

**PENNSYLVANIA COMMISSION ON SENTENCING**  
**[204 Pa.Code Chapter 303]**  
**Adoption of Sentencing Guidelines**

The Pennsylvania Commission on Sentencing is hereby submitting revised sentencing guidelines, 204 Pa. Code §§303.1 –303.18, for consideration by the General Assembly. The Commission initially adopted the revised sentencing guidelines on December 5, 2007, published them for comment at 38 Pa.B. 9 (January 5, 2008), and held public hearings on February 8, 2008 (Pittsburgh), February 21, 2008 (Philadelphia) and February 27, 2008 (Harrisburg). The Commission adopted the revised sentencing guidelines, found in Annex A, on June 19, 2008.

As specified by statute, 42 Pa.C.S. §2155, the General Assembly has ninety days from the date of this publication (September 6, 2008) to review the revisions to the sentencing guidelines. Unless rejected by concurrent resolution during that period, these revised guidelines will become effective on Friday, December 5, 2008 and will apply to all offenses committed on or after that date.

REPRESENTATIVE FRANK DERMODY  
*Chair*

**Commentary on Annex A**

*Reasons for Revisions to Sentencing Guidelines*

Pennsylvania's initial sentencing guidelines became effective June 22, 1982, and were subsequently amended on nine occasions, most recently in 2005. The current sentencing guidelines (6<sup>th</sup> Edition) became effective June 3, 2005 and apply to offenses committed on or after that date. The Commission herein proposes revisions to the 6<sup>th</sup> Edition sentencing guidelines in the following areas: assigning new offense gravity scores (OGS) to certain offenses; adding a law-abiding behavior requirement to the juvenile lapsing provision; expanding recommendations for consideration of state intermediate punishment; providing recommendations for the use of fines and community service as restorative sanctions as an initial response to the requirements contained in Act 2007-37; and correcting typographical errors and omissions identified in the 6<sup>th</sup> Edition sentencing guidelines.

*Revisions to Section 303.1 – Sentencing guidelines standards*

The standards contained in this section identify offenses for which courts must consider the sentencing guidelines, and offenses to which the guidelines do not apply; describe the application of the various editions of the guidelines; and describe the requirements for reporting sentences to the Commission. The current guidelines require the court to consider only the higher graded offense in circumstances where crimes merge for sentencing purposes. The Commission has proposed requiring the court to consider instead only the offense with the higher offense gravity score.

*Revisions to Sections 303.4 through 303.8 – Prior Record Score*

The standards contained in this section relate to Prior Record Score (PRS) policies, including the PRS categories, identification of previous adjudications and convictions included in the calculation of the PRS, and the relative weight of those previous adjudications and convictions in determining the PRS category. The PRS reflects both the number and severity of previous adjudications and convictions. The PRS is not a separate punishment, but rather a reflection of the seriousness of previous offenses. The Commission has proposed adding a reference to 'prior' judicial proceedings as a clarification and to make the text of these sections more consistent with that used in other sections.

In Section 303.6(c), the current guidelines provide a lapsing of certain juvenile adjudications if the offender is

28 years of age or older at the time the current offense was committed. The Commission has proposed including a requirement for a ten-year crime-free period in order for this lapsing to occur. 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. While retaining the lapsing provision, this proposal takes into account the higher risk for re-offending by youthful offenders that persist in criminal activity. The ten-year period is linked both to the existing time period for lapsing (i.e., ten years past 18 years of age), as well as the time period used in Pa.R.E. Rule 609 (Impeachment by Evidence of Conviction of Crime), and recognizes the availability of a provision for expungement of juvenile records under the Commonwealth's Criminal History Records Information Act (see 18 Pa.C.S. §9123).

In Section 303.7, the current guidelines provide point assignments used in the prior record score calculation. Recent amendments to the Operating a Watercraft Under the Influence of Alcohol or a Controlled Substances statute provide greater alignment between the penalties for this offense and those for DUI. The Commission has proposed extending the DUI point values to Operating a Watercraft Under the Influence.

#### *Revisions to Sections 303.9 through 303.14 – Guideline sentence recommendations*

The standards contained in this section relate to guideline sentence recommendations, including general provisions, enhancements for possession or use of a deadly weapon, enhancements for distribution of a controlled substance to a minor or in a school zone, sentencing levels and programs, aggravated and mitigated circumstances, and economic sanctions.

In Section 303.9, the current guidelines provide general recommendations for sentencing. The Commission has proposed adding to this section a reference to the proposed recommendation for fines and community service, as well as expanding the discussion of DUI sentencing provisions to address any mandatory sentence for which county intermediate punishment is authorized.

In Section 303.11, the current guidelines provide a 30 month minimum sentence threshold for targeting the use of intermediate punishments: offenders with a minimum sentence recommendation of less than 30 months are recommended for county intermediate punishment, and those with a minimum sentence recommendation of 30 months or greater are recommended for state intermediate punishment. The Commission has proposed a change that would place greater emphasis on recommended place of confinement for targeting the use of intermediate punishments, to promote greater consideration of these options at both the state and county level. The Commission has proposed consideration of county intermediate punishment when the individual or aggregate minimum sentence recommendation includes confinement in a county facility, and consideration of state intermediate punishment when the individual or aggregate minimum sentence recommendation includes confinement in a state facility.

In Section 303.12, the current guidelines provide recommendations for three sentencing programs: county intermediate punishment, state motivational boot camp and state intermediate punishment. The Commission has proposed adding language to better distinguish between county and state intermediate punishment programs, and to incorporate amendments to the county intermediate punishment statutes relating to qualified restrictive intermediate punishments (Act 2007-27).

In Section 303.13, the current guidelines define the minimum confinement ranges for aggravated and mitigated sentences. The Commission has proposed adding provisions to define the fines and community service ranges for aggravated and mitigated sentences at Level 1 and Level 2 of the sentencing guidelines.

In Section 303.14, the current guidelines provide recommendation for three categories of economic sanctions: fines, costs and fees, and restitution. Pursuant to Act 2007-37 (SB 116, PN1323), the Commission is required to adopt guidelines for fines and other lawful economic sanctions, and to prescribe community service alternatives which may be imposed in lieu of fines. The Commission is undertaking a comprehensive study of the use of fines and other economic sanctions as part of this effort, with particular focus on the imposition and collection of fines in recent years. However, as an initial response to the mandate of Act 37, the Commission

has advanced a proposal, limited to Level 1 and Level 2 of the sentencing guidelines, which provides structured sentencing recommendations for the use of fines and/or community service as restorative sanctions without confinement.

In order to avoid concerns regarding an offender's ability to pay, the Commission used community service hours as the starting point for its recommendations, since community service could be ordered without consideration of ability to pay. The proposal links the number of hours of community service recommended to the existing guideline recommendations, so that those offenders with more serious offenses or more extensive criminal history are recommended for more hours of community service. At Level 1, which targets the least serious offenders, the current sentence recommendation is exclusively RS; for these cells, the community service recommendation is 25-50 hours. At Level 2, where the sentence recommendation contains a range that includes RS and a minimum period of confinement, the number of hours of community service is increased by increments of 25 hours (e.g., RS-1 = 50-75 hours; RS-2 = 75-100 hours).

If the court determines the offender does have the ability to pay, and the court chooses to impose a fine, the proposal uses the community service recommendation to determine the fines recommendation. The proposal contains a sliding scale, in which the fine is determined by multiplying the number of hours that would otherwise have been ordered as community service by the offender's hourly wage, with the state minimum wage serving as the default. This approach maintains the proportionality of the sanction (i.e., increased hours for more serious offenders) while scaling the fine to the offender's income. It also provides the court with a credible sole-sanction for lower-level offenders. Based on experiences in other jurisdictions, the scaling of fines to ability to pay leads to higher compliance rates and increased overall collections.

#### *Revisions to Section 303.15 – Offense listing*

The Commission has proposed changes to this section that reflect assignments for recently enacted or amended statutes, as well as changes to assignments based on comments received. In several cases, the modifications correct errors/omissions identified in the 6<sup>th</sup> Edition sentencing guidelines, or further sub-categorize offenses for improved data collection, as is the case with certain Megan's Law offenses. Details are as follow:

#### Title 18

*New offenses:* Terrorism (2717), Trafficking of persons (3002), Conduct relating to sex offenders (3130), Ecoterrorism (3311), Destruction of a survey monument (3312), Disarming law enforcement officer (5104.1), VUFA/Person not to possess (6105), VUFA/Penalties for release of information (6108.5), Commemorative service demonstration activities (7517).

*Amended offenses/Modified OGS assignments:* Indecent assault (3126), Failure to register, etc. (4915), Sale or transfer of firearms (6111), Unlawful contact or communication with minor (6318).

*Corrections (6th Edition errors/omissions)/Sub-categorizations:* Use or possession of electric or electronic incapacitation device (908.1), Aggravated assault (2702), Kidnapping (2901), Aggravated indecent assault (3125), Arson endangering persons/Inchoate (3301), Theft by receiving stolen property (3925), Incest (4302), Promoting prostitution (5902), Obscene materials (5903), VUFA/Person not to possess (6105).

#### Title 23

*New offenses:* Penalties for failure to report child abuse (6319).

#### Title 30

*Amended offenses/Modified OGS assignments:* Operating watercraft under the influence (5502), Homicide by

watercraft while operating under the influence (5502.1), Homicide by watercraft (5502.2), Aggravated assault by watercraft while under the influence (5502.3).

Title 35

*Corrections (6th Edition errors/omissions)/Sub-categorizations):* Acquisition of controlled substance by fraud: MDMA, Marijuana (780-113(a)(12)), Delivery by practitioner: MDMA, Marijuana (780-113(a)(14)), Possession with intent to deliver, etc.: MDMA, Marijuana (780-113(a)(30)).

Title 75

*Amended offenses/Modified OGS assignments):* Fleeing or attempting to elude a police officer (3733).

*Corrections (6th Edition errors/omissions)/Sub-categorizations):* Accidents involving death or personal injury (3742), Ignition interlock (3808).