



Monitor

Governor Makes Final Appointments

In the last appointments to the Commission during his administration, Governor Mark Schweiker reappointed District Attorney Merritt E. "Ted" McKnight and Defense Attorney William T. C. Tully to two year terms.



Merritt E. "Ted" McKnight

Mr. McKnight, District Attorney of Clinton County, was

appointed to the Commission in March, 1996 by Governor Tom Ridge, and reappointed in 1998 and 2000. He received his A.B. degree from Grove City College (1969) and a J.D. degree from Dickinson School of Law (1972). Mr. McKnight is a former president of both the District Attorneys Association and the Pennsylvania District Attorneys Institute. Prior to becoming District Attorney in 1984, he served as a public defender for seven years.

Mr. Tully is a partner in the law firm of Mancke, Wagner, Hershey, and Tully. He was appointed as a defense attorney representative to the Commission in February, 1996 and twice re-appointed. He received his undergraduate degree from the University of Notre Dame (1979) and his J.D. (1982) from Dickinson.



William T. C. Tully

He is a member of the PA and Dauphin County Bar Associations, the PA Association of Criminal Defense Lawyers, and the PA Association of Sheriff's Solicitors. Along with his law practice, he is an instructor for the Minor Judiciary Education Board and an adjunct professor at the Widener School of Law.

2000 Annual Data Report to be Released

The Commission will be releasing the *2000 Annual Data Report* in mid-December. The *Annual Report* contains aggregate statewide sentencing data and an overview of sentencing practices in Pennsylvania. During the reporting year, Common Pleas judges submitted information on 111,296 individual sentences to the Commission, representing 80,238 criminal incidents. As required under the Commission's *Release of Information Policy*, all judges were given

an opportunity to verify the sentencing information prepared by the Commission prior to its release. The Commission policy also includes procedures for the release of detailed sentencing information through a menu of standard reports addressing type of sentence, conformity to the guidelines, imposition of mandatory sentences, and offense-specific sentencing information. Custom reports and data sets are also available. The reports may be requested on a

statewide, county, or judge-specific basis. For more information, or to request a copy of the *2000 Annual Data Report*, visit <http://pcs.la.psu.edu> or contact the Commission at: (814) 863-2797.

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Offenses reported: 111,296
 ⇒ **Non-DUI—93,495**
 ⇒ **DUI—17,801**
Offender characteristics:
 ⇒ **Race (63% White)**
 ⇒ **Gender (83% Male)**
 ⇒ **Type (76% Neg. Plea)**
 ⇒ **Age (mean = 31.7)**

Inside this issue:		2003 Scheduled Training Sessions	
Policy Committee Review	2	<i>Friday, Jan. 17 (Villanova Univ. School of Law)</i>	- Intro to Sentencing (3 CLE)
National Association of Sentencing Commissions	2	<i>Wednesday, Feb. 26 (PCCD, Harrisburg)</i>	- Intro to Sentencing (3 CLE)
Recent Commission Activities & Decisions	3	<i>Wednesday, Mar. 26 (Hilton Inn, State College)</i>	- 5th Edition Guidelines (6 CLE)
Key Sentencing-Related Decisions	3	<i>Wednesday, Apr. 23 (PCCD, Harrisburg)</i>	- In-Depth Look at Sentencing (3 CLE)
Sentencing Guidelines Q&A	3	<i>Wednesday, May 28 (PCCD, Harrisburg)</i>	- 5th Edition Guidelines (6 CLE)
Back page: Recent Legislation	4	For more information, contact Carrie Peters [(814) 863-2797, ext. 2 or carriep@psu.edu].	
RESEARCH BULLETINS		INSERT	

Commission Policy Review Continues

The Commission held a Sentencing Roundtable in August as part of a continuing process of reviewing the 1997 sentencing guidelines. Based on feedback received from practitioners, the Commission has been studying three aspects of the guidelines: offense gravity score assignment for new or modified offenses; prior record score policy as related to 'totally concurrent' sentences; and prior record score policy as related to juvenile adjudications.

In addition to Commission members and staff, participants included the Majority and Minority Counsels of the House and Senate Judiciary Committees, and representatives of the following: Attorney General's Office, Board of Probation & Parole, Department of Corrections, PA District Attorneys Association, PA Association of Criminal Defense Lawyers, and the County Chief Probation & Parole Officers Association of Pennsylvania.

In order to provide some context regarding the original intent of the 1997 guidelines, and their impact on sentencing practices, Professor John Kramer reported on the findings from his recent research. Both the 1994 and 1997 guideline changes sought to: provide more severe sanctions for violent offenders; increase the use of intermediate punishments for offenders who would otherwise be incarcerated; and recommend non-confinement for the least serious offenders. He summarized his findings as follows:

For serious violent offenders, minimum sentences increased proportional to the increase

in the 1994 sentencing guideline recommendations; but minimum sentences did not increase proportional to the increase in the 1997 sentencing guideline recommendations; For Level 3 & 4 drug offenders, there were significant decreases in incarceration rates for those sentenced for smaller drug amounts, with major increases in the use of Restrictive Intermediate Punishments (RIPs) linked to state funding;

For the least serious offenders, there were significant decreases in incarceration rates for those sentences with presumptive non-confinement recommendations.

Turning to a discussion of offense gravity scores (OGS), it was noted that more than eighty statutes that involve OGS assignments had been enacted or amended since 1997, with many more pending before the General Assembly. Under the Commission's omnibus OGS policy, an OGS is assigned to any new or amended offense based on the grade of the offense (i.e., F1 = OGS 8, M3 = OGS 1, etc.). Two areas of review include: whether the omnibus score assigned to any of the new or modified offenses is inappropriate; and whether the OGS assigned to any offense in the 1997 guidelines is inappropriate.

As a result of the Sentencing Roundtable, the following offenses were recommended for further review:

- ⇒ Violation of the Uniform Firearms Act, specifically §§6105, 6106, and 6108;
- ⇒ Sub-categorize Ecstasy under 35 P.S. §780-113(a)(12) consistent with heroin;

- ⇒ Sub-categorize Oxycontin under 35 P.S. §780-113(a)(14) relating to pills;
- ⇒ Theft of >\$100,000 and firearms;
- ⇒ Homeland Security legislation, specifically as related to weapons of mass destruction.

Regarding prior record score policies, there was general consensus that the 'totally concurrent' policy is too complicated and can be easily manipulated, resulting in inconsistent application. Several suggestions aimed at simplifying the policy included considering only those offenses sentenced consecutively, excluding all offenses sentenced concurrently, requiring the court to designate those offenses that would be included in future prior record scores, returning to a transaction-based policy, or a combination of the above. With regard to juvenile adjudications, there was general support for retaining the current policy, particularly in light of efforts by the Juvenile Court Judges Commission and the Juvenile Procedural Rules Committee to improve the quality, completeness and consistency of juvenile records.



Judge Hughes, Chair of the Commission's Policy Committee, expressed a hesitancy to move in the direction of a wholesale revision of the guidelines, but saw a need for a fine-tuning, particularly addressing issues raised. The Committee will continue to solicit suggestions from interested individuals, associations and agencies while studying the recommendations received to date.

National Association of Sentencing Commissions

The Commission was well represented at the Annual Conference of the National Association of Sentencing Commissions (NASC), held Aug. 4-6, 2002 in Williamsburg VA. In addition to the attendance by three Commission members and seven staff, a number of Pennsylvania-related presentations were given:

- ⇒ Professor Al Blumstein, Carnegie Mellon University (Lessons to be Learned from Our Past; Get Tough Sanctioning Initiatives—What Have We Learned?);
- ⇒ Professor John Kramer, Penn State (Sentencing Reform and Its Impact on Warranted and Unwarranted Disparity);
- ⇒ Professor Eric Silver, Penn State (Predicting Future Offender Risk: Its Role in Sentencing); and

- ⇒ Mark Bergstrom, Commission Executive Director (Culpability, Deterrence, and Recidivism: Revisiting the Role of Criminal History in Sentencing).

During the conference, attendees had an opportunity to tour the technologically advanced 'Courtroom 21' sponsored by the College of William & Mary School of Law and the National Center for State Courts.

Dr. Cynthia Kempinen, Deputy Director/Research Director of the Commission, was elected to the NASC Board for a two-year term, and subsequently selected as Board Secretary. NASC was established in 1994 to facilitate the exchange and sharing of information, ideas, data, expertise, and experiences and to educate on issues related to sentencing policies, sentencing guidelines, and sentencing commissions.



Commission members Professor Steven Chanenson, Judge Renee Cardwell Hughes and Judge Charles C. Brown, Jr. join Deputy Director Cynthia Kempinen (2nd from right) outside of the College of William & Mary Marshall-Wythe School of Law.

Recent Commission Activities & Decisions

The Commission's annual strategic planning work session and third quarterly meeting was held on August 13-14, 2002 at the Penn Stater Conference Center in State College. A *Sentencing Roundtable* was held on August 14 to review the sentencing guidelines specifically and to discuss broader sentencing issues.

QUARTERLY MEETING

Chairman Dermody formally welcomed the two newest members of the Commission, and made committee assignments as follows: President Judge Michael Conahan (Luzerne) appointed to Data & Field Services; Judge Jeffrey Manning (Allegheny) assigned to Policy. Chairman Dermody also recognized the service of former member Judge Gary Caruso (Westmoreland) and presented him with a plaque recognizing his service to the Commission and the people of Pennsylvania. The Chairman noted Judge Caruso's exemplary service during his four years on the Commission, especially his efforts in developing the Bylaws subsequently adopted by the Commission.

Budget & Management

The Commission closed out the FY01/02 budget and formally adopted the FY02/03 operating budget. Staff was authorized to prepare and submit the following DCSI applications: *RIP Sentencing & Recidivism Evaluation* (continuation); *Corrections Policy Research Support* (modification), including the hiring of a PCS/PCCD staff position to support victim services efforts; *Information Technology & Technical Assistance* (continuation/modification), including the addition of JNET-related communication services; and *Restitution & Collections Evaluation* (initial), subject to the approval of the Research Committee. The Commission also voted to: authorize the Chair to negotiate a new five-year MOU with the Pennsylvania State University; and to authorize the awarding of Service Purchase Contracts to students of the Duquesne University School of Law to assist Counsel with Commission-related legal research.

Data & Field Services

The 2000 data will be completed and the Annual Report released by the end of the

year. Staff is entering both 2001 and 2002 sentencing forms using *SGS Web*. Centre County is using *SGS Web* for real-time entry of 2002 sentences, and training is being provided in other counties. The interface between *SGS Web* and the AOPC District Justice system should be completed by the end of the year, streamlining data entry for users.

Research

The Commission approved the release of two *Research Bulletins* (enclosed) addressing restitution. The Boot Camp Legislative Report will be presented during the December meeting, for release in early 2003. Joint research projects with PCCD include: time-served, sanctions against youthful offenders, re-entry, and mandatories.

Policy

The Commission corrected an error in the descriptive information provided with the Guidelines (303.8(g) Excluded Offenses). **Un-counseled convictions may be included in calculating the prior record score; otherwise, pro se convictions would inappropriately be excluded.**

Key Sentencing-Related Decisions (August—November 2002)

Brief summaries of these and other cases are now found at the "Sentencing Guidelines & Information" tab on the Commission's web site:

<http://pcs.la.psu.edu>

Credit

Gallagher v. PBPP (804 A.2d 729)
Taglienti v. DOC (806 A.2d 988)
McCray v. DOC (807 A.2d 938)
Meehan v. PBPP (808 A.2d 313)

Furlough

Com. v. Armstrong (802 A.2d 675)
Com. v. Finn (808 A.2d 204)

Sentencing Issues

Com. v. Ralston (800 A.2d 1007)(fines)
Com. v. Fleming (801 A.2d 1234)(MeganL)
Com. v. Dinoia (801 A.2d 1254)(restitution)
Com. v. Leber (802 A.2d 648)(restitution)
Com. v. Gunn (803 A.2d 751)(mandatory)

Com. v. Griffin (804 A.2d 1)(guidelines)
Com. v. Fleming (804 A.2d 669)(fines)
Com. v. Dunlavy (805 A.2d 562)(modif)
Com. v. Cunningham (805 A.2d 566)(discr)
Com. v. Lightcamp (806 A.2d 449)(modif)
Com. v. Gatling (807 A.2d 890)(merger)

Revocation

Com. v. Williams (801 A.2d 499)
Com. v. Holder (805 A.2d 499)

Sentencing Guidelines Q&A...

Topic... Guideline Range Recommendations

If the guideline range recommendation exceeds the statutory minimum, may the court impose the range suggested?

No. §303.9 (g) indicates that for the purposes of the guidelines, the statutory limit is the longest legal minimum sentence, which is one-half the maximum allowed by law. The guidelines do not supersede sentencing statutes. If the guideline recommendation exceeds the statutory limit, the guideline recommendation is "cutoff" at the statutory limit.

If a mandatory minimum is imposed, and the guideline range recommendation is lower than that required by the mandatory,

what is the correct starting point for the court to consider?

A mandatory minimum imposed always supersedes a shorter guideline recommendation, therefore the correct starting point is the mandatory minimum. When the guideline range recommendation is higher than that required by a mandatory minimum, the court may consider imposing more than the mandatory. As an example, most guideline recommendations for DUI begin the standard range with RS (restorative sanctions), especially if there is a low prior record score. However, a mandatory sentence of 48 hours, 30 days, or 90 days is required. The mandatory minimum supersedes, and therefore replaces, the RS recommendation.

If an Intermediate Punishment sentence is imposed at Level 3, how is conformity to the guidelines determined?

Under the guidelines, in order to consider an IP sentence at Level 3, the court is required to order a diagnostic assessment of the offender to determine if he/she is drug dependent. If assessed to be dependent, and the court imposes the clinical recommendation, the conformity is standard. If the offender is not determined to be drug dependant, conformity is determined by the number of months of restrictive (RIP) programs ordered as compared to the amount of confinement recommended in the standard range. Failure to follow the assessment procedure is a procedural departure.

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MONITOR (FALL 2002)

The Pennsylvania Commission on Sentencing is an agency of the General Assembly located on the University Park campus of the Pennsylvania State University. The Commission was created in 1978 for the primary purpose of creating a consistent and rational statewide sentencing policy to promote fairer and more uniform sentencing practices.

The *Monitor* is a quarterly publication of the Commission. All inquiries should be directed to the Commission at the address or numbers listed above.

RESEARCH BULLETIN INSERTS

Legislation from 2002 Session of General Assembly (July—November)

<u>TITLE/SECTION</u>	<u>OFFENSE</u>	<u>OLD</u>	<u>NEW</u>	<u>1997 OGS</u>	<u>2001-2002 SESSION</u>	<u>EFFECTIVE DATE</u>
18/908.1	Electronic incapacitation device				Act 2002-132 [HB227/PN3199]	Jan 6, 2003
(a)	- use/possess, felony intent	new	F2	[Omnibus] 7		
(a)	- all other use/possession	new	M1	[Omnibus] 3		
18/3503	Criminal trespass				Act 2002-116 [HB582/PN4169]	Oct 2, 2002
(b)(1)	- Defiant/order by owner	new	M3	[Omnibus] 1		
(b)(2)	- Defiant/order by official	new	M3	[Omnibus] 1		
18/3929	Retail theft				Act 2002-116 [HB582/PN4169]	Dec 2, 2002
(b)(1.1)	- theft of motor fuel			[determined based on priors]	[Mandatory fine; Suspension of license]	
18/6312	Sexual abuse of children				Act 2002-134 [SB834/PN2319]	Jan 20, 2003
(c)(1)	- dissem. photo/1st offense	F3	F3	6		
(c)(1)	- dissem. photo/2nd/subseq.	F3	F2	[Omnibus] 7		
(d)(1)	- possess child porn/1st	F3	F3	6		
(d)(1)	- possess child porn/2nd/sub	F3	F2	[Omnibus] 7		
75/1543(b)(1)	Driving while operating privilege is suspended or revoked (DUI-related)				Act 2002-123 [SB238/PN2176]	Dec 3, 2002
(1.1)(i)	- BAC of 0.02%or greater	new	S	n/a	[90 day mandatory and \$1,000 fine]	
(1.1)(ii)	- BAC of 0.02%or greater/2nd	new	M3	[Omnibus] 1	[6 mo. mandatory and \$2,500 fine]	
(1.1)(iii)	- BAC of 0.02%or greater/3rd+	new	M1	[Omnibus] 3	[2 year mandatory and \$5,000 fine]	
75/1571	Violations concerning licenses				Act 2002-114 [HB2164/PN4204]	Dec 2, 2002
(a)(5)	- altered driver's license	new	M1	[Omnibus] 3		
(a.1)	- issue altered driver's license	new	F3	[Omnibus] 5	[Each license is separate offense]	
75/6503	Subsequent convictions of certain offenses				Act 2002-123 [SB238/PN2176]	Dec 3, 2002
(a.1)	- 6th+ offense under 1543(a)	new	S	n/a	[30 day mandatory and \$1,000 fine]	