



Monitor

Commission Receives CJA Designation

On January 23, 2003, Pennsylvania Attorney General Mike Fisher designated the Pennsylvania Commission on Sentencing a 'criminal justice agency' pursuant to the Criminal History Records Information Act.

This designation, following several years of discussion and formal application, will allow the Commission to obtain Pennsylvania criminal history information (rap sheets, etc.) directly from the Pennsylvania State Police and through JNET. This access will substantially improve the quality and reduce the work-hours associated with the Commission's research and data efforts.

The Commission is a Legislative Service Agency based on the University Park Campus of The Pennsylvania State University. The Commission was established in 1978, and was designated an agency of the General Assembly in 1986.

The primary purpose of the Commission is to create a consistent and rational statewide sentencing policy and to promote fairer and more uniform sentencing practices in the Commonwealth of Pennsylvania.

The Commission's annual appropriation is primarily used to support activities in four operational areas: sentencing

data collection and management; field services involving the implementation of the sentencing guidelines, verification of sentences reported to the Commission, and dissemination of sentencing information pursuant to the Commission's *Release of Information Policy*; research relating to incapacitation, recidivism, deterrence and overall effectiveness of sentences imposed; and policy involving the development of sentencing guidelines to be used by the courts and the modification or enactment of sentencing and correctional statutes necessary for an effective, humane and rational sentencing policy.

Status Report: SGS Web

In 2002, Commission staff began using JNET-based *SGS Web* to enter sentencing information received from counties on guideline forms. During 2003, the Commission expects many JNET counties to begin directly entering sentencing information using the same application, especially as the AOPC/DJ interface is deployed. Below is listed the status of counties as of January 2003.

Authorized Users

- ⇒ Centre
- ⇒ Warren

On-Site Training Conducted

- ⇒ Allegheny
- ⇒ Somerset

On-Site Demo Conducted

- ⇒ Bucks
- ⇒ Delaware

- ⇒ Lancaster
- ⇒ Snyder/Union
- ⇒ York

Others (Pilot, CD Demo)

- ⇒ Bucks
- ⇒ Cumberland
- ⇒ Dauphin
- ⇒ Franklin
- ⇒ Northampton
- ⇒ Philadelphia
- ⇒ Schuylkill
- ⇒ Westmoreland
- ⇒ Washington

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.



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

- ⇒ Schedule an on-site *SGS*

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

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2003 Commission Meeting Schedule

February 11-12	Harrisburg Hilton & Towers
May 13-14	Scranton Radisson Lackawanna Stat.
August 19-20	State College Penn Stater Conf. Center
December 9-10	Philadelphia The Union League

Times and locations are posted on the Commission's website (<http://pcs.la.psu.edu>); agenda and action items posted during the week prior to the meeting.

End-of-Session Legislation (2001-2002)

TITLE/SECTION	OFFENSE	OLD	NEW	1997 OGS	2001-2002 SESSION	EFFECTIVE DATE
18/2709	Harassment and stalking				Act 2002-218 [SB1515/PN2399]	Feb 7, 2003
(a)(4)	- lewd communication	new	M3	1 [omnibus]		
(a)(5)	- repeated, annoying	new	M3	1 [omnibus]		
(a)(6)	- repeated, inconvenient	new	M3	1 [omnibus]		
(a)(7)	- repeated, other	new	M3	1 [omnibus]		
18/2709.1	Stalking				Act 2002-218 [SB1515/PN2399]	Feb 7, 2003
(c)(1)	- first offense	new	M1	3 [omnibus]		
(c)(2)	- second/subsequent or prior crime of violence	new	F3	5 [omnibus]		
18/2710	Ethnic intimidation				Act 2002-143 [HB1493/PN4156]	Dec 3, 2002
(a)	- modified definition	no change		no change	Act 2002-218 [SB1515/PN2399]	Feb 7, 2003
(a)	- modified definition	no change		no change		
18/3121	Rape				Act 2002-162 [HB976/PN4725]	Feb 7, 2003
(b)	- uses substance to impair	additional 10 years		no change	Act 2002-162 [HB976/PN4725]	Feb 7, 2003
(c)	- child <13 years	max 40 years		no change	Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
(c)	- child <13 years	max 40 years		no change	Act 2002-162 [HB976/PN4725]	Feb 7, 2003
(d)	- child <13 years & sbi	max Life		no change	Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
(d)	- child <13 & sbi	max Life		no change		
18/3123	Involuntary deviate sexual intercourse				Act 2002-162 [HB976/PN4725]	Feb 7, 2003
(a)(6)	- change <13 to <16	no change		no change	Act 2002-162 [HB976/PN4725]	Feb 7, 2003
(c)	- child <13 years	max 40 years		no change	Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
(b)	- child <13 years	max 40 years		no change	Act 2002-162 [HB976/PN4725]	Feb 7, 2003
(d)	- child <13 years & sbi	max Life		no change	Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
(c)	- child <13 & sbi	max Life		no change		
18/3125	Aggravated indecent assault				Act 2002-162 [HB976/PN4725]	Feb 7, 2003
(b)	- child	F2	F1	[Omnibus] 8	Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
(b)	- child	F2	F1	[Omnibus] 8		
18/5511	Cruelty to animals				Act 2002-183 [HB2445/PN4722]	Feb 7, 2003
(a)(2.1)(i)	- definition modified	F3	M1	[Omnibus] 3		
18/7330	Internet child pornography				Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
	- repealed—see 18 Pa.C.S.A. 7622 -					
18/7508	Drug trafficking sentencing and penalties				Act 2002-183 [HB2445/PN4722]	Feb 7, 2003
(a)(8)(i)	- Violation of 35 PS 780-113(a)(14), (30) or (37); Ecstasy (50-<100 pills or 15-<30 grams)			5 year maximum	\$15,000 maximum	
(a)(8)(ii)	- Violation of 35 PS 780-113(a)(14), (30) or (37); Ecstasy (100-<1000 pills or 30-<300 grams)			10 year maximum	\$100,000 maximum	
(a)(8)(iii)	- Violation of 35 PS 780-113(a)(14), (30) or (37); Ecstasy (1000 or more pills or 300 or more grams)			15 year maximum	\$250,000 maximum	
18/7508.1	Substance Abuse Education & Demand Fund				Act 2002-198 [SB413/PN2385]	Feb 7, 2003
(b)	- mandatory assessment fee			\$100 fee		
(c)	- additional assessment fee: DUI with BAC of 0.15 or greater			\$200 fee		
18/7515	Contingent compensation	new	M3	[Omnibus] 1	Act 2002-172 [HB2070/PN4743]	Dec 9, 2002
18/7611	Unlawful use of a computer	new	F3	[Omnibus] 5	Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
18/7612	Disruption of computer service	new	F3	[Omnibus] 5	Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
18/7613	Computer theft	new	F3	[Omnibus] 5	Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
18/7614	Unlawful duplication				Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
(b)(1)	- Value of \$2,500 or less	new	F3	[Omnibus] 5		
(b)(2)	- Value of greater than \$2,500	new	F2	[Omnibus] 7		

(Continued on Page 4)

Recent Commission Activities & Decisions

The Commission's final quarterly meeting of 2002 was held on December 11-12, 2002 at The Union League in Philadelphia. In keeping with recent practice, the Commission held a *Sentencing Seminar for the Media* on Tuesday, December 11 in conjunction with the release of the 2000 Annual Data Report.

QUARTERLY MEETING

Budget & Management

The Commission adopted the following meeting schedule for 2003:

- ⇒ Feb. 11-12 (Harrisburg), to include a Legislative Dinner Tuesday evening;
- ⇒ May 13-14 (Scranton);
- ⇒ Aug. 19-20 (State College), to include the annual strategic planning session;
- ⇒ Dec. 9-10 (Philadelphia).

Staff will continue to explore appropriate activities to commemorate the 25th anniversary of the Commission in 2003-2004. Chairman Dermody announced the re-appointment of District Attorney McKnight and Attorney Tully by Governor Schweiker. He further indicated that attendance records

and notices of pending appointments would be mailed to all appointing authorities at the end of the year. The Commission formally adopted the FY2003/2004 budget request approved by the Budget & Management Committee and submitted to the Governor's Budget Office. The Commission submitted a zero-growth stat appropriation request of \$992,000, which represents just less than half of its operating budget.

Data & Field Services

In addition to Commission staff, two counties (Centre and Warren) are presently using the JNET-based *SGS Web* application to enter sentencing information. Presentation and training sessions have been held in a number of additional counties. Upon completion of an interface with the AOPC/DJ system in early 2003, a number of these counties are prepared to begin using *SGS Web*. The Commission approved a request submitted by Attorney Lee Ruslander for Megan's Law-related sentencing data. Two additional *Sentencing Seminars for the Media* have been scheduled for State College (January 10) and Pittsburgh (January

24) at the request of the media.

Research

The Commission approved the annual Boot Camp Report, which will be submitted to the Judiciary Committees as required by statute and made available to the public. Other research projects underway include the RIP/D&A Evaluation and a new Restitution/Collections Evaluation.. Joint research projects with PCCD include a study of the under-reporting of arrests (UCR) as departments switch from paper to web-based reporting.

Policy

The Commission reviewed the pending and signed end-of-session legislation. Due to the number of new/modified offenses, the possibility that the Commission will be required by statute to create an enhancement for homicide by vehicle in a construction zone, and a number of issues other raised during the past year, the Commission is actively considering revising the sentencing guidelines during 2003. The committee is also reviewing three-strikes *Apprendi* concerns.

Key Sentencing-Related Decisions (November-December 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>

Offenses

Com v. Alderman (811 A.2d 592) (rape)

Com. v. Alexander (811 A.2d 1064) (DUI)

Dillaman v. DOT (811 A.2d 98) (DUI)

Com. v. Farone (808 A.2d 580) (drugs)

Com. v. Fountain (811 A.2d 24) (escape)

Com. v. Giusto (810 A.2d 123) (stalking)

Com. v. Riley (811 A.2d 610) (crim.consp.)

Sentencing

Com. v. Pinko (811 A.2d 576)(IP) » » »

Others

Com. v. Kohler (811 A.2d 1046) (transact.)

Com. v. McJett (811 A.2d 104) (forfeiture)

Com. v. Shull (811 A.2d 1)(double jeop.)

Sentence of 60 months of intermediate punishment, all restrictive at county work release center or, if appropriate, to inpatient treatment for defendant's mental illness complied with provisions on imposition of intermediate punishment sentences and, thus, was not illegal, where, unlike provisions governing partial confinement, imposition of minimum and maximum sentence was not directed with regard to intermediate punishment sentence. 42/9721(a), 9755(b), 9763, 9801 et seq. ***Com. v. Pinko* (811 A.2d 576)**

Sentencing Guidelines Q&A...

Topic... OGS for unlisted drugs

What is the Offense Gravity Score (OGS) for a conviction under for 35 P.S. §780-113 (a)(30) for each of the following drugs: Ecstasy, GHB and OxyContin?

⇒ Ecstasy (3,4-Methylenedioxy-methamphetamine (MDMA)) is a non-narcotic Schedule I Controlled Substance under the Controlled Substance, Drug, Device and Cosmetic Act. Ecstasy is not subcategorized by the amount of drug involved in the offense. Therefore, the OGS is determined by the schedule, which has been assigned an OGS of 5 (Schedule I and II Drugs not listed). There are no man-

datory for Ecstasy, but Act 2002-183, effective February 7, 2003, establishes statutory maximums and maximum fines based on the number of pills.

⇒ GHB (Gamma Hydroxybutyric Acid) is a non-narcotic Schedule I Controlled Substance under the Controlled Substance, Drug, Device and Cosmetic Act. GHB is not subcategorized by the amount of drug involved in the offense. Therefore, the OGS is determined by the schedule, which has been assigned an OGS of 5 (Schedule I and II Drugs not listed). There are no mandatory for GHB; the statutory maximum is 60 months and the maximum

fine is \$15,000.

⇒ OxyContin (Oxycodone), is a Schedule II narcotic under the Controlled Substance, Drug, Device and Cosmetic Act. OxyContin is subcategorized by the amount of the drug involved in the offense (>1000g = OGS 13; 100g—1000g = OGS 11; 50g - < 100g = OGS 8; 2.5g—< 10g = OGS 7; < 2.5g = OGS 6). A mandatory related to OxyContin is found under 18§7508(a)(2) (i), (ii), (iii) Drug Trafficking Sentencing and Penalties, Schedule I or II narcotic drugs. §303.9(h) of the 5th Edition manual provides more information on mandatory sentences.

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MONITOR (WINTER 2003)

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Judge

Renee Cardwell Hughes
Judge

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Law Professor

Jeffrey A. Manning
Judge

Michael T. Conahan
Judge

Merritt E. 'Ted' McKnight
District Attorney

Jay Costa, Jr.
State Senator

William T. C. Tully
Defense Attorney

William I. Gabig
State Representative

Mark H. Bergstrom
Executive Director

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.

2003 CALENDAR INSERT

2001-2002 End-of-Session Legislation (2001-2002)

(continued)

<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>
<i>(Continued from Page 2)</i>						
18/7615	Computer trespass	new	F3	[Omnibus] 5	Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
18/7616	Distribution of computer virus	new	F3	5 [omnibus]	Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
18/7622	Duty of internet service provider				Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
⇒ 7624(1)	Child porn., 1st offense	new	M3	1 [omnibus]		
⇒ 7624(2)	Child porn., 2nd offense	new	M2	2 [omnibus]		
⇒ 7624(3)	Child porn., 3rd/subseq.	new	F3	5 [omnibus]		
18/7661	Unlawful transmission of electronic mail				Act 2002-226 [SB1402/PN2429]	Feb 14, 2003
(b)(1)	- value of less than \$2,500	new	M3	1 [omnibus]		
(b)(2)	- damage/reckless disregard	new	M1	3 [omnibus]		
(b)(3)	- damage/malicious act	new	F3	5 [omnibus]		
75/3732	Homicide by vehicle				Act 2002-229 [HB2410/PN4453]	June 23, 2003
(b)(1)	- active work zone	no change		12 year statutory maximum		
(b)(3)	- <i>sentencing enhancement to be enacted by Commission</i>					

A complete listing of new or modified offenses since the enactment of the 5th Edition Sentencing Guidelines (6/13/97) is available at: <http://pcs.la.psu.edu> (Sentencing Guidelines & Information/Offense Listings/New Legislation)

The full text of each bill is available at: <http://www.legis.state.pa.us> (Session Information/Electronic Bill Room/Legislation Enacted)