

## 1. THE SENTENCING COMMISSION

**Q.** What year was the commission established? Has the commission essentially retained its original form or has it changed substantially or been abolished?

The Commission was created in 1978<sup>1</sup> and has continued to function up to the present day. The Commission is tasked with the creation of sentencing guidelines.<sup>2</sup> In 2008, the legislature gave the commission the additional roles of developing guidelines for resentencing and parole, as well as recommitment ranges.<sup>3</sup>

**Q.** Membership: who appoints them, for what terms, with what required qualifications?

The Pennsylvania Commission on Sentencing consists of 11 voting members, apportioned between appointees made by the legislature, executive, and judiciary. The Secretary of the Pennsylvania Department of Corrections, the Chair of the Pennsylvania Board of Probation and Parole, and the Pennsylvania Victim Advocate serve as ex officio members of the commission.

Judiciary:

- Four judges of courts of record selected by the Chief Justice of Pennsylvania

Legislature:

- Two members of the House of Representatives selected by the Speaker of the House
- Two members of the Senate of Pennsylvania selected by the President pro tempore of the Senate

The two members from each legislative chamber must be of different political parties.

Executive:

- Three persons appointed by the Governor, who must include:
  - A district attorney
  - A defense attorney
  - A professor of law, or a criminologist

The commission selects a chairman from among its members.<sup>4</sup>

**Q.** Is the commission an independent agency, or is it located in or hosted by some other state agency?

The Commission on Sentencing is an independent, legislative service agency.<sup>5</sup>

**Q.** How many staff does the commission have? Are they dedicated to the commission, or shared with another agency?

The Commission employs 18 full-time staff across two offices, and also employs part-time counsel. The Commission is affiliated with the Pennsylvania State University system.<sup>6</sup>

**Q.** What is the commission's current statutory mandate?

The Commission is tasked with the creation and promulgation of guidelines governing:

- Sentencing;
- Fines;
- Intermediate punishment;
- Resentencing and Parole;
- The adoption of a risk assessment instrument; and
- Recommitment ranges following revocation of parole.

To carry out those tasks, the Commission is given the ability to:

- collect and publish information and data;
- create a research and development program;
- make annual reports to the General Assembly, the Office of Pennsylvania Courts, and the Governor;
- make recommendations to the General Assembly concerning modification or enactment of sentencing, parole, and correctional statutes;
- establish a program for monitoring guidelines compliance; and
- complete resource impact assessments for all implemented measures.<sup>7</sup>

**Q.** Do statutes and/or guidelines identify management of prison and jail resources as a goal?

The Commission's enabling statute does not explicitly identify resource management as a goal, but it does provide for consideration of the resource impact of proposed modifications or changes to the guidelines or risk assessment instrument.<sup>8</sup>

**Q.** Are sentencing practices studied by means of annual or other regular data sets? If so, are those data sets made available to outside researchers?

The Commission prepares annual sentencing data, analyzed on a county-by-county basis by a number of different metrics, such as type of sentence and conformity to the guidelines. The data sets are publicly available through the Commission's webpage.<sup>9</sup>

## 2. THE GUIDELINES

**Q.** When were the guidelines first implemented?

The Commission's first sentencing guidelines went into effect on July 22, 1982. However, in 1987 the Pennsylvania Supreme Court invalidated all guidelines as a result of a procedural error during the guidelines original enactment in 1981. The Commission, with unanimous support from the General Assembly, repromulgated the guidelines, and has revised them multiple times since.<sup>10</sup>

**Q.** In recent years, have they been modified at least once a year?

The guidelines are not annually updated. The Commission reviews the guidelines at the close of each legislative session, and they are revised periodically to reflect enacted legislation and changes in judicial resources. The Guidelines are currently in their 7th edition.<sup>11</sup>

**Q.** Do the commission's recommended initial or modified guidelines require affirmative legislative approval, or do they take effect subject to legislative override?

When adopting new or modified guidelines, the Commission must publish all proposed guidelines in the Pennsylvania Bulletin, and hold public hearings no earlier than 30 days and no later than 60 days after publication. The Commission must allow all interested persons or organizations to testify, with specific emphasis placed on the testimony of the following:

- i. Pennsylvania District Attorneys Association
- ii. Chiefs of Police Association
- iii. Fraternal Order of Police
- iv. Public Defenders Organization
- v. Law school faculty members
- vi. State Board of Probation and Parole
- vii. Departments of Corrections
- viii. Pennsylvania Bar Association
- ix. Pennsylvania Wardens Association
- x. Pennsylvania Association on Probation, Parole, and Corrections
- xi. Pennsylvania Conference of State Trial Judges.

After holding a hearing, the Commission must publish all adopted guidelines in the Pennsylvania Bulletin. The guidelines become effective 90 days after publication unless rejected by a concurrent resolution of the General Assembly. Once effective, the committee is tasked with holding training sessions for trial judges and board members.<sup>12</sup>

**Q.** Do the sentencing guidelines only apply to felonies, or are some misdemeanors and other lesser offenses also covered? Are some felonies excluded (e.g., those subject to life and/or death penalty)?

The sentencing guidelines apply to all felony and misdemeanor sentences.<sup>13</sup>

**Q.** Is a grid used? Are there multiple grids? How many severity levels does the grid contain?

The Guidelines employ seven different grids. The first grid is generally applicable,<sup>14</sup> the second applies to offenders under 18 convicted of first- or second-degree murder, the third and fourth apply to crimes involving possession or use of a firearm,<sup>15</sup> and the fifth,<sup>16</sup> sixth,<sup>17</sup> and seventh<sup>18</sup> apply to crimes involving either youth enhancements, school enhancements, or both. Each grid contains 14 severity levels, referred to as “offense gravity scores.”<sup>19</sup>

**Q.** How is the presumptive sentence determined?

The presumptive guidelines sentence is determined by assessing the Offense Gravity Score of the current offense of conviction, and the Prior Record Score of the defendant. Once those have been ascertained, they are used to calculate the recommended minimum sentence taking account of deadly weapon and other enhancements, as well as any aggravating or mitigating circumstances.<sup>20</sup>

The Offense Gravity Score measures the seriousness of the current conviction.<sup>21</sup> The list of Offense Gravity Scores is provided in statute.<sup>22</sup> Some offenses are sub-categorized by the Commission beyond statute, and require judicial determinations of severity based on the facts underlying the offense.<sup>23</sup> The Guidelines also describe the proper calculation of severity for the inchoate forms of listed offenses, and provide enhancements for ethnic intimidation, and violations involving controlled substances.<sup>24</sup>

The Prior Record Score is based on the type and number of prior convictions and prior juvenile adjudications. There are eight Prior Record Score categories: Repeat Violent Offender Category (“REVOG,” on the grid), Repeat Felony 1 and Felony 2 Offender (“RFEL”), and six point-based categories (0, 1, 2, 3, 4, and 5 points).<sup>25</sup>

Once the Offense Gravity Score and the Prior Record Score have been determined, the sentencing court considers any applicable enhancements. If one applies, the court applies the enhancement or uses the applicable matrix to determine the recommended guidelines sentence. If no enhancement applies, the court uses the basic sentencing matrix.<sup>26</sup>

After applying the proper matrix and determining the appropriate guidelines sentence, the sentencing court considers whether aggravating or mitigating factors are present. If it finds they are, it may adjust the guidelines sentence. The Commission includes recommendations for aggravated and mitigated sentences in the form of the number of months that can be added to or subtracted from the standard range.<sup>27</sup> Adjustments are limited by the severity of the offense of conviction, and the presence of any applicable enhancements.<sup>28</sup>

**Q.** Is the choice among types of sentences regulated by a “disposition” or other prison in/out line? Are “out” sentences accompanied by suspended execution of prison or suspended imposition of sentence? By definitive preclusion or prison for those cases?

The guidelines do not use a single disposition line, but instead divide the sentencing matrices into five levels. Each level targets certain types of offenders, and the levels together set forth a continuum of sentencing options ranging from restorative sanctions at Level 1 to total confinement at Level 5.<sup>29</sup>

- *Level 1* is for the least serious offenders, and the primary purposes of sentencing at this level are to provide the minimum control necessary to fulfill court obligations, and to restore the victim or the community to pre-offense status.<sup>30</sup>

Sentencing options at this level include: Restorative sanctions.<sup>31</sup>

- *Level 2* is for non-violent offenders and those with numerous less serious convictions. Recommended sentences at this level focus on alternatives to incarceration, and reflect the commission’s position that considerable restriction may need to be placed on the offender’s liberty.<sup>32</sup>

Sentencing options at this level include: Confinement, either total or partial, in a county facility, County Intermediate Punishment,\*\* or Restorative Sanctions.<sup>33</sup>

- *Level 3* is for serious offenders who may have the potential for violence and less serious offenders with numerous prior convictions. Recommended sentences at this level reflect the commission's position that a period of incarceration in a county facility should be the typical sentence, but that state incarceration and intermediate sanctions may also be appropriate.<sup>34</sup>

Sentencing options at this level include: Confinement in a state facility, which may include participation in State Motivational Boot Camp,\*\*\* State Intermediate Punishment,\*\*\*\* total or partial confinement in a county facility if sentence is between 2 and 5 years, or County Intermediate punishment.<sup>35</sup>

- *Level 4* is for very serious offenders and those with numerous convictions. Offenders at this level may have the potential for violence. Recommended sentences at this level reflect the commission's position that a period of incarceration in a state or county facility should be the typical sentence, but that individual circumstances may warrant intermediate sanctions.<sup>36</sup>

Sentencing options at this level include: Confinement in a state facility, which may include participation in State Motivational Boot Camp, State Intermediate Punishment, total or partial confinement in a county facility if sentence is between 2 and 5 years, or County Intermediate punishment.<sup>37</sup>

- *Level 5* is for the most violent offenders and those with major drug convictions. Recommended sentences at this level reflect the commission's position that a period of incarceration in a state facility should be the typical sentence, but that individual circumstances may warrant incarceration in a county facility or intermediate sanctions.<sup>38</sup>

Sentencing options at this level include: Confinement in a state facility, which may include participation in State Motivational Boot Camp, State Intermediate Punishment, total or partial confinement in a county facility if sentence is between 2 and 5 years, or County Intermediate punishment.<sup>39</sup>

\*Restorative sanctions are the least restrictive, non-confinement intermediate punishments.<sup>40</sup> Dispositions may include a finding of guilty without a penalty, probation, or payment of a fine or restitution.<sup>41</sup>

\*\* County intermediate punishment is programming that provides for strict supervision of the offender. It may involve housing the offender on a full or part-time basis, significant restrictions on the offender's movement, and monitoring of the offender's compliance with the program. Intermediate punishment may include house arrest, inpatient treatment, and work release programs.<sup>42</sup>

\*\*\* State motivational boot camp refers to a six-month program in which prison inmates engage in rigorous physical activity, substance abuse treatment, counseling services, and continuing and vocational education.<sup>43</sup>

\*\*\*\* State intermediate punishment is a direct alternative to state incarceration and state motivational boot camp for offenders with substantial drug dependency. It is a two-year program managed by the Department of Corrections, and involves individualized treatment and supervision, beginning with total confinement and treatment in a state facility and transitioning to the community.<sup>44</sup> When sentencing an individual to state intermediate punishment, the court may impose a consecutive period of probation, as long as the total duration of probation and state intermediate punishment does not exceed the maximum term for which the offender could otherwise be sentenced.<sup>45</sup>

**Q. Are there border boxes or other categories permitting multiple sentence types?**

The guidelines use five sentencing levels, each of which permits multiple sentence types. Level 1 permits only non-confinement sentences without departure. Levels 2-5 permits both sentences of confinement and non-confinement without departure, though each level further refines those recommendations.<sup>46</sup>

**Q.** Are the guidelines purely advisory, or are they legally binding?

The guidelines are advisory, but must be considered in sentencing. “They set forth a series of recommendations that based on the type of crime, the defendant’s criminal history, and the existence of any aggravating or mitigating factors, suggest a range of minimum sentences.” But judges retain broad discretion to sentence outside of the Guidelines so long as they do not exceed the statutory maximum sentence.<sup>47</sup> Nonetheless, misapplication of the guidelines is grounds for appeal. The right to appeal is available to both the defendant and the State.<sup>48</sup>

### 3. DEPARTURES AND SIMILAR ADJUSTMENTS TO GENERALLY-RECOMMENDED SENTENCES

**Q.** What is the overall/general standard for departure?

There is no specific standard for departure, but sentences outside the guidelines may be reversed on appeal if the sentence is found to be unreasonable.<sup>49</sup> If a sentencing court chooses to depart from the sentencing guidelines, it is required to make a statement of reasons explaining the departure.<sup>50</sup>

**Q.** Are there lists of aggravating and mitigating circumstances permitting departure? If so, are such lists non-exclusive? Is there a list of prohibited factors?

The guidelines do not include a list of aggravating and mitigating factors.<sup>51</sup> Although the Commission’s direction from the Legislature permitted the inclusion of a “non-inclusive” list of aggravating and mitigating factors, the Commission chose not to do so. The only factors prohibited from consideration are those already included in the guidelines calculation, such as offense of conviction, Deadly Weapon and Youth/School Enhancements, and prior convictions and adjudications.<sup>52</sup>

**Q.** Do the guidelines expressly address mitigations based on a guilty plea, acceptance of responsibility, and/or providing assistance to law enforcement?

The guidelines do not address these or any other specific mitigating factors.<sup>53</sup>

**Q.** Are there limits on the degree of durational (length-of-custody) departure?

The Guidelines include recommendations for aggravated and mitigated sentences in the form of the number of months that can be added to or subtracted from the standard range, but do not otherwise restrict the degree of a durational departure.<sup>54</sup>

**Q.** Are there limits on the availability of dispositional departure (executed-prison vs. stayed sentence)?

Although the Guidelines recommend specific dispositions based upon the seriousness of the offense and the offender’s prior record, there appear to be no specific limits on the imposition of a disposition other than that recommended.

### 4. PRISON RELEASE DISCRETION

**Q.** Does the jurisdiction utilize parole release discretion or has it been abolished for all or most offenders?

Pennsylvania retains parole release discretion for all custody sentences other than life without parole.<sup>55</sup>

**Q.** Does the state have a “truth in sentencing” law, limiting the extent of early release?

No. The sentencing judge announces a range consisting of a minimum and maximum sentence. The offender is not eligible for parole consideration until expiration of the minimum term of imprisonment.<sup>56</sup>



**Q.** Do recommended and imposed sentences under the guidelines set the minimum time to serve in prison, the maximum, both the minimum and maximum, a target/recommended/expected prison duration, or some other combination of these parameters?

For sentences of confinement, the guidelines prescribe a recommended minimum duration;<sup>57</sup> the sentencing judge then chooses a maximum duration within the statutory maximum authorized for the conviction offense. The sentence that the defendant will actually serve is dependent upon whether the defendant is granted parole, which may not be considered until after the expiration of the minimum term of imprisonment prescribed by the sentencing court.<sup>58</sup> No specific recommendations are provided for supervision periods for non-confinement sentencing alternatives.<sup>59</sup>

**Q.** Is the period of post-prison supervision independent of any unserved prison term?

No. Parole may only be granted upon expiration of the minimum term of sentence imposed, and the term of parole appears to be equal to unserved portion of the sentence.<sup>60</sup>

**Q.** What good-time credits do prisoners earn? Is program participation considered?

Pennsylvania has a Recidivism Risk Reduction Incentive (RRRI) for certain eligible offenders. If an offender is eligible for participation in the program, at the time of sentencing, the judge must pronounce an RRRI minimum sentence, which is equal to three-fourths of the minimum sentence imposed when the minimum sentence is three years or less, or five-sixths of the minimum sentence if the minimum sentence is greater than three years. The purpose of RRRI is to encourage inmate participation in evidence-based programs that reduce the risks of future crime.<sup>61</sup>

**Q.** Are prisoners subject to exceptional, “second-look” releasing mechanisms?

The Parole Board may consider all prisons terms for release, except for offenders sentenced to life without parole.<sup>62</sup>

## 5. RELATIONSHIP TO CRIMINAL LAWS

**Q.** Did the guidelines replace some or all previous statutory maxima?

As stated by the Commission: “The guidelines do not supersede sentencing statutes. Therefore, the guideline recommendation may not exceed the maximum allowable penalties as defined in statute.”<sup>63</sup>

**Q.** Are guidelines built on top of (i.e., equal to or more severe than) any remaining mandatory minima, or are they set independently and overridden whenever a mandatory applies?

Mandatory minimums are established by the Legislature rather than the Commission on Sentencing. They are statutory provisions that may not be superseded by the guidelines.<sup>64</sup> Pennsylvania law provides: “When the guideline range is lower than that required by a mandatory sentencing statute, the mandatory minimum requirement supersedes the sentence recommendation. When the sentence recommendation is higher than that required by a mandatory sentencing statute, the court shall consider the guideline sentence recommendation.”<sup>65</sup>

**Q.** Are some “mandatory” minima subject to case-specific “departure” or other exception?

A sentencing court has no authority to impose a sentence lower than one called for by a mandatory provision.<sup>66</sup>

## 6. CRIMINAL HISTORY SCORING

**Q.** What are the major components of the criminal history score?

The Prior Record Score counts prior adult convictions and many juvenile adjudications,<sup>67</sup> with points assigned on the basis of severity. Prior felony offenses may receive a score of 1, 2, 3, or 4 points. Designated class-1 misdemeanors count one point each; other misdemeanor convictions receive one to three points, depending upon whether the offender has 2-3, 4-6, or at least 7 such misdemeanor convictions prior to the current conviction.<sup>68</sup>

There are eight Prior Record Score categories: Repeat Violent Offender Category (“REVOC,” on the grid), Repeat Felony 1 and Felony 2 Offender (“RFEL”), and six point-based categories (0, 1, 2, 3, 4, and 5 points). Offenders who have two or more previous four-point offenses and whose current crime of conviction carries an Offense Gravity Score of 9 or higher are classified as Repeat Violent Offenders. Offenders who have previous convictions or adjudications for felony 1 and/or felony 2 offense which total 6 points or more, and who do not fall within the Repeat Violent Offender Category, are classified in the repeat Felony 1 and Felony 2 Offender Category. Offenders who don’t fall into the prior two categories are placed in a Point-Based Category, with their Prior Record Score being the sum of the points accrued from previous convictions and adjudications, up to a maximum of 5.<sup>69</sup>

**Q.** Does the jurisdiction utilize “decay”/washout rules, that is, do old convictions count less or drop out? Which older convictions decay, when, and how?

Prior adult convictions are always counted, no matter how old they are. Prior juvenile adjudications may “lapse” and not be counted if the offender was 28 years of age or older at the time the current offense was committed, and was crime free for 10 years prior to his or her 28th birthday. However, prior juvenile offenses worth four severity points never lapse, and are always included in the prior record score.<sup>70</sup>

**Q.** Do the Guidelines include any other significant limitations on how criminal history can be used (e.g., limits on eligibility for high-history categories; adjustments for older offenders)?

Offenders are not eligible for the two highest criminal history categories (Repeat Felony-1 and Felony-2 Offender, and Repeat Violent Offender) unless they have multiple serious and/or violent prior convictions.<sup>71</sup>

## 7. MULTIPLE CURRENT OFFENSES

**Q.** Are consecutive sentences limited? If so, how (e.g. prohibited, permissive, or mandatory in certain cases; limits on total duration; use of a multiple-counts enhancement formula)?

The sentencing court retains full discretion to impose sentences either concurrently or consecutively.<sup>72</sup>

**Q.** In consecutive sentencing, how is the offender’s criminal history taken into account?

Criminal history is scored separately for each current offense being sentenced, regardless of whether those offenses are sentenced concurrently or consecutively.<sup>73</sup>

## 8. ENFORCEMENT MECHANISMS (LOCATION ON THE “ADVISORY”-TO-“MANDATORY” CONTINUUM)

**Q.** Are recommended sentences enforced by prosecution and defense sentence appeals?

The prosecution and the defense may appeal the legality of a sentence as a matter of right. A reviewing court may only vacate and remand a sentence on three grounds:

- The sentencing court purported to sentence within the sentencing guidelines but applied the guidelines erroneously;
- The sentencing court sentenced within the sentencing guidelines but the case involves circumstances where the application of the guidelines would be clearly unreasonable; or
- The sentencing court sentenced outside the sentencing guidelines and the sentence is unreasonable.

In all other cases, the reviewing court must affirm the sentence imposed.<sup>74</sup>

**Q.** Are other enforcement methods used (e.g., required reasons for departure; published judge-specific departure rates; narrow permitted sentencing alternatives and/or ranges)?

Sentencing courts are required to state reasons for departing,<sup>75</sup> and the Commission publishes the statewide departure rate in its annual report. The Commission also publishes county-by-county departure rates, and lists the reasons most often cited for departure.<sup>76</sup> In addition, the public can access and create ad hoc reports on a county or statewide basis through the Commission’s Sentencing Report Portal.<sup>77</sup>

**Q.** Are some deviations from the guidelines not deemed departures?

All deviations from the presumptive guidelines range are departures, and require a statement of reasons.<sup>78</sup> Departures within the aggravated or mitigated ranges provided by the guidelines require a statement on the record of the aggravating or mitigating factors considered.<sup>79</sup>

**Q.** Do some deviations require especially strong justification? Or minimal justification?

All deviations equally require a statement of reasons for departure.<sup>80</sup>

## ENDNOTES

<sup>1</sup> *About the Commission*, Pa. Comm. on Sentencing, <http://pcs.la.psu.edu/about-the-commission> (last visited Jan. 26, 2018).

<sup>2</sup> 42 Pa. Cons. Stat. Ann. § 2154(a).

<sup>3</sup> 42 Pa. Cons. Stat. Ann. § 2154.44-6.

<sup>4</sup> 42 Pa. Cons. Stat. Ann. § 2152 (2017).

<sup>5</sup> Pa. Comm’n on Sentencing, *Governance*, <http://pcs.la.psu.edu/about-the-commission/governance> (last visited Jan. 26, 2018).

<sup>6</sup> Pa. Comm’n on Sentencing, *Commission Staff*, <http://pcs.la.psu.edu/about-the-commission/members-and-staff/commission-staff> (last visited Jan. 26, 2018).

<sup>7</sup> 42 Pa. Cons. Stat. Ann. §§ 2153–55 (2017).

<sup>8</sup> 42 Pa. Cons. Stat. Ann. § 2153(a)(15) (2017).

<sup>9</sup> Pa. Comm’n on Sentencing, *Data*, <http://pcs.la.psu.edu/data/public/statewide> (last visited Jan. 26, 2018).

<sup>10</sup> *Sentencing*, Pa. Comm. on Sentencing, <http://pcs.la.psu.edu/guidelines/sentencing/sentencing-guidelines-and-implementation-manuals> (last visited Jan. 26, 2018).

<sup>11</sup> Pa. Comm’n on Sentencing, *Sentencing Guidelines and Implementation Manuals*, <http://pcs.la.psu.edu/guidelines/sentencing/sentencing-guidelines-and-implementation-manuals> (last visited Jan. 26, 2018).

<sup>12</sup> 42 Pa. Cons. Stat. Ann. § 2155 (2017). It should be noted that the governor can veto the resolution, and if that occurs, re-passage would require a two-thirds majority in both the House and Senate. Pa. Const. Art. 3, § 9.

<sup>13</sup> 204 Pa. Code § 303.1(a) (2017).

<sup>14</sup> 204 Pa. Code § 303.16(a) (2017).

<sup>15</sup> 204 Pa. Code §§ 303.16(b); 303.17(a) (2017); 303.17(b) (2017).

<sup>16</sup> 204 Pa. Code § 303.18(a) (2017).

<sup>17</sup> 204 Pa. Code § 303.18(b) (2017).

<sup>18</sup> 204 Pa. Code § 303.18(c) (2017).

<sup>19</sup> 204 Pa. Code §§ 303.16–18 (2017).

<sup>20</sup> 204 Pa. Code §§ 303.2, 303.9, 303.10 (2017).

<sup>21</sup> Pa. Comm’n on Sentencing, *Sentencing Guidelines Implementation Manual* at 99 (7th Ed. 2012).

<sup>22</sup> 204 Pa. Code § 303.15 (2017).

<sup>23</sup> Pa. Comm’n on Sentencing, *Sentencing Guidelines Implementation Manual* at 103 (7th Ed. 2012).

<sup>24</sup> 204 Pa. Code § 303.3 (2017).

<sup>25</sup> 204 Pa. Code § 303.4 (2017).

<sup>26</sup> 204 Pa. Code §§ 309(a)(2), (b), (c); 303.10 (2017). See also Penn. Commission on Sentencing, *Merged Guideline Text: 7th Edition, Amendment 1 and Amendment 2* at 8-16

(<http://pcs.la.psu.edu/guidelines/sentencing/sentencing-guidelines-and-implementation-manuals/7th-edition-amendment-2-sentencing-guidelines-effective-september-26-2014/merged-guideline-text-7th-edition-amendment-1-and-amendment-2/view>) (last visited Jan. 26, 2018).

<sup>27</sup> Pa. Comm’n on Sentencing, *Sentencing Guidelines Implementation Manual* at 167 (7th Ed. 2012).



# Jurisdiction Profile: Pennsylvania

<sup>28</sup> 204 Pa. Code § 303.13 (2017).  
<sup>29</sup> Pa. Comm'n on Sentencing, *Sentencing Guidelines Implementation Manual* at 203 (7th Ed. 2012).  
<sup>30</sup> 204 Pa. Code § 303.11(b)(1) (2017); Pa. Comm'n on Sentencing, *Sentencing Guidelines Implementation Manual* at 203 (7th Ed. 2012).  
<sup>31</sup> 204 Pa. Code § 303.11(b)(1) (2017).  
<sup>32</sup> 204 Pa. Code § 303.11(b)(2) (2017); Pa. Comm'n on Sentencing, *Sentencing Guidelines & Implementation Manual* at 203-04 (7th Ed. 2012).  
<sup>33</sup> 204 Pa. Code § 303.11(b)(2) (2017).  
<sup>34</sup> 204 Pa. Code § 303.11(b)(3) (2017); Pa. Comm'n on Sentencing, *Sentencing Guidelines & Implementation Manual* at 204 (7th Ed. 2012).  
<sup>35</sup> 204 Pa. Code § 303.11(b)(3) (2017).  
<sup>36</sup> 204 Pa. Code § 303.11(b)(4) (2017); Pa. Comm'n on Sentencing, *Sentencing Guidelines & Implementation Manual* at 204 (7th Ed. 2012).  
<sup>37</sup> 204 Pa. Code § 303.11(b)(4) (2017).  
<sup>38</sup> 204 Pa. Code § 303.11(b)(5) (2017); Pa. Comm'n on Sentencing, *Sentencing Guidelines & Implementation Manual* at 204-05 (7th Ed. 2012).  
<sup>39</sup> 204 Pa. Code § 303.11(b)(5) (2017).  
<sup>40</sup> 204 Pa. Code § 303.12(a)(5) (2017).  
<sup>41</sup> 204 Pa. Code § 303.9(f) (2017).  
<sup>42</sup> 204 Pa. Code § 303.12(a) (2017). 204 Pa. Code § 303.12(a)(4) (2017) (the structure of County intermediate punishment programs is dictated by whether the offender is in need of drug and alcohol treatment, and whether the offender has committed certain impaired driving offenses).  
<sup>43</sup> 204 Pa. Code § 303.12(b) (2017). 61 Pa. Cons. Stat. Ann. § 3903 (2017) (eligibility is limited to inmates sentenced to 2-5 years, or inmates sentenced to longer terms who are within two years of completion of the minimum term, and who have not yet reached the age of 40. No inmate whose sentence includes a deadly weapon enhancement or a requirement for sex offender registration is eligible. Certain convictions or prior convictions may also disqualify the offender from eligibility).  
<sup>44</sup> Penn. Commission on Sentencing, *Sentencing Guidelines & Implementation Manual* at 207 (7th Ed. 2012). See generally, 61 Pa. Cons. Stat. Ann. §§ 4101-4108 (2017). 204 Pa. Code § 303.12(c)(1) (2017) (conviction of a drug-related offense constitutes eligibility for purposes of considering state intermediate punishment as an alternative).  
<sup>45</sup> 204 Pa. Code § 303.12(c)(4) (2017).  
<sup>46</sup> 204 Pa. Code § 303.11(b); see Pa. Comm'n on Sentencing, *Sentencing Guidelines & Implementation Manual* at 203-07 (7th Ed. 2012).  
<sup>47</sup> 204 Pa. Code § 303.1(a) (2017). *Com. v. Yuhasz*, 923 A.2d 1111, 1119 (Pa. 2007) (the Pennsylvania Supreme Court has determined that the guidelines are advisory, despite the right to appeal stemming from their misuse).  
<sup>48</sup> 42 Pa. Con. Stat. Ann. § 9781(a) (2017).  
<sup>49</sup> 42 Pa. Con. Stat. Ann. § 9781(c)(3).  
<sup>50</sup> 204 Pa. Code § 303.13(c) (2017).  
<sup>51</sup> See 204 Pa. Code § 303.13 (2017) (specified broader sentencing ranges are provided when the court finds aggravating or mitigating circumstances, but the latter are not defined).

<sup>52</sup> Pa. Comm'n on Sentencing, *Sentencing Guidelines Implementation Manual* at 226 (7th Ed. 2012).  
<sup>53</sup> See 204 Pa. Code § 303.13 (2017).  
<sup>54</sup> Pa. Comm'n on Sentencing, *Sentencing Guidelines Implementation Manual* at 167 (7th Ed. 2012). See also 204 Pa. Code § 303.13 (2017) (the recommended durations shown on the guidelines grid, in the "AGG/MIT" column).  
<sup>55</sup> 61 Pa. Cons. Stat. Ann. § 6137(a)(1) (2017).  
<sup>56</sup> 61 Pa. Cons. Stat. Ann. § 6137 (2017).  
<sup>57</sup> 204 Pa. Code § 303.9(e) (2017).  
<sup>58</sup> 61 Pa. Cons. Stat. Ann. § 6137 (2017); *Com. v. Kleinicke*, 895 A.2d 562, 572 (Pa. Super. Ct. 2006).  
<sup>59</sup> 204 Pa. Code § 303.9(f) (2017).  
<sup>60</sup> 61 Pa. Con. Stat. Ann. § 6137(a)(3) (2017) (stating parole may only be granted after expiration of the minimum term of sentence); 37 Pa. Code § 63.2 (2017) (stating that a parolee shall remain in the legal custody of the Board of Probation and Parole until the expiration of his maximum sentence, or until he is legally discharged).  
<sup>61</sup> 61 Pa. Con. Stat. §§ 4501-12 (2017).  
<sup>62</sup> *State Parole Status and Guidelines*, Pa. Comm'n on Sentencing, <http://pcs.la.psu.edu/guidelines/state-parole> (last visited Jan. 26, 2018); 61 Pa. Con. Stat. Ann. § 6137(a)(1) (2017).  
<sup>63</sup> Pa. Comm'n on Sentencing, *Sentencing Guidelines Implementation Manual* at 173 (7th Ed. 2012).  
<sup>64</sup> Pa. Comm'n on Sentencing, *Sentencing Guidelines Implementation Manual* at 178 (7th Ed. 2012).  
<sup>65</sup> 204 Pa. Code § 303.9(h) (2017).  
<sup>66</sup> 204 Pa. Code § 303.9(h) (2017).  
<sup>67</sup> 204 Pa. Code §§ 303.4-303.8 (2017).  
<sup>68</sup> 204 Pa. Code §§ 303.7, 303.8(g)(1) (2017) (however, summary offenses, local ordinance violations, and certain other minor crimes are never counted).  
<sup>69</sup> 204 Pa. Code § 303.4 (2017).  
<sup>70</sup> 204 Pa. Code § 303.6(c) (2017).  
<sup>71</sup> 204 Pa. Code § 303.4(a) (2017).  
<sup>72</sup> 42 Pa. Con. Stat. Ann. § 9721(a) (2017).  
<sup>73</sup> 204 Pa. Code § 303.2(a) (2017); 204 Pa. Code §§ 303.4-303.8 (2017); see also Pa. Comm'n on Sentencing, *Sentencing Guidelines Implementation Manual* at 119-21 (7th Ed. 2012) (explaining the policy transition from sentencing by transaction to sentencing by judicial proceeding).  
<sup>74</sup> 42 Pa. Con. Stat. Ann. § 9781(c) (2017).  
<sup>75</sup> 204 Pa. Code § 303.1(d) (2017).  
<sup>76</sup> Pa. Comm'n on Sentencing, *Sentencing in Pennsylvania: 2013 Annual Report at Part III* (2014), available at <http://pcs.la.psu.edu/publications-and-research/annual-reports/2013/view>.  
<sup>77</sup> *Access Public Data*, Pa. Comm'n on Sentencing, <http://pcs.la.psu.edu/data/public> (last visited Jan. 26, 2018).  
<sup>78</sup> 204 Pa. Code § 303.1(d) (2017).  
<sup>79</sup> 204 Pa. Code § 303.13(c) (2017).  
<sup>80</sup> 204 Pa. Code § 303.1(d) (2017).