



# Monitor

## Dermody Re-Elected Chair

During the February 12, 2003 Quarterly Meeting, Representative Frank Dermody was unanimously re-elected Chairman of the Commission, marking the start of his sixth year in this position. During his tenure as Chair, the Commission has formalized its relationship with the Pennsylvania State University through a *Memorandum of Understanding*, has developed and is implementing the JNET-based SGS Web sentencing application, and most recently has been designated by the Attorney General as a Pennsylvania criminal justice agency.

Representative Dermody was appointed to the Commission in January 1991

and first elected Chair in October 1997. He received his Bachelor of Arts degree from Columbia University and his law degree from Indiana University School of Law-Bloomington.

Representative Dermody worked as an Assistant Public Defender and as Assistant District Attorney in Allegheny County for five years. He served as the District Justice for Oakmont and Verona and was Legal Advisor to Allegheny County's 55 District Justices in 1989-1990. He was elected to the House in 1990 and serves as a member of the Judiciary, Professional Licensure, Tourism &



Rep. Frank Dermody

Recreational Development, and Transportation committees. He is Chair of the Allegheny County Democratic Delegation and Democratic Chair of the Subcommittee on Courts.



## Brown Ends Term Serving as Vice-Chair

Centre County President Judge Charles C. Brown, Jr., unanimously elected as Vice Chair of the Commission in February, has completed his fourth and final term as a judicial member of the Commission. Judge Brown was appointed to the Commission in October 1995 to serve the balance of a vacant position, and was subsequently re-appointed to three two-year terms in 1997, 1999 and 2001.



Judge Charles C. Brown, Jr.

As Chair of the Commission's Data & Field Ser-

vices Committee, Judge Brown was instrumental in establishing and maintaining the *Release of Information Policy* and related protocols.

Judge Brown previously served as Chair of the Rural Judges Advisory Committee, which assisted with the guideline reassessment process that culminated in the 1994 (4th Edition) Sentencing Guidelines.

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### 2003 Scheduled Training Sessions

Wednesday, Aug. 27	(PCCD, Harrisburg)
- Intro to Sentencing	(3 CLE)
Wednesday, Sept. 24	(TBA, State College)
- 5th Edition Guidelines	(6 CLE)
Wednesday, Oct. 29	(PCCD, Harrisburg)
- In-Depth Look at Sentencing	(3 CLE)
Wednesday, Nov. 19	(PCCD, Harrisburg)
- 5th Edition Guidelines	(6 CLE)

**For more information, or to schedule an on-site training session, contact Carrie Peters [(814) 863-2797, ext. 2 or carriep@psu.edu].**

# PA Superior Court on Modification of Sentence

The Superior Court recently handed down several decisions addressing modification of sentences. Excerpts of those decisions are found below.

## **Com. v. Walters**

**(814 A.2d 253) (12/20/2002)**

Trial courts have the power to alter or modify a criminal sentence within thirty days after entry, if no appeal is taken. 42 Pa.C.S. A. §5505; *Commonwealth v. Quinlan*, 639 A.2d 1235, 1238 (Pa. 1994). Generally, once the thirty-day period is over, the trial court loses the power to alter its orders. *Quinlan*, 639 A.2d at 1238. When an appeal is taken, the trial court has no jurisdiction to modify its sentence. *Id.* We note, however, that the time constraint imposed by Section 5505 does not affect the inherent powers of the court to modify a sentence in order to "amend records, to correct mistakes of court officers or counsel's inadvertencies, or to supply defects or omissions in the record..." *Id.*, at 1239. Therefore, where the mistake is patent and obvious, the court has the power to correct it even though the 30-day appeal period has expired. *Commonwealth v. Rohrer*, 719 A.2d 1078, 1080 (Pa. Super. 1998). It is also well-established that where a showing of fraud or other circumstance "so grave or compelling as to constitute 'extraordinary causes justifying intervention by the court,'" then a court may open or vacate its order after the 30-day period has expired. *Cardwell v. Chrysler Fin. Corp.*, 804 A.2d 18, 22 (Pa. Super. 2002).

In the case *sub judice*, Appellee was sentenced on February 22, 1994. No direct

appeal was filed. The order sentencing Appellee was final, thus 42 Pa.C.S.A. §5505 applies. Accordingly, the trial court had 30 days, barring mistake or fraud, in which to modify the order. The trial court did not take action within this time period. It was not until August 30, 2001 that the trial court allowed Appellee to withdraw his plea and re-enter a plea. The court then re-sentenced Appellee. The trial court's action took place well beyond the thirty days after the entry of the final order. As the court had no jurisdiction to act, unless the action was to correct a patent or obvious mistake or was as a result of fraud or extraordinary circumstances justifying judicial intervention, the action is void.

## **Com. v. Haughwout**

**(816 A.2d 247) (1/21/2003)**

Rule 1701(a) of the Rules of Appellate Procedure states that, "after an appeal is taken... the trial court... may no longer proceed further in the matter." Pa.R.A.P. 1701(a); see also 42 Pa.C.S.A. §5505 (stating that a court may modify any order within thirty days after its entry so long as no appeal from such order has been taken). However, according to Rule 1701(b)(3), "[a]fter an appeal is taken," the trial court may "[g]rant reconsideration of the order which is the subject of the appeal," if "an application for reconsideration of the order is filed in the trial court... within the time provided or prescribed by law" and "an order expressly granting reconsideration of such prior order is filed in the trial court... within the time prescribed by these rules for the filing of a notice of appeal." Pa.R.A.P. 1701(b)(3). In this case, had Mr. Haugh-

wout filed motions for reconsideration in conjunction with his notices of appeal (the Note to Rule 1701 acknowledges that this is "the better procedure under this rule." Pa.R.A.P. 1701, Note.), the trial court would have had until the thirtieth day after the entry of the order deciding his post-sentence motion to file an order expressly granting reconsideration. Had the trial court granted reconsideration, the trial court would have had the remaining balance of the time period set forth in Rule 720 of the Rules of Criminal Procedure to decide the post-sentence motion.... However, Mr. Haughwout did not file applications for reconsideration. Accordingly, the trial court was without jurisdiction to modify its original sentences after Mr. Haughwout filed his notices for appeal on March 13, 2002.

## **Com. v. Reefer**

**(816 A.2d 1136) (1/30/2003)**

[61 P.S. §81. Illness of prisoner; removal for treatment] By its very terms and its historical context, then, we find that the General Assembly intended that the language "modify its sentence" in Section 81 refers to modification of the place at which the sentence is being served. Moreover, the language of Section 81 and its historical context, as noted above, does not yield the conclusion that the General Assembly was authorizing the sentencing courts to shorten the length of the sentence. Directing those courts to "recommit" such prisoners contradicts such a construction and would virtually write that word out of the statute. ... Thus, the trial court appears to have been without power to modify the length of Mr. Reefer's sentence.

## Reminders Regarding Guidelines, Forms & SGS Web

The sentencing guidelines do not apply to the following: Accelerated Rehabilitative Disposition (ARD) (Pa.R.Crim. P. Chapter 3); Probation Without Verdict Disposition (35 P.S. §780-117); Disposition in Lieu of Trial or Criminal Punishment (35 P.S. §780-118); Contempt of Court Orders; Violations of Protection from Abuse Orders; and violations of probation, intermediate punishment or parole. As a result, a Guideline Sentence Form is not required.

In *Com v. Coolbaugh* (770 A.2d 788) the Superior Court held that the sentencing guidelines do not apply to sentences imposed as a result of probation revocations; the trial court is limited only by the maximum sentence that could have been im-

posed at the time of the original sentencing.

The sentencing guidelines must be considered at sentencing for all felony and misdemeanor convictions, including guilty pleas and nolo contendere. The court is required to submit a completed Guideline Sentence Form to the Commission within 30 days of sentencing.

At the court's direction, the Guideline Sentence Form is to be completed and made a part of the record. Three options exist for preparing and submitting the Guideline Sentence Forms: (1) the Commission provides pre-printed triplicate forms and postage-paid return envelopes for manual preparation; (2) the Commission's pc-based SGS

software is available for the automated calculation of the guidelines and printing of a form. SGS does not contain a sentencing component, and completed forms must be mailed to the Commission; and (3) the JNET-based SGS Web application is available for secure, on-line preparation and submission of all required sentencing information. SGS Web now includes an interface with the AOPC DJ system to reduce redundant data entry. Contact the Commission to schedule an on-site SGS Web demo.



# Recent Commission Activities & Decisions

The Commission's first quarterly meeting of 2003 was held on February 11-12 in Harrisburg. The Commission hosted a 'Welcome & Get Acquainted' reception and dinner for members and staff of the House and Senate Judiciary Committees, the Leadership, and directors of other Legislative Service Agencies. The Reception was sponsored by Cross Current Corporation (CCC), a Pennsylvania company that has worked with the Commission for three years to design, build and implement the JNET-based SGS Web application. Information related to the Commission, JNET and CCC was provided. Chairman Dermody and Executive Director Bergstrom offered some brief remarks regarding the Commission's role as a legislative services agency, activities of the Commission, and the assistance the Commission can provide to members and staff of the General Assembly.

## QUARTERLY MEETING

### Budget & Management

The Commission unanimously elected Representative Frank Dermody Chair and Cen-

tre County President Judge Charles Brown Vice Chair of the Commission for 2003-2004. In other action items, the Commission formally adopted a staff *Policies & Procedures Manual*, and authorized the preparation and submission of the following:

- ⇒ DCSI Community Corrections Technical Assistance & Training grant application;
- ⇒ DCSI Corrections Policy Research Support grant application;
- ⇒ NCHIP SGS Web Enhancement proposal;
- ⇒ Video-Conferencing proposal.

The Commission was designated a Pennsylvania criminal justice agency by the Attorney General.

### Data & Field Services

The Commission approved several changes to the Release of Information Policy, including provisions that would streamline the process for approving certain reports and the notifications to judges, as well as to incorporate issues related to data sets and annual reports into the policy.

### Research

Dr. Eric Silver, an Assistant Professor of Crime, Law & Justice at Penn State, gave a presentation on actuarial risk assessment in sentencing. Professor Silver gave a similar presentation during the National Association of Sentencing Commission (NASC) conference in August 2002.

The Commission approved release of a *Research Bulletin* (enclosed) summarizing the recently published report evaluating the state motivational boot camp.

### Policy

The Policy Committee met recently with representatives of the Domestic Relations Procedural Rules Committee to discuss coordination of fines, costs and restitution orders and collections with child support obligations. The Policy Committee continues to identify items to be considered during the next year as part of the guidelines review process.

Remaining 2003 Commission Meetings: Scranton (May 13-14); State College (Aug. 19-20) and Philadelphia (Dec. 9-10).

## Key Sentencing-Related Decisions (December 2002-April 2003)

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>

### Appeal (substantial question)

*Com. v. Mouzon* (812 A.2d 617)

*Com. v. Titus* (816 A.2d 251)

### Sentencing Issues

*Com. v. Simmer* (814 A.2d 696) (ARD)

*Com. v. Styles* (812 A.2d 1277) (Gdl)? ?

*Com. v. Koskey* (812 A.2d 509) (IP)

*Com. v. Kunkle* (817 A.2d 498) (mandatory)

*Com. v. Sanchez-Rodriguez* (814 A.2d 1234)

*Com. v. Kitchen* (814 A.2d 209) (merger)

*Com. v. Reefer* (816 A.2d 1136) (modif.)

*Com. v. Haughwout* (816 A.2d 247) (modif.)

*Com. v. Walters* (814 A.2d 253) (modif.)

*Com. v. Robinson* (817 A.2d 1153) (resent.)

**While it may be argued that a guilty plea is a disposition in lieu of trial, (§303.1(b)), the application of the guidelines is made explicit in §303.1(a) which includes offenders pleading guilty to felonies and misdemeanors. Our study of the "disposition in lieu of trial" exception in §303.1(b) reveals that this language refers not to guilty pleas, but to disposition in lieu of trial or criminal punishment found in 35 P.S. §780-118 of the (CSDDCA) Act.**

## Sentencing Guidelines Q&A...

### Topic... Application of the guidelines

#### **Do the sentencing guidelines apply to guilty pleas?**

Yes. The sentencing guidelines shall be considered for offenders convicted of, or pleading guilty or *nolo contendere* to, felonies and misdemeanors (§303.1(a), page 41 in 5<sup>th</sup> Edition manual).

#### **Do the sentencing guidelines apply to revocations?**

No. Sentencing guidelines do not apply to sentences imposed as a result of revocations of probation or intermediate punishment, or to the commitment following revocation of parole. Upon revocation of

probation or intermediate punishment, the court has all sentencing alternatives available as were available at the time of the initial sentencing. See 42 Pa.C.S.A. §§9771(b) and 9773(b) for further information. Revocation of county parole does not result in re-sentencing, but rather in the commitment for the unexpired balance of the original incarceration sentence. The court retains the authority to re-parole.

#### **How does one determine which edition of the sentencing guidelines applies, and which guideline sentence form to use?**

Sentencing guidelines are applied to all offenses committed on or after the effective date of the guidelines. There are various

editions of the sentencing guidelines, and each set of guidelines has specific manuals and forms. The 5<sup>th</sup> Edition manual, the most current edition, applies to all offenses committed on or after 6/13/97. The corresponding guideline sentence form number is PCS 7 1/2000, which is located in the lower left hand corner of the form. The 5<sup>th</sup> Edition also has a supplemental sentencing form for multiple identical offenses and for guilt without further penalty (PCS 8a & b 2/2001).

The 5<sup>th</sup> Edition manual (§303.1(c), page 49) also provides the effective dates of the earlier editions of the guidelines. To obtain manuals or forms for previous editions, please contact the Commission.

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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.

MONITOR (SPRING 2003)

RESEARCH BULLETIN INSERT

## Two Members Step Down from Commission

Two Republican Legislators recently stepped down from the Commission following the completion of their terms.

Senator Jeffrey E. Piccola served as a member and as Vice Chair of the Commission since 1997, and chaired the Commission's Research Committee.



**Senator Jeffrey E. Piccola**

He was a driving force behind several initiatives, including the establishment of the Research Committee. As a member of the Commission's Budget & Management Committee, he promoted policies and procedures to improve the efficiency, productivity and accountability of the Commission, consistent with the findings of a Legislative Budget & Finance Committee performance audit.

Senator Piccola was appointed to the Commission in October 1997 and re-appointed in 1999 and 2001. He was elected Senate Majority Whip in 2001 and re-elected in 2003.



Representative Gabig was appointed to the Commission in January 2001 and served on the Budget & Management and Policy Committees. He has been



**Rep. William I. Gabig**

actively involved in discussions regarding changes to the 1997 Guidelines.

Rep. Gabig was elected to the House in 2000, and serves as Secretary of the House Judiciary Committee. He formerly served as an Assistant District Attorney for ten years in Cumberland and Dauphin counties.