

**Pennsylvania Commission on Sentencing  
Caselaw Highlights (PA Reporter through May 23, 2008)**

|                     |          |              |            |          |          |           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|---------------------|----------|--------------|------------|----------|----------|-----------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| In the interest of: | M.M.     | 690 A.2d 175 | 2/19/1997  | PA       | Sentence | Probation | An order placing a defendant on probation is an appealable order, regardless of whether defendant is an adult or a juvenile. Supreme court overruled probation which was held to be 'not final' order where issuing court ordered probation 'temporarily'.                                                                                                                                                                                                                                                                                                                                    |
|                     | Shrawder | 940 A.2d 436 | 12/31/2007 | PA Super | Sentence | Probation | Use of therapeutic polygraph testing as part of sexual offender counseling that was a condition of probation did not violate probationer's constitutional privilege against self-incrimination, so long as inquiries did not compel probationer to provide information that could be used against him in a subsequent criminal trial; testing furthered primary goal of counseling to rehabilitate and prevent recidivism, with reasonably small incremental deprivations of liberty, and candor was always expected during a probation inquiry. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 9. |
|                     | Shrawder | 940 A.2d 436 | 12/31/2007 | PA Super | Sentence | Probation | Therapeutic polygraph testing is a proper element in a sex offender treatment program for a convicted sexual offender and does not violate a probationer's privilege against self-incrimination, so long as the inquiries made pursuant to it relate to the underlying offense for which an offender has been sentenced and do not compel him or her to provide information that could be used against him or her in a subsequent criminal trial. U.S.C.A. Const.Amend. 5; Const. Art. 1, § 9.                                                                                                |
|                     | Kelly    | 931 A.2d 694 | 8/6/2007   | PA Super | Sentence | Probation | Defendant's probation qualified as a special case, subject to supervision of Pennsylvania Board of Probation and Parole (PBPP); PBPP, under statute, had exclusive power to supervise person placed on probation by judge of court having criminal jurisdiction, when court could by special order direct supervision by board, and court requested special probation supervision by PBPP, and PBPP accepted defendant for special probation supervision pursuant to specific criteria. 61 P.S. § 331.17.                                                                                     |
|                     | Kelly    | 931 A.2d 694 | 8/6/2007   | PA Super | Sentence | Probation | County probation department, as agent of court of common pleas and Pennsylvania Board of Probation and Parole (PBPP), was authorized to detain defendant for violating his three probationary sentences imposed by court; court delegated authority to county probation officers to detain defendant who violates probation, county probation officer stated that she was acting by virtue of authority delegated to her by court, and county department, as agent of court, had authority to detain defendant for probation violation proceedings. 37 Pa.Code § 65.3; 61 P.S. § 331.17a.     |

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|  | Merolla | 909 A.2d 337  | 9/28/2006 | PA Super | Sentence | Probation                 | Imposition of consecutive terms of probation for defendant's two indecent assault charges, each five to ten years, for an aggregate probationary period of not less than ten nor more than twenty years, constituted an illegal sentence; term of probation should have been finite or "flat," and length of probation could not exceed the maximum term for which defendant could be confined. 42 Pa.C.S.A. §§ 9721(a), 9754(a), 9755(b), 9756(b).                                                                                                                                                                                                                                        |
|  | Hartman | 908 A.2d 316  | 9/11/2006 | PA Super | Sentence | Probation                 | In light of the fact the criminal charge of sexual abuse of children arose from defendant's use of his computer to download from the Internet sexually explicit photographs of young girls, trial court's placing upon defendant's probation a condition that defendant not possess or use a computer, own a cell phone or PDA with Internet capabilities, or otherwise access the Internet was appropriate in that these probation conditions were rationally related to the trial court's rehabilitative goals and defendant had no inherent right to Internet access; trial court's probation conditions served the important goals of protecting the public and preventing recidivism. |
|  | Fenton  | 750 A.2d 863  | 4/3/2000  | PA Super | Sentence | Probation                 | Condition of probation, following convictions for terroristic threats and harassment by communication, that prohibited contact with local newspaper and congressman, was not illegal as an undue restriction of speech, in that the restriction did not bar defendant from expressing his views in the appropriate forum (18/2706).                                                                                                                                                                                                                                                                                                                                                        |
|  | Koren   | 646 A.2d 1205 | 8/25/1994 | PA Super | Sentence | Probation                 | Condition of probation that defendant not have any contact with boyfriend during her probation was reasonable and necessary for her rehabilitation, even if boyfriend was her fiancée.                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
|  | Byrd    | 663 A.2d 229  | 8/10/1995 | PA Super | Sentence | Probation without verdict | In case where defendant sentenced to Section 17 probation without verdict, where there was no negotiated plea, trial court has authority after violation of probation to impose period of incarceration greater than original period of probation.                                                                                                                                                                                                                                                                                                                                                                                                                                         |
|  | Severns | 663 A.2d 210  | 8/9/1995  | PA Super | Sentence | Probation without verdict | Trial court has no discretion to grant 'Section 17' Probation without verdict to defendant found guilty on charge of simple possession; defendant only eligible if he pleads guilty or nolo contendere to non-violent offenses where drug dependency is proven.                                                                                                                                                                                                                                                                                                                                                                                                                            |