



Monitor

Governor Appoints Professor Chanenson to Commission

Steven L. Chanenson, an Assistant Professor at Villanova University School of Law, is Governor Mark S. Schweiker's first appointee to the Commission. Professor Chanenson replaces Law Professor Laurie Magid, who re-



PROF. STEVEN CHANENSON

signed in August 2001 to accept the position of Deputy United States Attorney for Policy and Appeals for the Eastern District of Pennsylvania.

Professor Chanenson received both a Bachelor of Arts *Magna Cum Laude* in Economics (1987) and a Master of Science *Magna Cum Laude* in Criminology (1988) from the University of Pennsylvania. While at Penn, he studied criminal research and theory in a program directed by Dr. Marvin E. Wolfgang. Professor Chanenson received a Juris Doctor with Honors from the University of Chicago Law School in 1992. He was a comment editor of the *Law*

Review and served as a Research Assistant for Professor Norval Morris.

Professor Chanenson was a law clerk to the Honorable Phyllis A. Kravitch of the U.S. Court of Appeals for the Eleventh Circuit and the Honorable William J. Brennan, Jr. of the U.S. Supreme Court. While at the Court, he also participated as a law clerk in Justice David Souter's Chambers. He served as an Assistant United States Attorney in Chicago prior to accepting a position at Villanova. His research interests include criminal procedure and criminal sentencing. He is an editor of the *Federal Sentencing Reporter*.

SGS Web Presentations Available

SGS Web was launched in early January as a JNET 'agency-hosted' application. Authorized JNET counties are now able to use the secure JNET infrastructure to enter all information required for sentencing guidelines, to review conformity and total sentence imposed, and to submit the information electronically to the Commission. In addition to removing the requirement for submitting paper forms to the Commission, *SGS Web* permits multiple authorized county users to work on the same case, and provides

counties with access to sentencing information submitted by the county.



Three steps are required in order for JNET counties and users to receive access:

⇒ Schedule an on-site *SGS Web* demonstration in your county for the court and all potential users;

⇒ Complete and submit to the Commission a county protocol, describing your process for using *SGS Web* and designating user roles;

⇒ Attend an *SGS Web* training session and/or use the test site or Tutorial CD.

For more information, visit the "Information Technology & Software" tab on the Commission's web site (<http://pcs.la.psu.edu>) or contact Carol Zeiss ((814) 863-0731 or caz3@psu.edu).

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First Quarter 2002 Training Sessions

- Wednesday, February 13 (Harrisburg)*
- Intro & Sentencing Fundamentals
- Wednesday, February 20 (Harrisburg)*
- 5th Edition Guidelines
- Wednesday, March 13 (Harrisburg)*
- In-Depth Look at Sentencing
- Wednesday, March 27 (State College)*
- 5th Edition Guidelines

For more information, contact Carrie Peters [(814) 863-2797, ext. 2 or carriep@psu.edu].

Expanded Training Schedule, New Courses

The Commission recently published and mailed a *Training Catalog* containing a schedule of course offerings for the first six months of 2002. Several new courses have been developed in response to requests from practitioners. All courses are provided free of charge, and most have been approved for CLE credit. A brief summary of each course is provided below.

Introduction to the Criminal Justice System & Fundamentals of Sentencing in Pennsylvania

This training session covers basic terminology used in the field, statutes and policies related to sentencing (mandatories, county vs. state sentences, aggregation, merger, etc.).

5th Edition Sentencing Guidelines & Sentencing in Pennsylvania

This training session covers the 5th Edition Sentencing Guidelines, including a brief

review of sentencing fundamentals and focus on two specific Sentencing Guideline components: Offense Gravity Score and Prior Record Score. The afternoon session covers specific guideline recommendations. The Guideline Sentence Form is reviewed with time designated for participants to work through several example cases. The Sentencing Guideline Software is also discussed.

An In-Depth Look at Sentencing

This training session addresses sentencing related issues (aggregation, place of confinement, enhancements vs. mandatories), sentencing guideline policies (totally concurrent), Sentencing Commission policies (release of information), recent case law as it relates to sentencing, and new legislation. The format of this session is a combination of lecture and case studies, with participants encouraged to provide specific questions/issues for group discussion.

Special Topics

These training sessions are specially designed around a county's or group's needs. Topics may include but are not limited to:

- Specific sentencing-related issues
- Special programs (e.g., Drug Courts, Treatment Courts, other specialty courts)
- Treatment-based Restrictive IP
- Sentence Calculation

In addition to the above listing, on-site *SGS Web* demonstrations and training are available through the Commission (see related article).

Information on courses, and details on registration and scheduling, can be found at the "Training & Publications" tab on the Commission's web site (<http://pcs.la.psu.edu>), or by contacting Carrie Peters [(814) 863-2797, ext. 2 or carriep@psu.edu].

Commission Research Update

RIP Evaluation Project

The *RIP Recidivism Component* is studying the impact of RIP sentences under the '97 Sentencing Guidelines by comparing offenders sentenced to RIP in 1998, and a comparison group of offenders sentenced to incarceration during 1996. The *RIP/D&A Recidivism Component* is focusing specifically on offenders sentenced to drug treatment funded by a \$13 million annual appropriation. The project uses data from a number of sources, including Dedicated Forms from participating counties, sentencing data, and criminal history records.

Restitution Project Update

A *Victim Survey* will be distributed to a sample of 500 victims, with about 50 of these victims selected to participate in more detailed interviews. A *Criminal Justice Personnel Survey* was sent out in the Fall to judges, prosecutors, defense attorneys, and probation officers to elicit further information on the importance of various factors in determining restitution orders, the impact of the 1995 law mandating restitution, factors influencing the payment of restitution, and the importance of restitution in relation to other sentencing options.

Boot Camp Project Update

The *2002 Legislative Report*, submitted to the General Assembly in January, focuses on the initial results of the two Boot Camp Offender surveys: a Self-Report Survey, which asks about the offender's past criminal history, drug and alcohol use, family background, and education and employment history; and a Boot Camp Evaluation Survey, designed to measure attitudinal changes along several dimensions found to be related to criminal behavior and addressed through the programmatic aspects of the Boot Camp Program.

Guideline Decisions from the Superior Court

Com. v. Begley (780 A.2d 605)(9/26/01)

A trial court cannot justly sentence a defendant unless it possesses sufficient and accurate information about the circumstances of the offense and the character of the defendant to formulate its judgment. As long as the trial court's reasons demonstrated that it weighed the Sentencing Guidelines with the facts of the crime and the defendant's character in a meaningful fashion, the court's sentence should not be disturbed.

Com. v. Kenner (784 A.2d 808)(10/12/01)

Trial court abused its discretion by imposing unreasonably lenient sentence of 11.5-23 months of imprisonment following

guilty plea to aggravated assault without adequately explaining reasons for departing from sentencing guidelines; although defendant was 23 years old and had no prior record, defendant stabbed victim repeatedly with knife causing injuries and victim was not charged with any crime. In exercising its discretion, sentencing court may deviate from guidelines, if necessary, so long as court also states of record factual basis and specific reasons which compelled deviation from guidelines.

Com. v. Eby (784 A.2d 204)(10/4/01)

The use of the sentencing guidelines is not voluntary; courts must apply the guidelines unless the circumstances of the individual

case requires deviation, and, in that situation where deviation is required, the court must articulate sufficient reasons to justify this conclusion.

Com. v. Ritchey (779 A.2d 1183)(7/2/01)

Where a sentence deviates from the guidelines, the court is required to provide a contemporaneous written statement of its reasons for doing so; this requirement is satisfied when the court states its reasons for the sentence on the record and in the defendant's presence. Where the court deviates substantially from the guidelines, it is especially important that the court consider all factors relevant to the determination of a proper sentence.

Recent Commission Activities & Decisions

The Commission's fourth quarterly meeting of 2001 was held at The Union League in Philadelphia on December 4 & 5. Tuesday's activities included a media workshop and tour of the Philadelphia Community Court facilities. The final public meeting of the year was held Wednesday morning.

Media Workshop

Commission members and staff held a Media Workshop to coincide with release of the 1999 Annual Data Report. Documents provided during the presentations, including an overview of the Commission and details of the *Release of Information Policy*, are on file in the Commission office and available upon request.

Community Court Tour

In lieu of a public work session, Commission members and staff met at the Philadelphia Community Court on Tuesday, December 4, 2000 from 1:30 p.m.-2:30 p.m. to tour the new facility and receive a briefing by Attorney William G. Babcock, Community Court Coordinator.

Budget & Management

The Commission formally adopted the FY2002/2003 budget request that was submitted October 31, 2001 to the Governor's Budget Office. The Commission had previously approved the framework and funding targets for the budget request. The request contains a zero-growth operating budget request of \$922,900 and an information technology budget request of \$202,800 to continue the development and implementation of the JNET-based SGS Web application. The Commission also approved the extension of a Service Purchase contract for IT support.

Data & Field Services

The Commission released the 1999 Annual Data Report during a Media Workshop held the previous day, and verification of the 2000 sentencing data by judges will begin in early 2002. A Training Catalog, containing a schedule of course offerings in 2002 and descriptions of each course, is being developed and will be mailed to criminal justice practitioners (see related article).

Research

The Commission approved publication of a *Research Bulletin* on Restitution Orders in Pennsylvania and the annual *Boot Camp Report*. The *Bulletin* will be mailed in December, and the *Report* will be submitted to the General Assembly and mailed to other interested parties in January. The Commission also approved the use of preliminary 2000 data by researchers contracted by the Supreme Court's Committee on Race & Gender Bias.

Policy

The Commission approved the following schedule of public meetings for 2002:

Feb. 12-13 Harrisburg
May 14-15 Harrisburg*
Aug. 13-14 State College**
Dec. 10-11 Philadelphia

* *Legislative Breakfast*

** *Strategic Planning Session*

All Commission meetings are open to the public. Details and tentative agendas are found at the "What's New" tab on the Commission's web site: <http://pcs.la.psu.edu>

Key Sentencing-Related Decisions (September-December 2001)

Mandatory Sentences

Com. v. Edrington (780 A.2d 721)
Com. v. Richardson (784 A.2d 126)

Sentencing Guidelines

Com. v. Ritchey (779 A.2d 1183)
Com. v. Begley (780 A.2d 605)
Com. v. Kenner (784 A.2d 808)
Com. v. Eby (784 A.2d 204)

Other Sentencing Issues

Com. v. Opperman (780 A.2d 714)
Com. v. Klein (781 A.2d 1133)
Com. v. Lowery (784 A.2d 795) ►►
Com. v. Baker (782 A.2d 584)

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>

Rule of *Apprendi*, requiring that any fact except a prior conviction increasing penalty for crime beyond prescribed statutory maximum be submitted to jury and proved beyond a reasonable doubt, did not apply to defendant convicted of aggravated assault and sentenced to 54-108 months' imprisonment, despite application of deadly weapon enhancement; defendant's sentence was within statutory maximum for aggravated assault.

Com. v. Lowery (784 A.2d 795)

Sentencing Guidelines Q&A...

Topic... House Arrest

Is house arrest always an intermediate punishment program?

No. In determining the sentence to be imposed, the Judicial Code (42 Pa. C.S. 9721) provides the court with six sentencing alternatives to consider (probation, guilt without further penalty, partial confinement, total confinement, a fine, and intermediate punishment). House arrest is not a sentencing alternative, but rather a program that may be used as a condition of these sentencing alternatives. Although house arrest is often ordered as part of an intermediate punishment sentence, it may also be ordered as a condition of a probation sentence or parole.

Does it really make a difference how house arrest is ordered?

Yes. If required as a condition of an intermediate punishment (IP) order, house arrest must meet the minimum standards published in the Pennsylvania Bulletin (37 Pa. Code §451.117). Requirements include written policies and procedures, a drug testing capability, caseload limitations, and minimum contacts per month. These standards do not apply if house arrest is ordered as a condition of probation or parole. Under the sentencing guidelines, only programs imposed as restrictive intermediate punishments (RIP) are considered equivalent to incarceration when determining conformity. It is also important to note that a

violation of probation or intermediate punishment results in a re-sentencing, while a violation of parole results in a re-commitment for the un-served balance of the confinement sentence.

How is house arrest reported on the Guideline Sentence Form?

If ordered as a condition of probation, indicate house arrest on the 'Conditions' line below 'Probation Period.'

If ordered as a condition of intermediate punishment, indicate on the 'Programs' line below RIP Period.

If ordered as a condition of parole, it is not necessary to report on the form, since it is not a condition of the sentence.

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MONITOR (WINTER 2002)

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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.

2002 Calendar/Meeting Schedule Insert

Legislation from 2001 Session of General Assembly (September-December)

TITLE/SECTION	OFFENSE	OLD	NEW	1997 OGS	2001 SESSION	EFFECTIVE DATE
18/4583.1	Aggravated jury tampering				Act 2001-90 (HB17/PN2740)	February 8, 2002
(b)(1)	- most serious offense submitted to jury is F1 or Murder 1 or Murder 2	new	F1	[Omnibus] 8		
(b)(2)	- most serious offense submitted to jury is F2	new	F2	[Omnibus] 7		
(b)(3)	- any other violation	new	F3	[Omnibus] 5		
18/4952	Intimidation of witnesses/victims				Act 2001-90 (HB17/PN2740)	February 8, 2002
(b)(2)	- listed factor(s) and most serious offense charged is F1 or Murder 1 or Murder 2	F3	F1	[Omnibus] 8		
(b)(3)	- listed factor(s) and most serious offense charged is F2	F3	F2	[Omnibus] 7		
(b)(4)	- any other case in which actor sought to influence/intimidate	F3	F3	7		
(b)(5)	- any other obstruction or interference	M2	M2	5		