



## Enabling Legislation (11/24/2008)

### 42 Pa.C.S.A. § 2151.1. Definitions

The following words and phrases when used in this subchapter shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Board." The Pennsylvania Board of Probation and Parole.

"Commission." The Pennsylvania Commission on Sentencing established in section 2151.2 (relating to Commission).

"Department." The Department of Corrections of the Commonwealth.

### 42 Pa.C.S.A. § 2151.2. Commission

(a) General rule.--The commission shall be established as an agency of the General Assembly and shall consist of 11 persons selected as provided in this subchapter.

(b) Seal.--The commission shall have a seal engraved with its name and such other inscription as may be specified by regulation of the commission.

### 42 Pa.C.S.A. § 2152. Composition of commission

(a) General rule.--The Pennsylvania Commission on Sentencing shall consist of:

(1) Two members of the House of Representatives selected by the Speaker of the House of Representatives, no more than one of whom shall be of the same political party.

(2) Two members of the Senate of Pennsylvania selected by the President pro tempore of the Senate, no more than one of whom shall be of the same political party.

(3) Four judges of courts of record selected by the Chief Justice of Pennsylvania.

(4) Three persons appointed by the Governor, who shall be, respectively:

(i) A district attorney.

(ii) A defense attorney.

(iii) Either a professor of law or a criminologist.

(a.1) Ex officio members.--The Secretary of Corrections, the victim advocate appointed under section 301 of the act of November 24, 1998 (P.L.882, No.111), known as the Crime Victims Act, and the chairman of the board, during their tenure in their respective positions, shall serve as ex officio nonvoting members of the commission.

(b) Terms of office.--The members of the commission shall serve for terms of two years and until a successor has been selected and qualified. A vacancy on the commission shall be filled for the balance of the term.

(c) Chairman and executive director.--The commission shall select a chairman from its members and an executive director. The chairman shall:

(1) Preside at meetings of the commission.

(2) Direct the preparation of requests for appropriations for the commission and the use of funds made available to the commission.

(d) Meetings and quorum.--

(1) The commission shall meet at least four times a year and not less than semiannually to establish its general policies and rules.



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(2) The commission shall be deemed an “agency” within the meaning of and shall be subject to the provisions of the act of July 19, 1974 (P.L. 486, No. 175), referred to as the Public Agency Open Meeting Law.

(3) Seven commissioners shall constitute a quorum for the purpose of adopting proposed initial and initial and subsequent guidelines. A majority of commissioners shall constitute a quorum for all other purposes.

(4) Minutes of meetings shall be kept by the executive director and filed at the executive office of the commission.

(e) Records of action.--Except as otherwise provided by statute, the commission shall maintain and make available for public inspection a record of the final vote of each member on any action taken by it.

(f) Expenses.--Each commissioner shall be entitled to reimbursement for his accountable expenses incurred while engaged in the business of the commission.

#### **42 Pa.C.S.A. § 2153. Powers and duties**

(a) General rule.--The commission, pursuant to rules and regulations, shall have the power to:

(1) Establish general policies and promulgate such rules and regulations for the commission as are necessary to carry out the purposes of this subchapter and Chapter 97 (relating to sentencing).

(2) Utilize, with their consent, the services, equipment, personnel, information and facilities of Federal, State, local and private agencies and instrumentalities with or without reimbursement therefore.

(3) Enter into and perform such contracts, leases, cooperative agreements and other transactions as may be necessary in the conduct of the functions of the commission, with any public agency or with any person, firm, association, corporation, educational institution or nonprofit organization.

(4) Request such information, data and reports from any officer or agency of the Commonwealth government as the commission may from time to time require and as may be produced consistent with other law.

(5) Arrange with the head of any government unit for the performance by the government unit of any function of the commission, with or without reimbursement.

(6) Issue invitations requesting the attendance and testimony of witnesses and the production of any evidence that relates directly to a matter with respect to which the commission or any member thereof is empowered to make a determination under this subchapter.

(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, resentencing and parole practices.

(ii) Assisting and serving in a consulting capacity to the board, State courts, departments and agencies in the development, maintenance and coordination of sound sentencing, resentencing and parole practices.

(8) Collect systematically the data obtained from studies, research and the empirical experience of public and private agencies concerning the sentencing processes.

(9) Publish data concerning the sentencing and parole processes.

(10) Collect systematically and disseminate information concerning parole dispositions and sentences actually imposed, including initial sentences and any subsequent modification of sentences or resentences following revocation or remand, and parole and reparole decisions by the board and any other paroling authority.

(11) Collect systematically and disseminate information regarding effectiveness of parole dispositions and sentences imposed.



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(12) Make recommendations to the General Assembly concerning modification or enactment of sentencing, parole and correctional statutes which the commission finds to be necessary and advisable to carry out an effective, humane and rational sentencing policy.

(13) Establish a plan and timetable to collect and disseminate information relating to incapacitation, recidivism, deterrence and overall effectiveness of sentences and parole dispositions imposed.

(14) Establish a program to systematically monitor compliance with the guidelines, recommitment ranges and with mandatory sentencing laws to document eligibility for and releases pursuant to a county reentry plan, to document eligibility for and imposition of recidivism risk reduction incentive minimum sentences and to document all parole and reparole decisions by the board and any other paroling authority by:

(i) Promulgating forms which document the application of sentencing, resentencing and parole guidelines, mandatory sentencing laws, releases pursuant to a county reentry plan, recommitment ranges and recidivism risk reduction incentive minimum sentences, and collecting information on all parole and reparole decisions by the board and any other paroling authority.

(ii) Requiring the timely completion and electronic submission of such forms to the commission.

(15) Prior to adoption of changes to guidelines for sentencing, resentencing and parole, and recommitment ranges following revocation, use a correctional population simulation model to determine:

(i) Resources that are required under current guidelines and ranges.

(ii) Resources that would be required to carry out any proposed changes to the guidelines and ranges.

(b) Annual reports.--The commission shall report annually to the General Assembly, the Administrative Office of Pennsylvania Courts and the Governor on the activities of the commission.

(c) Additional powers and duties.--The commission shall have such other powers and duties and shall perform such other functions as may be necessary to carry out the purposes of this subchapter or as may be provided under any other provision of law and may delegate to any commissioner or designated person such powers as may be appropriate other than the power to establish general policies, guidelines, rules and factors under subsection (a)(1).

#### **42 Pa.C.S.A. § 2154. Adoption of guidelines for sentencing**

(a) General rule.--The commission shall adopt guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to, or who were found guilty of, felonies and misdemeanors. The guidelines shall:

(1) Specify the range of sentences applicable to crimes of a given degree of gravity.

(2) 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.

(3) Specify a range of sentences of increased severity for defendants who possessed a deadly weapon during the commission of the current conviction offense.

(4) Prescribe variations from the range of sentences applicable on account of aggravating or mitigating circumstances.

(5) Consider the impact of any amendments to section 9756 (relating to sentence of total confinement).



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(b) Definition.--As used in this section the term "possessed" means on the defendant's person or within his immediate physical control.

### **42 Pa.C.S.A. § 2154.1. Adoption of guidelines for county intermediate punishment**

The commission shall adopt guidelines to identify offenders who would be eligible and appropriate for participation in county intermediate punishment programs. These guidelines shall be considered by the sentencing court in determining whether to sentence an offender pursuant to section 9763 (relating to sentence of county intermediate punishment). The guidelines shall:

- (1) Use the description of "eligible offender" provided in Chapter 98 (relating to county intermediate punishment).
- (2) Give primary consideration to protection of the public safety.

### **42 Pa.C.S.A. § 2154.2. Adoption of guidelines for State intermediate punishment**

The commission shall adopt guidelines to identify offenders who would be appropriate for participation in State intermediate punishment programs. These guidelines shall be considered by the attorney for the Commonwealth and the sentencing court in determining whether to commit a defendant for evaluation and whether to sentence an eligible offender pursuant to Chapter 99 (relating to State intermediate punishment). The guidelines shall:

- (1) Use the description of "eligible offender" provided in Chapter 99.
- (2) Give primary consideration to protection of the public safety.

### **42 Pa.C.S.A. § 2154.3. Adoption of guidelines for fines**

The commission shall adopt guidelines for fines or other lawful economic sanctions, within the limits established by law, which shall be considered by the sentencing court in determining the appropriate sentence for defendants who plead guilty or nolo contendere to or who are found guilty of felonies and misdemeanors. The guidelines shall do all of the following:

- (1) Specify the range of fines or other lawful economic sanctions, applicable to crimes of a given degree of gravity.
- (2) Specify a range of fines or other lawful economic sanctions of increased amount for defendants previously convicted or adjudicated delinquent for one or more misdemeanor or felony offenses committed prior to the current offense. For purposes of this paragraph, the term "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.
- (3) Prescribe variations from the range of fines applicable on account of aggravating or mitigating circumstances.
- (4) Prescribe community service alternatives which may be imposed in lieu of all or part of the fines where the sentencing court finds the defendant lacks the ability to pay all or part of the fine.

### **42 Pa.C.S.A. § 2154.4. Adoption of guidelines for resentencing**

The commission shall adopt guidelines that shall be considered by the court when resentencing an offender following revocation of probation, county intermediate punishment or State intermediate punishment. The guidelines shall take into account factors considered in adopting the sentencing guidelines, the seriousness of the violation and the rehabilitative needs of the defendant.



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### **42 Pa.C.S.A. § 2154.5. Adoption of guidelines for parole**

The commission shall adopt guidelines that shall be considered by the board and any other paroling entity when exercising its power to parole and reparole all persons sentenced by any court in this Commonwealth to imprisonment in any State or county penitentiary, prison or penal institution. The guidelines shall do all of the following:

- (1) Give primary consideration to the protection of the public and to victim safety.
- (2) Provide for due consideration of victim input.
- (3) Be designed to encourage inmates and parolees to conduct themselves in accordance with conditions and rules of conduct set forth by the department or other prison facilities and the board.
- (4) Be designed to encourage inmates and parolees to participate in programs that have been demonstrated to be effective in reducing recidivism, including appropriate drug and alcohol treatment programs.
- (5) Provide for prioritization of incarceration, rehabilitation and other criminal justice resources for offenders posing the greatest risk to public safety.
- (6) Use validated risk assessment tools, be evidence based and take into account available research relating to the risk of recidivism, minimizing the threat posed to public safety and factors maximizing the success of reentry.
- (7) Discretionary authority.--Notwithstanding any other provision of law, this section shall not remove the discretionary parole authority of the board and any other paroling entity when exercising its power to parole and reparole.

### **42 Pa.C.S.A. § 2154.6. Adoption of recommitment ranges following revocation of parole by board.**

(a) Reccommitment ranges.--The commission shall adopt recommitment ranges that shall be considered by the board when exercising its power to reparole, commit and recommit for violations of parole any person sentenced by a court in this Commonwealth to imprisonment in any prison or penal institution of this Commonwealth, including State or county penitentiaries, prisons or penal institutions. The recommitment ranges shall take into account the seriousness of the initial conviction offense, the level of seriousness of the violation and the rehabilitative needs of the defendant. At the end of the recommitment period, the parole violator shall be reviewed for parole or, without further review, shall be reparaoled.

(b) Deviation.--In every case in which the board deviates from the recommitment ranges, the board shall provide a contemporaneous written statement of the reasons for the deviation from the recommitment ranges to the commission as established under section 2153(a)(14) (relating to powers and duties).

(c) Definitions.--As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Recommitment range." A range of time within which a parole violator may be recommitted to serve an additional part of the term the parole violator would have been compelled to serve had the parole violator not been paroled.

### **42 Pa.C.S.A. § 2155. Publication of guidelines for sentencing, resentencing and parole and recommitment ranges following revocation**

(a) General rule.--The commission shall:

- (1) Prior to adoption, publish in the Pennsylvania Bulletin all proposed sentencing guidelines, resentencing guidelines following revocation of probation, county intermediate punishment and State intermediate punishment, parole guidelines and recommitment ranges following revocation by the board of paroles



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granted, and hold public hearings not earlier than 30 days and not later than 60 days thereafter to afford an opportunity for the following persons and organizations to testify:

- (i) Pennsylvania District Attorneys Association.
- (ii) Chiefs of Police Associations.
- (iii) Fraternal Order of Police.
- (iv) Public Defenders Organization.
- (v) Law school faculty members.
- (vi) State Board of Probation and Parole.
- (vii) Department of Correction.
- (viii) Pennsylvania Bar Association.
- (ix) Pennsylvania Wardens Association.
- (x) Pennsylvania Association on Probation, Parole and Corrections.
- (xi) Pennsylvania Conference of State Trial Judges.
- (xii) Any other interested person or organization.

(2) Publish in the Pennsylvania Bulletin sentencing guidelines as adopted by the commission.

(b) Rejection by General Assembly.--Subject to gubernatorial review pursuant to section 9 of Article III of the Constitution of Pennsylvania, the General Assembly may by concurrent resolution reject in their entirety any guidelines or recommitment ranges adopted by the commission within 90 days of their publication in the Pennsylvania Bulletin pursuant to subsection (a)(2).

(c) Effective date.-- Sentencing guidelines, resentencing guidelines following revocation of probation, county intermediate punishment and State intermediate punishment, parole guidelines and recommitment ranges following revocation by the board of paroles granted, adopted by the commission shall become effective 90 days after publication in the Pennsylvania Bulletin pursuant to subsection (a)(2) unless disapproved pursuant to subsection (b) and shall apply to sentences and resentences and parole decisions made after the effective date of the guidelines. If not disapproved, the commissioners shall conduct training and orientation for trial court judges and board members prior to the effective date of the guidelines and recommitment ranges.

### **42 Pa.C.S.A. § 2156. Severability of subchapter**

The provisions of this subchapter are severable. If any provision of this subchapter or its application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this subchapter which can be given effect without the invalid provision or application.

### **Additional Evaluation & Reporting Requirements**

#### State Motivational Boot Camp (42 Pa.C.S.A. § 9909. Evaluation)

The department and the commission shall monitor and evaluate the motivational boot camp program under the act of December 19, 1990 (P.L. 1391, No. 215), known as the Motivational Boot Camp Act, to ensure that the programmatic objectives are met. In even-numbered years, the department shall present a report of its evaluation to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives no later than February 1. In odd-numbered years, the commission shall present a report of its evaluation to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives no later than February 1.



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### State Intermediate Punishment (42 Pa.C.S.A. § 9907. Reports)

(a) Final report.--The department shall provide a final report to the court, the defendant, the attorney for the Commonwealth and the commission on a participant's progress in the drug offender treatment program.

(b) Evaluation and report to General Assembly.--The department and the commission shall monitor and evaluate the drug offender treatment program to ensure that the programmatic objectives are met. In odd-numbered years, the department shall present a report of its evaluation to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives no later than February 1. In even-numbered years, the commission shall present a report of its evaluation to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives no later than February 1. The report shall include:

- (1) The number of offenders evaluated for the drug offender treatment program.
- (2) The number of offenders sentenced to the drug offender treatment program.
- (3) The number of offenders sentenced to a State correctional institution who may have been eligible for the drug offender treatment program.
- (4) The number of offenders successfully completing the drug offender treatment program.
- (5) The six-month, one-year, three-year and five-year recidivism rates for offenders who have completed the drug offender treatment program and for a comparison group of offenders who were not placed in the drug offender treatment program.
- (6) Any changes the department or the commission believes will make the drug offender treatment program more effective.

### Recidivism Risk Reduction Incentive (44 Pa.C.S.A. § 5309. Evaluation)

The department, the board and the commission shall monitor and evaluate the recidivism risk reduction incentive programs. Evaluations under this section should be scientifically rigorous and seek to determine the effectiveness of the programs, including whether specific recidivism risk reduction incentive programs have reduced the recidivism rates of the program participants as compared to previously incarcerated and similarly situated prisoners. The department, the board and the commission shall make evaluations conducted under this section and underlying data available to the public. The publicly available data and evaluations shall comply with generally accepted practices of the research community, including expectations relating to subject privacy and identifying information.

### Recidivism Risk Reduction Incentive (44 Pa.C.S.A. § 5310. Reports)

(a) Recidivism risk reduction.--The department, the board and the commission shall monitor and evaluate the recidivism risk reduction incentive programs to ensure that the goals and objectives of this chapter are met. Reports to the General Assembly shall be as follows:

- (1) In odd-numbered years, the department shall present a report of its evaluation to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives no later than February 1. The report shall include all of the following:
  - (i) The number of offenders determined by the department to be eligible offenders under this chapter and the offenses for which the offenders were committed to the custody of the department.
  - (ii) The number of prisoners committed to the custody of the department who were subject to a recidivism risk reduction incentive minimum sentence.
  - (iii) The number of prisoners paroled at the recidivism risk reduction incentive minimum date.
  - (iv) Any potential changes that would make the program more effective.



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(v) The six-month, one-year, three-year and five-year recidivism rates for prisoners released at the recidivism risk reduction incentive minimum sentence.

(vi) Any other information the department deems relevant.

(2) In even-numbered years, the commission shall present a report of its evaluation to the Judiciary Committee of the Senate and the Judiciary Committee of the House of Representatives no later than February 1. The report shall include all of the following:

(i) Whether the goals of this chapter could be achieved through amendments to parole or sentencing guidelines.

(ii) The various options for parole or sentencing guidelines under subparagraph (i).

(iii) The status of any proposed or implemented guidelines designed to implement the provisions of this chapter.

(iv) Any potential changes to the program that would be likely to reduce the risk of recidivism of prisoners and improve public safety.

(v) Any other information the commission deems relevant.

(b) Educational plan.--The Pennsylvania Commission on Crime and Delinquency shall publish a report of a proposed educational program plan within one year of the effective date of this section. The proposed educational program plan shall be developed in consultation with the department, commission, board, the Pennsylvania District Attorneys Association, the Victim Advocate and representatives of the judiciary and the criminal defense bar and other criminal justice stakeholders. The plan shall seek to provide cost-effective training or information through electronic means, publications or continuing educational programs that address the following topics:

(1) The treatment programs available through the board and the department.

(2) The availability of programs and eligibility requirements that can reduce recidivism risk including State intermediate punishment, the motivational boot camp and recidivism risk reduction incentives programs.

(3) The calculation of sentencing credit and practices that could inadvertently prevent an inmate from receiving sentence credit.

(4) Recent statutory changes relating to sentencing, place of confinement, medical releases, transfer of inmates and parole.