

Annex A
TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS
PART VIII. CRIMINAL SENTENCING
CHAPTER 303. SENTENCING GUIDELINES

§303.1. Sentencing guidelines standards.

(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 assigned the higher offense gravity score.

(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.

(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 and June 3, 2005.

(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).

(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.

§303.2. Procedure for determining the guideline sentence.

(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).

(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.

§303.3. Offense Gravity Score - general.

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

(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 [*].

(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.

(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.

(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.)

(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

§303.4. Prior Record Score - categories.

(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 and 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 and 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.

§303.5. Prior Record Score - prior convictions.

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

(b) If there are multiple offenses in the prior 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.

(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.

- (d) Adequacy of the Prior Record Score. The court may consider at sentencing prior 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.

§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).

- (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.

- (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.]* :
 - i. *The offender was 28 years of age or older at the time the current offense was committed; and*
 - ii. *The offender remained crime-free during the ten-year period immediately preceding the offender's 28th birthday.*
 - iii. *Crime-free. Included in the definition of crime-free is any summary offense and/or one misdemeanor offense with a statutory maximum of one year or less.*

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

§303.7. Prior Record Score - guideline points scoring.

- (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 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 (complainant is less than 13 years of age)

Indecent Exposure (persons present are less than age 16)

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]* lifetime conviction or adjudication.

Operating a Watercraft Under the Influence of Alcohol or a Controlled Substance, except for a first lifetime conviction or adjudication.

(5) Other Misdemeanor Offenses. All other misdemeanor offenses, including a first lifetime conviction for Driving Under the Influence of Alcohol or a Controlled Substance or Operating a Watercraft Under the Influence of Alcohol or a Controlled Substance, 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.

§303.8. Prior Record Score - miscellaneous.

(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.

(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.

(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.

(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 other misdemeanors. When it cannot be determined if the prior conviction was a felony, one point misdemeanors, or other misdemeanors, it shall be treated as other misdemeanors. 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.

(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.

(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).

(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.

§303.9. Guideline sentence recommendation: general.

(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).

(b) Deadly Weapon Enhancement sentence recommendations. 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).

(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).

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

(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).

(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. **Recommendations related to fines and community service are found at §303.14(a).** RIP in the sentence recommendation, an abbreviation for Restrictive Intermediate Punishments, suggests use of Restrictive Intermediate Punishments pursuant to §303.12(a)(4).

(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.

(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.

(i) **[Driving Under the Influence] Mandatory sentences for which county intermediate punishment is authorized.** The court shall consider the sentence recommendations pursuant to this section (§303.9) for an offender convicted under **30 Pa.C.S. §5502 (Operating a Watercraft Under the Influence of Alcohol or a Controlled Substance), 75 Pa.C.S. §1543(b) (Driving While Operating Privilege is Suspended or Revoked, Certain Offenses), 75 Pa.C.S. §3802 (Driving Under the Influence of Alcohol or Controlled Substance) or 75 Pa.C.S. §1543(b) (Illegally Operating a Motor Vehicle Not Equipped with Ignition Interlock).** The court may use a Qualified Restrictive Intermediate Punishment pursuant to §303.12(a)(6) to satisfy the mandatory minimum requirement **as provided by law.**

§303.10. Guideline sentence recommendations: enhancements.

(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.

(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.

§303.11. Guideline sentence recommendation: sentencing levels.

(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.

(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.] When the individual or aggregate minimum sentence recommendation includes confinement in a county facility, county intermediate punishment should be considered in lieu of confinement for an eligible offender. When the individual or aggregate minimum sentence recommendation includes confinement in a state facility, county or state intermediate punishment should be considered in lieu of confinement for an eligible offender.*** 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))
(also see §303.14(a)(4) for Fines/Community Service Guidelines)

(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))
(also see §303.14(a)(4) for Fines/Community Service Guidelines)

(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[n] 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 or county 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).

Partial confinement in a county facility.

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 or county 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 or county 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).

Partial confinement in a county facility.

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

§303.12. Guideline sentence recommendations: sentencing programs.

(a) County intermediate punishment (CIP).

(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) County III intermediate punishments classifications. In order to incorporate county intermediate punishment programs into the sentencing levels, the Commission has classified county intermediate punishment programs as Restrictive Intermediate Punishments (RIP) and restorative sanction programs. Additionally, specific county 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 convictions funder 75 Pa.C.S. §3802 (J relating to **Operating a Watercraft Under the Influence of Alcohol or a Controlled Substance, Driving While Operating Privilege is Suspended or Revoked, Driving Under the Influence of Alcohol or Controlled Substance and Illegally Operating a Motor Vehicle Not Equipped with Ignition Interlock J**); 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 county 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 30 Pa.C.S. §5502(c.1) for a first, second or third offense under 30 Pa.C.S. §5502, 75 Pa.C.S. §[3802] 1543(b), former 75 Pa.C.S. §3731, 75 Pa.C.S. §3804 for a first, second or third offense under 75 Pa.C.S. Chapter 38, or 75 Pa.C.S.

§3808(a)(2) (Illegally Operating a Motor Vehicle Not Equipped with Ignition Interlock).

(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, **and receives a penalty imposed under 75 Pa.C.S. §1543(b), former 75 Pa.C.S. §3731, 75 Pa.C.S. §3804, or 75 Pa.C.S. §3808(a)(2)** a sentence to **county** intermediate punishment shall include participation in drug and alcohol treatment under 75 Pa.C.S. §3815(c), and may be combined with:

1. **a residential inpatient program or residential rehabilitative center;**
2. house arrest with electronic surveillance; *[or]*
3. a partial confinement program such as work release, a work camp or a halfway facility. *]; or*
4. **any combination of Qualified Restrictive Intermediate Punishment programs.**

(B) if the defendant is determined not to be in need of drug and alcohol treatment, **or if the defendant receives a penalty imposed under 30 Pa.C.S. §5502(c.1)**, a sentence to **county** 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.

(b) State Motivational Boot Camp (**BC**).

(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.

(c) State Intermediate Punishment (**SIP**).

(1) Eligibility.

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

(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.

§ 303.13. Guideline sentence recommendations: aggravated and mitigated circumstances.

(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. **When imposing a fine or community service pursuant to §303.14(a)(4), the court may impose a sentence that is up to 25 hours 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.

(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. *When imposing a fine or community service pursuant to §303.14(a)(4), the court may impose a sentence that is up to 25 hours 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.

(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).

§303.14. Guideline sentence recommendations – economic sanctions.

(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 a[n] county intermediate punishment sentence or as a non-confinement sentencing alternative (see restorative sanction §303.9(f)).

(4) *Fines/Community Service Guidelines. The following guidelines shall be considered by the court when ordering fines or community service as a Restorative Sanction without confinement. Community service, when ordered, is imposed as a condition of probation. A fine, when ordered, is imposed as a non-confinement sentencing alternative or as a condition of probation. The fines guidelines are determined by multiplying the number of hours recommended by the offender's hourly wage or the current minimum wage, whichever is higher, but may not exceed the statutory maximum fine authorized by law*

a. OGS 1

- i. PRS 0 25 hours-50 hours
- ii. PRS 1 50 hours-75 hours
- iii. PRS 2 75 hours-100 hours
- iv. PRS 3 100 hours-125 hours
- v. PRS 4 125 hours-150 hours
- vi. PRS 5 150 hours-175 hours
- b. OGS 2
 - i. PRS 0 25 hours-50 hours
 - ii. PRS 1 75 hours-100 hours
 - iii. PRS 2 100 hours-125 hours
 - iv. PRS 3 125 hours-150 hours
 - v. PRS 4 150 hours-175 hours
- c. OGS 3
 - i. PRS 0 50 hours-75 hours
 - ii. PRS 1 150 hours-175 hours
 - iii. PRS 2 225 hours-250 hours
 - iv. PRS 3 300 hours-325 hours
- d. OGS 4
 - i. PRS 0 100 hours-125 hours
 - ii. PRS 1 225 hours-250 hours
 - iii. PRS 2 300 hours-325 hours
- e. OGS 5
 - i. PRS 0 225 hours-250 hours

(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.)

(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)).

