted below.
- * The statutory definition states that: (The guidelines must) "Specify a range of sentences of increased severity for defendants previously convicted of or adjudicated delinquent for one or more misdemeanor or felony offenses committed prior to the current offense. For purposes of this section, "previously convicted or adjudicated delinquent" shall include any finding of guilt or adjudication of delinquency whether or not sentence has been imposed or disposition ordered prior to the commission of the current offense." (42 Pa. C.S. §2154(a)(2))
- * Considering together this policy and that found at §303.5 (c), the following criteria must be met in order for a prior conviction or adjudication to be included in the calculation of the prior record score: (a) the previous offense must have been committed prior to the current offense; (b) the conviction on the prior offense must have occurred prior to the commission of the current offense; and (c) the sentence for the previous offense must have been imposed prior to the sentence for the current offense. However, the court may consider prior adjudications or convictions not included in the calculation of the prior record score, along with any other legally permissible factors, when imposing a sentence (see §303.5(d)).
- * This interpretation of "previously convicted" does not allow for stacking (i.e. the counting of prior offenses in the Prior Record Score when the offender is convicted or pleads guilty of those prior offenses at the same time), except sentenced under 18 Pa.C.S. §7508 (Drug trafficking).
- * A prior conviction counts in the Prior Record Score when an appeal before any court is pending.
- * An offense which did not result in a conviction is not included in the Prior Record Score.
- * A withdrawn plea which has been accepted by the court is not included in the Prior Record Score.
- * A prior conviction which was pardoned or expunged is not included in the Prior Record Score.

GUIDELINE FORM/SGS WEB APPLICATION:

* See §303.4(a).

COMMENTARY:

The 1982 guidelines' definition of "prior conviction", which was amended in 1986 to make explicit reference to prior adjudications, was interpreted in *Com. v. Wolfe*, 349 Pa. Super. 415, 503 A.2d 435, 439 (1986) and *Com. v. Mourar*, 349 Pa. Super. 583, 504 A.2d 197 (1986). In these cases, the Superior Court held that a prior crime must have been sentenced before the current crime was committed in order for the prior crime to count in the Prior Record Score.

The statutory definition contained in 42 Pa. C.S. §2154(a)(2), quoted above, was explicitly designed to nullify the holdings of *Wolfe* and *Mourar*. Prior to the Superior Court decision in *Eyster*, the Commission interpretation of the "previously convicted" language relied upon legislative intent, which was designed to require that all crimes count in the Prior Record Score when: (a) they occurred before the current offense was committed; and (b) there was a finding of guilt on the prior offense before the current offense was sentenced. The Commission was aware that there was an alternative interpretation of "previously convicted" and believed that the courts would ultimately decide the meaning of the statutory language, which they did in *Eyster*.

Under the 5th Edition guidelines, the *Description* section contained a statement that 'uncounseled convictions' were not to be counted in the prior record score. The Commission reviewed and removed this statement from the 6th Edition guidelines, recognizing that the many *pro se* cases resulting in convictions should be counted in the prior record score, and that the court has an obligation under the Rules of Criminal Procedure (Rule 121) to ascertain from the defendant on the record that the waiver of counsel was made knowingly, voluntarily, and intelligently

§303.8 (b)
INCHOATE OFFENSES.

GUIDELINE TEXT:

(b) Inchoate offenses. Unless otherwise provided in §303.7 or §303.15, a prior conviction or adjudication of delinquency for criminal attempt, criminal solicitation or criminal conspiracy is scored under §303.7 based upon the grade of the inchoate offense.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.8(b)).

DESCRIPTION:

- * This section assigns points for the Prior Record Score calculation for inchoate offenses. The values for some of these offenses are also found in §303.15.
- * In order to determine the Prior Record Score for an attempt, conspiracy, or solicitation offense, it is necessary to know what offense was attempted, conspired to or solicited.
- * An inchoate to murder is assigned four points in the Prior Record Score
- * An inchoate to any of the following offenses is assigned three points in the Prior Record Score:
 - Crime of violence (four point offenses)
 - (Aggravated Assault, attempt to cause SBI, is assigned three points)
 - Any other F1 offense not listed
 - (Aggravated Assault of an Unborn Child, attempt to cause SBI, is assigned three points)
 - 35P.S. §§780-113(a)(12)(14)(30) involving 50 grams or more
- * Aggravated Assault of an Unborn Child (18 Pa. C.S. §2606, F1) includes attempt to cause serious bodily injury in the statutory definition. The Commission subcategorized this offense consistent with inchoate OGS and PRS policies. As a result, aggravated assault of an unborn child causing serious bodily injury is assigned an OGS 11 and four prior record points; attempt to cause serious bodily injury, or any other inchoate to aggravated assault of an unborn child is assigned an OGS 10, and three prior record points.
- * Aggravated Assault (18 Pa. C.S. §2702(a)(1) and (2), a Felony 1) includes attempt to cause serious bodily injury in the statutory definition. The Commission subcategorized this offense consistent with inchoate OGS and PRS policies. As a result, aggravated assault causing serious bodily injury is assigned an OGS 11 and four prior record points; attempt to cause serious bodily injury, or any other inchoate to F1 aggravated assault, is assigned an OGS 10, and three prior record points. The original text of the guidelines found in §303.15 incorrectly listed the prior record point value for attempt as four.
- * Aggravated Indecent Assault (18 Pa. C.S. §3125) is a Felony 1 if the victim is under 13 years of age; otherwise, it is a Felony 2. Consistent with OGS and PRS policies, an inchoate to F1 aggravated indecent assault is assigned an OGS 11 and three prior record points; an inchoate to F2 aggravated indecent assault is assigned an OGS 10 and three prior record points. The original text of the guidelines found in §303.15 failed to provide this differentiation based on the grade of the object offense.
- * An inchoate to any of the following offenses is assigned two points in the Prior Record Score:
 - Any other F2 offense not listed
 - Any other drug felony not listed

- * An inchoate to any of the Misdemeanor 1 offenses listed in §303.7(a)(4) is assigned one point in the Prior Record Score.
- * An inchoate to any other misdemeanor offense is scored pursuant to §303.7(a)(5).

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

This section assigns the Prior Record Score to inchoate or unfinished crimes. All inchoate offenses receive the same grade as the object offense. However, the Commission decided to assign a lower point value to certain previous inchoate offenses due to the inherent seriousness of a completed felony 1 offense that may not be present in an inchoate.

§303.8 (c)
ETHNIC INTIMIDATION

GUIDELINE TEXT:

§303.8 (c) Ethnic Intimidation. Unless otherwise provided in §303.7 or §303.15, a prior conviction or adjudication of delinquency for Ethnic Intimidation is scored under §303.7 based upon the grade of the Ethnic Intimidation.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.8(c)).

DESCRIPTION:

- * This section assigns points in the Prior Record Score for previous Ethnic Intimidation convictions based on the grade of the offense.
- * By statute (18 Pa. C.S. §2710 (a)) "a person commits the offense of ethnic intimidation if, with malicious intention toward the actual or perceived race, color, religion, national origin, ancestry, mental or physical disability, sexual orientation, gender or gender identity of another individual or group of individuals, he commits an offense under any other provision of this article (Article B) or under Chapter 33 (relating to arson, criminal mischief and other property destruction) exclusive of section 3307 (relating to institutional vandalism) or under section 3503 (relating to criminal trespass) with respect to such individual or his or her property or with respect to one or more members of such group to their property."
- * The offender must be convicted of one of the offenses in the sections listed above in order to also be convicted of Ethnic Intimidation.
- * Grading of Ethnic Intimidation is based upon the statutory classification of the offense that involved the Ethnic Intimidation. By statute, (18 Pa. C.S. §2710 (b)) "an offense under this section (Ethnic Intimidation) shall be classified as a misdemeanor of the third degree if the other offense is classified as a summary offense. Otherwise, an offense under this section (Ethnic Intimidation) shall be classified one degree higher in the classification specified in section 106 (relating to classes of offenses) than the classification of the other offense."
- * It is necessary to know what offense was involved in the Ethnic Intimidation in order to determine the points assigned in the Prior Record Score for the Ethnic Intimidation.
- * Ethnic Intimidation to an F1 offense is assigned four points in the Prior Record Score
- * Ethnic Intimidation to an F2 offense is assigned three points in the Prior Record Score.
- * Ethnic Intimidation to an F3 offense is assigned two points in the Prior Record Score.
- * Ethnic Intimidation to an M1 offense is assigned one point in the Prior Record Score.
- * Ethnic Intimidation to any other misdemeanor or summary offense is scored pursuant to §303.7(a)(5).

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

The Commission specifically assigns points in the Prior Record Score for Ethnic Intimidation based on the grade of the Ethnic Intimidation. Ethnic Intimidation is assigned a grade one degree higher than the object offense. This was done to ensure that points assigned in the Prior Record Score for Ethnic Intimidation reflect the increased culpability of the defendant and the increased seriousness of the victimization.

§303.8 (d)
FORMER PENNSYLVANIA OFFENSES

GUIDELINE TEXT:

§303.8 (d) Former Pennsylvania offenses.

(1) A prior conviction or adjudication of delinquency under former Pennsylvania law is scored as a conviction for the current equivalent Pennsylvania offense.

(2) When there is no current equivalent Pennsylvania offense, prior convictions or adjudications of delinquency are scored under §303.7 based on the grade of the offense. When a prior conviction or adjudication of delinquency was for a felony, but the grade of the felony is unknown, it shall be treated as a Felony 3. When a prior conviction was for a misdemeanor, but the grade of the misdemeanor is unknown, it shall be treated as a Misdemeanor 3. When it cannot be determined if the prior conviction was a felony or a misdemeanor, it shall be treated as a Misdemeanor 3. When a prior conviction is for a crime which has a summary grade, and the grade of the conviction is unknown, the prior conviction shall not be counted in the Prior Record Score.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.8(d)).

DESCRIPTION:

- * This subsection provides rules for scoring prior convictions and adjudications of delinquency for a Pennsylvania offense which has since been repealed, re-defined, re-graded or for which the maximum penalty has been changed.
- * Prior convictions or adjudications under this section are scored as follows:
 - (a) where a current equivalent offense exists in Pennsylvania at the time of the current offense, score the prior offense the same as a conviction or adjudication for the current equivalent offense;
 - (b) where there is no equivalent crime in effect in Pennsylvania at the time of the current offense, score the prior offense based on the grading of the prior offense.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

This section requires a former Pennsylvania offense which has been re-graded by the legislature after the defendant committed his prior crime to be given points under the new, higher scoring. This does not mean that the prior offense was a conviction for a crime of the higher grade, or that it has at some point been transformed into a conviction for the higher grade offense. The prior conviction was and remains for the grade of crime at the time of conviction. However, a defendant does not have a right to have a prior conviction treated with any particular weight by a court when sentencing a subsequent offense. The Commission believes that the prior offense should be given the weight in the Prior Record Score which the legislature and the Commission now believe is proper for the crime. The Commission chose to address this issue by the general rule contained in this subsection.

§303.8 (e)
MISGRADED OFFENSE

GUIDELINE TEXT:

§303.8 (e) A prior conviction or adjudication of delinquency for an offense which was misgraded is scored as a conviction for the current equivalent Pennsylvania offense.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.8(e)).

DESCRIPTION:

- * When the grade of a prior adjudication or conviction is incorrect, and the grade used is not provided for in statute for that offense, the grade of the current equivalent offense is used to determine the points assigned in the Prior Record Score.
- * When the grade of a prior adjudication or conviction is incorrect, but the grade used is provided for in statute for that offense, the grade used in the prior adjudication or conviction is used to determine the points assigned in the Prior Record Score.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

This section provides a policy for assigning points in the Prior Record Score for prior mis-graded offenses. The Commission's general policy requires use of the grade provided, even if it appears incorrect, since the trial court was in the best position to determine the appropriate grade and the court's decision should not be undermined. However, in cases where the grade assigned to a prior adjudication or conviction does not exist, the Commission thought it inappropriate to legitimize such an error by including a non-existent offense in the Prior Record Score. As a result, the Commission adopted a new policy which requires the use of the current equivalent grade in place of the previous improper grade when determining the Prior Record Score.

§303.8 (f)
OUT-OF-STATE, FEDERAL OR FOREIGN OFFENSES

GUIDELINE TEXT:

§303.8 (f) Out-of-state, federal or foreign offenses.

- (1) **An out-of-state, federal or foreign conviction or adjudication of delinquency is scored as a conviction for the current equivalent Pennsylvania offense.**
- (2) **A court-martial for a criminal offense under the Uniform Code of Military Justice is considered a federal conviction and is scored as a conviction for the current equivalent Pennsylvania offense. Non-judicial punishments or administrative actions (e.g., Article 15, Article 134) which are not convictions shall not be counted in the Prior Record Score.**
- (3) **When there is no current equivalent Pennsylvania offense, determine the current equivalent Pennsylvania grade of the offense based on the maximum sentence permitted, and then apply §303.8(d)(2).**

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.8(f)). The text of this section was amended to incorporate language concerning court-martial for a criminal offense previously contained in the *Description* section of the *Implementation Manual*.

DESCRIPTION:

- * This subsection provides rules for scoring prior adult convictions and adjudications of delinquency from a foreign jurisdiction, including federal court, courts of another state, military courts and courts of other countries.
- * Prior convictions or adjudications under this section are scored as follows:
 - (a) where a current equivalent offense exists in Pennsylvania at the time of the current offense, score the prior offense the same as a conviction or adjudication for the current equivalent offense;
 - (b) where there is no equivalent crime in effect in Pennsylvania at the time of the current offense, score the prior offense based on the grading of the prior offense. Use the maximum sentence permitted for the offense in the foreign jurisdiction to determine the current equivalent Pennsylvania grade.
- * Under the Uniform Code of Military Justice, a court-martial for a criminal offense is a federal conviction and as such should be included in the prior record score. However, non-judicial punishments or administrative actions (e.g. -- Article 15, Article 134) which are not convictions should not be included in the prior record score.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

Fairness requires that the Prior Record Score include convictions and adjudications of delinquency from other states and from the United States courts, even though a rule on this topic will sometimes be cumbersome to apply. To do

otherwise would have treated some defendants as first offenders merely because they had committed their crimes in another jurisdiction. In addition, failing to provide a rule would have resulted in differing interpretations and inconsistency about how these prior convictions and adjudications were considered.

The Commission originally considered: (1) using the grade of the offense in the jurisdiction of conviction; or (2) assigning the Pennsylvania grade that was equivalent to the maximum penalty for the crime in the foreign jurisdiction or which corresponded to the sentence actually imposed. There were earlier concerns that defendants would have scored differently depending on where they committed their past crimes, and so the Commission decided to use "the current equivalent Pennsylvania offense" as the standard for scoring. Whenever possible, prior foreign convictions and adjudications of delinquency are to be scored in the light of Pennsylvania law, although the Commission recognizes the difficulties in establishing the equivalence of statutes.

There are cases where there appears to be no current equivalent Pennsylvania offense because of the difference between federal and state jurisdiction, and because of the lack of correspondence among different states' ways of categorizing offenses (for example Minnesota's "criminal sexual misconduct", which may take the 1st, 2nd, 3rd, or 4th degrees, is substantially different from Pennsylvania's categorization of sex crimes).

The Commission considered it important to count all non-Pennsylvania crimes systematically, even when there was no obvious equivalent, and previously scored these crimes as non-weapons misdemeanors when there is no current equivalent Pennsylvania offense. This resulted in a low Prior Record Score for some offenders, especially those with uniquely federal offenses. As a result, in these circumstances the Commission decided to revise the previous policy and now assigns points in the Prior Record Score based on the current equivalent Pennsylvania grade for that prior conviction.

There are two situations where the text of the guidelines is silent, but the Commission believes that prior convictions should not be used in the Prior Record Score, even if there is a current equivalent Pennsylvania offense. Where the prior conviction was for a violation of a statute that has been held to be unconstitutional, that prior conviction should not be counted in the Prior Record Score. Further, where the prior conviction occurred in a foreign jurisdiction where even minimal legal rights are not observed, such a conviction should not be counted in the Prior Record Score.

The Commission added specific reference to court-martial for a criminal offense to the 6th Edition guidelines in response to a Superior Court opinion that referenced this provision.

§303.8 (g)
EXCLUDED OFFENSES

GUIDELINE TEXT:

§303.8 (g) Excluded offenses, charges and convictions. The following types of offenses, charges and convictions shall not be scored in the Prior Record Score:

- (1) Summary offenses, violations of local ordinances, direct or indirect contempt of court, violation of protection from abuse orders, and dispositions under Pa.R.Crim.P. Rules 300-320 (relating to accelerated rehabilitative disposition), 35 P.S. §780-117 (relating to probation without verdict) or 35 P.S. §780-118 (relating to disposition in lieu of trial or criminal punishment).**
- (2) A charge which is nolle prossed, dismissed, or on which a demurrer is sustained.**
- (3) Any prior conviction which contributed to an increase in the grade of a subsequent conviction, except for prior Driving Under the Influence of Alcohol or Controlled Substance convictions.**

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.7(f)). The text of this section was amended to incorporate reference to matters previously contained in the *Description* section of the *Implementation Manual*, including: direct and indirect contempt of court and violation of protection from abuse orders; and a charge which is nolle prossed, dismissed, or on which a demurrer is sustained. In addition, an exception to the non-scoring of subsequent convictions that contribute to an increase in the grade was added for prior DUI convictions. The citation relating to ARD was changed to reflect the re-numbering of the Rules of Criminal Procedures.

DESCRIPTION:

- * Only prior convictions and adjudications for misdemeanors and felonies can count in the Prior Record Score. (See §303.8(a)).
- * Summary offenses and violations of local ordinances are not counted in the Prior Record Score.
- * Probation without verdict, accelerated rehabilitative disposition, and disposition in lieu of trial or criminal punishment are not counted in the Prior Record Score.
- * Direct and indirect contempt of court and violations of protection from abuse orders are not counted in the prior record score, as they are not misdemeanor or felony convictions.
- * A charge which is nolle prossed, dismissed, or on which a demurrer is sustained, is not counted in the Prior Record Score.
- * With the exception of DUI adjudications and convictions, any prior conviction which is used to elevate the grade of a subsequent offense, whether the current offense or a previous offense, is not counted in the Prior Record Score. Under the 6th Edition guidelines, only a first lifetime adjudication or conviction for DUI or equivalent offense in another jurisdiction is assigned points as an Other Misdemeanor based on the formula above. All other previous adjudications or convictions for DUI or equivalent offenses in another jurisdiction are assigned one point in the Prior Record Score. Under Pennsylvania statute, these subsequent DUI convictions may be classified as M1, M2, or ungraded misdemeanors.

- * Any prior convictions in excess of that necessary to elevate the grade of a subsequent offense is counted in the Prior Record Score.
- * For retail theft, an F3, only two prior retail theft convictions are excluded from the Prior Record Score.
- * When the current offense is a violation of The Controlled Substance, Drug, Device and Cosmetic Act (CSDDCA), prior violations for the CSDDCA count in the Prior Record Score.
- * This subsection does not apply when the grade of the current offense is dependent on another factor associated with the crime and that factor is unrelated to the existence of any prior convictions.
- * Generally, the defendant must be given notice if prior convictions are to be used as the basis for the grade of the current offense or for increasing the maximum penalty of the current offense such as in cases of repeat retail thefts (*Com. v. Campbell*, 273 Pa. Super. 405, 417 A.2d 712 (1980); but see *Com. v. Harvin*, 346 Pa. Super. 575, 500 A.2d 98 (1985)).

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.4(a).

COMMENTARY:

Prior summary offenses and violations of local ordinances were excluded from the Prior Record Score calculations for several reasons. First, there was no specific directive to include them in the Prior Record Score. Second, many of these dispositions have little or no relevance to criminal conduct. Finally, it would have placed an unreasonable burden on the court to obtain for every case accurate and complete records of the defendant's summary and ordinance violations.

Prior dispositions such as those for diversion programs or contempt, which are not convictions or adjudications of delinquency, were excluded because there was no statutory authorization to include them. Further, some of these dispositions are expressly designed, by statute or by rule of criminal procedure, as non-punitive dispositions. The nature of these dispositions also caused the Commission to doubt its authority to include them in the Prior Record Score.

Exclusion of prior convictions that are used to elevate the statutory grading of an offense reflects the Commission's general policy against the "double counting" of factors against the defendant. For a few offenses, such as retail theft, certain prior convictions may increase the grade of a subsequent offense. Because both the Offense Gravity Score and the Prior Record Score reflect to some degree the grade of offenses, and an increase in the grade of a current or previous offense will generally increase the sentence recommendation, the offenses which contribute to an increase in the grade of a subsequent offense should not be counted again. Under earlier versions of the guidelines, previous offenses were only excluded when the current offense was affected; the policy was changed under the 5th Edition and retained under the 6th Edition to extend this policy so that any previous conviction that increases the grade of an offense, either a current or previous offense, would be excluded from calculation of the Prior Record Score. This change removed the 'double counting' of a conviction, which was the premise of the original policy. This policy focuses on increases in the grade rather than the maximum sentence.

The exception to this policy is a second or subsequent conviction for DUI, since the grading of the offense is linked to the number of prior convictions within the ten-year look-back period as well as the BAC or nature of the current offense. All prior lifetime DUI convictions are considered in the calculation of the prior record score.

Under the 5th Edition guidelines, the *Description* in this section contained a statement that 'uncounseled convictions' were not to be counted in the prior record score. The Commission reviewed and removed the statement from the 6th Edition guidelines, recognizing that the many *pro se* cases resulting in convictions should be counted in the prior

record score, and that the court has an obligation under the Rules of Criminal Procedure (Rule 121) to ascertain from the defendant on the record that the waiver of counsel was made knowingly, voluntarily, and intelligently.

§303.9
GUIDELINE SENTENCE RECOMMENDATION
-GENERAL-

§303.9 (a)
BASIC SENTENCE RECOMMENDATIONS

GUIDELINE TEXT:

§303.9 (a) Basic sentence recommendations. Guideline sentence recommendations are based on the Offense Gravity Score and Prior Record Score. In most cases, the sentence recommendations are found in the Basic Sentencing Matrix (§303.16). The Basic Sentencing Matrix specifies a range of sentences (i.e.-standard range) that shall be considered by the court for each combination of Offense Gravity Score (OGS) and Prior Record Score (PRS).

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.9(a)). The Basic Sentencing Matrix found at §303.16 was modified, replacing the 240 month upper limit of the recommended range for OGS 14 with SL (statutory limit), and eliminating an aggravated range recommendation for OGS 14.

DESCRIPTION:

- * The sentence recommendation is offense-based under this edition of the guidelines. Therefore, both the OGS and PRS are considered when determining the sentence recommendation for each conviction offense.
- * Under a number of previous editions of the guidelines, the PRS was only considered for the most serious offense of a transaction.
- * The Basic Sentencing Matrix at §303.16 provides a standard range recommendation for each combination of an OGS and PRS. This recommendation should be considered the most appropriate minimum sentence for most convictions.
- * Sentencing levels have been established in the guidelines based on the standard range recommendation (see §303.11).
- * When the court determines that there are aggravating or mitigating circumstances, it may impose an aggravated or mitigated sentence in accordance with §303.13. Imposition of an aggravated or mitigated sentence does not alter the sentencing level, since the level is based on the OGS and PRS.
- * When a deadly weapon is possessed or used during the commission of a crime, §303.9(b) applies.
- * When controlled substances are distributed to persons under 18 years of age or in a school zone in violation of 35 P.S. §780-114, §303.9(c) applies.

GUIDELINE FORM/SGS WEB APPLICATION:

- * **SENTENCE MODULE.** Both the sentence date and the start date of the sentence must be entered to begin the Sentence Module of *SGS Web*. The start date is either the same date as the date of sentence, or some date in the future; it cannot be a date prior to the date of sentencing.
- * Complete any remaining information relating to the judicial proceeding. Designate in the required field whether the offender is a sexually violent predator and whether a pre-sentence investigation (PSI) report

was completed. Enter the amounts of costs or fees imposed by the Court on the offender for the judicial proceeding. Enter the type of disposition and whether the same type of disposition applies to all offenses in the judicial proceeding.

- * All offenses entered as part of the Offense Module must be disposed of in some manner. Check boxes are provided for offenses that: merged for sentencing purposes; were dismissed; were referred to diversion programs (e.g., ARD, Probation Without Verdict/Section 17, or Disposition in Lieu of Trial/Section 18); or the sentencing alternative of Guilt Without Further Penalty.
- * Click the 'Save' button to continue and proceed to assign sentences to offenses. For each sentence imposed, click the 'Manage' button next to the offense. If credit for time served is known, it can be calculated on this screen; the length of credit time is required for 'time served' sentences. Enter any applicable fines and restitution and modify the type of disposition as needed.
- * For a state intermediate punishment sentence, click the large button which adds state intermediate punishment for all offenses in the judicial proceeding. Choosing this option removes all other sanctions and assigns a 24 month sentence to each offense. If also imposed by the court, a consecutive period of probation may then be added to specific offenses.
- * For sentences involving the remaining sentencing alternatives (confinement, county intermediate punishment, and probation), enter details as required. For confinement sentences, a minimum and maximum sentence must be reported. For county intermediate punishment and boot camp sentences, only eligible offenses may be entered. *SGS Web* conducts several validation checks against sentencing statutes; any errors will appear in red text on the screen.
- * Concurrent/Consecutive information is required when imposing any second or subsequent sentencing alternative, including whether a period of probation is concurrent or consecutive to an incarceration sentence imposed for the same offense or for a different offense in the same judicial proceeding. *SGS Web* does not currently require information regarding whether current sentences are to be served concurrent with or consecutive to sentences in other judicial proceedings.
- * After all sentence information for the current offense has been entered, click on 'Save Credit and Sanctions' button. *SGS Web* will calculate the conformity of the sentence to the guidelines based on information provided.
- * When a sentence departs from the guidelines such that the sentence is longer than that recommended as an aggravated sentence or shorter than that recommended as a mitigated sentence, the reason(s) for a departure sentence as well as any other comments regarding the sentence must be indicated on the guideline sentence form.
- * *SGS Web* provides three options for providing reason(s) for a departure sentence as well as other comments for sentences imposed under the 5th and 6th Edition guidelines: (1) a pull-down list of common reasons submitted to the Commission; (2) a text box labeled 'Other Reasons' for brief reasons or comments; and (3) a text box labeled 'Narrative' for longer, more detailed reasons or comments.

COMMENTARY:

The Commission provides recommendations regarding the appropriate sentencing options based upon any combination of Offense Gravity Score (OGS) and Prior Record Score (PRS).

Under the 4th Edition (1994) guidelines, the Commission adopted the Basic Sentencing Matrix, and with it established the concepts of sentencing purposes and sentencing levels to better target the use of the sentencing options and to incorporate intermediate punishments into the guidelines. The Matrix was based on 13 OGS categories and 8 PRS

categories (0-5, Repeat Felony 1 & 2 Category, Repeat Violent Offender Category). The four sentencing levels, determined by the sentencing options permitted within the standard guideline range, focused on: non-incarceration for the least serious offenders; short terms of county confinement and/or community-based intermediate punishments for non-violent offenders; a wide range of options including state and county confinement as well as county intermediate punishments for serious and repeat offenders; and state incarceration for the most serious offenders. The 4th Edition guidelines included four cells with a recommendation of RS-RIP (i.e.- sentence recommendations limited to Restorative Sanctions and restrictive intermediate punishment programs), which permitted up to 30 days in a restrictive intermediate punishment program but did not recommend incarceration. The Commission also included sentence recommendations for aggravated and mitigated sentences. Based upon the Offense Gravity Score of the current conviction, a number of months was added or subtracted from the standard range to determine the aggravated or mitigated sentence recommendations.

The 5th Edition guidelines (1997) increased penalties for serious offenders while expanding opportunities for the use of county intermediate punishments, and in particular, the use of clinically prescribed drug and alcohol treatment as a county intermediate punishment in lieu of incarceration. These guidelines also reflected a new Commission policy of offense-based sentence recommendations rather than the previous transaction-based sentence recommendations. The offense-based sentence recommendations take into account both the Offense Gravity Score (OGS) and the Prior Record Score (PRS) for every sentence recommendation. The previous transaction-based sentence recommendation took into account both the OGS and PRS only when the offense being sentenced was the most serious offense of the transaction; otherwise, the PRS was not considered in the sentence recommendation. The move to an offense-based sentence recommendation is linked to the Commission's decision to eliminate 'transaction' which was used in previous guidelines as a means of grouping offenses.

During the 1995 Special Session on Crime, the General Assembly increased the statutory maximum for certain Felony 1 offenses beyond the traditional 20 years up to 40 years. The 5th Edition sentencing guidelines responded by creating an OGS 14 with an upper limit of 240 months, reflecting a statutory limit of 20 years. These guidelines also replaced RS-RIP cells with a recommendation of RS-1, thus expanding the cells to include 30 days of incarceration. This was consistent with Commission policy that established a rough equivalency between restrictive intermediate punishment programs and incarceration in areas of the matrix that allow for incarceration. That is, the maximum length of time in an RIP program is the same as the longest recommended length of confinement. Allowing 30 days of incarceration also provided more flexibility for counties that did not have Intermediate Punishment sentencing authority or resources to support RIP programs. At the same time, the Commission added a fifth sentencing level, and by doing so expanded the target for county intermediate punishment to include eligible offenders who could otherwise be incarcerated in a county facility up to a maximum sentence of five years.

The 6th Edition guidelines (2005) build on these earlier guidelines. During the seven years since enactment of the 5th Edition guidelines, the General Assembly enacted, amended or repealed more than 120 statutes that impact on the sentencing guidelines. In addition, the Commission received requests from practitioners to change the sentence recommendations for a number of offenses. As a result, the Commission undertook a comprehensive review of all Offense Gravity Score (OGS) and Prior Record Score (PRS) point assignments for offenses covered under the sentencing guidelines. In response to a mandate from the General Assembly to provide a sentencing enhancement for homicide by vehicle that occurs in an active work zone, the Commission developed a further sub-categorization of homicide by vehicle. The General Assembly also increased the statutory maximum for certain Felony 1 offenses to life imprisonment. In response, the Commission assigned an OGS 14 to each of these offenses. Further, the Commission increased the upper limit for all sentence recommendations involving OGS 14 from 240 months to the statutory limit (SL) in recognition of the differing classifications of offenses assigned an OGS 14. As a result, the Commission has removed the aggravated range for OGS 14, as the standard range includes the statutory limit.

§303.9 (b)
DEADLY WEAPON ENHANCEMENT SENTENCE RECOMMENDATION

GUIDELINE TEXT:

§303.9 (b) Deadly Weapon Enhancement sentence recommendation. If the court determines that an offender possessed a deadly weapon pursuant to §303.10(a)(1), the court shall instead consider the DWE/Possessed Matrix (§303.17). If the court determines that an offender used a deadly weapon pursuant to §303.10(a)(2), the court shall instead consider the DWE/Used Matrix (§303.18). Both enhanced matrices specify a range of sentences (i.e., standard range) that shall be considered by the court for each combination of Offense Gravity Score (OGS) and Prior Record Score (PRS).

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.9(b)). The DWE/Possessed Matrix found at §303.17 and the DWE/Used Matrix found at §303.18 were modified, replacing the 240 month upper limit of the recommended range for OGS 14 with SL (statutory limit), and eliminating an aggravated range recommendation for OGS 14.

DESCRIPTION:

- * As with the Basic Sentence Recommendation, the Deadly Weapon Enhancement Sentence Recommendation is offense-based. Therefore, both the OGS and PRS are considered when determining the sentence recommendation for each conviction.
- * Under several previous editions of the guidelines, the PRS was only considered for the most serious offense of a transaction.
- * The DWE/Possessed Matrix at §303.17 provides a standard range recommendation for each combination of an OGS and PRS when a deadly weapon was possessed during the commission of the crime currently being sentenced. This recommendation should be considered the most appropriate minimum sentence for most convictions.
- * The DWE/Used Matrix at §303.18 provides a standard range recommendation for each combination of an OGS and PRS when a deadly weapon was used during the commission of the crime currently being sentenced. This recommendation should be considered the most appropriate minimum sentence for most convictions.
- * Sentencing levels have been established in the guidelines based on these standard range recommendations (see §303.11).
- * When the court determines that there are aggravating or mitigating circumstances, it may impose an aggravated or mitigated sentence in accordance with §303.13. Imposition of an aggravated or mitigated sentence does not alter the sentencing level, since the level is based on the OGS and PRS.
- * If, in addition to possession or use of a deadly weapon, a controlled substance is distributed to persons under 18 years of age or in a school zone in violation of 35 P.S. §780-114, §303.9(c) also applies.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

The Commission makes recommendations regarding the appropriate sentencing options based upon any combination of Offense Gravity Score and Prior Record Score. The Commission is required by statute to provide sentence recommendations of increased severity for a defendant who possessed a deadly weapon during the commission of the current conviction offense. As part of the 5th Edition guidelines, the Commission created separate enhancement ranges for possession of a deadly weapon versus use of a deadly weapon. These two sets of recommendations are retained in the 6th Edition guidelines.

§303.9 (c)
YOUTH/SCHOOL ENHANCEMENT SENTENCE RECOMMENDATION

GUIDELINE TEXT:

§303.9 (c) Youth/School Enhancement sentence recommendations. If the court determines that an offender violated the drug act pursuant to §303.10(b), 12 months shall be added to the lower limit of the standard range of the applicable sentencing matrix and 36 months shall be added to the upper limit of the standard range of the applicable sentencing matrix. The range of sentences (i.e., standard range) shall be considered by the court for each combination of Offense Gravity Score (OGS) and Prior Record Score (PRS).

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.9(c)).

DESCRIPTION:

- * The sentence recommendation is offense-based under this edition of the guidelines. Therefore, both the OGS and PRS are considered when determining the sentence recommendation for each conviction.
- * Under several previous editions of the guidelines, the PRS was only considered for the most serious offense of a transaction.
- * When controlled substances are distributed to persons under 18 years of age or in a school zone in violation of 35 P.S. §780-114, 12 months is added to the lower limit and 36 months to the upper limit of the otherwise applicable standard range recommendation found in the Basic, DWE/Possessed or DWE/Used Matrices at §303.16 - 303.18. The revised recommendation should be considered the most appropriate minimum sentence for most convictions.
- * Sentencing levels have been established in the guidelines based on the standard range recommendation (see §303.11).
- * When the court determines that there are aggravating or mitigating circumstances, it may impose an aggravated or mitigated sentence in accordance with §303.13. Imposition of an aggravated or mitigated sentence does not alter the sentencing level, since the level is based on the OGS and PRS.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

The Commission makes recommendations regarding the appropriate sentencing options based upon any combination of Offense Gravity Score (OGS) and Prior Record Score (PRS). The Commission developed an enhancement linked to 35 P.S. §780-114 (Distribution to Persons Under Eighteen) as an alternative to the mandatory sentencing provisions. Further discussion of this policy is found in §303.10(b).

§303.9 (d)
AGGRAVATED AND MITIGATED SENTENCE RECOMMENDATIONS

GUIDELINE TEXT:

§303.9 (d) Aggravated and mitigated sentence recommendations. To determine the aggravated and mitigated sentence recommendations, apply §303.13.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.9(d)).

DESCRIPTION:

- * When the court determines that there are aggravating or mitigating circumstances, it may impose an aggravated or mitigated sentence in accordance with §303.13.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

The Commission makes recommendations regarding the appropriate sentencing options based upon any combination of Offense Gravity Score and Prior Record Score.

The Commission includes sentence recommendations for aggravated and mitigated sentences. Based upon the Offense Gravity Score of the current conviction, a number of months is added or subtracted from the standard range to determine the aggravated or mitigated sentence recommendations.

§303.9 (e)
NUMERIC SENTENCE RECOMMENDATIONS

GUIDELINE TEXT:

§303.9 (e) Numeric sentence recommendations. All numbers in sentence recommendations suggest months of minimum confinement pursuant to 42 Pa.C.S. §9755(b) (partial confinement) and §9756(b) (total confinement).

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.9(e)).

DESCRIPTION:

- * All numeric guideline sentence ranges relate to the minimum term of partial or total confinement. Partial and total confinement, and credit for time served, require institutional confinement.
- * In certain cases, the numeric sentence ranges relate to the maximum term of one or more restrictive intermediate punishment program(s). See §303.12(a) (County Intermediate Punishment). County intermediate punishment does not require institutional confinement.
- * Numeric guideline sentence ranges do not make recommendations for the maximum term of partial or total confinement. There is no limit in the guidelines on the maximum sentence that may be imposed in any case. The longest possible maximum sentence for a crime is set by statute.
- * For the appropriate sentencing options for each range, see Sentencing Levels at §303.11.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

Early Commissions adopted this policy because the minimum sentence more closely approximated the actual length of time a defendant was confined. Thus, minimum sentence guidelines would have a greater impact than maximum sentence guidelines would have had.

Confinement may be either partial or total in order to give the court the widest possible latitude in sentencing, consistent with the Commission's charge to promote uniform and equitable sentences. In addition, the differences in the availability of work-release facilities among the counties made it impractical to specify the cases for which work-release should or should not be ordered.

All persons whose maximum sentence is five years or more are confined under the jurisdiction of the Department of Corrections (42 Pa.C.S. §9762). Persons whose maximum term of confinement is at least two years, but less than five years, may be confined either under the jurisdiction of the Department of Correction or in the county jail, as the sentencing judge directs. (42 Pa.C.S. §9762). Persons whose maximum term of confinement is less than two years are confined in the county jail (42 Pa. C.S. §9762).

Paroling authority from a maximum sentence of confinement of two years or greater, a state sentence, is vested in the Pennsylvania Board of Probation and Parole (61 P.S. §331.17). Paroling authority from a maximum sentence of confinement of less than two years, a county sentence, is vested in the court (61 P.S. §331.17). The one exception to this, for DUI-related sentences, permits the court to retain paroling authority for sentences served in a county correctional facility where the maximum sentence is two years or greater but less than five years (see 75 Pa.C.S.

§3815).

While the Sentencing Levels (see §303.11(b)) take into account place of confinement and paroling authority in developing general recommendations and determining thresholds between the various Levels, the sentencing guidelines do not contain any limitation on the place of confinement.

When the use of a sentence of state intermediate punishment is permitted by statute and approved as a sentencing option under §303.12(c), the offender must be committed to the Department of Corrections prior to sentencing for an assessment and evaluation. If recommended by the Department for participation in the program, and subsequently sentenced to state intermediate punishment by the court, a flat two-year state intermediate punishment sentence shall be imposed; a consecutive period of probation supervision may also be imposed.

When the use of a sentence of county intermediate punishment is permitted by statute and approved as a sentencing option under §303.12(a), and the offender is not drug dependant, the numeric range reflects the longest period of time an offender may be ordered to participate in one or more restrictive intermediate punishment (RIP) programs as part of an intermediate punishment sentence. If the offender is drug dependant, the longest period of time an offender may be ordered to participate in one or more RIP programs is determined by the clinical evaluation.

The use of an indefinitely suspended sentence is not provided for in the Sentencing Code (*Com. v. Hamilton*, 488 A.2d 277, Pa.Super. 1985). Any other suspension of a sentence of incarceration in which conditions are placed on the defendant has been held to be the equivalent of probation (*Com. v. Duffy*, 681 A.2d 219, Pa.Super. 1996).

§303.9 (f)
ALPHABETIC SENTENCE RECOMMENDATIONS

GUIDELINE TEXT:

§303.9 (f) Alphabetic sentence recommendations. RS in the sentence recommendation, an abbreviation for Restorative Sanctions, suggests use of the least restrictive, non-confinement sentencing alternatives described in 42 Pa.C.S. §9753 (determination of guilt without further penalty), §9754 (order of probation) and §9758 (fine), and include §9763 (intermediate punishment) when limited to restorative sanction programs (see §303.12(a)(5)). 42 Pa.C.S. §9721(c) (mandatory restitution) is also included in RS. No specific recommendations are provided for periods of supervision or amounts of fines for these non-confinement sentencing alternatives. RIP in the sentence recommendation, an abbreviation for Restrictive Intermediate Punishments, suggests use of Restrictive Intermediate Punishments pursuant to §303.12(a)(4).

PRIOR GUIDELINES:

An identical provision was contained in previous guidelines (§303.9(f)).

DESCRIPTION:

- * RS is the primary alphabetic sentence recommendation. It refers to Restorative Sanctions, which are all non-confinement sentencing alternatives provided in statute.
- * RS includes the following sentencing alternatives: determination of guilt without further penalty, order of probation, fine, and mandatory restitution.
- * RS does not include a sentence of county intermediate punishment, as such sentences include restrictive programs.
- * RIP, or Restrictive Intermediate Punishment programs, are generally considered the equivalent of partial or total confinement under the guidelines and are not Restorative Sanctions. See §303.12(a).
- * For the appropriate sentencing options for each range see Sentencing Levels §303.11.
- * The guidelines do not suggest specific lengths or amounts for Restorative Sanctions.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

The guidelines do not suggest sentence lengths for Restorative Sanctions because there have been few complaints about disparity in such lengths, and because the duration of non-confinement periods should be individualized to address the rehabilitative focus of these sentencing alternatives. The use of fines and restitution is encouraged, and in some cases mandated. See §303.14. However, the use of these alternatives, and the optimal dollar amounts ordered, differ substantially from case to case. As a result, any amount permitted by statute may be ordered as a Restorative Sanction.

The use of an indefinitely suspended sentence is not provided for in the Sentencing Code (*Com. v. Hamilton*, 488 A.2d 277, Pa.Super. 1985). Any other suspension of a sentence of incarceration in which conditions are placed on the defendant has been held to be the equivalent of probation (*Com. v. Duffy*, 681 A.2d 219, Pa.Super. 1996).

§303.9 (g)
APPLICABLE STATUTES

GUIDELINE TEXT:

§303.9 (g) When the guideline sentence recommendation exceeds that permitted by 18 Pa.C.S. §1103 and §1104 (relating to sentence of imprisonment for felony and misdemeanor) and 42 Pa.C.S. §9755(b) and §9756(b) (relating to sentence of partial and total confinement) or other applicable statute setting the maximum term of confinement, then the statutory limit is the longest guideline sentence recommendation. For the purposes of the guidelines, the statutory limit is the longest legal minimum sentence, which is one-half the maximum allowed by law.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.9(g)).

DESCRIPTION:

- * In some cases one or more of the guideline recommendations may partially or totally exceed the longest minimum sentence permitted by law, and in such cases the guidelines are capped at the statutory limit (i.e., longest minimum sentence permitted under statute).
- * This is most likely to occur when the Prior Record Score is high, when the deadly weapon enhancement is added, when the youth or school enhancement is added, or when all of these conditions are present.
- * Statute always limits the longest legal minimum sentence which may be imposed, and all guideline recommendations are limited by the statutory restriction.
- * When part of a recommendation is higher than the longest legal minimum sentence, the part of the recommendation which equals or is below the legal limit is the guideline range.
- * When the entire recommendation is higher than the longest legal minimum sentence, the guideline recommendation is the longest legal minimum sentence.
- * The statutory limit is based on the maximum penalty applicable to the conviction offense. While the maximum penalty is generally based on the grade of the offense, some offenses are assigned a different maximum sentence than otherwise assigned to the grade.
- * The guidelines do not supersede sentencing statutes. Therefore, the guideline recommendation may not exceed the maximum allowable penalties as defined in statute.
- * The statutory limit, for guideline purposes, is defined as the longest minimum sentence provided by law. This is one-half of the statutory maximum for sentences of partial or total confinement.
- * If the guideline recommendation exceeds the statutory limit, the guideline recommendation is "cutoff" at the statutory limit.
- * Except where the statute relating to an offense specifically provides otherwise, the following maximum lengths of confinement are permitted by 18 Pa. C. S. §§1102-1105:
 - 1) for murder and murder of an unborn child of the first degree, life imprisonment or death;
 - 2) for murder and murder of an unborn child of the second degree, life imprisonment;
 - 3) for murder and murder of an unborn child of the third degree or an inchoate to murder or murder of an unborn child involving serious bodily injury, not more than 40 years;

- 4) for a felony of the first degree, not more than 20 years;
- 5) for a felony of the second degree, not more than 10 years;
- 6) for a felony of the third degree, not more than 7 years;
- 7) for a misdemeanor of the first degree, not more than 5 years;
- 8) for a misdemeanor of the second degree, not more than 2 years;
- 9) for a misdemeanor of the third degree, not more than 1 year; and
- 10) for a summary offense, not more than 90 days. The longest minimum length of confinement for a summary offense is also 90 days.

* For most drug offenses, the maximum term of confinement is set by 35 P.S. §§113(b)-(l), and §§114-115.

GUIDELINE FORM/SGS WEB APPLICATION:

* See §303.9(a).

COMMENTARY:

The sentence recommendations exceed the statutory limit in some cases. This section is intended to make clear that the guidelines are limited by lengths of confinement established by statute. Act 1995-5(SS1) increased the maximum sentence permitted for Murder of the Third Degree and inchoates to Murder involving serious bodily injury to 40 years. As a result, the statutory limit, or longest minimum sentence, increased to 20 years. More recent legislation increased the maximum sentences permitted for other offenses based on specific elements of the offense. As an example, Act 2002-162 increased the statutory maximum for rape of a child less than 13 years of age to 40 years, and for rape of a child less than 13 years of age resulting in serious bodily injury to life imprisonment. The applicable statutory maximum and statutory limit for each offense is incorporated into the *SGS Web* application.

This section establishes a clear and simple rule for computing guideline lengths when the sentence recommendations are longer than statute allows. The Commission rejected the only two ways to prevent some suggested sentence lengths from exceeding the longest legal minimum sentence. The Commission could have assigned Offense Gravity Scores that were so low that the sentence ranges never would exceed the statutory limit, even for people who possessed a deadly weapon and who had the maximum Prior Record Score. This alternative would have resulted in undue leniency. The Commission also decided against constructing different sentence range matrices for every crime, or for every major category of crime. This would have made the guidelines much more complex than they are now.

§303.9 (h)
MANDATORY SENTENCES

GUIDELINE TEXT:

§303.9 (h) Mandatory sentences. The court has no authority to impose a sentence less than that required by a mandatory minimum provision established in statute. When the guideline range is lower than that required by a mandatory sentencing statute, the mandatory minimum requirement supersedes the sentence recommendation. When the sentence recommendation is higher than that required by a mandatory sentencing statute, the court shall consider the guideline sentence recommendation.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.9(h)).

DESCRIPTION:

- * Mandatory sentencing provisions are established by the legislature, not the Commission on Sentencing.
- * The guidelines never supersede a longer mandatory sentencing provision.
- * If the guidelines are shorter than the mandatory minimum sentence, then the length of time recommended by the mandatory minimum is the length of time recommended by the guidelines.
- * If the guidelines are longer than the mandatory minimum sentence, then the guidelines should be considered as they are in any other case.
- * Guideline Sentence Forms are required for any felony or misdemeanor conviction regardless of whether or not there is an applicable mandatory minimum sentencing provision.
- * When a mandatory minimum sentence is required by statute, one or more of the recommendations that would normally be correct may include sentence suggestions that are shorter than the mandatory minimum sentence. In such cases, the suggested guidelines are those parts of the standard, mitigated, or aggravated recommendations which are equal to or above the shortest length of confinement allowed by law. If no part of the aggravated recommendation is longer than the mandatory minimum sentence, then the mandatory minimum is the guideline sentence recommendation.
- * See §303.9(i) for more information on mandatory minimum sentences relating to Driving Under the Influence (DUI).

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.3(a) and §303.9(a).

COMMENTARY:

Mandatory minimum sentences are sentencing provisions which establish the shortest sentence that an offender may receive upon conviction for a certain offense. The court has no authority to impose a sentence shorter than one called for by a mandatory provision. The sentencing guidelines are sentencing recommendations that the courts are required by law to consider. The courts may depart from the recommendations by stating their reason(s) for departure for the record.

Mandatory minimum sentences are statutory provisions which may not be superseded by the guidelines. Most often mandatory sentencing provisions are linked to only one or two characteristics of an offense (e.g. there are mandatory minimum sentences for drug trafficking offenses that are based upon the type and quantity of drug involved in the offense.) The guidelines, however, take into consideration a number of factors including the extent and severity of an offenders' prior record. For this reason the guidelines often call for sentences that are higher than those required by the mandatory sentencing provisions. When this occurs the guidelines should be considered.

The legislature has enacted mandatory sentences for first and second degree murder, and for particular offenses committed in specified ways or by repeat offenders. The mandatory confinement sentences applicable to violations of the Crimes Code, The Controlled Substance, Drug, Device and Cosmetic Act, and the Motor Vehicle Code are found in this section. There are other mandatory penalties (mostly fines) in various statutory Titles.

With the exception of the penalties for first and second degree murder, the mandatory sentence specified by statute is a mandatory minimum sentence. The actual sentence imposed may be longer than the mandatory minimum sentence as long as the minimum does not exceed the longest minimum sentence authorized by other statute. When a mandatory minimum sentence is imposed, a maximum sentence must also be imposed.

For most mandatory sentencing provisions, the prosecutor is required to give reasonable notice to the defendant of the intention to proceed under a mandatory minimum sentencing statute. When notice is required, it is generally required after conviction and before sentencing.

Most of the mandatory sentencing statutes explicitly state that the guidelines do not supersede the mandatory sentencing provisions, while other mandatory sentencing statutes do not include such language. The law seems to be the same whether the mandatory statute includes this provision or not: in all cases subject to a mandatory sentencing law, the court has no power to sentence below the mandatory minimum notwithstanding any guideline provision. However, the court must consider the guidelines whenever the guidelines recommend a longer sentence than the mandatory minimum law required.

A Guideline Sentence Form is required for all cases that are subject to a mandatory minimum sentence law, regardless of whether the guidelines suggest a sentence above or below the minimum sentence required by the mandatory law. Where the guidelines suggest a longer sentence than the mandatory minimum law, and the court chooses to impose the mandatory minimum sentence, reasons for departure must be given. The authority for collecting this form derives from 42 Pa.C.S. §2153(14). The form is a useful summary of information that is necessary to the sentencing court, and it has been helpful to the Commission, the legislature, the governor's office, and others when monitoring the impact of mandatory sentencing legislation

MANDATORY SENTENCES (EXCLUDING DUI-RELATED)

18 Pa. C.S. §1102(a)(1); 18 Pa. C.S. §2502(a):

Murder of the First Degree.

A sentence of life imprisonment or death is required, pursuant to 42 Pa. C.S. §9711.

Effective 9/12/78.

NO NOTICE REQUIRED

18 Pa. C.S. §1102(a)(2); 18 Pa. C.S. §2604(a):

First Degree Murder of an Unborn Child.

A sentence of life imprisonment is required.

Effective 3/31/98.

NO NOTICE REQUIRED

18 Pa. C.S. §1102(b); 18 Pa. C.S. §2502(a):

Murder of the Second Degree.

A sentence of life imprisonment is required.

Effective 6/6/73.

NO NOTICE REQUIRED

18 Pa. C.S. §1102(b); 18 Pa. C.S. §2604(b):

Second Degree Murder of an Unborn Child.

A sentence of life imprisonment is required.

Effective 3/31/98.

NO NOTICE REQUIRED

18 Pa. C.S. §2506:

Drug Delivery Resulting in Death.

A person commits Murder of the Third Degree who violates 35 P.S. §780-113(a)(14) or (30) and another person dies as a result of using the substance.

A minimum sentence of five years of total confinement is required.

Effective 12/22/89; amended 4/20/98.

NO NOTICE REQUIRED

18 Pa. C.S. §2704:

Assault by Life Prisoner.

A person is guilty of this offense if he intentionally or knowingly causes another to come into contact with fluid or material infected by a communicable disease.

A sentence of life imprisonment is required.

Effective 2/18/98; amended 4/20/98.

NO NOTICE REQUIRED

18 Pa. C.S. §2716(b)(1):

Weapons of Mass Destruction.

A person commits this offense if his intentional, knowing or reckless actions related to a weapon of mass destruction causes death of an individual.

A sentence to life imprisonment is required if use results in death of an individual.

Effective 8/27/02

NO NOTICE REQUIRED

18 Pa. C.S. §3301(a)(2):

Arson Endangering Persons as Murder of the First Degree.

A person commits Murder of the First Degree if the fire or explosion causes the death of any person and was set with the purpose of causing the death of another person.

A sentence of death or life imprisonment without right to parole is required.

Effective 6/6/73.

NO NOTICE REQUIRED

18 Pa. C.S. §3301(a)(2):

Arson Endangering Persons as Murder of the Second Degree.

A person commits Murder of the Second Degree if the fire or explosion causes the death of any person.

A sentence of life imprisonment is required.

Effective 6/6/73.

NO NOTICE REQUIRED

18 Pa. C.S. §5123(a.1):

Controlled Substance Contraband to Confined Persons.

A person commits this offense if he provides any controlled substance to a confined person without a written permit.

A minimum sentence of at least two years of total confinement is required.

Effective 9/4/95.

NO NOTICE REQUIRED

18 Pa. C.S. §6111(h):

Sale or Transfer of Firearms; Subsequent Violation.

A person is subject to this provision if he is found to have a second or subsequent violation of the statute relating to delivering a firearm to a purchaser.

A minimum sentence of five years of imprisonment is required.

Effective 9/4/95.

NOTICE REQUIRED PRIOR TO SENTENCING, PROOF REQUIRED AT SENTENCING

18 Pa. C.S. §6121:

Certain Bullets Prohibited.

A person commits this offense if he is convicted of committing or attempting to commit a crime of violence while possessing, using, or attempting to use a KTW Teflon-coated bullet or other armor-piercing ammunition.

A minimum sentence of not less than five years of imprisonment is required.

Effective 2/19/85.

NO NOTICE REQUIRED

18 Pa. C.S. §6314:

Sentencing and Penalties for Trafficking Drugs to Minors.

A person is subject to this provision if he is over 18 years of age and is convicted of violating 35 P.S. §780-113(a)(14) or (30) involving delivery of or possession with intent to deliver a controlled substance to a minor.

A minimum sentence of at least one year of total confinement is required. If the person committed the offense with the intent to promote habitual use, intended to engage the minor in trafficking, committed the offense within 1,000 feet of the real property of a school, or committed the offense on a school bus or within 500 feet of a school bus stop, a minimum sentence of at least three years of total confinement is required.

Effective 7/1/88; amended 7/8/97.

NOTICE REQUIRED PRIOR TO SENTENCING, PROOF REQUIRED AT SENTENCING

18 Pa. C.S. §6317:

Drug Free School Zones.

A person is subject to this provision if he is 18 years of age or older and is convicted of violating 35 P.S. §780-113(a)(14) or (30) involving delivery of or possession with intent to deliver a controlled substance within 1,000 feet of the real property of a school or within 250 feet of the real property of a recreation center or playground or on a school bus.

A minimum sentence of at least two years of total confinement is required, and a maximum sentence of imprisonment of four years is required if the maximum sentence is otherwise less than four years.

Effective 8/25/97

NOTICE REQUIRED PRIOR TO SENTENCING, PROOF REQUIRED AT SENTENCING

18 Pa. C.S. §7508:

Drug Trafficking Sentencing and Penalties.

A person is subject to this provision if he is convicted of violating 35 P.S. §780-113(a)(14), (30) or (37) and the amount of marijuana or aggregate weight of the compound or mixture is:

- (1) marijuana (two pounds or more, or ten live plants or more);
- (2) heroin (1 gram or more);
- (3) narcotics of schedules I or II (two grams or more);
- (4) cocaine (two grams or more);
- (5) methamphetamine (five grams or more);
- (6) amphetamine (five grams or more); or
- (7) methaqualone (50 capsules or more).

A minimum sentence of imprisonment based on the type of controlled substance and the amount or weight is required; increased minimum sentences apply to subsequent convictions if the person has been previously convicted of a violation of 35 P.S. §780-113(a)(14), (30) or (37) or equivalent offense, whether or not judgment of sentence has been imposed concerning that offense.

Effective 7/1/88; amended 12/19/90; amended 8/21/00.

NOTICE REQUIRED PRIOR TO SENTENCING, PROOF REQUIRED AT SENTENCING

35 P.S. §780-113(k):

Manufacture of Amphetamine, Methamphetamine, or Phenylacetone and Phenyl-2-proprionone.

A person commits this offense if he manufactures amphetamine, methamphetamine, or phenylacetone and phenyl-2-proprionone.

A minimum sentence of at least two years of total confinement without probation, parole or work release is required.

Effective 2/12/85; amended 7/3/85.

NO NOTICE REQUIRED

42 Pa. C.S. §9712:

Sentences for Offenses Committed with Firearms.

A person is subject to this provision if he is convicted of a crime of violence and visibly possessed a firearm or a replica of a firearm, whether loaded or unloaded, during the commission of a the offense, and placed the victim in reasonable fear of death or serious bodily injury.

A crime of violence includes any of the following offenses: Murder of the Third Degree; voluntary manslaughter; aggravated assault (F1); rape; involuntary deviate sexual intercourse; aggravated indecent assault; incest; sexual assault; arson (F1); kidnapping; burglary of a structure adapted for overnight accommodations in which at the time of the offense any person is present; robbery (F1); robbery of a motor vehicle; or an inchoate to murder or any of the listed offenses.

A minimum sentence of at least five years of total confinement is required. Such persons shall not be eligible for parole, probation, work release or furlough.

Effective 6/7/82; amended 12/10/95; amended 7/10/00; amended 2/19/01 (crimes of violence definition).

NOTICE REQUIRED PRIOR TO SENTENCING, PROOF REQUIRED AT SENTENCING

42 Pa. C.S. §9712.1:

Sentences for Certain Drug Offenses Committed with Firearms.

A person is subject to this provision if he is convicted of violation of 35 P.S. §780-113(a)(30) when at the time of the offense the person or his accomplice is in physical possession or control of a firearm, whether visible or concealed, or within the person's or accomplice's reach, or in close proximity to the controlled substance.

A minimum sentence of at least five years of total confinement is required.

Effective 1/29/05.

NOTICE REQUIRED PRIOR TO SENTENCING, PROOF REQUIRED AT SENTENCING

42 Pa. C.S. §9713:

Sentences for Offenses Committed on Public Transportation.

A person is subject to this provision if he is convicted of a crime of violence if the crime occurs in or near public transportation in or near public transportation.

A crime of violence includes any of the following offenses: Murder of the Third Degree; voluntary manslaughter; aggravated assault (F1); rape; involuntary deviate sexual intercourse; aggravated indecent assault; incest; sexual assault; arson (F1); kidnapping; burglary of a structure adapted for overnight accommodations in which at the time of the offense any person is present; robbery (F1); robbery of a motor vehicle; or an inchoate to murder or any of the listed offenses.

A minimum sentence of at least five years of total confinement is required.

Effective 6/7/82; amended 12/10/95; amended 7/10/00; amended 2/19/01 (crimes of violence definition).

NOTICE REQUIRED PRIOR TO SENTENCING, PROOF REQUIRED AT SENTENCING

42 Pa. C.S. §9714: (TWO/THREE STRIKES)

Sentences for Second or Subsequent Offenses.

A person is subject to this provision if he is convicted of crime of violence and, if at the time of the commission of the current offense, he had previously been convicted of a crime of violence.

A crime of violence includes any of the following offenses: Murder of the Third Degree; voluntary manslaughter; aggravated assault (F1); rape; involuntary deviate sexual intercourse; aggravated indecent assault; incest; sexual assault; arson (F1); kidnapping; burglary of a structure adapted for overnight accommodations in which at the time of the offense any person is present; robbery (F1); robbery of a motor vehicle; or an inchoate to murder or any of the listed offenses.

(1) If at the time of the commission of the current offense the person has previously been convicted of a crime of violence, a minimum sentence of at least ten years of total confinement, and a mandatory maximum sentence equal to twice the mandatory minimum sentence, is required.

(2) If at the time of the commission of the current offense the person has previously been convicted of two or more crimes of violence arising from separate criminal transactions, a minimum sentence of at least twenty-five years of total confinement, and a mandatory maximum sentence equal to twice the minimum sentence, is required. The court may, if it determines that 25 years of total confinement is insufficient to protect the public safety, sentence the person to life imprisonment without parole.

Effective 6/7/82; amended 6/15/82; amended 2/9/87; amended 12/10/95; amended 7/10/00; amended 2/19/01.

NOTICE REQUIRED PRIOR TO SENTENCING, PROOF REQUIRED AT SENTENCING

42 Pa. C.S. §9715:

Life Imprisonment for Homicide.

A person is subject to this provision if he is convicted of Murder of the Third Degree and has previously been convicted at any time of murder or voluntary manslaughter or a substantially equivalent crime in another jurisdiction.

A sentence of life imprisonment is required.

Effective 6/7/82; amended 6/15/82.

NOTICE REQUIRED PRIOR TO SENTENCING, PROOF REQUIRED AT SENTENCING

42 Pa. C. S. §9716:

Two or More Mandatory Minimum Sentences Applicable.

Whenever two or more sections requiring mandatory minimum sentences are applicable, the court shall be bound by the section requiring the greater penalty.

Effective 6/6/82.

42 Pa. C. S. §9717:

Sentences for Offenses Against Elderly Persons.

A person is subject to this provision if he is under 60 years of age and is convicted of the following offenses when the victim is over 60 years of age and not a police officer:

- (1) Aggravated assault (§2702(a)(1) and (a)(4)) requires a minimum sentence of imprisonment of not less than two years;
- (2) Rape (§3121) requires a minimum sentence of imprisonment of not less than five years;
- (3) Involuntary deviant sexual intercourse (§3123) requires a minimum sentence of imprisonment of not less than five years.
- (4) Theft by deception (§3922) requires a minimum sentence of imprisonment of not less than twelve months, but the imposition of the minimum sentence shall be discretionary with the court where the court finds justifiable cause and that finding is written in the opinion.

Effective 2/28/83.

NO NOTICE REQUIRED*

(Notice required prior to guilty plea)

42 Pa. C.S. §9718:

Sentences for Offenses Against Infant Persons.

A person is subject to this provision if:

- (1) He is convicted of the following offenses when the victim is under 16 years of age:
 - a. Aggravated assault (§2702(a)(1) and (a)(4)) requires a minimum sentence of imprisonment of not less than two years;
 - b. Rape (§3121) requires a minimum sentence of imprisonment of not less than five years;
 - c. Involuntary deviant sexual intercourse (§3123) requires a minimum sentence of imprisonment of not less than five years.
- (2) He is convicted of the following offenses when the victim is under 13 years of age:
 - a. Aggravated assault (§2702(a)(1)) requires a minimum sentence of imprisonment of not less than five years;
 - b. Rape (§3121) requires a minimum sentence of imprisonment of not less than five years;
 - c. Aggravated indecent assault (§3125) requires a minimum sentence of imprisonment of not less than five years or not less than two and one-half years.

Effective 2/28/83; amended 5/30/95; amended 11/30/04.

NO NOTICE REQUIRED*

(Notice required prior to guilty plea)

42 Pa. C.S. §9719:

Sentences for Offenses Committed While Impersonating a Law Enforcement Officer.

A person is subject to this provision if he was impersonating a law enforcement officer while committing one of the following offenses: Murder of the Third Degree; voluntary manslaughter; rape; involuntary deviate sexual intercourse; aggravated assault as defined in 18 Pa. C.S. §2702(a)(1); robbery (F1); kidnapping or attempt to any of these crimes.

A minimum sentence of total confinement of at least three years is required.

Effective 6/12/88.

NOTICE REQUIRED PRIOR TO SENTENCING, PROOF REQUIRED AT SENTENCING

75 Pa. C.S. §3742:

Accidents Involving Death or Personal Injury; Leaving Scene of Accident.

A person commits this offense if he is the driver of any vehicle involved in an accident resulting in injury or death of any person and fails to immediately stop the vehicle and remain at the scene of the accident.

- (1) If the victim suffers serious bodily injury, a minimum sentence of imprisonment of not less than 90 days is required;
- (2) If the victim dies, a minimum sentence of imprisonment of not less than one year is required.

Effective 6/3/96.

NO NOTICE REQUIRED

PENNSYLVANIA'S MANDATORY MINIMUM SENTENCING PROVISIONS

Title/Section	Description	Mandatory Minimum
18 Pa. C.S. §1102(a)(1); 18 Pa. C.S. §2502(a)	Murder of the First Degree	Death or Life imprisonment
18 Pa. C.S. §1102(a)(2); 18 Pa. C.S. §2604(a)	First Degree Murder of an Unborn Child	Life imprisonment
18 Pa. C.S. §1102(b); 18 Pa. C.S. §2502(a)	Murder of the Second Degree	Life imprisonment
18 Pa. C.S. §1102(b); 18 Pa. C.S. §2604(b)	Second Degree Murder of an Unborn Child	Life imprisonment
18 Pa. C.S. §2506	Drug Delivery Resulting in Death	5 years
18 Pa. C.S. §2704	Assault by Life Prisoner	Life imprisonment
18 Pa. C.S. §2716(b)(1)	Weapons of Mass Destruction (resulting in death of an individual)	Life imprisonment
18 Pa. C.S. §3301(a)(2)	Arson Endangering Persons as Murder of the First Degree	Death or Life imprisonment
18 Pa. C.S. §3301(a)(2)	Arson Endangering Persons as Murder of the Second Degree	Life imprisonment
18 Pa. C.S. §5123(a.1)	Controlled Substance Contraband to Confined Persons	2 years
18 Pa. C.S. §6111(h)	Sale or Transfer of Firearms (subsequent violation)	5 years
18 Pa. C.S. §6121	Certain Bullets Prohibited (armor-piercing bullets while committing or attempting a crime of violence)	5 years
18 Pa. C.S. §6314 (a)	Trafficking Drugs to Minors (violation of 35 P.S. §780-113(a)(14) or (30) involving minors)	1 year
18 Pa. C.S. §6314 (b)	Trafficking Drugs to Minors (violation of 35 P.S. §780-113(a)(14) or (30) involving minors <u>including any of the following factors</u> : promoting habitual use of drugs by minor; engaging a minor in drug trafficking; committing offense within 1000 feet of the real property of a school; or committing offense on a school bus or within 500 feet of a school bus stop)	3 years
18 Pa. C.S. §6317	Drug Free School Zones (violation of 35 P.S. §780-113(a)(14) or (30) within 1000 feet of the real property of a school or 250 feet of the real property on which is located a rec center or playground or on a school bus)	2 year minimum, 4 year maximum
35 P.S. §780-113(k)	Manufacture of Amphetamines, Methamphetamine, or Phenylacetone and Phenyl-2-proprionone	2 years

18 Pa.C.S. §7508 Drug Trafficking Sentencing and Penalties	Quantity	1st Conviction	2nd or Subsequent
MARIJUANA	2 lbs. to less than 10 lbs. or 10 live plants to less than 21 live plants	1 year	2 years
	10 lbs. to less than 50 lbs. or 21 live plants to 51 live plants	3 years	4 years
	50 lbs. + or 51 live plants +	5 years	5 years
HEROIN	1 gram to less than 5 grams	2 years	3 years
	5 grams to less than 50 grams	3 years	5 years
	50 grams +	5 years	7 years
NARCOTICS OF SCHEDULE I or II	2 grams to less than 10 grams	2 years	3 years
	10 grams to less than 100 grams	3 years	5 years
	100 grams +	5 years	7 years
COCAINE	2 grams to less than 10 grams	1 year	3 years
	10 grams to less than 100 grams	3 years	5 years
	100 grams +	4 years	7 years
METHAMPHETAMINE/ PHENCYCLIDINE	5 grams to less than 10 grams	3 years	5 years
	10 grams to less than 100 grams	4 years	7 years
	100 grams +	5 years	8 years
AMPHETAMINE	5 grams +	2 ½ years	5 years
METHAQUALONE	50 tablets to less than 200 tablets or 25 grams to less than 100 grams	1 year	3 years
	200 tablets + or more than 100 grams	2 ½ years	5 years

Title/Section	Description	Mandatory Minimum
42 Pa. C.S. §9712	Offenses committed with firearms (visibly possessing a firearm while committing a crime of violence)	5 years
42 Pa. C.S. §9712.1	Certain drug offenses committed with firearms (possession of firearm while violating 35 P.S. §780-113(a) (30))	5 years
42 Pa. C.S. §9713	Offenses committed on public transportation (committing a crime of violence in or near public transportation)	5 years
42 Pa. C.S. §9714	Second or Subsequent Offenses (<u>Two/Three Strikes</u>) (committing a crime of violence and having previously been convicted of a crime of violence). A mandatory maximum of at least double the mandatory minimum applies.	<u>2nd Strike</u> 10 years <u>3rd Strike</u> 25 years or Life
42 Pa. C.S. §9715	Conviction for Murder in the Third Degree if previously convicted of murder or voluntary manslaughter	Life imprisonment
42 Pa. C.S. §9716	Where two or more mandatories apply, the court is required to impose the greater penalty.	Longest mandatory minimum applies
42 Pa. C.S. §9717	Offenses against elderly (certain offenses committed against person over 60 years of age by a person under 60 years of age)	<u>Aggravated assault</u> (SBI or DW) 2 years <u>Rape/IDSI</u> 5 years <u>Theft by deception</u> 1 year (discretionary if court finds justifiable cause)
42 Pa. C.S. §9718	Offenses against infant persons (certain offenses committed against a person under 16 years of age or under 13 years of age)	<u>Aggravated assault</u> (SBI or DW, < 16) 2 years (SBI, victim <13) 5 years <u>Rape</u> 5 years <u>Agg. Indec. Assault</u> 2.5 or 5 years
42 Pa. C.S. §9719	Offenses committed while impersonating a law enforcement officer (committed any of the following offenses: murder in the third degree, voluntary manslaughter, rape, IDSI, felony 1 robbery, aggravated assault (SBI), or kidnapping)	3 years
75 Pa. C.S. §3742	Accidents involving death or personal injury (leaving scene of accident)	<u>Victim suffers SBI</u> 90 days <u>Victim dies</u> 1 year

§303.9 (i)
DRIVING UNDER THE INFLUENCE

GUIDELINE TEXT:

§303.9 (i) Driving Under the Influence. The court shall consider the sentence recommendations pursuant to this section (§303.9) for an offender convicted under 75 Pa.C.S. 3802 (Driving Under the Influence of Alcohol or Controlled Substance). The court may use a Qualified Restrictive Intermediate Punishment pursuant to §303.12(a)(6) to satisfy the mandatory minimum requirement.

PRIOR GUIDELINES:

A similar provision was included in previous guidelines (§303.9(i)). Minor changes in the text reflect changes in statute.

DESCRIPTION:

- * The court is required to consider the sentencing guidelines when sentencing an offender for DUI and Homicide by Vehicle while DUI. In most previous editions of the guidelines, the Commission had not assigned a specific Offense Gravity Score to these vehicle code violations, and therefore did not provide a sentence recommendation; this previous policy changed with the 5th Edition guidelines.
- * In addition to considering the guideline sentence recommendation, mandatory minimum sentencing provisions apply to violations of Driving under the influence of alcohol or controlled substance (75 Pa. C.S. §3802) and certain aspects of other DUI-related offenses, including: Driving while operating privilege is suspended or revoked (75 Pa.C.S. §1543), Homicide by vehicle while DUI (75 Pa. C.S. §3735), and Illegally operating a motor vehicle not equipped with ignition interlock (75 Pa. C.S. §3808).
- * For Driving Under the Influence, the mandatory minimum term and the grade of the offense is determined based on the subsection of the statute violated and the number of prior DUI convictions during a 10-year look-back period.
- * For mandatory minimum and grading purposes, a prior admission to Accelerated Rehabilitative Disposition (ARD) for DUI is counted as a prior conviction if the defendant was admitted to the ARD program after January 15, 1983.
- * For guideline purposes, a prior admission to Accelerated Rehabilitative Disposition (ARD) is not counted in the prior record score.
- * The first lifetime DUI, if resulting in ARD, is not counted in the prior record score. The first lifetime DUI, if resulting in an adjudication or conviction, is considered an ‘Other misdemeanor’ for purposes of the prior record score. All subsequent lifetime DUI offenses which result in an adjudication or conviction are assigned one point in the prior record score.
- * For homicide by vehicle while under the influence of alcohol, the mandatory minimum sentence is three years, and a consecutive three year mandatory minimum sentences must be imposed for each victim that dies as a direct result of the violation.
- * Defendants subject to mandatory minimum sentences for first, second or third DUI offenses may be eligible for participation in certain county intermediate punishment programs. These programs, identified as

qualified restrictive intermediate punishment programs, are described in §303.12(a) (County Intermediate Punishment Program).

GUIDELINE FORM/SGS WEB APPLICATION:

* See §303.3(a) and §303.9(a)

COMMENTARY:

Pennsylvania's first sentencing guidelines (1982) had specific penalties for driving under the influence (DUI). These were eliminated on January 2, 1986 because they were inconsistent with the mandatory minimum sentences for this crime, and, as an M2 with a statutory limit of one year, any recommendation in addition to the mandatory would have had little impact. Subsequent editions of the guidelines simply included the mandatory provisions provided then in 75 Pa.C.S. §3731 (relating to imprisonment for DUI if no injuries occurred) and 75 Pa.C.S. §3735 (relating to Homicide by Vehicle While DUI). Since 1986, the Commission adopted two sentence recommendations relating to DUI offenses. In the first instance, the Commission provided sentence recommendations for a DUI which resulted in serious bodily injury; in the second instance, the Commission provided for the use of certain county intermediate punishments in lieu of mandatory imprisonment for DUI as permitted in statute.

The Commission responded to enactment of County Intermediate Punishment legislation (Acts 1990-193 and 1990-201) by recommending the diversion of offenders with mandatory DUI county sentences to designated programs for a maximum of 90 days. By initially limiting diversion to 90 days, those convicted of DUI with SBI, Homicide by Vehicle with DUI, and Involuntary Manslaughter with DUI would be required to serve some period of incarceration. (With enactment of amendments to 42 Pa.C.S. §9755 and §9756 providing for incarceration with consecutive county intermediate punishment, this limitation no longer applies.) The designated programs were identified as Qualified Restrictive Intermediate Punishment programs, and were those programs permitted in 37 Pa. Code §451.52 for Driving Under the Influence of Alcohol or Controlled Substance. This definition was chosen over that found in 42 Pa.C.S. §9763.(c) due to its more restrictive requirements. The provision permitting the use of Qualified Restrictive Intermediate Punishment programs to satisfy a mandatory minimum sentence is discussed under §303.12(a).

In 1997, the Commission decided to incorporate DUI-related offenses into the 5th Edition guidelines after an 11 year absence. This decision was adopted for several reasons. First, as a misdemeanor offense, the Commission was required by statute to specify a range of sentences applicable to DUI-related offenses, and to provide increased severity for defendants with any previous adjudications or convictions. It had been argued that reliance on the mandatory minimum and the statutory limit did not satisfy this requirement. Second, DUI-related offenses were the only offenses with mandatory provisions which the Commission excluded from the sentencing guidelines. And third, the increase in the grade of third and subsequent DUI offenses to an M1 increased the possibility of unwarranted disparity in the absence of guideline sentence recommendations. At the same time, the Commission removed the sentence recommendation for DUI resulting in serious bodily injury due to the enactment of Aggravated Assault by Vehicle While DUI (75 Pa.C.S. §3735.1) and the assignment of an Offense Gravity Score to the new offense.

The DUI statute was re-written in 2004, and the 6th Edition guidelines include substantial changes as a result. First, the offense gravity score assignment is based on the grade of the offense: an ungraded misdemeanor is an OGS 1; an M2 DUI is an OGS 3; and an M1 DUI is an OGS 5. Second, the prior record point assignment is based on the number of lifetime DUI convictions: a first lifetime conviction for DUI is considered an 'Other misdemeanor', while any subsequent lifetime conviction is assigned one point. An admission into ARD is not considered a conviction under the guidelines and is not included in the prior record score.

The policy which excludes from the prior record score any previous conviction that contributes to an increase in grading of a subsequent offense no longer applies to DUI, since the increase in grading under the new statute takes account both prior convictions and the current elements of the conviction, and now includes a 10-year look-back period for consideration of prior DUI convictions.

A Guideline Sentence Form is required for all convictions for DUI-related offenses. No form is required if the offender is accepted into an ARD program. The authority for collecting this form derives from 42 Pa. C.S. §2153(14), and provides information necessary to comply with 75 Pa.C.S. §3817 (DUI Reporting requirements).

DUI-RELATED MANDATORY SENTENCES

30 P.S. §5502:

Operating Watercraft Under Influence of Alcohol or Controlled Substance.

A person commits this offense if he operates or is in actual physical control of a watercraft while under the influence.

The sentencing court shall order the person to serve a minimum term of imprisonment of:

- (1) 1st offense within seven years = not less than 48 hours;
- (2) 2nd offense within seven years = not less than 30 days;
- (3) 3rd or subsequent offense within seven years = not less than 90 days.

Effective 1/14/81; amended 7/30/84; amended 12/30/97.

NO NOTICE REQUIRED

30 P.S. §5502.1:

Homicide by Watercraft While Operating Under the Influence.

A person commits this offense if he unintentionally causes the death of another person as the result of a violation of 30 P.S. §5502 (relating to operating watercraft under influence of alcohol or controlled substance).

A minimum sentence of imprisonment of not less than three years is required.

Effective 7/30/84.

NO NOTICE REQUIRED

75 Pa. C.S. §1543(b):

Driving While Operating Privilege is Suspended or Revoked/DUI-related.

A person commits this offense if he drives while his operating privilege is suspended or revoked due to a previous DUI.

A minimum sentence of imprisonment of not less than 60 days nor more than 90 days is required, unless:

- (1) The person is driving under suspension/revocation after imbibing (BAC of .02% or tests positive for a Schedule I or non-prescribed Schedule II or III controlled substance), for which a minimum sentence of imprisonment of not less than 90 days is required;
- (2) A second violation after imbibing, for which a minimum sentence of imprisonment of not less than six months is required;
- (3) A third or subsequent violation after imbibing, for which a minimum sentence of imprisonment of not less than two years is required.

Pursuant to 42 Pa. C.S. §9804(b), a person convicted of this offense may be eligible to participate in certain county intermediate punishment programs to satisfy the mandatory minimum sentence requirement.

Effective 6/17/76; amended 12/3/02; amended 2/1/04.

NO NOTICE REQUIRED

[75 Pa. C.S. §3731 Repealed by L.2003, Act 24(14), Effective 2/1/04.]

Driving Under the Influence of Alcohol or Controlled Substance. (See 75 Pa. C.S. §3802)

75 Pa. C.S. §3735:

Homicide by Vehicle While Driving Under Influence.

A person commits this offense if he unintentionally causes the death of another person as the result of a violation of 75 Pa. C.S. §3802 (relating to driving under influence of alcohol or controlled substance).

A minimum sentence of imprisonment of not less than three years is required. A consecutive three-year term of imprisonment is required for each victim whose death is the direct result of the violation of section

3802.

Effective 1/14/83; amended 4/23/96; amended 9/9/96; amended 2/19/99; amended 2/1/04.

NO NOTICE REQUIRED

75 Pa. C.S. §3802:

Driving Under the Influence of Alcohol or Controlled Substances.

A person commits this offense if he drives, operates or is in control of a motor vehicle after imbibing.

- (1) A violation of section 3802 (a)(1) incapable of driving safely or (a)(2) BAC .08 - < .10, first offense, requires a minimum sentence of probation of 6 months; second offense, a minimum sentence of imprisonment of not less than 5 days; third or subsequent offense, a minimum sentence of imprisonment of not less than 10 days.
- (2) A violation of section 3802 (a)(1) incapable of driving safely involving accident, or (b) BAC .10 - < .16, or (e) minor, or (f) commercial/school vehicle, first offense, requires a minimum sentence of imprisonment of not less than 48 hours; second offense, a minimum sentence of imprisonment of not less than 30 days; third offense, a minimum sentence of imprisonment of not less than 90 days; fourth or subsequent offense, a minimum sentence of imprisonment of not less than one year.
- (3) A violation of section 3802 (a)(1) incapable of driving safely involving refused testing, or (c) BAC .16 or greater, or (d) controlled substances, first offense, requires a minimum sentence of imprisonment of not less than 72 hours; second offense, a minimum sentence of imprisonment of not less than 90 days; third or subsequent offense, a minimum sentence of imprisonment of not less than one year.

Pursuant to 75 Pa. C.S. §3806, a prior offense, for purposes of grading and penalties, is a conviction, adjudication of delinquency, juvenile consent decree, acceptance of Accelerated Rehabilitative Disposition or other form of preliminary disposition for violation of section 3802 or any equivalent offense, within the ten years before the present violation occurred.

Pursuant to 42 Pa. C.S. §9804(b), a person convicted of a first, second or third offense may be eligible to participate in certain county intermediate punishment programs to satisfy the mandatory minimum sentence requirement.

Effective 2/1/04; amended 11/29/04.

NO NOTICE REQUIRED

75 Pa. C.S. §3808:

Illegally Operating a Motor Vehicle Not Equipped with Ignition Interlock.

A person commits this offense if he is required to only drive, operate or be in actual physical control of a motor vehicle equipped with an ignition interlock system, and drives, operates or is in actual physical control of a motor vehicle without such a system and has a BAC equal to or greater than .025% or tests positive for a Schedule I or non-prescribed Schedule II or III controlled substance.

A minimum sentence of imprisonment of not less than 90 days is required.

Effective 2/1/04; amended 11/29/04.

NO NOTICE REQUIRED

PENNSYLVANIA'S DUI-RELATED MANDATORY MINIMUM SENTENCING PROVISIONS

Title/Section	Description	Mandatory Minimum
30 P.S. §5502	Operating watercraft under influence of alcohol or controlled substance. Increases in the mandatory minimum based on any previous conviction for §5502 or comparable offense within past seven years .	<u>1st offense</u> 48 hours <u>2nd offense</u> 30 days <u>3rd offense</u> 90 days
30 P.S. §5502.1	Homicide by watercraft while operating under influence of alcohol or controlled substance.	3 years
75 Pa. C.S. §1543(b)	Driving while operating privilege is suspended or revoked, DUI-related. Increased mandatory if a person is driving under suspension or revocation after imbibing (BAC of .02% or tests positive for a Sched. I or a non-prescribed Sched. II or III controlled substance). Mandatory may be satisfied with certain county intermediate punishment programs.	60 days, unless: <u>Imbibing, 1st offense</u> 90 days <u>Imbibing, 2nd offense</u> 6 months <u>Imbibing, 3rd or subseq.</u> 2 years
75 Pa. C.S. §3735	Homicide by vehicle while DUI. Consecutive 3 years for each victim (death is a direct result)	3 years
75 Pa. C.S. §3742	Accidents involving death or personal injury (leaving scene of accident)	<u>Victim suffers SBI</u> 90 days <u>Victim dies</u> 1 year
75 Pa. C.S. §3802	Driving under influence of alcohol or controlled substance. The mandatory minimum is based on elements of the conviction, with increases in the mandatory minimum based on any previous conviction for DUI or comparable offense within past ten years . Mandatory may be satisfied for a first-, second- or third-time offender with certain county intermediate punishment programs.	(a)(1) <u>incapable of driving safely</u> , or (a)(2) <u>BAC .08 - < .10</u> : 1 st - 6 mo. (probation); 2 nd - 5 days; 3 rd /subseq. - 10 days (a)(1) <u>incapable of driving safely involving accident</u> , or (b) <u>BAC .10 - < .16</u> , or (e) <u>minor</u> , or (f) <u>commercial/school vehicle</u> : 1 st - 48 hours; 2 nd - 30 days; 3 rd - 90 days; 4 th /subseq. - 1 year (a)(1) <u>incapable of driving safely involving refused testing</u> , or (c) <u>BAC .16 or greater</u> , or (d) <u>controlled substances</u> : 1 st - 72 hours; 2 nd - 90 days; 3 rd /subseq. - 1 year
75 Pa. C.S. §3808	Illegally operating a motor vehicle not equipped with ignition interlock (BAC of .025% or tests positive for a Schedule I or a non-prescribed Schedule II or III controlled substance)	90 days

§303.10 GUIDELINE SENTENCE RECOMMENDATIONS: ENHANCEMENTS

**§303.10 (a)
DEADLY WEAPON ENHANCEMENT**

GUIDELINE TEXT:

§303.10 (a) Deadly Weapon Enhancement.

(1) When the court determines that the offender possessed a deadly weapon during the commission of the current conviction offense, the court shall consider the DWE/Possessed Matrix (§303.17). An offender has possessed a deadly weapon if any of the following were on the offender's person or within his immediate physical control:

- (i) Any firearm, (as defined in 42 Pa.C.S. §9712) whether loaded or unloaded, or**
- (ii) Any dangerous weapon (as defined in 18 Pa.C.S. §913), or**
- (iii) Any device, implement, or instrumentality designed as a weapon or capable of producing death or serious bodily injury where the court determines that the defendant intended to use the weapon to threaten or injure another individual.**

(2) When the court determines that the offender used a deadly weapon during the commission of the current conviction offense, the court shall consider the DWE/Used Matrix (§303.18). An offender has used a deadly weapon if any of the following were employed by the offender in a way that threatened or injured another individual:

- (i) Any firearm, (as defined in 42 Pa.C.S. §9712) whether loaded or unloaded, or**
- (ii) Any dangerous weapon (as defined in 18 Pa.C.S. §913), or**
- (iii) Any device, implement, or instrumentality capable of producing death or serious bodily injury.**

(3) There shall be no Deadly Weapon Enhancement for the following offenses:

- (i) Possessing Instruments of Crime**
- (ii) Prohibited Offensive Weapons**
- (iii) Possession of Weapon on School Property**
- (iv) Possession of Firearm or Other Dangerous Weapon in Court Facility**
- (v) Simple Assault (18 Pa.C.S. §2701(a)(2))**
- (vi) Aggravated Assault (18 Pa.C.S. §2702(a)(4))**
- (vii) Theft when property stolen is a firearm (18 Pa.C.S. Chapter 39)**

(viii) **Violations of the Pennsylvania Uniform Firearms Act**

(ix) **Any other offense for which possession of a deadly weapon is an element of the statutory definition.**

(4) The Deadly Weapon Enhancement shall apply to each conviction offense for which a deadly weapon is possessed or used.

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.10(a)). The text of this section was amended to remove the phrase 'or in the furtherance of the crime' from the deadly weapon used provision, and to add 'theft when the property stolen is a firearm' as an offense to which the deadly weapon enhancement does not apply.

DESCRIPTION:

- * Unless possession of a deadly weapon is an element of the statutory definition of a crime, the deadly weapon enhancement is added every time an offender possessed or used the weapon during the commission of a crime. Thus, the enhancement is added when it is legally possible to commit the crime without possessing a deadly weapon.
- * The most common offenses which require a deadly weapon as part of the statutory definition are listed. These offenses are mentioned in the guidelines as examples. There are other crimes for which the statute requires possession of a deadly weapon, and the enhancement cannot be added to these offenses.
- * No deadly weapon enhancement is applied to 18 Pa.C.S. §2701(a)(2), simple assault involving a deadly weapon, regardless of the grade of the offense pursuant to 18 Pa.C.S. §2701(b). The deadly weapon enhancement shall apply to all other convictions under the simple assault statute when a deadly weapon is possessed or used.
- * No deadly weapon enhancement is applied to 18 Pa.C.S. §2701(a)(4), aggravated assault involving a deadly weapon. The deadly weapon enhancement shall apply to all other convictions under the aggravated assault statute when a deadly weapon is possessed or used.
- * The deadly weapon enhancement can be added to crimes which are usually committed with a deadly weapon, but for which weapon possession is not a part of the statutory definition of the offense.
- * The enhancement is added to each offense which meets the requirements of this section. The enhancement is applied to the lesser offenses in a criminal act or episode, even if a deadly weapon is an element of a greater offense.
- * The length of the enhancement varies based upon the Offense Gravity Score of the offense to which the enhancement is added and whether the weapon was possessed or used.
- * Both a deadly weapon enhancement and the youth or school enhancement can be added to the same offense.
- * The deadly weapon enhancement is a means of modifying the guideline sentence ranges for a case. It is not an "add on" to the sentence itself, nor is it a separate sentence which needs to be imposed.
- * The guidelines provide two different deadly weapon enhancements, one based on possession of a deadly weapon and the other based on the use of a deadly weapon.

- * An offender possessed a deadly weapon if any of the following were on the offender's person or within his immediate physical control:
 - (i) Any firearm, (as defined in 42 Pa.C.S. §9712) whether loaded or unloaded, or
 - (ii) Any dangerous weapon (as defined in 18 Pa.C.S. §913), or
 - (iii) Any device, implement, or instrumentality designed as a weapon or capable of producing death or serious bodily injury where the court determines that the defendant intended to use the weapon to threaten or injure another individual.
- * An offender has used a deadly weapon if any of the following were employed by the offender in a way that threatened or injured another individual:
 - (i) Any firearm, (as defined in 42 Pa.C.S. §9712) whether loaded or unloaded, or
 - (ii) Any dangerous weapon (as defined in 18 Pa.C.S. §913), or
 - (iii) Any device, implement, or instrumentality capable of producing death or serious bodily injury.
- * The intent of the offender and the effect on the victim should be considered by the court in determining whether an act was threatening. The DWE/Used enhancement is intended to apply provision to circumstances in which a person is threatened or injured. In cases where a weapon is used but no person is threatened or injured, such as in a case involving cruelty to animals, the DWE/Possessed enhancement applies. The Commission specifically selected the definition of firearm found in 42 Pa.C.S. §9712 over other definitions provided in statute.
- * Definition of firearm - Any weapon, including a starter gun, which will or is designed to or may readily be converted to expel a projectile by the action of an explosive or the expansion of gas therein. (42 Pa.C.S. §9712).
- * Definition of dangerous weapon - A bomb, grenade, blackjack, sandbag, metal knuckles, dagger, knife (the blade of which is exposed in an automatic way by switch, push-button, spring mechanism or otherwise) or other implement for the infliction of serious bodily injury which serves no common lawful purpose. (18 Pa.C.S. §913).
- * The enhancement has been added to the lower and upper limit of the standard range of the Basic Sentencing Matrix (§303.16). These enhanced standard ranges are found in the DWE/Possessed Matrix (§303.17) and DWE/Used Matrix (§303.18).
- * For the DWE/Possessed Matrix (§303.17):
An enhancement of 3 months has been added when the Offense Gravity Score for the current offense is 1, 2, 3 or 4. An enhancement of 6 months has been added when the Offense Gravity Score for the current offense is 5, 6, 7 or 8. An enhancement of 9 months has been added when the Offense Gravity Score for the current offense is 9, 10, 11, 12, 13 or 14. For the purposes of calculating the Deadly Weapon/Possessed Enhancement, RS recommendations are treated as zeros.
- * For the DWE/Used Matrix (§303.18):
An enhancement of 6 months has been added when the Offense Gravity Score for the current offense is 1, 2, 3 or 4. An enhancement of 12 months has been added when the Offense Gravity Score for the current offense is 5, 6, 7 or 8. An enhancement of 18 months has been added when the Offense Gravity Score for the current offense is 9, 10, 11, 12, 13 or 14. For the purposes of calculating the Deadly Weapon/Used Enhancement, RS recommendations are treated as zeros.
- * Once the appropriate enhancement and corresponding matrix is selected, the court may take into account the relative weight of the deadly weapon in the crime. Factors which may be considered include but are not

limited to the type of weapon, the level of threat or degree of injury.

- * The court must compute the guidelines correctly before a sentence is imposed. When the factual circumstances described in this section apply, the court is required to consider the applicable enhanced sentence recommendation. The court may impose a sentence which departs from the guidelines, but only after it considers the correct enhanced ranges. When the court departs from the guidelines, it must specify its reasons for doing so. See §303.1(d).

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.3(a) and §303.9(a)

COMMENTARY:

The Legislature has required by statute that the guidelines "(S)pecify a range of sentences of increased severity for defendants who possessed a deadly weapon during the commission of the current conviction offense." (42 Pa. C.S. §2154(a)(3)).

Possessing a weapon during a crime increases the fear of the victim and increases the risk of injury to victims and to law enforcement officers. Defendants who commit such crimes are more culpable than if they had not possessed a weapon. This fact is recognized by the Legislature and the Commission and is the reason why possession of a deadly weapon is given such great weight in computing the suggested guideline sentence ranges.

The enhancement provides increases in the guideline recommendations proportional to the severity of the conviction offense. Under the 5th Edition revisions, the Commission decided to differentiate between deadly weapons that were possessed and those that were used during the commission of an offense. Revised definitions of firearm and dangerous weapon were incorporated from statute. The Commission utilized the lower limits of the previous enhancements for the new DWE/Possessed increment, and the upper limits of the previous enhancements for the DWE/Used increment.

A former provision relating to lesser included offenses was added in the April 25, 1988 edition of the guidelines in response to concerns that a defendant might be unconstitutionally constrained from requesting a charge to a jury on a lesser included offense. This could occur when the lesser offense had the longer guideline penalty, as it would if the enhancement could be added to the lesser included offense, but not to the greater crime. This policy was eliminated when the Commission moved to an offense-based system in which the Prior Record Score and all applicable enhancements would be applied to each conviction offense.

When the Commission assigned Offense Gravity Scores, all of the elements of an offense were taken into account, including possession of a deadly weapon when that is an element. The most important aspect of a crime that was considered was the degree of harm or the potential for harm that is typically involved in the offense. Therefore, adding the weapon enhancement when weapon possession is already considered in the Offense Gravity Score would count the weapon twice. The Commission has eschewed such "double counting" throughout the guidelines. Counting the same element in different parts of the guidelines would be unfair and would penalize the defendant more than once for the same behavior. It is for this reason that the Commission added theft of a firearm to the list of offenses for which no deadly weapon is applied during the 6th Edition revisions.

As part of the 6th Edition guidelines, the Commission also removed the phrase 'or in the furtherance of the crime' from the deadly weapon used provision. This was done following a review of a case involving the application of the deadly weapon used enhancement in a case involving an offense of cruelty to animals at which time no person was present. (See *Com. v. Hackenberger*, 836 A.2d 2). A majority of the Commission members supported limiting the application of DWE/Used enhancement to circumstances in which a person was threatened or injured as most consistent with the original purpose of the separate enhancements. The Commission further recognized that the

DWE/Possessed enhancement would continue to apply in all other cases (including cruelty to animals) where a deadly weapon was possessed by the offender.

§303.10 (b)
YOUTH/SCHOOL ENHANCEMENT

GUIDELINE TEXT:

§303.10 (b) Youth/School Enhancement

(1) When the court determines that the offender either distributed a controlled substance to a person or persons under the age of 18 in violation of 35 P.S. §780-114, or manufactured, delivered or possessed with intent to deliver a controlled substance within 1000 feet of the real property on which is located a public or private elementary or secondary school, the court shall consider the range of sentences described in §303.9(c).

(2) The Youth/School Enhancement only applies to violations of 35 P.S. §780-113(a)(14) and (a)(30).

(3) The Youth/School Enhancement shall apply to each violation which meets the criteria above.

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.10(b)). The text of this section was amended to insert the phrase 'the real property on which is located' to more clearly describe the school zone.

DESCRIPTION:

- * The Youth/School Enhancement is only applicable to violations of subsections (a)(14) and (a)(30) of the Controlled Substance Drug, Device and Cosmetic Act. It does not apply to inchoates to these offenses.
- * The Youth/School Enhancement is not applicable to non-drug offenses.
- * The Youth/School Enhancement does not require a nexus between proximity to a school and the drug manufacture, possession or delivery.
- * Section 114 of the drug act states that:

§114. Distribution to Persons Under Age Eighteen. Any person who is at least twenty-one years of age and who is not himself a drug dependent person who violates this act by distributing a controlled substance listed in Schedules I through V to a person under eighteen years of age who is at least four years his junior is punishable by a term of imprisonment up to twice that otherwise authorized by subsection (f) of section 13 of this act, in addition to any fine authorized by this act.
- * The Youth/School Enhancement is added for every drug offense for which one of the above conditions are met, even if the offenses arose from the same incident.
- * The Youth/School Enhancement requires adding an additional 12 to 36 months when either:

(a) the defendant distributed a controlled substance to a person under the age of 18 in violation of 35 P.S. §780-114; *or*

(b) the defendant manufactured, delivered or possessed with intent to deliver a controlled substance within 1000 feet of the real property on which is located a public or private elementary or secondary school.

- * The Youth/School Enhancement is a means of modifying the guideline sentence ranges for a case. It is not an "add on" to the sentence itself, nor is it a separate sentence which needs to be imposed.
- * Both the Youth/School Enhancement and a Deadly Weapon Enhancement can be added to the same offense.
- * When the Youth/School Enhancement applies, add 12 months to the bottom and 36 months to the top of the applicable standard range.
- * The court must compute the guidelines correctly before a sentence is imposed. When the factual circumstances described in this section apply, the court is required to consider the applicable enhanced sentence recommendation. The court may impose a sentence which departs from the guidelines, but only after it considers the correct enhanced ranges. When the court departs from the guidelines, it must specify its reasons for doing so. See §303.1(d).

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.3(a) and §303.9(a)

COMMENTARY:

The Youth/School Enhancement was initially developed as an alternative to mandatory sentencing provisions. Although, historically, this provision has not been frequently applied, the Commission chose to maintain the Youth/School Enhancement within the guidelines. The Commission was concerned with the message that would be sent to society and to the drug dealers if the provision was removed from the guidelines.

In response to concerns raised by the Superior Court in a case involving the application of the school enhancement (see *Com. v. Davis*, 734 A.2d 879), the Commission added language in the 6th Edition guidelines to clarify that the school enhancement applied to offenses committed within 1000 feet of 'the real property on which is located 'a public or private elementary or secondary school. As part of this review, the Commission reviewed the definitions found in 18 Pa.C.S. §6314 (Sentencing and penalties for trafficking drugs to minors) and §6317 (Drug-free school zones). While the Commission adopted the statutory language to describe the distance, it decided that application of the enhancement would continue to apply only to elementary and secondary schools, and not extend the enhancement to other locations covered in the mandatory provisions, such as colleges, universities, playgrounds and school buses.

§303.11 GUIDELINE SENTENCE RECOMMENDATION: SENTENCING LEVELS.

§303.11 (a) PURPOSE OF SENTENCE

GUIDELINE TEXT:

§303.11(a) Purpose of sentence. In writing the sentencing guidelines, the Pennsylvania Commission on Sentencing strives to provide a benchmark for the judges of Pennsylvania. The sentencing guidelines provide sanctions proportionate to the severity of the crime and the severity of the offender's prior conviction record. This establishes a sentencing system with a primary focus on retribution, but one in which the recommendations allow for the fulfillment of other sentencing purposes including rehabilitation, deterrence, and incapacitation. To facilitate consideration of sentencing options consistent with the intent of the sentencing guidelines, the Commission has established five sentencing levels. Each level targets certain types of offenders, and describes ranges of sentencing options available to the court.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.11(a)).

DESCRIPTION:

- * This section explains the Commission's overall purpose in writing the sentencing guidelines.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

In this section the Commission states its purposes behind the guideline sentence recommendations. The purposes were specified so that the court could compare the purpose of the guideline recommendation with its own purpose in imposing a sentence in a particular case.

As noted in the text above, the sentencing guidelines establish a system with a primary focus on retribution, but which allow for other sentencing purposes, including rehabilitation, deterrence, and incapacitation. Retribution, or just deserts, is punishment imposed to hold the offender accountable for the crime committed. By using the seriousness of the current offense (offense gravity score) and the offender's criminal history (prior record score) to scale the type and length of punishment, the Commission provides a benchmark for sentencing which is proportional and consistent. But recognizing both the need and the statutory requirement for individualized sentencing, courts are encouraged to consider the other purposes identified. "Rehabilitation aims to prevent criminal behavior by sentencing offenders to programs designed to eliminate or substantially reduce their criminal propensities. Underlying this rationale is the belief that the best way to discourage criminal activity is to offer skills, motivation, and employment opportunities that will reorient offenders toward socially productive behavior." (Campbell, Arthur W. *Law of Sentencing, 2nd Edition*). Deterrence seeks to use the sentence imposed to discourage the offender (specific) and the broader public (general) from engaging in future criminal activity. Incapacitation is the removal of the offender from society through imprisonment or similar separation.

The following sentencing alternatives are provided in the Judicial Code: 1) an order of probation; 2) a determination of guilt without further penalty; 3) partial confinement; 4) total confinement; 5) a fine; 6) county intermediate punishment; and 7) state intermediate punishment. In addition to these alternatives, the court is required to order the defendant to pay restitution to the victim for damage or injury sustained.

The general standards for sentencing require the following:

- 1) "courts should 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" (42 Pa. C.S. §9721(b)).
- 2) "The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing . . ." (42 Pa. C.S. §9721(b)).
- 3) All sentences of imprisonment shall be to a definite term (42 Pa. C.S. §9721(e)).

Pursuant to Pa.R.Crim.P. Rule 705 (Imposition of Sentence), when more than one sentence is imposed, or when a sentence is imposed on a defendant who is sentenced for another offense, the court must state whether the sentences shall run concurrently or consecutively; if concurrent, the sentence shall commence from the date of imposition unless otherwise ordered by the court. When imposing a sentence to imprisonment, the court shall state the date the sentence is to commence. "There is simply no statutory provision which would permit a sentencing judge to either commence a second sentence retroactively, *i.e.*, to have it commence at the same time as a prior sentence, or to provide credit for the time served on a prior unrelated charge." *Wassell v. Com.*, 658 A.2d 466 (Pa.Cmwlth, 1995). Relevant case law require that consecutive sentences be automatically aggregated, even if imposed by different judges, even if imposed by different courts, and even if imposed at different times, and that, where the total aggregate sentence carries a maximum of two years or more, exclusive parole authority lies with the Pennsylvania Board of Probation and Parole. *Com. v. Miller*, 770 A.2d 362 (PA Super., 2001).

As part of the 6th Edition guidelines, the Commission has expanded the description of sentencing levels to target the use of county intermediate punishments for those eligible offenders with a minimum sentence recommendation of less than 30 months, and state intermediate punishments for those eligible offenders with a minimum sentence recommendation of 30 months or greater. The Commission has also modified the definitions of sentencing levels 3 and 4 to include offenses for which a mandatory minimum sentence to a county facility apply and for which an intermediate punishment sentence is authorized. While some offenses, such as DUI, may be assigned to lower sentencing levels due to the grade of the offense and the OGS assignment, the mandatory sentencing provision and the intermediate punishment eligibility are consistent with the general description of levels 3 and 4: standard range requires incarceration or restrictive intermediate punishment but in all cases permits incarceration in a county facility. The Commission has further modified the definitions of sentencing levels 3, 4 and 5 to incorporate state intermediate punishment as an available sentencing option.

§303.11 (b)
SENTENCING LEVELS

GUIDELINE TEXT:

§303.11 (b) Sentencing levels. The sentencing level is based on the standard range of the sentencing recommendation. Refer to §303.9 to determine which sentence recommendation (i.e. - Basic, Deadly Weapon Enhancement or Youth/School Enhancement) applies. In any case where an individual or aggregate sentence recommendation may include total confinement, county intermediate punishment is recommended for eligible offenders with a minimum sentence recommendation of less than 30 months, and state intermediate punishment is recommended for eligible offenders with a minimum sentence recommendation of 30 months or greater. The descriptions of the five sentencing levels are as follows:

(1) Level 1 - Level 1 provides sentence recommendations for the least serious offenders with no more than one prior misdemeanor conviction, such that the standard range is limited to Restorative Sanctions (RS). The primary purpose of this level is to provide the minimal control necessary to fulfill court-ordered obligations. The following sentencing option is available:

Restorative Sanctions (§303.9(f))

(2) Level 2 - Level 2 provides sentence recommendations for generally non-violent offenders and those with numerous less serious prior convictions, such that the standard range requires a county sentence but permits both incarceration and non-confinement. The standard range is defined as having an upper limit of less than 12 months and a lower limit of Restorative Sanctions (RS). The primary purposes of this level are control over the offender and restitution to victims. Treatment is recommended for drug dependent offenders. The following sentencing options are available:

**Total confinement in a county facility under a county sentence
(see 61 P.S. §331.17).**

Partial confinement in a county facility

County Intermediate Punishment (see §303.12(a) for eligibility criteria)

Restorative Sanctions (§303.9(f))

(3) Level 3 - Level 3 provides sentence recommendations for serious offenders and those with numerous prior convictions, such that the standard range requires incarceration or County Intermediate Punishment, but in all cases permits a county sentence. The standard range is defined as having a lower limit of incarceration of less than 12 months. Included in Level 3 are those offenses for which a mandatory minimum sentence of less than 12 months applies and for which a state or county intermediate punishment sentence is authorized by statute. The primary purposes of this level are retribution and control over the offender. If eligible, treatment is recommended for drug dependent offenders in lieu of incarceration. The following sentencing options are available:

Total confinement in a state facility.

**Total confinement in a state facility, with participation in the State Motivational Boot Camp
(see §303.12(b) for eligibility criteria)**

State Intermediate Punishment (see §303.12(c) for eligibility criteria)

Total confinement in a county facility under a state or county sentence

(see 61 P.S. §331.17).

Partial confinement in a county facility.

County Intermediate Punishment (see §303.12(a) for eligibility criteria)

(4) Level 4 - Level 4 provides sentence recommendations for very serious offenders and those with numerous prior convictions, such that the standard range requires state incarceration but permits it to be served in a county facility. The standard range is defined as having a lower limit of incarceration of greater than 12 months but less than 30 months, but limited to offenses with an Offense Gravity Score of less than 9. Included in Level 4 are those offenses for which a mandatory minimum sentence of less than 30 months applies and for which a state or county intermediate punishment sentence is authorized by statute. The primary purposes of the sentencing options at this level are punishment and incapacitation. However, it is recognized that certain offenders at this level are permitted to serve a sentence of total confinement in a county facility, and some non-violent offenders may benefit from drug and alcohol treatment. If eligible, state intermediate punishment is recommended for drug dependent offenders. The following sentencing options are available:

Total confinement in a state facility.

Total confinement in a state facility, with participation in the State Motivational Boot Camp (see §303.12(b) for eligibility criteria)

State Intermediate Punishment (see §303.12(c) for eligibility criteria)

**Total confinement in a county facility as a state offender.
(see 61 P.S. §331.17).**

County Intermediate Punishment (see §303.12.(a) for eligibility criteria)

(5) Level 5 - Level 5 provides sentence recommendations for the most violent offenders and those with major drug convictions, such that the conviction has an Offense Gravity Score of 9 or greater or the standard range requires state incarceration in a state facility. The standard range in such a case is defined as having a lower limit of 12 months or greater. Included in Level 5 are those offenses for which a mandatory minimum sentence of 30 months or greater applies and for which a state intermediate punishment sentence is authorized by statute. The primary purposes of the sentencing options at this level are punishment commensurate with the seriousness of the criminal behavior and incapacitation to protect the public. If eligible, state intermediate punishment is recommended for drug dependent offenders. The following sentencing options are available:

Total confinement in a state facility.

Total confinement in a state facility, with participation in the State Motivational Boot Camp (see §303.12(b) for eligibility criteria)

State Intermediate Punishment (see §303.12(c) for eligibility criteria)

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.11(b)). The text of this section was amended to incorporate and provide targeting for the use of state intermediate punishment, to distinguish between county intermediate punishment and state intermediate punishment in terms of targeting, and to clarify the sentencing level assignments for mandatory minimum sentences.

DESCRIPTION:

- * This section discusses the specific purposes of the sentencing recommendations, which shift with each level of the guidelines.
- * The levels approximate a continuum of sentencing recommendations with Restorative Sanctions (RS) at Level 1 to total confinement in a state facility at Level 5.
- * The sentencing levels are based on the standard range of the applicable matrix (see §303.9(a)). The level and corresponding sentencing options recommended under this section do not change as a result of an aggravating, mitigating or departure sentence.
- * Information on Alphabetic Sentence Recommendations, such as RS, is found at §303.9(f). Information on Numeric Sentence Recommendations, which includes total confinement, is found at §303.9(e).
- * Information on County Intermediate Punishment Programs is found at §303.12(a). Information on the State Motivational Boot Camp is found at §303.12(b).
- * Level 1 generally includes offenders who are the least serious in terms of their current conviction and their prior record. The sentence recommendations at Level 1 reflect the Commission's position that the offender should be required to restore either the victim or the community to pre-offense status. Constraint of the offender's freedom is utilized at this level to insure compliance with court orders.
- * At Level 1, the court may utilize any sentencing option classified as a Restorative Sanction (RS). At Level 1, a sentence that is more than RS (e.g. county intermediate punishment including one or more RIP programs, state intermediate punishment, partial confinement, total confinement) is outside the standard range.
- * Level 2 generally includes offenders with convictions for more serious offenses than at Level 1 or those offenders with convictions for less serious offenses but with a prior record. The sentence recommendations at this level reflect the Commission's position that the offender may need to have considerable restrictions placed on his or her freedom. The recommendations also allow for sentences that require the offender to meet his or her responsibilities to the victim and/or the community. At Level 2 the guidelines recommend that the court focus on alternatives to incarceration.
- * At Level 2, there are three sentencing options that are recommended within the standard range. The first is the imposition of a Restorative Sanction such as probation. The second is a sentence of county intermediate punishment which includes participation in one or more Restrictive Intermediate Punishment (RIP) programs. The third is partial or total confinement in a county correctional facility.
- * At Level 2, a sentence that includes participation in an RIP program or confinement that is longer than the number of months indicated is outside the standard range.
- * At Level 2, the court is not required under the guidelines to have the offender evaluated for dependency on alcohol or other drugs before placing an offender into a restrictive intermediate punishment program. However, the guidelines encourage the courts to consider the appropriateness of treatment.
- * Level 3 generally includes serious offenders who may have a potential for violence or less serious offenders who have numerous prior convictions. Level 3 also includes offenders for which a mandatory minimum sentence of less than 12 months applies and for which county intermediate punishment or state intermediate punishment is permitted. The sentence recommendations at this level reflect the Commission's position that the offender generally requires a period of incarceration in a county facility. However, individual circumstances may warrant either confinement in a state facility or a sentence of county intermediate punishment or state

intermediate punishment.

- * At Level 3, there are four sentencing options that are permitted within the guidelines. The first is commitment to a state correctional facility, including authorizing the offender's participation in the state motivational boot camp provided the statutory criteria are met. The second is a commitment to a county correctional facility, including authorizing the offender's participation in work release. The third is a sentence of county intermediate punishment which includes participation in one or more restrictive intermediate punishment (RIP) programs. The fourth is state intermediate punishment, which requires an evaluation and positive recommendation by the Department of Corrections prior to sentencing.
- * The court may utilize one or more of the Level 3 sentencing options to satisfy the sentence recommendation provided in the standard range.
- * At Level 3, the following sentences are outside the standard range: Restorative Sanction (RS); a sentence of county intermediate punishment for a drug-dependent offender that does not conform to the clinical recommendation; a sentence for a non-dependent offender that includes participation in an RIP program that is shorter or longer than the number of months indicated; a sentence of partial or total confinement that is shorter or longer than the number of months indicated.
- * Level 4 generally includes very serious offenders and those with numerous prior convictions. As with Level 3, such offenders may have a potential for violence. Level 4 also includes offenders for which a mandatory minimum sentence of less than 30 months applies and for which county intermediate punishment or state intermediate punishment is permitted. The sentence recommendations at this level reflect the Commission's position that the offender generally requires a period of incarceration in a state or county facility. However, individual circumstances may warrant a sentence of county intermediate punishment or state intermediate punishment.
- * At Level 4, there are four sentencing options that are permitted within the guidelines. The first is commitment to a state correctional facility, including authorizing the offender's participation in the state motivational boot camp provided the statutory criteria are met. The second is a commitment to a county correctional facility, including authorizing the offender's participation in work release. The third is a sentence of county intermediate punishment which includes participation in one or more restrictive intermediate punishment (RIP) programs. The fourth is state intermediate punishment, which requires an evaluation and positive recommendation by the Department of Corrections prior to sentencing.
- * As with Level 3, the following sentences are outside the standard range: Restorative Sanction (RS); a sentence of county intermediate punishment for a drug-dependent offender that does not conform to the clinical recommendation; a sentence for a non-dependent offender that includes participation in an RIP program that is shorter or longer than the number of months indicated; a sentence of partial or total confinement that is shorter or longer than the number of months indicated.
- * Level 5 includes offenders who have been convicted of a violent or major drug offense, including those offenders who have a very lengthy and/or serious prior record. Level 5 also includes offenders for which a mandatory minimum sentence of 30 months or greater applies and for which a state intermediate punishment sentence is permitted. The sentence recommendations at this level reflect the Commission's position that the offender generally requires incarceration in a state facility. However, individual circumstances may warrant confinement in a county facility or state intermediate punishment.
- * At Level 5, there are three sentencing options that are permitted within the guidelines. The first is commitment to a state correctional facility, including authorizing the offender's participation in the state motivational boot camp provided the statutory criteria are met. The second, while inadvertently omitted from the text of the guidelines, is a commitment to a county correctional facility pursuant to 61 P.S. §331.17. The third is state intermediate punishment, which requires an evaluation and positive recommendation by the Department of Corrections prior to sentencing.

- * At Level 5, the following sentences are outside the standard range: Restorative Sanction (RS); a sentence of county intermediate punishment; a sentence of partial or total confinement that is shorter or longer than the number of months indicated.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

The following sentencing alternatives are provided in the Judicial Code: 1) an order of probation; 2) a determination of guilt without further penalty; 3) partial confinement; 4) total confinement; 5) a fine; 6) county intermediate punishment; and 7) state intermediate punishment. In addition to these alternatives, the court is required to order the defendant to pay restitution to the victim for damage or injury sustained.

The general standards for sentencing require the following:

- 1) "courts should 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" (42 Pa. C.S. §9721(b)).
- 2) "The court shall also consider any guidelines for sentencing adopted by the Pennsylvania Commission on Sentencing . . ." (42 Pa. C.S. §9721(b)).
- 3) All sentences of imprisonment shall be to a definite term (42 Pa. C.S. §9721(e)).

Pursuant to Pa.R.Crim.P. Rule 705 (Imposition of Sentence), when more than one sentence is imposed, or when a sentence is imposed on a defendant who is sentenced for another offense, the court must state whether the sentences shall run concurrently or consecutively; if concurrent, the sentence shall commence from the date of imposition unless otherwise ordered by the court. When imposing a sentence to imprisonment, the court shall state the date the sentence is to commence. "There is simply no statutory provision which would permit a sentencing judge to either commence a second sentence retroactively, *i.e.*, to have it commence at the same time as a prior sentence, or to provide credit for the time served on a prior unrelated charge." *Wassell v. Com.*, 658 A.2d 466 (Pa.Cmwth, 1995). Relevant case law require that consecutive sentences be automatically aggregated, even if imposed by different judges, even if imposed by different courts, and even if imposed at different times, and that, where the total aggregate sentence carries a maximum of two years or more, exclusive parole authority lies with the Pennsylvania Board of Probation and Parole. *Com. v. Miller*, 770 A.2d 362 (PA Super., 2001).

Under the 4th Edition guidelines, the Commission divided the sentencing recommendations into four levels and developing two categories of county intermediate punishment programs (*i.e.*, restrictive intermediate punishments and restorative sanctions programs), the Commission incorporated the statutory sentencing alternatives into the guidelines. Offenders were targeted for different sentencing options based upon the recommendation of the standard range of the applicable matrix. The guidelines targeted offenders to help promote the most efficient use of correctional resources and reduce the possibility of net-widening. The Commission recommended a sentence of county intermediate punishment for only those offenders who would otherwise have been sentenced to partial or total confinement in a county correctional facility.

As part of the 5th Edition guidelines, the two cells which included a PRS = 1 were removed from Level 1. The resulting Level 1 included only those with the least serious offenses (OGS=1, 2) and no significant prior convictions (PRS=0). The standard range recommendation for Level 1 under the 5th Edition guidelines was RS. The most significant change in sentencing levels involved the modification of the previous Level 4 and the addition of a new Level 5. This change generally incorporated into the guidelines other provisions of statute which provide for place of confinement and paroling authority based on the maximum sentence. See §303.9(e) (Numeric Sentence Recommendations). The modified Level 4 targeted those offenders who may serve a state sentence in a county facility. Some of these offenders may be eligible for a sentence of county intermediate punishment in lieu of incarceration. The new Level 5 generally targeted those offenders who are required to serve a state sentence in a state facility. Also included in Level 5 were state offenders with current

convictions for crimes of violence. The Commission generally recommended that these sentences be served in a state facility.

As part of the 6th Edition guidelines, the Commission has expanded the description of sentencing levels to target the use of county intermediate punishments for those eligible offenders with a minimum sentence recommendation of less than 30 months, and state intermediate punishments for those eligible offenders with a minimum sentence recommendation of 30 months or greater. The Commission modified the definitions of sentencing levels 3 and 4 to include offenses for which a mandatory minimum sentence to a county facility apply and for which a county intermediate punishment sentence is authorized. While some offenses, such as DUI, may be assigned to lower sentencing levels due to the grade of the offense and the OGS assignment, the mandatory sentencing provision and the county intermediate punishment eligibility are consistent with the general description of levels 3 and 4: standard range requires incarceration or restrictive intermediate punishment but in all cases permits incarceration in a county facility. The Commission has further modified the definitions of sentencing levels 3, 4 and 5 to incorporate state intermediate punishment as an available sentencing option.

Three sentencing programs, discussed in §303.12, are available as alternatives to traditional sentence of total confinement: county intermediate punishment, the state motivational boot camp, and state intermediate punishment. While there is some overlapping in eligibility, each program targets a substantially different population.

County intermediate punishment remains the primary alternative to county incarceration, including for those offenders who would otherwise serve a state sentence in a county facility.

- County intermediate punishment targets offenders who otherwise would be serving a minimum sentence of confinement of less than 30 months. For Level 3 and 4 offenders, a drug and alcohol assessment must be administered by the county prior to sentencing. For drug-dependant offenders, only a clinically-prescribed treatment program may be ordered as part of a county intermediate punishment sentence; for non drug dependant offenders, the court may use any approved county intermediate punishment programs as part of a county intermediate punishment sentence, with the use of restrictive intermediate punishment programs as a 1:1 trade-off with the recommended period of incarceration, and restorative sanctions programs, such as probation supervision, replacing traditional county parole.

The state motivational boot camp and state intermediate punishment are the two alternatives to state incarceration.

- State motivational boot camp targets younger offenders (male or female) who would otherwise be serving a minimum sentence of one to three years in a state facility and whose primary needs are structure, education, discipline and life skills, with drug & alcohol dependency a secondary issue. The boot camp is a six-month program with mandatory aftercare and intensive supervision.
- State intermediate punishment targets drug dependent offenders who otherwise would be serving a minimum sentence of confinement in a state facility of 30 months or more. The court must commit the offender to the Department of Corrections for a comprehensive evaluation prior to sentencing. State intermediate punishment is a two-year program of individualized treatment and supervision for offenders with substantial drug dependency, beginning with total confinement and treatment in a state correctional institution and transitioning to the community, all supervised by the Department of Corrections.

§303.12 GUIDELINE SENTENCE RECOMMENDATIONS: SENTENCING PROGRAMS

**§303.12 (a)
COUNTY INTERMEDIATE PUNISHMENT**

§303.12 (a) County intermediate punishment.

(1) Eligibility.

(i) The following regulations and statutes govern operation of and eligibility for county intermediate punishment programs:

37 Pa.Code §451.1 et seq.

42 Pa.C.S. §9729, §9763, §9773 and Chapter 98.

204 Pa.Code §303.8 and §303.9.

(ii) Sentence recommendations which include an option of County Intermediate Punishment for certain offenders are designated as shaded cells in the guideline matrices.

(2) The county intermediate punishment plan provides a mechanism to advise the court of the extent and availability of services and programs authorized in the county. This plan includes information on the appropriate classification and use of county programs based on program-specific requirements.

(3) Intermediate punishments classifications. In order to incorporate intermediate punishment programs into the sentencing levels, the Commission has classified intermediate punishment programs as Restrictive Intermediate Punishments (RIP) and restorative sanction programs. Additionally, specific intermediate punishment programs have been identified in legislation (42 Pa.C.S. §§9763(c) and 9804(b)) and regulation (37 Pa. Code §451.52) as authorized sentences for conviction under 75 Pa.C.S. §3802 (relating to Driving Under the Influence of Alcohol or Controlled Substance); the Commission has classified these programs as Qualified Restrictive Intermediate Punishments.

(4) Restrictive Intermediate Punishments (RIP). Restrictive Intermediate Punishments are defined as programs that provide for strict supervision of the offender. The county intermediate punishment board is required to develop assessment and evaluation procedures to assure the appropriate targeting of offenders. All programs must meet the minimum standards provided in the Pennsylvania Commission on Crime and Delinquency regulations (37 Pa.Code Chapter 451) for intermediate punishments.

(i) Restrictive Intermediate Punishments (RIP) either:

(A) house the offender full or part time; or

(B) significantly restrict the offender's movement and monitor the offender's compliance with the program(s); or

(C) involve a combination of programs that meet the standards set forth above.

(ii) An offender under consideration for Restrictive Intermediate Punishments at Level 4 or Level 3 shall have a diagnostic assessment of dependency on alcohol or other drugs conducted by one of the following: the Pennsylvania Department of Health's Bureau of Drug and Alcohol Programs (BDAP) or a designee; the county authority on drugs and alcohol or a designee; or clinical personnel of a facility licensed by the Bureau of Drug and Alcohol

Programs.

(iii) An offender assessed to be dependent shall be evaluated for purposes of a treatment recommendation by one of the above listed assessors. The evaluation shall take into account the level of motivation of the offender. If sentenced to a Restrictive Intermediate Punishment, the sentence shall be consistent with the level of care and length of stay prescribed in the treatment recommendation, regardless of the standard range sentencing recommendation.

(iv) An offender assessed as not in need of drug or alcohol treatment may be placed in any approved Restrictive Intermediate Punishment program. Each day of participation in a Restrictive Intermediate Punishment program or combination of programs shall be considered the equivalent of one day of total confinement for guideline sentence recommendations.

(v) The court may impose a Qualified Restrictive Intermediate Punishment in lieu of incarceration for certain convictions under 75 Pa. C.S. §3802 (relating to Driving Under the Influence of Alcohol or Controlled Substance).

(5) Restorative sanction programs. Restorative sanction programs are the least restrictive, non-confinement intermediate punishments. Restorative sanction programs are generally used in conjunction with Restrictive Intermediate Punishments as the level of supervision is reduced, but may also be used as separate sanctions under any of the non-confinement sentencing alternatives provided in the statute (see §303.9(f)).

(i) Restorative sanction programs:

(A) are the least restrictive in terms of constraint of offender's liberties;

(B) do not involve the housing of the offender (either full or part time); and

(C) focus on restoring the victim to pre-offense status.

(6) Qualified Restrictive Intermediate Punishments. In accordance with 42 Pa.C.S. §§9763(c), 9804(b) and 37 Pa. Code §451, Qualified Restrictive Intermediate Punishment programs may be used to satisfy the mandatory minimum sentencing requirements of certain convictions under 75 Pa.C.S. §3802.

(i) Unless otherwise provided in statute, Qualified Restrictive Intermediate Punishment programs include:

(A) if the defendant is determined to be in need of drug and alcohol treatment, a sentence to intermediate punishment shall include participation in drug and alcohol treatment under 75 Pa.C.S. §3815(c), and may be combined with:

1. house arrest with electronic surveillance; or

2. a partial confinement program such as work release, a work camp or a halfway facility.

(B) if the defendant is determined not to be in need of drug and alcohol treatment, a sentence to intermediate punishment may only include:

1. house arrest with electronic surveillance; or

2. **partial confinement programs such as work release, a work camp or a halfway facility; or**
3. **any combination of Qualified Restrictive Intermediate Punishment programs.**

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.12(a)). The text of this section was amended to reflect changes in statute.

DESCRIPTION:

- * County intermediate punishment targets offenders who otherwise would be serving a minimum sentence of confinement of less than 30 months. For Level 3 and 4 offenders, a drug and alcohol assessment must be administered by the county prior to sentencing. For drug-dependant offenders, only a clinically-prescribed treatment program may be ordered as part of a county intermediate punishment sentence; for non drug dependant offenders, the court may use any approved county intermediate punishment programs as part of a county intermediate punishment sentence, with the use of restrictive intermediate punishment programs as a 1:1 trade-off with the recommended period of incarceration, and restorative sanctions programs, such as probation supervision, replacing traditional county parole.
- * Three types of county intermediate punishment programs are described in this section: Restrictive Intermediate Punishment (RIP) programs, restorative sanction programs, and Qualified Restrictive Intermediate Punishment programs. All programs must be included in the county's Intermediate Punishment Plan and the plan must be approved by the Pennsylvania Commission on Crime and Delinquency (PCCD) annually. Please direct any questions regarding county intermediate punishment plans and related funding to the Pennsylvania Commission on Crime and Delinquency at (717) 787-8559 or (800) 692-7292.
- * Participation in one or more of the intermediate punishment programs may only be ordered through a county intermediate punishment sentence, not as a condition of probation and not through parole from a sentence of partial or total confinement. A county intermediate punishment sentence may take many forms depending on the specific programs identified by the court and the county intermediate punishment plan: non-custodial programs such as house arrest and electronic monitoring; residential programs such as inpatient treatment; and partial confinement programs such as work release.
- * A sentence of county intermediate punishment, while similar to an order of probation in many ways, targets a more serious offender. Like an order of probation, a county intermediate punishment sentence is a flat sentence. And like probation, participation in one or more programs or assignment of conditions may be included in the sentence.
- * Since county intermediate punishment is used in lieu of a sentence of partial or total confinement, every sentence of county intermediate punishment should include one or more Restrictive Intermediate Punishment (RIP) program or Qualified Restrictive Intermediate Punishment program. Restorative sanction programs may only be used in conjunction with an RIP or Qualified Restrictive Intermediate Punishment program under a sentence of county intermediate punishment.
- * Based on applicable statutes on the date these guidelines took effect (6/3/05), an offender with a current conviction or a prior conviction within the past ten years for of any of the following offenses is ineligible for county intermediate punishment:

Murder

(18 Pa.C.S. § 2502);

Voluntary manslaughter
(18 Pa.C.S. § 2503);
Aggravated assault
(18 Pa.C.S. § 2702);
Assault by prisoner
(18 Pa.C.S. § 2703);
Assault by life prisoner
(18 Pa.C.S. § 2704);
Kidnapping
(18 Pa.C.S. § 2901);
Rape
(18 Pa.C.S. § 3121);
Statutory sexual assault
(18 Pa.C.S. § 3122.1);
Involuntary deviate sexual intercourse
(18 Pa.C.S. § 3123);
Sexual assault
(18 Pa.C.S. § 3124.1);
Aggravated indecent assault
(18 Pa.C.S. § 3125);
Indecent assault
(18 Pa.C.S. § 3126);
Arson and related offenses
(18 Pa.C.S. § 3301);
Burglary (F1)
(18 Pa.C.S. § 3502(c));
Robbery
(18 Pa.C.S. § 3701);
Theft by extortion
(18 Pa.C.S. § 3923);
Incest
(18 Pa.C.S. § 4302);
Escape
(18 Pa.C.S. § 5121);

- * Additionally, "eligible offender" is defined in 42 Pa.C.S. §9802 (relating to definitions) as follows:
“...a person convicted of an offense who would otherwise be sentenced to a county correctional facility, who does not demonstrate present or past violent behavior and who would otherwise be sentenced to partial confinement pursuant to section 9724 (relating to partial confinement) or total confinement pursuant to section 9725 (relating to total confinement).”
- * For eligible offenders, a county intermediate punishment sentence which includes one or more Restrictive Intermediate Punishment (RIP) program(s) may satisfy a standard range recommendation at Sentencing Levels 2, 3 and 4. Generally, the duration of the RIP programs may not exceed the recommended period of incarceration. (See exception for drug dependent offenders below). However, the duration of additional restorative sanction programs within such a sentence is only limited by the statutory maximum of the conviction offense.
- * Eligible offenders at Levels 3 and 4 under consideration for a sentence of county intermediate punishment are required to have a diagnostic assessment of dependency on alcohol or other drugs conducted by a Pennsylvania Department of Health, Bureau of Drug and Alcohol Programs’ (BDAP) licensed agency. If the offender is assessed to be dependent on alcohol or drugs and the court elects to impose a sentence of county intermediate punishment, the standard range recommendation requires a sentence consistent with the treatment recommendation. Only programs and licensed facilities included in an approved county intermediate

punishment plan may be considered in the treatment recommendation.

- * At Levels 3 and 4, if the court fails to have an assessment and/or evaluation conducted in accordance with this section prior to imposing a sentence of county intermediate punishment, or imposes a sentence of county intermediate punishment on a drug dependent offender that is not consistent with the clinical recommendation, the sentence is a departure from the guidelines.
- * Effective July 1, 1997, the Pennsylvania Department of Health, Bureau of Drug and Alcohol Programs (BDAP) requires the use of the Pennsylvania Client Placement Criteria (PCPC) for assessment and evaluation of adults in order to determine the appropriate level of care and length of treatment service.
- * Restorative sanction **programs** should only be used within a sentence of county intermediate punishment in conjunction with RIP or Qualified Restrictive Intermediate Punishment programs. The use of one of these least restrictive programs as a sole sanction is more appropriately ordered as conditions of an order of Probation or other Restorative Sanction (RS) **sentencing alternatives**.
- * Restorative sanction **programs** are the least restrictive county intermediate punishment programs. They are viewed by the Commission as programs which supplement restrictive programs and provide reintegration following restrictive programs. Such programs may be used within a county intermediate punishment sentence in conjunction with an RIP or Qualified Restrictive Intermediate Punishment program.
- * Restorative Sanctions (RS), on the other hand, are the **sentencing alternatives** provided in 42 Pa.C.S. §9721. These sentencing alternatives are discussed at §303.9(f).
- * Qualified Restrictive Intermediate Punishment programs are specifically provided for in statute and the code. They are the only programs which may be used in a sentence of county intermediate punishment to satisfy the mandatory minimum sentence requirement for DUI. (See §303.9(i) Driving Under the Influence).
- * A person convicted of DUI is eligible for county intermediate punishment for a first, second or third offense. Statute requires participation in treatment for those DUI offenders determined to be in need of treatment, and restricts the type of county intermediate punishment programs to the following: residential inpatient programs; residential rehabilitative center; house arrest with electronic surveillance; partial confinement program such as work release, work camp, or a halfway facility; or a combination of these programs. A DUI offender determined to not be in need of treatment may only be sentenced to the following : house arrest with electronic surveillance; partial confinement program such as work release, work camp, or a halfway facility; or a combination of these programs. (See 42 Pa.C.S. §9802, §9804)
- * As provided in 42 Pa.C.S. §9755 and §9756, the court may impose a flat sentence of partial confinement or total confinement of up to 90 days when followed immediately by a sentence of county intermediate punishment. Because of this statutory provision, and the benefits of long-term treatment and supervision, the Commission has removed its previous recommendation that limited the use of Qualified Restrictive Intermediate Punishment program(s) to 90 days.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

The Commission is required by 42 Pa.C.S. §2154.1 to identify offenders who are appropriate for a sentence of county intermediate punishment. The Commission is directed to use the description of "eligible offender" provided in 42 Pa.C.S. §9802 (relating to county intermediate punishment) to identify such offenders.

Acts 1990-193 and 1990-201 identified offenders convicted of DUI as eligible for a sentence of county intermediate punishment. The legislation also limited the specific programs which could be used to satisfy the mandatory minimum requirement. The Pennsylvania Commission on Crime and Delinquency further narrowed the programs through the regulatory authority it was granted in the legislation.

On August 9, 1991, the first set of guidelines that incorporated recommendations for county intermediate punishment went into effect. The initial county intermediate punishment guidelines were limited in the number of areas of the matrix that called or allowed for the use of a sentence of county intermediate punishment. The Commission moved forward slowly with county intermediate punishment recommendations, acknowledging the fact that many counties had not yet developed programs for use with this new sentencing alternative.

During the 1994 revisions to the guidelines, the Commission expanded recommendations for the use of intermediate punishment sentences within the guidelines. Since the legislation encompassed a wide variety of appropriate programs, the Commission decided to categorize the programs. The programs identified in statute and code as appropriate to satisfy the DUI mandatory were labeled "Qualified Restrictive Intermediate Punishment programs;" all other programs which confined or significantly restricted the movement of an offender were labeled "Restrictive Intermediate Punishment programs;" and all other less restrictive programs were labeled "restorative sanction programs." Recognizing that intermediate punishment programs vary somewhat by county regarding the level of supervision and the number of controls placed upon an offender, the Commission chose to allow the County Intermediate Punishment Board, in conjunction with the courts, to classify local programs as either Restrictive Intermediate Punishment (RIP) programs or restorative sanction programs.

During the 1997 revisions to the guidelines, the Commission reinterpreted the definition of "eligible offender" more consistent with statute. Under previous guidelines, eligible offender under 42 Pa.C.S. §9729 (relating to intermediate punishment) was interpreted as including only those offenders who would otherwise receive a 'county sentence' (i.e. - less than 24 month maximum sentence). This was based on the section of the statute which permitted an intermediate punishment sentence for an offender "... who would otherwise be sentenced to a county correctional facility..." On reconsideration, the Commission decided to adopt a broader interpretation which would make eligible a 'state offender' who could serve a sentence in a county facility (i.e. - less than 60 month maximum sentence). Linked to this expanded definition of eligible offender were changes in the Sentencing Levels (see §303.11), particularly the modification of the previous Level 4. The Commission encouraged the targeting of eligible drug dependent offenders at Levels 3 and 4 for a sentence of intermediate punishment. The Commonwealth has provided \$15.3 million during FY'97/'98 for county intermediate punishment programs, with \$10 million of the allocation linked to the development and expansion of treatment-based Restrictive Intermediate Punishment (RIP) programs for use at Levels 3 and 4.

As part of the 6th Edition guidelines, the Commission has expanded of the description of sentencing levels to target the use of county intermediate punishments for those eligible offenders with a minimum sentence recommendation of less than 30 months, and state intermediate punishments for those eligible offenders with a minimum sentence recommendation of 30 months or greater. The Commission has modified the definitions of sentencing levels 3 and 4 to include offenses for which a mandatory minimum sentence to a county facility apply and for which an intermediate punishment sentence is authorized. While some offenses, such as DUI, may be assigned to lower sentencing levels due to the grade of the offense and the OGS assignment, the mandatory sentencing provision and the intermediate punishment eligibility are consistent with the general description of levels 3 and 4: standard range requires incarceration or restrictive intermediate punishment but in all cases permits incarceration in a county facility. The Commission has further modified the definitions of sentencing levels 3, 4 and 5 to incorporate state intermediate punishment as an available sentencing option.

As part of a comprehensive re-drafting of the County Intermediate Punishment statutes during the 2000 Session, and of the DUI statute and related legislation during the 2004 Session, the General Assembly amended several provisions related to county intermediate punishment eligibility, and specific programs that could be used to satisfy the mandatory minimum sentencing requirement for DUI convictions. These changes have been incorporated into the 6th Edition guidelines. County intermediate punishment remains the primary alternative to county incarceration, including for those offenders who would otherwise serve a state sentence in a county facility.

§303.12 (b)
STATE MOTIVATIONAL BOOT CAMP

GUIDELINE TEXT:

§303.12 (b) State Motivational Boot Camp.

(1) Eligibility.

(i) The following statute governs operation of and eligibility for the State Motivational Boot Camp:

61 P.S. §1121 - §1129

(ii) Sentence recommendations which include boot camp eligible offenders are designated by the letters BC in the cells of the Basic Sentencing Matrix (§303.16).

(2) The court shall indicate on the offender's commitment order and the Guideline Sentence Form if the offender is authorized as eligible for the boot camp program. The Department of Corrections makes the final determination as to whether the offender will be accepted into the boot camp program.

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.12(b)).

DESCRIPTION:

- * State motivational boot camp targets younger offenders (male or female) who would otherwise be serving a minimum sentence of one to three years in a state facility and whose primary needs are structure, education, discipline and life skills, with drug & alcohol dependency a secondary issue. The boot camp is a six-month program with mandatory aftercare and intensive supervision.
- * This section provides guidelines which parallel the legislative criteria for boot camp eligibility.
- * The boot camp accepts both male and female offenders.
- * The guidelines include a "BC" in the Basic Sentencing Matrix (§303.16) to indicate potential eligibility for boot camp. However, the specific eligibility criteria provided in this section must be satisfied in order for an offender to be authorized by the court for boot camp participation.
- * Offenders with sentences which include a Youth/School Enhancement may be eligible for boot camp participation if the specific eligibility criteria provided in this section are satisfied.
- * An offender sentenced under certain mandatory sentencing provision may be authorized for boot camp participation provided all of the other criteria are met. See the listing of ineligible offenses below.
- * In order to be eligible for participation in the boot camp, Act 1996-201 requires that the offender receive:
 - 1) a minimum sentence that is two years or less and a maximum sentence that is five years or less; or
 - 2) a minimum sentence that is not more than three years and the inmate is within two years of completing the minimum term.
- * The offender must be less than 35 years of age and committed to a state correctional facility in order to be considered for boot camp participation.

- * The Commission recommends that courts not alter sentencing practices by giving state sentences to offenders who ordinarily would receive a county sentence in anticipation of admission into the boot camp.
- * The court must provide authorization for the offender to participate in the boot camp program. Without the court's authorization, an offender is not allowed to participate in the boot camp program.
- * In order to insure that all offenders who have been authorized for participation in the boot camp are considered, it is necessary for the court to indicate its authorization on both the commitment order and on the Guideline Sentence Form.
- * The offender is required to apply for admission to the boot camp program. If the offender chooses not to apply to the program, the sentence imposed by the court is served in a traditional incarceration setting.
- * The Department of Corrections (DOC) makes the final determination regarding inmates admitted into the boot camp program. The DOC will automatically exclude inmates who: 1) have a history of escapes; 2) are not psychologically well-balanced (to be determined through tests given by DOC); 3) are not in reasonable physical shape; and 4) have medical problems. The DOC will also review closely the applications of inmates who have prior violent offenses or detainees.
- * If an offender voluntarily leaves the boot camp or is expelled, he or she is returned to general prison population to serve the remainder of his or her sentence.
- * Upon completion of the six month boot camp program, the statute provides that the inmate is automatically released on intensive parole supervision. By authorizing participation in boot camp, the court agrees to allow the inmate to be released prior to the expiration of the minimum sentence.
- * Graduates of the boot camp program are required to participate in a structured re-entry program for a minimum of 30 days. The structured re-entry program includes a detailed prescriptive program for each inmate, a minimum one month of residency in a structured, supervised residential facility, orientation to the community, involvement of families and the parole agent, cognitive behavior therapy, job readiness skills, job acquisition, and drug and alcohol follow-up services.
- * Based on applicable statutes on the date these guidelines took effect (6/3/05), an offender convicted of any of the following offenses is ineligible for boot camp:
 - Murder**
(18 Pa.C.S. § 2502);
 - Voluntary manslaughter**
(18 Pa.C.S. § 2503);
 - Drug delivery resulting in death**
(18 Pa.C.S. § 2506)
 - Kidnapping**
(18 Pa.C.S. § 2901);
 - Rape**
(18 Pa.C.S. § 3121);
 - Involuntary deviate sexual intercourse**
(18 Pa.C.S. § 3123);
 - Sexual assault**
(18 Pa.C.S. § 3124.1);
 - Aggravated indecent assault**
(18 Pa.C.S. § 3125);
 - Arson endangering persons (danger/person)**
(18 Pa.C.S. § 3301(a)(1)(i));

Burglary (OGS 9, house/person present)

(18 Pa.C.S. § 3502);

Robbery (F1)

(18 Pa.C.S. § 3701(a)(1)(i),(ii),(iii));

Robbery of a motor vehicle

(18 Pa.C.S. § 3702);

Drug trafficking (>3 year mandatory min.)

(18 Pa.C.S. § 7508(a)(1) (iii), (a)(2) (iii), (a)(3) (iii) or (a)(4) (iii)).

- * **Additionally, an offender sentenced for any offense which included a Deadly Weapon Enhancement (§303.10(a)) is ineligible.**

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

The State Motivational Boot Camp opened in Quehanna, Clearfield County on June 15, 1992. The boot camp program is an alternative to a traditional state incarceration sentence and offers eligible inmates a reduction in sentence for successful completion of the program. The boot camp is designed to admit platoons of 20 inmates per month. In 2000, the capacity of the boot camp increased to 600 inmates.

Act 215 of 1990, which provided for the establishment of motivational boot camps, also set forth criteria concerning who would be eligible for the boot camp program. Revised eligibility criteria, adopted as a result of Act 86 of 1996, are outlined in this section. These criteria were used by the Commission in directing the court to consider eligible candidates for boot camp.

The Commission strongly recommends against the court identifying persons with less than a 12-month minimum as being eligible for boot camp. Defendants often spend several months in the county jail awaiting sentencing and several more months in the diagnostic and classification center. Therefore, defendants with minimum sentences less than 12 months would not be good candidates for the six-month boot camp.

The legislation providing for motivational boot camps mandates that the boot camp program be for a period of six months. Thus, by identifying a defendant as eligible for boot camp, the court is agreeing to allow a defendant to be released prior to the expiration of the minimum sentence.

It should be noted that even though the court identifies a defendant as being eligible for boot camp, the defendant must apply to the Department of Corrections for participation. Then, the Department of Corrections makes the final determination concerning who is admitted. In light of this, it is important that the court not sentence a defendant to state incarceration with the assumption that the defendant will automatically be admitted into the boot camp program.

The Commission, in cooperation with the Department of Corrections, is required to monitor and evaluate the State Motivational Boot Camp program and to report their findings annually to the General Assembly (61 P.S. §1125(e)). Copies of these reports are available from the Commission upon request.

The Boot Camp Selection Committee at the Central Diagnostic and Classification Center at SCI-Camp Hill makes the final determination as to who is admitted into the boot camp. Any questions regarding this process may be directed to the CDCC Unit Director at ((717)737-4531). Tours of the Quehanna Motivational Boot Camp, located near Karthaus (Clearfield County), can be arranged by contacting the Boot Camp Commander at ((814)765-0644).

§303.12 (c)
STATE INTERMEDIATE PUNISHMENT

GUIDELINE TEXT:

§303.12 (c) State Intermediate Punishment.

(1) Eligibility.

(i) The following statute governs operation of and eligibility for State Intermediate Punishment:

42 Pa.C.S. Chapter 99

(ii) Any person convicted of a drug-related offense for which the sentence recommendation includes total confinement in a state facility may be considered for state intermediate punishment.

- (2) 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 treatment in a drug offender treatment program is appropriate.**
- (3) Upon receipt of a recommendation for placement in a drug offender treatment program and an individualized treatment plan from the Department of Corrections, and agreement of the attorney for the Commonwealth and the defendant, the court may sentence an eligible offender to a period of 24 months of state intermediate punishment.**
- (4) The court may impose a consecutive period of probation. The total duration of a sentence of state intermediate punishment and consecutive probation may not exceed the maximum term for which the eligible offender could otherwise be sentenced.**

PRIOR GUIDELINES:

This is a new provision which describes state intermediate punishment and incorporates it into the guidelines.

DESCRIPTION:

- * State intermediate punishment targets drug dependent offenders who otherwise would be serving a minimum sentence of confinement in a state facility of 30 months or more.
- * To be eligible, the offender must be designated by the court as a person convicted of a *drug-related offense*, an offense motivated by the defendant's consumption of or addiction to alcohol or a controlled substance, counterfeit, designer drug, drug, immediate precursor or marijuana, as those terms are defined in the Controlled Substance Act.
- * The duration of a state intermediate punishment sentence is 24 months and is comprised of the following:
 - A minimum of seven months in a state correctional institution of which not less than four months must be spent in a institutional therapeutic community (the time during which the defendant is being evaluated by the Department is included in this period);
 - A minimum of two months in a community-based therapeutic community;
 - A minimum of six months in treatment through an outpatient treatment facility (an offender may spend part of the six-month aftercare phase in a community correction center, a group home or an approved transitional residence such as his/her home; the Department continues to supervise the offender);

- A period of supervised reintegration into the community for the balance of the sentence.

* Prior to sentencing, and upon motion by the District Attorney and agreement of the defendant, the court commits the offender to the Department of Corrections for an evaluation to determine if the offender is in need of drug and alcohol addiction treatment and appropriate for participation in the program.

* By committing the defendant to the Department of Corrections for an evaluation, the court is not sentencing the defendant, and thus retains jurisdiction. The court will decide on the appropriate sentence after receiving the evaluation from the Department.

* Suggested language for commitment order for evaluation:

AND NOW, this ____ day of _____, 20__, the defendant having been convicted of [insert crime] on [date], [Name of defendant] is committed to the Department of Corrections for an evaluation to be used by the Court to determine whether defendant shall be sentenced to State Intermediate Punishment.

The Sheriff of _____ County shall transport the defendant as soon as possible to the State Correctional Institution designated to receive defendants from _____ County.

* An offender being committed for the purpose of an SIP Evaluation should be transported to the state correctional facility that normally receives newly sentenced state offenders sentenced in the county (i.e., male inmates: Graterford SCI for eastern counties, Camp Hill SCI for central counties, Albion SCI or Greene SCI for western counties; female offenders: Muncy SCI)

* Although a commitment for the purpose of an SIP Evaluation occurs prior to the sentencing of the offender, the incomplete guideline sentence form(s) generated via *SGS Web* should be attached to the commitment order. This will provide Department of Correction’s staff with important information regarding the current conviction offense(s), the Prior Record Score details, deadly weapon or youth/school enhancements, and other important sentencing-related information.

* The evaluation by the Department will be administered by a person skilled in the treatment of drug and alcohol additions and trained to conduct assessments.

* The Department will provide an evaluation report to the Court, the District Attorney and the Defendant within 60 days of commitment; the Court may not modify or alter the terms of the Department’s proposed individualized treatment plan without agreement of the Department and the District Attorney.

* If the Department recommends the offender for participation and the District Attorney does not object, the court may sentence the offender to the 24 month state intermediate punishment sentence. The court may impose a consecutive period of probation. The total sentence may not exceed the maximum term for which the offender could otherwise be sentenced.

* The Department has the discretion to transfer an offender between the different stages of the program as necessary and the Department and the program administrators have the right to refuse a participant oif the offender is deemed to be inappropriate for a particular program.

* Individuals who fail during the program or do not complete it within the 24 month sentence are subject to revocation. Upon revocation, the sentencing alternatives available to the court are the same as those available at the time of the initial sentencing, including any applicable mandatory minimum sentencing provision.

* An offender is not eligible if he demonstrates a history of present or past violent behavior.

- * An offender is not eligible if he is subject to a deadly weapon enhancement under the sentencing guidelines.
- * An individual is not eligible if he has been convicted of a *personal injury crime*, including an attempt, conspiracy or threat to commit any of the following:

Criminal homicide (18 Pa.C.S. Chapter 25)

Assault (18 Pa. C.S. Chapter 27), including simple assault, REAP, TT, harassment, stalking, ethnic intimidation

Kidnapping (18 Pa.C.S. Chapter 29), including unlawful restraint, false imprisonment

Sexual offenses (18 Pa.C.S. Chapter 31), including indecent assault, indecent exposure

Arson (18 Pa.C.S. §3301)

Robbery (18 Pa.C.S. Chapter 37)

Victim and witness intimidation (18 Pa.C.S. Chapter 49, Sub-Chapter B)

Homicide by watercraft while operating under influence (30 P.S. §5502.1)

Driving under the influence (75 Pa.C.S. §3731 (repealed) and 75 Pa.C.S. Chapter 38) in cases involving bodily injury

Homicide by vehicle (75 Pa.C.S. §3732)

Homicide by vehicle while DUI (75 Pa.C.S. §3735)

Aggravated assault by vehicle while DUI (75 Pa.C.S. §3735.1)

Accidents involving death or SBI (75 Pa.C.S. §3742)

Violations of any protective order issued as a result of an act related to domestic violence.

- * Additionally, an individual is not eligible if he has been convicted of any of the following:

Incest (18 Pa.C.S. §4302)

Open lewdness (18 Pa.C.S. §5901)

Abuse of children (18 Pa.C.S. §6312)

Unlawful contact with minor (18 Pa.C.S. § 6318)

Sexual exploitation of children (18 Pa.C.S. §6320)

Internet child pornography (18 Pa.C.S. Chapter 76, Subchapter C)

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

State Intermediate Punishment was established as a sentencing alternative pursuant to Act 2004-112, effective May 18, 2005. The purpose of state intermediate punishment is: “to create a program that punishes person(s) who commit crimes, but also provides treatment that offers the opportunity for those persons to address their drug and alcohol addiction or abuse and thereby reduce the incidents of recidivism and enhance public safety.” (42 Pa.C.S. §9902(6)) A full description of state intermediate punishment may be found at 42 Pa.C.S. Chapter 99.

As part of the 6th Edition guidelines, the Commission has expanded the description of sentencing levels to target the use of county intermediate punishments for those eligible offenders with a minimum sentence recommendation of less than 30 months, and state intermediate punishments for those eligible offenders with a minimum sentence recommendation of 30 months or greater. The Commission has further modified the definitions of sentencing levels 3, 4 and 5 to incorporate state intermediate punishment as an available sentencing option.

Any questions regarding this process may be directed to the Department of Correction’s Central Diagnostic and Classification Center (CDCC) Unit Director at ((717)737-4531).

**§303.13 GUIDELINE SENTENCE RECOMMENDATIONS:
AGGRAVATED AND MITIGATED CIRCUMSTANCES**

**§303.13 (a)
AGGRAVATING CIRCUMSTANCES**

GUIDELINE TEXT:

§303.13 (a) When the court determines that an aggravating circumstance(s) is present, it may impose an aggravated sentence as follows:

(1) For the Offense Gravity Scores of 9, 10, 11, 12 and 13 the court may impose a sentence that is up to 12 months longer than the upper limit of the standard range.

(2) For the Offense Gravity Score of 8, the court may impose a sentence that is up to 9 months longer than the upper limit of the standard range.

(3) For the Offense Gravity Scores of 6 and 7, the court may impose a sentence that is up to 6 months longer than the upper limit of the standard range.

(4) For the Offense Gravity Scores of 1, 2, 3, 4, and 5, the court may impose a sentence that is up to 3 months longer than the upper limit of the standard range.

(5) When the standard range is Restorative Sanctions (RS), the aggravated sentence recommendation is RIP-3.

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.13(a)). The text of this section was amended to remove reference to an aggravated range for OGS 14, as the standard range includes the statutory limit.

DESCRIPTION:

- * When the court chooses to impose an aggravated sentence, its reasons should be stated in open court and placed on the Guideline Sentence Form.
- * Within the guidelines the court may impose an aggravated sentence that exceeds the top of the standard range by the specified number of months which vary based upon the Offense Gravity Score. Any sentence longer than that recommended as an aggravated sentence is a departure above the guidelines.
- * Although the standard range applies in most instances, an aggravated sentence should be imposed when the court determines that there are aggravating factors which are sufficiently important to warrant a sentence above the standard range recommendation.
- * Any factor which is legally cognizable may be considered as an aggravating circumstance, except a factor which is included in determining the Offense Gravity Score, Prior Record Score, or an enhancement.
- * The guidelines do not impose a burden on the court or its staff, in addition to any burden required by other law, to search for aggravating or mitigating circumstances.
- * Where there is a dispute about the presence or importance of aggravating factors, the court must determine

whether such factors exist, and the weight that they will be given.

- * When the court determines that there are aggravating factors, it may impose an aggravated sentence in accordance with this section.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

Statute requires that the guidelines: "(p)rescribe variations from the (standard) range of sentences applicable on account of aggravating or mitigating circumstances." (42 Pa. C.S. §2154(a)(4)).

In order to simplify the matrices in §303.16-§303.18, the Commission decided to provide the standard range recommendation for each combination of OGS and PRS, and to indicate the maximum number of months that may be added to the top of the standard range for an aggravated sentence.

House Resolution 24 of 1981 (with Senate concurring) advised and directed the Commission to develop guidelines which would not limit the factors which might be considered as aggravating and mitigating circumstances, although the guidelines could contain a "non-exclusive" list of aggravating and mitigating circumstances. After great debate, the Commission again in 1994 decided not to include a list of suggested aggravating or mitigating factors for most offenses in the text of the guidelines. The Commission chose to remove all references to appropriate aggravating and mitigating circumstances and removed some cautionary statements that were previously included in the guidelines as well as a list of aggravating and mitigating factors for the court to consider when sentencing controlled substance act violations. Any legally cognizable criteria not specifically considered in the guidelines may continue to be used as reasons for imposing an aggravated or mitigated sentence.

Factors which may not be used to justify an aggravated sentence include items which are already counted in the guidelines, such as offense of conviction, deadly weapon and youth and school enhancements, and prior convictions and adjudications which are counted in the Prior Record Score.

The Commission cautions judges and others that the guidelines are written for the typical case and a standard sentence may not provide fair results for the atypical case. In previous versions of the guidelines, the Commission acknowledged that for some offenses such as major drug trafficking, economic crimes, white-collar crimes, organized crime and offenses where the offender abused his or her position of trust, public office, or fiduciary obligation to facilitate the commission of an offense, it is very difficult to set sentences. Additionally, the Commission recognized that the guidelines do not specifically consider whether the offender cooperated in the apprehension or prosecution of other offenders. Any of these criteria could justify a sentence more or less severe than the penalties suggested in the standard range of the guidelines.

§303.13 (b)
MITIGATING CIRCUMSTANCES

GUIDELINE TEXT:

§303.13 (b) When the court determines that a mitigating circumstance(s) is present, it may impose a mitigated sentence as follows:

- (1) For the Offense Gravity Scores of 9, 10, 11, 12, 13, and 14, the court may impose a sentence that is up to 12 months shorter than the lower limit of the standard range.**
- (2) For the Offense Gravity Score of 8, the court may impose a sentence that is up to 9 months shorter than the lower limit of the standard range.**
- (3) For the Offense Gravity Scores of 6 and 7, the court may impose a sentence that is up to 6 months shorter than the lower limit of the standard range.**
- (4) For the Offense Gravity Scores of 1, 2, 3, 4, and 5, the court may impose a sentence that is up to 3 months shorter than the lower limit of the standard range.**
- (5) When the bottom of the standard range is less than or equal to 3 months of incarceration, the lower limit of the mitigated sentence recommendation is Restorative Sanctions (RS).**
- (6) In no case where a Deadly Weapon Enhancement is applied may the mitigated sentence recommendation be lower than 3 months.**

PRIOR GUIDELINES:

An identical provision was included in the previous guidelines (§303.13(b)).

DESCRIPTION:

- * When the court chooses to impose a mitigated sentence, its reasons should be stated in open court and placed on the Guideline Sentence Form.
- * Within the guidelines the court may impose a mitigated sentence that is less than the bottom of the standard range by the specified number of months which vary based upon the Offense Gravity Score. Any sentence shorter than that recommended as a mitigated sentence is a departure below the guidelines.
- * Although the standard range applies in most instances, a mitigated sentence should be imposed when the court determines that there are mitigating factors which are sufficiently important to warrant a sentence below the standard range recommendation.
- * Any factor which is legally cognizable may be considered as a mitigating factor, except a factor which is included in determining the Offense Gravity Score, Prior Record Score, or enhancement.
- * The guidelines do not impose a burden on the court or its staff, in addition to any burden required by other law, to search for mitigating circumstances.
- * Where there is a dispute about the presence or importance of mitigating factors, the court must determine whether such factors exist, and the weight that they will be given.

- * Enhancements: when the DWE/Possessed is applied, the mitigated sentence recommendation is never lower than three months; when the DWE/Used is applied, the mitigated sentence recommendation is never lower than six months; when the Youth/School Enhancement is applied, the mitigated sentence recommendation is never lower than twelve months.
- * When the court determines that there are mitigating factors, it may impose a mitigated sentence in accordance with this section.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

Statute requires that the guidelines: "(p)rescribe variations from the (standard) range of sentences applicable on account of aggravating or mitigating circumstances." (42 Pa. C.S. §2154(a)(4)).

In order to simplify the matrices in §303.16-§303.18, the Commission decided to provide the standard range recommendation for each combination of OGS and PRS, and to indicate the maximum number of months that may be subtracted from the bottom of the standard range for a mitigated sentence.

House Resolution 24 of 1981 (with Senate concurring) advised and directed the Commission to develop guidelines which would not limit the factors which might be considered as aggravating and mitigating circumstances, although the guidelines could contain a "non-exclusive" list of aggravating and mitigating circumstances. After great debate, the Commission again in 1994 decided not to include a list of suggested aggravating or mitigating factors for most offenses in the text of the guidelines. The Commission chose to remove all references to appropriate aggravating and mitigating circumstances and removed some cautionary statements that were previously included in the guidelines as well as a list of aggravating and mitigating factors for the court to consider when sentencing controlled substance act violations. Any legally cognizable criteria not specifically considered in the guidelines may continue to be used as reasons for imposing an aggravated or mitigated sentence.

Factors which may not be used to justify an mitigated sentence include items which are already counted in the guidelines, such as offense of conviction, deadly weapon and youth and school enhancements, and prior convictions and adjudications which are counted in the Prior Record Score.

The Commission cautions judges and others that the guidelines are written for the typical case and a standard sentence may not provide fair results for the atypical case. In previous versions of the guidelines, the Commission acknowledged that for some offenses such as major drug trafficking, economic crimes, white-collar crimes, organized crime and offenses where the offender abused his or her position of trust, public office, or fiduciary obligation to facilitate the commission of an offense, it is very difficult to set sentences. Additionally, the Commission recognized that the guidelines do not specifically consider whether the offender cooperated in the apprehension or prosecution of other offenders. Any of these criteria could justify a sentence more or less severe than the penalties suggested in the standard range of the guidelines.

303.13 (c)
REASONS ON THE RECORD

GUIDELINE TEXT:

§303.13 (c) When the court imposes an aggravated or mitigated sentence, it shall state the reasons on the record and on the Guideline Sentence Form, a copy of which is electronically transmitted to the Commission on Sentencing in the manner described in §303.1(e).

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.13(c)). The text of this section was amended to reference electronic reporting requirements.

DESCRIPTION:

- * Aggravating or mitigating reasons should be stated on the record, and the court is encouraged to include those reasons on the guideline sentence form.
- * The court is required to provide reasons on the guideline sentence form for each sentence that is a departure above the aggravated range or a departure below the mitigated range.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

The court is encouraged to provide specific reasons for imposing an aggravated or mitigated sentence, and is required to provide such reasons for sentences that depart from the guidelines. Title 42 Pa. C.S. §9721(b) requires that "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."

A brief listing of such reasons on the Guideline Sentence Form is requested so that the Commission can meet its statutory obligation "to systematically monitor compliance with the guidelines and with mandatory sentencing laws by: (i) Promulgating forms which document the application of the guidelines or mandatory sentencing laws, or both. (ii) Requiring the timely completion and submission of such forms to the Commission." (42 Pa. C.S. §2153(14)). This requirement is intended to "further the policy of accountability inherent in the Sentencing Code." *Com. v. Hoover*, 342 Pa. Super. 163, 166, 492 A.2d 443, 444 (1985).

§303.14 GUIDELINE SENTENCE RECOMMENDATIONS – ECONOMIC SANCTIONS.

**§303.14 (a)
FINES.**

GUIDELINE TEXT:

§303.14 (a) Fines.

(1) Fines may be added to any guideline sentence, as authorized by law. Relevant statutes include but are not limited to:

- (i) 18 Pa.C.S. §1101 (relating to fines)**
- (ii) 35 P.S. §780-113(b)-(o) (relating to controlled substances)**
- (iii) 42 Pa.C.S. §9726 (relating to fine as a sentence)**
- (iv) 42 Pa.C.S. §9758 (relating to imposition of a fine)**
- (v) 75 Pa.C.S. §3804 (relating to fines for DUI)**

(2) A fine, within the limits established by law, shall be considered by the court when the offender is convicted of 35 P.S. §780-113(a)(12), (14) or (30), and the drug involved is any of the following: a controlled substance or counterfeit substance classified in Schedule I or II and which is a narcotic; phencyclidine, methamphetamine, or cocaine, including the isomers, salts, compounds, salts of isomers, or derivatives of phencyclidine, methamphetamine, or cocaine; or is in excess of one thousand pounds of marijuana. Such fine shall be of an amount that is at least sufficient to exhaust the assets utilized in, and the proceeds obtained by the offender from, the illegal possession, manufacture, or distribution of controlled substances. Such fine shall not include assets concerning which the attorney for the Commonwealth has filed a forfeiture petition or concerning which he has given notice to the court of his intent to file a forfeiture petition.

(3) Fines may be utilized as part of an intermediate punishment sentence or as a non-confinement sentencing alternative (see restorative sanction §303.9(f)).

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.14(a)). The text of this section was amended to remove restitution (see §303.14(c)), to provide examples of statutes requiring imposition of fines, and to modify the information related to the imposition of fines for offenders convicted of 35 P.S. §780-113(a)(12), (14) or (30) consistent with statute.

DESCRIPTION:

- * The guidelines do not restrict the court's discretion to sentence an offender to pay a fine in addition to any other sentence that may be imposed.
- * Where the guidelines permit a Restorative Sanction (RS), a sentence to pay a fine may be the sole sanction. Such a sentence is within the guidelines.
- * Where the guidelines recommend confinement, a sentence to pay a fine may be added to the guideline

sentence. Such a sentence is within the guidelines.

- * Where the guidelines recommend confinement, and only a sentence to pay a fine is imposed, it is a departure from the guidelines.
- * A fine may be imposed up to the maximum provided in statute, but must take into account the offender's ability to pay (18 Pa.C.S. §9726(d)).
- * Subsection (a)(2) recommends that where the current offense is a violation of subsections (12), (14) or (30) of the drug act involving narcotics of schedules I or II, phencyclidine, cocaine, methamphetamine or in excess of 1,000 pounds of marijuana, the court *consider* imposing a fine sufficient to exhaust the assets utilized in, or profits obtained by, the defendant from drug trafficking. However, a forfeiture of assets should be given priority over a fine.
- * Subsection (a)(2) provides that assets subject to forfeiture not be included in the assets which are fined.

GUIDELINE FORM/SGS WEB APPLICATION:

- * See §303.9(a).

COMMENTARY:

“Economic sanctions rest on a continuum, ranging from sanctions that most directly benefit the victim to those that most directly punish the offender. At the extremes of this continuum, the purposes of economic sanctions are fairly clear: restitution focuses almost exclusively on reparation to a specific victim (with little or no consideration of punishing the offender), while fines and forfeiture focus almost exclusively on punishing the offender (with little or no consideration of reparation to a victim). However, most economic sanctions are less pure in purpose and occupy the ‘middle ground,’ because they seek reparations for ‘society’ as a victim (and in particular the court system), and require offenders to pay substantial (and increasing) amounts in an effort to hold them accountable for their actions. These ‘middle ground’ economic sanctions include costs and fees.”

“Economic sanctions have five advantages. First, compared with incarceration, they are about as effective in deterring future crime (Gordon & Glaser, 1991) but are substantially cheaper, because the state does not have to pay for housing (Morris & Tonry, 1990). Moreover, economic sanctions can avoid the stigma and secondary effects of incarceration, such as loss of employment and dependents who would otherwise have to rely on public assistance (Gordon & Glaser, 1991). Second, economic sanctions can be delivered more consistently than other types of sanctions, an important advantage because continuous punishment, in which punishment is delivered after every response, deters behavior better than intermittent punishment, in which punishment is delivered after some, but not every, response (Brennan & Mednick, 1994). In general, it is easier to impose financial penalties after every crime than to impose incarceration after every crime. Third, compared with simple probation, economic sanctions are more punitive. Fourth, economic sanctions are flexible, in that they can be adjusted to the facts of the case and the circumstances of the offender. Moreover, they can be used alone, with incarceration, with probation, or with both incarceration and probation. Fifth, evaluating the basic fulfillment of economic sanctions is relatively easy and straightforward, and is usually determined by an offender’s level of payment.”

Ruback, R. Barry & Bergstrom, Mark H. (forthcoming). Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications. *Criminal Justice and Behavior*.

Historically, the guidelines have neither encouraged nor discouraged the use of fines and other economic sanctions, because of the differences in the financial circumstances of defendants and their families, and the differences in the actual loss of money or property of victims. In recent years, the General Assembly has given increased attention in statute to a broad range of economic sanctions, including fines, costs, fees and restitution. The Commission has also conducted extensive research in this area, and has found substantial increases in the imposition and collection of

economic sanctions. County and state agencies have greatly increased efforts in these areas as well, due in part to additional statutory provisions relating to collection procedures and payment plans. (See 42 Pa.C.S. §§9726, 9728, 9730, 9730.1, and 9758).

While fines are often imposed in addition to other sanctions, opportunities may exist for the use of fines and other economic sanctions as sole penalties, particularly as stand-alone Restorative Sanctions targeting less serious offenders. The use of fines as a sole sanction, or as a substantial additional sanction to increase the overall severity of the penalty, may be under-utilized based on a presumption that most defendants do not have an ability to pay. However, as has been proven in the past decade by the enactment of mandatory restitution legislation, the introduction of supervision fees, and the imposition of numerous other fees and costs, a broad range of economic sanctions can be imposed on offenders, and substantial revenues can be generated from these offenders, to compensate victims and recover some of the costs associated with the criminal justice system.

If the quantity of drugs involved in the offense meets the criteria in subsection (a)(2), the guidelines require a fine to be considered. In such circumstances, failure to consider a fine is a departure from the guidelines. However, the guidelines do not require that a fine be imposed. This subsection should not be interpreted as an attempt to discourage the use of fines if the crime involved a drug not listed in this subsection. Nonetheless, fines are specifically encouraged in cases meeting the criteria of subsection (a)(2), because the listed drugs are among those generally thought to be the most serious. The Commission does not intend that its encouragement of fines reduce the use of forfeiture. Assets seized by forfeiture are used directly by prosecutors for future drug prosecutions, whereas assets which are fined are not so earmarked. Therefore, this guideline subsection is carefully written to give preference to forfeitures.

In addition to fines and forfeitures, the court is encouraged to consider and impose fees, costs and other economic sanctions required by rule or statute, but only after considering the offender's ability to pay. The Commission added subsections (b) and (c) to draw attention to the variety of economic sanctions available to the court, to encourage greater consideration of the use of economic sanctions as sole sanctions and in conjunction with other penalties, and to recognize the various purposes of these sanctions.

**§303.14 (b)
COSTS AND FEES.**

GUIDELINE TEXT:

§303.14 (b) Costs and fees.

(1) Costs and fees may be added to any guideline sentence, as authorized by law. Relevant statutes include but are not limited to:

- (i) 18 Pa.C.S. §1109 (relating to costs of any reward)**
- (ii) 18 P.S. §11.1101 (relating to Crime Victim's Compensation Fund costs)**
- (iii) 18 P.S. §11.1102 (relating to costs of offender supervision programs)**
- (iv) 42 Pa.C.S. §1725 (relating to fees and charges)**
- (v) 42 Pa.C.S. §1725.1 (relating to costs)**
- (vi) 42 Pa.C.S. §1725.2 (relating to costs of summary convictions)**
- (vii) 42 Pa.C.S. §1725.3 (relating to criminal laboratory user fees)**
- (viii) 42 Pa.C.S. §1726.1 (relating to forensic exam)**
- (ix) 42 Pa.C.S. §1726.2 (relating to criminal prosecution involving domestic violence)**
- (x) 42 Pa.C.S. §9728(c) (relating to costs, etc.)**

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.14(a)). The text of this section was added to specifically address costs and fees separately from fines and restitution.

DESCRIPTION:

- * The guidelines do not restrict the court's discretion to sentence an offender to pay costs or fees in addition to any other sentence that may be imposed.
- * Where the guidelines permit a Restorative Sanction (RS), a sentence to pay costs or fees may be the only sentence. Such a sentence would be within the guidelines.
- * Where the guidelines recommend confinement, a sentence to pay costs or fees may be added to the guideline sentence. Such a sentence combination would be within the guidelines.
- * Where the guidelines recommend confinement, and only a sentence to pay costs or fees is imposed, it is a departure from the guidelines.

GUIDELINE FORM/SGS WEB APPLICATION:

* See §303.9(a).

COMMENTARY:

“Economic sanctions rest on a continuum, ranging from sanctions that most directly benefit the victim to those that most directly punish the offender. At the extremes of this continuum, the purposes of economic sanctions are fairly clear: restitution focuses almost exclusively on reparation to a specific victim (with little or no consideration of punishing the offender), while fines and forfeiture focus almost exclusively on punishing the offender (with little or no consideration of reparation to a victim). However, most economic sanctions are less pure in purpose and occupy the ‘middle ground,’ because they seek reparations for ‘society’ as a victim (and in particular the court system), and require offenders to pay substantial (and increasing) amounts in an effort to hold them accountable for their actions. These ‘middle ground’ economic sanctions include costs and fees. “

“Economic sanctions have five advantages. First, compared with incarceration, they are about as effective in deterring future crime (Gordon & Glaser, 1991) but are substantially cheaper, because the state does not have to pay for housing (Morris & Tonry, 1990). Moreover, economic sanctions can avoid the stigma and secondary effects of incarceration, such as loss of employment and dependents who would otherwise have to rely on public assistance (Gordon & Glaser, 1991). Second, economic sanctions can be delivered more consistently than other types of sanctions, an important advantage because continuous punishment, in which punishment is delivered after every response, deters behavior better than intermittent punishment, in which punishment is delivered after some, but not every, response (Brennan & Mednick, 1994). In general, it is easier to impose financial penalties after every crime than to impose incarceration after every crime. Third, compared with simple probation, economic sanctions are more punitive. Fourth, economic sanctions are flexible, in that they can be adjusted to the facts of the case and the circumstances of the offender. Moreover, they can be used alone, with incarceration, with probation, or with both incarceration and probation. Fifth, evaluating the basic fulfillment of economic sanctions is relatively easy and straightforward, and is usually determined by an offender’s level of payment.”

“Fees are used to reimburse the state for the administrative expenses of operating the criminal justice system. Current distinctions in the labeling of fees (e.g., court costs, supervision fees, etc.) help to differentiate the purpose or use of the funding, but do not otherwise change the nature of these society-focused sanctions.”

Ruback, R. Barry & Bergstrom, Mark H. (forthcoming). *Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications. Criminal Justice and Behavior.*

Historically, the guidelines have neither encouraged nor discouraged the use of costs, fees and other economic sanctions, because of the differences in the financial circumstances of defendants and their families, and the differences in the actual loss of money or property of victims. In recent years, the General Assembly has given increased attention in statute to a broad range of economic sanctions, including fines, costs, fees and restitution. The Commission has also conducted extensive research in this area, and has found substantial increases in the imposition and collection of economic sanctions. County and state agencies have greatly increased efforts in these areas as well, due in part to additional statutory provisions relating to collection procedures and payment plans. (See 42 Pa.C.S. §§9726, 9728, 9730, 9730.1, and 9758).

The court is encouraged to consider and impose costs and fees required by rule or statute, but only after considering the offender’s ability to pay. The Commission added subsections (b) and (c) to draw attention to the variety of economic sanctions available to the court, to encourage greater consideration of the use of economic sanctions as sole sanctions and in conjunction with other penalties, and to recognize the various purposes of these sanctions.

**§303.14 (c)
RESTITUTION.**

GUIDELINE TEXT:

§303.14 (c) Restitution

(1) Restitution shall be added to any guideline sentence, as authorized by law. Relevant statutes include but are not limited to:

- (i) 18 Pa.C.S. §1106 (relating to injuries to person or property)**
- (ii) 18 Pa.C.S. §1107 (relating to theft of timber)**
- (iii) 18 P.S. §11.1302 (relating to restitution to the Office of Victim Services)**
- (iv) 42 Pa.C.S. §9720.1 (relating to identity theft)**
- (v) 42 Pa.C.S. §9721(c) (relating to mandatory restitution)**

(2) Restitution may be imposed as a direct sentence or as a condition of probation or intermediate punishment, and is considered a non-confinement sentencing alternative (see restorative sanction §303.9(f)).

PRIOR GUIDELINES:

A similar provision was included in the previous guidelines (§303.14(a)). The text of this section was added to address restitution separately from fines and other economic sanctions.

DESCRIPTION:

- * The guidelines do not restrict the court's discretion to sentence an offender to pay restitution in addition to any other sentence that may be imposed.
- * Where the guidelines permit a Restorative Sanction (RS), a sentence to pay restitution may be the only sentence. Such a sentence would be within the guidelines.
- * Where the guidelines recommend confinement, a sentence to pay restitution may be added to the guideline sentence. Such a sentence combination would be within the guidelines.
- * Where the guidelines recommend confinement, and only a sentence of restitution is imposed, it is a departure from the guidelines.
- * Restitution must be ordered regardless of the current resources of the offender so as to provide the victim with the fullest compensation for the loss (18 Pa.C.S. §9721(c)).

GUIDELINE FORM/SGS WEB APPLICATION:

* See §303.9(a).

COMMENTARY:

“Economic sanctions rest on a continuum, ranging from sanctions that most directly benefit the victim to those that most directly punish the offender. At the extremes of this continuum, the purposes of economic sanctions are fairly clear: restitution focuses almost exclusively on reparation to a specific victim (with little or no consideration of punishing the offender), while fines and forfeiture focus almost exclusively on punishing the offender (with little or no consideration of reparation to a victim). However, most economic sanctions are less pure in purpose and occupy the ‘middle ground,’ because they seek reparations for ‘society’ as a victim (and in particular the court system), and require offenders to pay substantial (and increasing) amounts in an effort to hold them accountable for their actions. These ‘middle ground’ economic sanctions include costs and fees.”

“Economic sanctions have five advantages. First, compared with incarceration, they are about as effective in deterring future crime (Gordon & Glaser, 1991) but are substantially cheaper, because the state does not have to pay for housing (Morris & Tonry, 1990). Moreover, economic sanctions can avoid the stigma and secondary effects of incarceration, such as loss of employment and dependents who would otherwise have to rely on public assistance (Gordon & Glaser, 1991). Second, economic sanctions can be delivered more consistently than other types of sanctions, an important advantage because continuous punishment, in which punishment is delivered after every response, deters behavior better than intermittent punishment, in which punishment is delivered after some, but not every, response (Brennan & Mednick, 1994). In general, it is easier to impose financial penalties after every crime than to impose incarceration after every crime. Third, compared with simple probation, economic sanctions are more punitive. Fourth, economic sanctions are flexible, in that they can be adjusted to the facts of the case and the circumstances of the offender. Moreover, they can be used alone, with incarceration, with probation, or with both incarceration and probation. Fifth, evaluating the basic fulfillment of economic sanctions is relatively easy and straightforward, and is usually determined by an offender’s level of payment.”

Ruback, R. Barry & Bergstrom, Mark H. (forthcoming). *Economic Sanctions in Criminal Justice: Purposes, Effects, and Implications. Criminal Justice and Behavior.*

Historically, the guidelines have neither encouraged nor discouraged the use of restitution and other economic sanctions, because of the differences in the financial circumstances of defendants and their families, and the differences in the actual loss of money or property of victims. In recent years, the General Assembly has given increased attention in statute to a broad range of economic sanctions, including fines, costs, fees and restitution. The Commission has also conducted extensive research in this area, and has found substantial increases in the imposition and collection of economic sanctions. County and state agencies have greatly increased efforts in these areas as well, due in part to additional statutory provisions relating to collection procedures and payment plans. (See 42 Pa.C.S. §§9726, 9728, 9730, 9730.1, and 9758).

Restitution may presently be ordered as a direct sentence, pursuant to Section 1106, or as an indirect sentence, pursuant to Section 9754, as a condition of probation. Different rules apply depending on which option is exercised by the sentencing court. As a direct sentence, the court is required to impose an order for the full amount of the loss, regardless of the offender’s ability to pay; the manner and amount of restitution must be determined at the time of sentencing; and the restitution order is limited to the loss that flows from the conduct for which the defendant is convicted. As an indirect sentence (i.e., condition of probation), the court must consider the offender’s ability to pay when determining the amount of restitution; the court is not required to specify the amount of restitution at the time of sentencing; and restitution may include indirect damages caused by the defendant. It would appear that an indirect sentence of restitution is presently available to the court to compensate victims for collateral injuries. (See *Com. v. Deshong*, 850 A.2d 712, 2004 Pa. Super. 164).

In addition to restitution, the court is encouraged to consider and impose fees, costs and other economic sanctions

required by rule or statute. The Commission added subsections (b) and (c) to draw attention to the variety of economic sanctions available to the court, to encourage greater consideration of the use of economic sanctions as sole sanctions and in conjunction with other penalties, and to recognize the various purposes of these sanctions.

