



Monitor

Chief Justice Reappoints Two Commission Members

In April, Chief Justice John P. Flaherty reappointed President Judge Charles C. Brown Jr. and Senior Judge Robert E. Dauer to new two-year terms.



Judge Charles C. Brown, Jr.

Judge Brown was appointed to the Commission in October 1995. He has been President Judge of Centre County since 1980. He also chairs

Centre County's Criminal Justice Advisory Board and is a member of the PA Commission on Crime & Delinquency (PCCD) Local Corrections Advisory Committee. Judge Brown is on the Board of Trustees for Juniata College. He received a B.A. degree from Juniata College (1959) and a law degree from New York University School of Law, where he was a Root-Tilden scholar (1962).

Judge Dauer was a member of the Commission from 1990-96, during which time he served as Chair from 1995-96. He was reappointed to the Commission in April 1997. He received his J.D. degree from the University of Pittsburgh School of Law (1956). He was appointed to the Court of Com-



Judge Robert E. Dauer

mon Pleas of Allegheny County in 1972 and was subsequently elected three times to ten year terms. In 1977 he was elected by his fellow judges as Administrative Judge of the Criminal Division, a position held until 1993 when he was elected President Judge, a position he held until December 1998 when he became a Senior Judge.

SGS-WEB Pilot Project Begins

The Commission rolled-out a test version of SGS-WEB during a meeting with representatives of five pilot counties on July 31, 2001. The five counties, all part of the JNET county integration project, include: Allegheny, Bucks, Centre, Cumberland and Delaware. Under current plans, the application will be available to all JNET counties beginning in January 2002 for guideline calculations and reporting. Com-

mission staff will work with the counties and the web application developer, Cross Current Corporation, through the end of this year to test the application, to assist with the development of state-wide and county-specific protocols, and to recommend modifications and enhancements to the application. The Commission has applied for federal DCSI funds to support expansion of the application to allow for the



importing of AOPC disposition information, exporting Act 84 data, and other new features. For more information on the project, or to schedule an on-site demonstration, please contact the Commission's project manager, Carol Zeiss at (814) 863-0731 or caz3@psu.edu.

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2001 Guideline Training Sessions

Wednesday, October 10 (State College)
Wednesday, December 12 (Harrisburg)

These six-hour sessions (8:30AM-4:00PM) are CLE-approved and free of charge, although advance registration is required.

If you wish to schedule on-site training, please contact Carrie Peters [(814) 863-2797, ext. 2 or carriep@psu.edu] for details and arrangements.

New Boot Camp Aftercare Procedures

As of May 1, 2001, all Boot Camp eligible inmates who are received at the SCI Camp Hill Diagnostic and Classification Center are required to participate in a structured aftercare program in a Community Corrections Center for a minimum of ninety days following graduation from the Boot Camp Program. While statute has always required intensive supervision of Boot Camp graduates, this did not necessarily involve residential aftercare, particularly for those offenders with home plans.

According to the Department of Corrections, Boot Camp graduates "will be provided with a structured re-entry program which includes a detailed prescriptive pro-

gram for each inmate, a minimum of three months of residency in a structured, supervised residential facility, orientation to the community, involvement of families and the parole agent, cognitive behavior therapy, job readiness skills, job acquisition, and drug and alcohol follow-up service. Those inmates that require more intensive or long-term programming will be placed in the Aspire Program which has six months of residency and six months of aftercare or the Comprehensive Transitional Employment Program (CTEP). These programs focus on life skills, enhancing education capabilities, substance abuse, relapse counseling, and employment issues. More intensive drug and alcohol programming would

also be available."

These changes to the aftercare requirements for Boot Camp graduates are the result of studies, including those by the Commission, which indicate that the Boot Camp Program has had limited success in achieving its goal of reducing recidivism. Research indicates, however, that participation in structured re-entry programs increases an offender's chances for success. It is hoped that the aforementioned changes will result in the anticipated reduction in recidivism. The Commission will be evaluating the effects of this change as part of its ongoing legislative mandate to evaluate the Boot Camp Program.

Commission to Study Drug & Alcohol Treatment

At its May meeting, Commission members approved a staff proposal to study the effectiveness of Restrictive Intermediate Punishment sentences with drug and alcohol treatment (RIP/D&A) for Level 3 and 4 offenders. This initiative, to substitute a clinically prescribed treatment/supervision program for incarceration, was incorporated into the sentencing guidelines in 1994 and expanded in 1997. The research project will be two-fold: 1) to examine the shift in sentencing patterns from incarceration to RIP for targeted offenders and 2) to study whether

these RIP/D&A sentences have reduced crime. The General Assembly has appropriated \$13 million annually to provide selected counties with support for comprehensive RIP/D&A treatment. Through a competitive application process, 22 counties currently receive this funding. Thus far, however, no comprehensive evaluation of the effectiveness of RIP programs has been conducted.

The Commission contracts annually with Penn State University faculty to conduct

research on behalf of the Commission. The Principal Investigators for this study, Professors John Kramer and Jeffery Ulmer, recently completed a study examining guideline departures for violent offenders. The Commission has applied to the PA Commission on Crime and Delinquency for federal DCSI funds to allow for a more comprehensive RIP/D&A evaluation. The Commission has established an advisory committee, comprised of state and county probation/parole, treatment and court representatives, to support this project.

Commission Staff Changes

After nearly three years of service to the Commission as a Community Corrections Project Specialist and County Integration Project Coordinator, both grant-supported positions, *Chad E. Firestone* resigned on July 31, 2001 to accept a newly created JNET County Coordinator position in the Commonwealth's Justice Network (JNET) Office. In his new position, Chad will continue to work with counties and state agencies on the automation and integration of criminal justice information.

Replacing Chad as a Community Corrections Program Specialist is *Kelly J. Praskovich*. Kelly is a May 2000 graduate of Penn State with a B.S. in Administration of Justice. As an undergraduate, she completed an internship with the Centre County Adult Probation Department, worked as a youth counselor at the Central Counties Youth Center, served as an Instructor and later, Director, of the Benner Township Summer Youth Program, and

worked in the Commission's Data Management unit. In her new position, jointly funded by PA Commission on Crime & Delinquency and Commission on Sentencing, Kelly's sentencing-related duties include assisting court personnel in the application of the sentencing guidelines, sentencing guideline training focusing on the appropriate use of intermediate punishment sentences and shock incarceration, SGS software application and training, and related Field Services projects.

Two new graduate students, *Melissa Logue* and *Christine Van Asten*, will be assisting the Commission on its research projects this year. Melissa is a doctoral candidate in the Crime, Law and Justice Program (CLJ) at Penn State University and will be providing assistance with the Boot Camp Project. Last year, she worked with Professor Barry Ruback on the Restitution Project. Christine Van Asten, who is an incoming graduate student in CLJ, will be working on the

Restrictive Intermediate Punishment Evaluation Project

Last year's graduate students, *Young Kim* and *Brian Johnson*, have moved on to new and exciting opportunities. Young, who assisted on the Boot Camp Project, received his Ph.D. in CLJ in August 2001 and is a post-doctorate scholar with the newly established Africana Research Center at Penn State University. Brian Johnson, who was involved with the data analysis for the Guideline Departure Project, was awarded a fellowship for the coming year from the The Crawford Fellowship for Ethical Inquiry.

The Commission's two undergraduate research assistants, *Alysia Hudock* and *Carrie Maloney*, graduated from the Administration of Justice Program in May 2001. Both Alysia and Carrie assisted Professor Ruback on the Restitution Project by entering data that was collected from court records.

Recent Commission Activities & Decisions

The Commission met at the Harrisburg Hilton & Towers on May 8 & 9, 2001 for its second quarterly meeting of 2001. During the Tuesday evening work session, Professor Barry Ruback gave a presentation on the Restitution Project being undertaken as part of a National Institute of Justice Research Partnership between the Commission and the Pennsylvania State University. On Wednesday morning, prior to its quarterly meeting, the Commission hosted a *Legislative Breakfast* for members and staff of the Appropriations and Judiciary Committees. Handouts distributed during the Breakfast summarizing Commission duties and activities are available upon request.

Budget & Management

The Commission approved the continuation of the *Memorandum of Understanding* without modification with the Pennsylvania State University. The Commission also approved adjustments to the FY00/01 budget and adoption of the FY01/02 budget.

Data & Field Services

Representatives of Cross Current Corporation provided a demonstration of the SGS-WEB application. The Commission approved a staff recommendation that a copy of all relevant *Sentencing Guidelines Implementation Manuals* be included with each data set. The Commission briefly discussed whether 'plea negotiation' should be removed as an appropriate departure reason. The matter was referred to committee for further discussion.

Research

The Commission approved a new research project for FY2001/2002: a study of the effectiveness of restrictive intermediate punishment/drug and alcohol treatment (RIP/D&A) for Level 3 and 4 offenders, and approved submission of a concept paper to PCCD related to this project. The research will be conducted by Professors John Kramer and Jeffrey Ulmer as part of the *Memorandum of Understanding* with Penn State. At the request of Attorney Tully, staff prepared information on the Boot Camp for distribution during a sched-

uled Pennsylvania Bar Institute symposium.

Policy

Chairman Dermody appointed Judge Hughes as Chair of the newly created Policy Committee. Members include Judge Caruso, Representative Gabig, and Attorney Tully. The committee will meet to identify and prioritize issues relating to Commission organization, sentencing policies and legislation.

Next Meeting

The next Commission meeting will be held in State College on September 11-12, 2001. A strategic planning work session is scheduled for Tuesday from 1:00-5:00 p.m. on the University Park Campus of the Pennsylvania State University. The quarterly meeting is scheduled for Wednesday from 9:00-11:30 a.m. at The Carnegie House, Circlewood Drive & Toftrees Avenue, State College, PA. All Commission meetings are open to the public. For more information or directions, please contact Cathy Dittman [(814) 863-2797, ext. 1 or cwd2@psu.edu].

Key Sentencing-Related Decisions (March – July 2001)

Sentencing Guidelines

Com. v. Burns (765 A.2d 1144)

Com. v. Coolbaugh (770 A.2d 788)

Merger

Com. v. Andrews (768 A.2d 309)

Com. v. Collins (764 A.2d 1056)

Com. v. Smith (772 A.2d 75)

Restitution

Com. v. Harbst (763 A.2d 953)

Com. v. James (771 A.2d 33)

Sweatt v. PBPP (769 A.2d 574)

Other Sentencing Issues

Com. v. Harclerode (768 A.2d 1132)

Com. v. Johnson (768 A.2d 1177)

Com. v. Miller (770 A.2d 362) ►►

Com. v. Petaccio (764 A.2d 582)

Torres v. PBPP (765 A.2d 418)

Statute and case law require that consecutive sentences be automatically aggregated, even if imposed by different courts, and even if imposed at different times, and that, where the total aggregate sentence carries a maximum of two years or more, exclusive parole authority lies with the Pennsylvania Board of Probation and Parole.

Com. v. Miller (770 A.2d 362)

Sentencing Guidelines Q&A...

Topic... Aggregation

May a court impose a new sentence consecutive to the minimum incarceration sentence? May it impose a non-aggregating consecutive sentence?

In *Com. v. Ward* (534 A.2d 1095) the Commonwealth Court held that a sentence which is partially consecutive and partially concurrent is illegal. "While at first glance it might appear that a consecutive minimum sentence and concurrent maximum sentence has no effect, we must point out that the minimum and maximum sentences may determine the convict's place of incarceration, his parole eligibility and the jurisdiction to grant parole. In *Com. v. Tilghman* (673 A.2d 898), the Supreme

Court held that consecutive sentences are automatically aggregated.

An offender is sentenced by Judge #1 to 6-12 months in the county jail; several months later, the same defendant is sentenced by Judge #2 to 1-12 months to run consecutive to any other sentence the offender may be serving. Who is the paroling authority and where is the place of confinement?

As noted earlier, aggregation of consecutive sentences is automatic. In *Com. v. Harris* (620 A.2d 1173), the Superior Court held that when the aggregation of two (or more) county sentences results in a maximum sentence of 24 months or greater, paroling au-

thority is vested in the Pennsylvania Board of Probation and Parole. If the aggregated maximum is less than 24 months, "... that original sentencing court cannot expect to continue to exercise paroling authority." Also see *Com. v. Miller* above.

Abraham v. DOC (615 A.2d 814) provides guidance on the use of state facilities for three classes of aggregated state cases. However, decisions regarding place of confinement involving aggregation for multi-county cases must be determined by the courts. Options include transferring the inmate from one county to another upon completion of the original minimum sentence; or serving the entire aggregated sentence in one of the counties.

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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.

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Visit the Commission's updated website...
<http://pcs.la.psu.edu>

Commonwealth v. Peter Chiappini (J-25-1999) (Supreme Court of Pennsylvania, Decided 7-23-01)

At the outset, we note that Kriston and Conahan solely involved the interpretation of the term "imprisonment" for purposes of the offense of driving under the influence of Section 3731 of the Motor Vehicle Code. Here, we are concerned with the meaning of the term "custody" used in Section 9760 of the Sentencing Code. The Commonwealth posits that the term custody is identical to the term imprisonment and that a defendant could only receive credit pursuant to Section 9760 for time spent in prison or a similar institution. On the other hand, Appellant asserts that "custody," while encompassing "imprisonment," is not so limited as the Commonwealth suggests. We agree with Appellant.

The terms imprisonment and custody, although synonymous, are not identical. As Appellant advocates, the term custody is broader than the term imprisonment. Imprisonment is but one form of custody. In drafting Section 9760 of the Sentencing Code, the Legislature chose to use the term custody rather than the more restrictive term imprisonment. Given that we do not find these terms to be identical, we cannot disregard the different terminology used in Section 9760 and Section 3731 as the Superior Court did in Shartle. As a matter of policy, the legislature has chosen to give credit "against the maximum term and any minimum term... for which a prison sentence is imposed... for time spent *in custody* prior to trial, during trial, pending sentence and pending resolution of an appeal." (Emphasis added). It is not the prerogative of this Court to disregard or change the language employed by the legislature in enacting a statutory provision. Accordingly, we reject the limited interpretation of the term custody advocated by the Commonwealth, which would exclude forms of legal restraint other than imprisonment.

In determining whether a person has spent time in custody it is necessary to examine the extent of control exercised by those in authority. The type of technology employed in this case has made it possible for prison authorities to restrain and severely limit a person's freedom by limiting his ability to move about freely to the confines of his home. The restrictions placed upon Appellant here went well beyond the restrictions typically employed by a court in releasing a defendant on his own recognizance or upon a condition that a defendant not leave the jurisdiction of the court.

Based on the foregoing, we conclude that the 518 days that Appellant was subjected to this home confinement/electronic monitoring program provided sufficient restraints on his liberty to constitute time spent in custody for purposes of Section 9760 of the Sentencing Code.