



Frequently Asked Questions Sentencing Guidelines

[The Commission and its Mandates](#)

- What is the Sentencing Commission?
- What are sentencing guidelines?
- Why are sentencing guidelines revised?
- How do you know which edition of the sentencing guidelines to use?
- How are sentencing guidelines used?

[Offense Gravity Score \(OGS\)](#)

- What is an offense gravity score (OGS)?
- Does an increased OGS for ethnic intimidation require a conviction under statute?
- Can an OGS be negotiated?
- How is the OGS determined for marijuana and/or plants based on the demarcations which include both weight and "live plants?"
- Is the OGS for an inchoate offense always the same as the OGS for the object offense?

[Prior Record Score \(PRS\)](#)

- What is a prior record score (PRS)?
- When looking at an offender's criminal history, is a prior "judicial proceeding" the same as "previous transaction?"
- Do prior felony drug convictions contribute to a prior record score of RFEL?
- What is the reason for the juvenile lapsing provision, and why does it not apply to prior adult convictions?
- Is there a requirement for law abiding behavior before juvenile lapsing can occur?
- Can the Commission provide crimes code information from other states for purposes of prior record score calculation?
- If a previous Pennsylvania conviction was misgraded, is the correct grade used in PRS calculation?
- If a previous Pennsylvania conviction appears to have an incorrect grade, how should it be counted in PRS?

[Sentencing Levels](#)

- What is a sentencing level?
- How does Level 2 differ from Level 3?
- When the guidelines recommend total confinement at Level 5, does that mean incarceration in a state or county facility?

[Enhancements](#)

- What is a sentencing guideline enhancement?
- Can a sentencing guideline enhancement be waived or negotiated?
- Can multiple sentencing guideline enhancements be added to a sentence if multiple circumstances are determined to be present?
- Does the deadly weapon have to be discharged (e.g. offender shoots the gun, or stabs the offender with the deadly weapon) in order for the Deadly Weapon Used enhancement to apply?

[Fines and Community Service Recommendations](#)

- Do the sentencing guidelines provide for fines and/or community service recommendations for every offender?
- What if the court chooses not to impose the recommended number of hours of community service or fines – would the sentence be considered a departure from the sentencing guidelines?

[7th Edition and 7th Edition Amendments 1, 2, and 3 Sentencing Guidelines](#)

- Have there been any recent changes to the current sentencing guidelines?
- Are the Amendments to the 7th Edition Sentencing Guidelines significantly different from the sentencing guidelines that became effective December 28, 2012?



Frequently Asked Questions Sentencing Guidelines

County Intermediate Punishment (CIP)

- What is County Intermediate Punishment (CIP)?
- How does the court impose county intermediate punishment, either as a stand-alone sentence or in conjunction with incarceration?
- What remedies are in place for a violation of county intermediate punishment sentences? Who handles such violations?
- How do some of the programs listed as restorative sanctions address victim needs? What are some examples of such programs for non-violent offenders?
- Are there requirements for mental health facilities which function as restrictive intermediate punishment programs?
- Are assessments/evaluations required for these defendants?

State Intermediate Punishment (SIP)

- What is State Intermediate Punishment (SIP)?
- Once an individual is sentenced to SIP, can the court award credit for time served for any time spent in custody in the county jail?
- Can a court sentence an offender to a longer period of time than the standard 24 months for SIP?
- Who supervises the SIP offender during the 24-month period?
- Who would supervise a consecutive term of probation if the court orders to follow the SIP program?
- Have there been any recent changes to the SIP statute?

Drug Violations

- Does the same penalty apply for forgery and misrepresentation to a doctor under 35 P.S. §780-113(a)(12)?
- For second and subsequent drug offenses, why is there no doubling of the guideline recommendation to reflect the doubling of the maximum as provided in statute?

Driving Under the Influence (DUI)

- When calculating a Prior Record Score (PRS), do I need to limit prior criminal history information to include only prior convictions within the past 10 years when the current conviction is a DUI?
- When the current conviction offense is a DUI, do I factor in a prior DUI offense that resulted being accepted into ARD?

Miscellaneous

- Do Magisterial District Judges (MDJ) submit sentencing guidelines after imposing a sentence?
- Would a RRRRI (Recidivism Risk Reduction Incentive) minimum apply to an offender receiving a sentence to be served in a county jail?
- What factors may be considered for aggravating/mitigating?
- Who has the burden of proof for guideline-related determinations? Is burden 'reasonable doubt' or is it 'preponderance'?
- Can a judge grant early parole to an inmate who is serving a county jail sentence?



Frequently Asked Questions Sentencing Guidelines

The Commission and its Mandates

What it is the Sentencing Commission?

The Pennsylvania Commission on Sentencing was created by the General Assembly in 1978 for the primary purpose of creating a consistent and rational statewide sentencing policy that would increase sentencing severity for serious crimes and promote fairer and more uniform sentencing practices. The Commission is comprised of four judges appointed by the Chief Justice, two senators (one from each caucus) appointed by the Senate Pro Tempore, two representatives (one from each caucus) appointed by the Speaker of the House of Representatives, and a district attorney, defense attorney, and law professor appointed by the Governor. A term is two years and members serve until replaced.

What are sentencing guidelines?

Sentencing guidelines promote sentencing equity and fairness by providing every judge with a common reference point for sentencing similar offenders convicted of similar crimes. The legislative mandate to adopt guidelines is located under 42 Pa.C.S.A. §2154. Sentencing guidelines must be considered by the court in determining the appropriate sentence for offenders who plead guilty or nolo contendere or who were found guilty of felonies and misdemeanors.

Why are Sentencing Guidelines revised?

The Commission reviews and revises sentencing guidelines as needed. Modifications may be driven by newly enacted statutes that call for sentencing enhancements, create new offenses, or change grading of existing offenses. They may be a result of new sentencing alternatives or policy shifts.

How do you know which edition of the sentencing guidelines to use?

In order to use the correct set of guidelines, the date(s) of the offense(s) needs to be known. See the [effective date of sentencing guideline chart](#). Sentencing guidelines apply to all offenses committed on or after the effective date of the guidelines. Amendments to the guidelines shall apply to all offenses committed on or after the date the amendment becomes part of the guidelines.

How are sentencing guidelines used?

The correct Offense Gravity Score (OGS) is determined and the Prior Record Score (PRS) must be computed for each conviction offense for all offenders when calculating sentencing ranges. The sentence recommendations are found in the Basic Sentencing Matrix (§303.16).

The Basic Sentencing Matrix specifies a range of sentences that shall be considered by the court for each combination of OGS and PRS. The OGS measures the seriousness of the current conviction, and it is the primary determinate of the guideline sentence ranges. OGS ranges from 1 (lowest) to 14 (highest). The OGS assignments are located in §303.3. The PRS is based on the type and number of prior convictions and prior juvenile adjudications. There are eight PRS categories: point-based categories of 0 through 5, Repeat Felony 1 and Felony 2 Offender (RFEL), and Repeat Violent Offender (REVOC). The PRS assignments are located in 303.4 through 303.8.



Frequently Asked Questions Sentencing Guidelines

Offense Gravity Score (OGS)

What is an offense gravity score (OGS)?

The OGS measures the seriousness of the current conviction, and it is the primary determinate of the suggested guideline sentencing ranges. OGS assignments range from 1 (lowest) to 14 (highest) (§303.15). An OGS assignment of 15 is designated for offenders under age 18 convicted of 1st or 2nd degree murder (§303.16(b)).

Does an increased OGS for ethnic intimidation require a conviction under statute?

Guidelines are conviction-based recommendations. Assignment of an OGS is based on the specifics of the conviction offense.

In the case of ethnic intimidation, the definition in 18 Pa.C.S. §2710(a) requires that a person commit one of several listed offenses, and do so "...with malicious intention toward the race, color, religion, or national origin, of another individual or group of individuals...". Based on this definition, a finding must first be made as to whether the person did in fact "commit" one of the listed offenses [i.e.--conviction]. A conviction for ethnic intimidation, and the subsequent increased OGS, requires conviction of one of the underlying offenses.

Can an OGS be negotiated?

No. Offense Gravity Scores are assigned by the Commission. When there is a dispute about which OGS the Commission has assigned to a particular offense, the court must decide which OGS is correct.

How is the OGS determined for marijuana and/or plants based on the demarcations which include both weight and "live plants?"

The demarcation of marijuana plants is based on that found in the mandatory provision in 18 Pa.C.S. §7508. Under this statute, the categories begin at 10 or more "live" marijuana plants; in those cases where the number of live plants does not equal 10 plants, the statute provides a definition and procedure for weighing "growing" plants. The weight includes the whole plant and the root system, but does not include any substance not a part of the growing plant.

Is the OGS for an inchoate offense always the same as the OGS for the object offense?

No. The Sentencing Commission's OGS policy regarding inchoate offenses is slightly different than statute. The OGS for attempt, solicitation or conspiracy to any felony 1 offense carries an OGS one point less than the object offense; an inchoate to a felony 2 or less serious offense is assigned the same OGS as the object offense. One exception to this rule is for inchoate murder, in which the OGS is 14 (if there is serious bodily injury) or OGS 13 (if no serious bodily injury).



Frequently Asked Questions Sentencing Guidelines

Prior Record Score (PRS)

What is a prior record score (PRS)?

The PRS measures the type and number of prior convictions and prior juvenile adjudications of an offender. There are eight PRS categories: point-based categories of 0 through 5, Repeat Felony 1 and Felony 2 Offender (RFEL), and Repeat Violent Offender (REVOC). The PRS assignments are located in 303.4 through 303.8.

When looking at an offender's criminal history, is a prior "judicial proceeding" the same as "previous transaction?"

No. The Commission's earlier policy of considering only the most serious offense of a previous transaction was changed beginning with the 6th *Edition Sentencing Guidelines* to prior "judicial proceeding." This policy remains unchanged in 7th *Edition Sentencing Guidelines* and forward.

A judicial proceeding is a proceeding in which all offenses for which the offender has been convicted are before the court for sentencing at the same time. A judicial proceeding may include multiple offenses, multiple transactions, multiple OTNs, or multiple docket numbers.

Do prior felony drug convictions contribute to a prior record score of RFEL?

No. The RFEL category is restricted to those defendants with six or more points based exclusively for felony 1 and felony 2 offenses. Felony drug offenses, although assigned two points in the prior record score, are not classified as F1 or F2 offenses; as a result, they are not included in the RFEL category.

RFEL and REVOC were established as categories reserved for the most serious felony offenders and the most serious repeat offenders. Both categories provide incapacitation sentence recommendations for offenders who have demonstrated continued dangerousness.

What is the reason for the juvenile lapsing provision, and why does it not apply to prior adult convictions?

Lapsing of prior records has been a topic of extensive research and debate during the guidelines revision process. Consideration was given to both an adult and juvenile lapsing provision. Fundamental to it was the underlying purpose of the prior record score: a measure of increased culpability and predictor of future criminal behavior. The usefulness of this measure diminishes as the offender remains crime free.

Support for a lapsing provision was evidenced by both survey responses and sentencing data which included stale prior record as a reason for mitigated or departure sentences. Also, the Commission considered the lack of availability or access to accurate prior records, and the disparity in sentencing caused by the relative ease or difficulty counties faced in accurately scoring the prior record score. With juveniles in particular, the Commission noted the purpose of the juvenile court as substantively different of that of criminal court.

The Commission has never adopted an adult lapsing provision due to strong opposition and little or no support from the public. The juvenile lapsing did find support, and the guidelines reflect a juvenile lapsing provision beginning at age 28.

Is there a requirement for law abiding behavior before juvenile lapsing can occur?

Yes. Under the 6th *Edition, Revised Sentencing Guidelines* (effective 12/5/2008), the Commission included a requirement for a ten-year period of law-abiding behavior in order for lapsing to occur. Crime free behavior is defined as any summary offense and/or one misdemeanor offense with a statutory maximum of one year or less. This policy remains unchanged in 7th *Edition Sentencing Guidelines* and forward.

Can the Commission provide statutes from other states for purposes of prior record score calculation?

No. In order to accurately determine this score, the statute of conviction in the other jurisdiction is compared to current Pennsylvania statutes, and the prior record score is based on the points assigned to the current equivalent statute in Pennsylvania.

If a previous Pennsylvania conviction was misgraded, is the correct grade used in PRS calculation?

Yes, but only if the prior misgraded offense never existed in statute for that particular offense. Commission policy developed under the 5th *Edition Sentencing Guidelines* requires that the points assignment to be based on the current



Frequently Asked Questions Sentencing Guidelines

PA equivalent offense. The Commission thought it inappropriate to legitimize such an error by including a non-existent offense/grade in the prior record score.

If a previous Pennsylvania conviction appears to have an incorrect grade, how should it be counted in PRS?

In this situation, the previously graded conviction actually existed in statute for that particular offense. The Commission's policy requires use of the grade provided, even if it appears incorrect, since the trial court was in the best position to determine the appropriate grade and the court's decision should not be undermined.



Frequently Asked Questions Sentencing Guidelines

Sentencing Levels

What is a sentencing level?

The sentencing guidelines provide sanctions proportionate to the severity of the crime and the severity of the prior conviction record. It establishes a sentencing system with a primary focus on retribution, but includes recommendations that allow for sentencing purposes including rehabilitation, deterrence, and incapacitation. To provide sentencing options consistent with the intent of the sentencing guidelines, the Commission has established five sentencing levels. Each level targets certain types of offenders, and describes ranges of sentencing options available to the court. See §303.11

The specific purposes of the sentencing recommendations shift with each level of the guidelines. The levels approximate a continuum of sentencing recommendations from restorative sanctions (fines, probation) at Level 1 to total confinement in a state facility at Level 5.

How does Level 2 differ from Level 3?

Level 3 always provides a primary recommendation of incarceration, but permits the court to consider other sentencing options, including county intermediate punishment with the restrictive intermediate punishments in lieu of the recommended period of incarceration following an assessment/evaluation for drug dependency. Restorative sanctions are not included as sentencing options at Level 3 unless used in conjunction with a more restrictive sentencing option. In Level 2, the sentencing options available to the court include incarceration in a county facility, county intermediate punishment, and restorative sanctions; specific options permitted are based on the standard range indicated in the cell. The court is encouraged to give greater consideration to the exclusive use of restorative sanctions as a total sentence.

When the guidelines recommend total confinement (state-sentence) at Level 5, does that mean incarceration in a state or county facility?

The system of levels within the guidelines provides a preliminary targeting of offenders, and based on this provides recommendations which maximize the use of correctional resources via a continuum of sentencing options. While the place of confinement remains at the discretion of the court, the Commission identifies those at Level 5 as the most serious offenders. As a result, the Commission has provided a Level 5 standard range recommendation of total confinement for a period of time which places the offender in the custody of the DOC and the authority for parole and subsequent supervision with the Pennsylvania Board of Probation and Parole.



Frequently Asked Questions Sentencing Guidelines

Enhancements

What is a sentencing guideline enhancement?

A sentencing enhancement increases the recommended sentencing range based on specific elements determined to be present by the court. The Commission enhances sentencing ranges in one of two ways: 1) increase in OGS assignment; or 2) add additional months to both the lower and upper sentencing ranges. See §303.10

Can a sentencing guideline enhancement be waived or negotiated?

No. When the factual circumstances of either enhancement apply, the court is required to consider the applicable enhanced sentence recommendation. The court may impose a sentence with departs from the guidelines, but only after it considers the correct enhanced ranges. When the court departs from the guidelines, it must specify its reasons for doing so.

Can multiple sentencing guideline enhancements be added to a sentence if multiple circumstances are determined to be present?

Yes. Multiple enhancements can be applied when applicable. One exception however, is for Sexual Abuse of Children enhancement. In applying this enhancement when both aggravating circumstances (nature and character of abuse depicted and number of images possessed) are present, the court shall consider the enhancement with the higher sentence recommendation.

Does the deadly weapon have to be discharged (e.g. offender shoots the gun, or stabs the offender with the deadly weapon) in order for the Deadly Weapon Used enhancement to apply?

No. The sentencing guidelines Deadly Weapon Enhancement policy defines “use” when the offender threatens or injures another individual with a firearm (loaded or unloaded); dangerous weapon; or any device implement, or instrumentality capable of producing death or serious bodily injury. Therefore, if the deadly weapon is used in a threatening manner, the Deadly Weapon Used Enhancement would be the correct starting point for the court.



Frequently Asked Questions Sentencing Guidelines

Fines and Community Service Recommendations

Do the sentencing guidelines provide for fines and/or community service recommendations for every offender?

No. Under the 6th Edition, *Revised Sentencing Guidelines* (effective December 5, 2008), the Commission added provisions to define fines and community service ranges only for sentences at Level 1 and Level 2 of the sentencing guidelines. These recommendations should be considered by the court when ordering fines or community service as a Restorative Sanction without confinement.

What if the court chooses not to impose the recommended number of hours of community service or fines – would the sentence be considered a departure from the sentencing guidelines?

No. The lack of a community service component on a sentence of Probation or the no fine imposed would not impact conformity to the sentencing guidelines.



Frequently Asked Questions Sentencing Guidelines

7th Edition and 7th Edition Amendments 1, 2, and 3 Sentencing Guidelines

Have there been any recent changes to the current sentencing guidelines?

Yes. The 7th Edition Sentencing Guidelines became effective December 28, 2012 for crimes committed on or after that date. The Commission has since made three amendments to those guidelines. The first amendment became effective September 27, 2013 (for crimes committed on or after). The second amendment became effective September 26, 2014 (for crimes committed on or after). Amendment 3 was effective September 25, 2015. All updates can be found on the Commission's website.

Are the Amendments to the 7th Edition Sentencing Guidelines significantly different from the sentencing guidelines that became effective December 28, 2012?

No, but several important changes were made to meet legislative mandates.

In 7th Edition Amendment 1 Sentencing Guidelines (effective September 27, 2013) a new sentencing provision and new enhancements were added.

Act 204 of 2012 established mandatory minimum sentences for offenders younger than age 18 convicted of murder in the 1st or 2nd degree, including 1st or 2nd degree murder of unborn child and 1st or 2nd degree murder of law enforcement officer, who are convicted after June 24, 2012. This Act brings Pennsylvania into compliance with the U.S. Supreme Court ruling that life without parole cannot be the only sentencing option when an offender is younger than age 18 at the time of the crime.

The Commission assigned an offense gravity score (OGS) of 15 for 1st and 2nd Degree Murder when committed by offenders under age 18. In order to address the new OGS 15 and its specific recommendations, a new sentencing matrix for offender under age 18 convicted of 1st or 2nd Degree Murder (§303.16(b)) was created.

Also included in the 7th Edition Amendment 1, the Commission also added three new enhancements: Criminal Gang Enhancement, Third Degree Murder of a Victim Younger than Age 13 Enhancement and Accident Involving Death or Personal Injury Failure to Stop Enhancement, when it results in death. The Criminal Gang Enhancement applies to a crime of violence or possession with intent to deliver when the offense is committed in association with a criminal gang. The Third Degree Murder of a Victim Younger than Age 13 enhancement adds twelve months to the lower limit of the standard range and the statutory limit becomes the upper limit of the standard range. The Commission enhanced the offense of Accident Involving Death or Personal Injury by assigning an OGS 9 if the victim dies as a result of the violation.

The entire offense listing was replaced with a reformatted offense listing to better correlate the Commission's listing of offenses with the Administrative Office of Pennsylvania's Courts' offense listing.

The 7th Edition Amendment 2 Sentencing Guidelines (effective September 26, 2014) contain minor changes. The Commission added two new enhancements: Sexual Abuse of Children Enhancement and Arson Enhancement. The Commission based the Sexual Abuse of Children Enhancement on certain factors including: the number of images; and the nature and character of the abuse depicted. The Arson Enhancement would apply under certain circumstances including: the number of persons present; the value of property damaged; or use of explosive or incendiary device.

The 7th Edition Amendment 3 Sentencing Guidelines (effective September 25, 2015) also contains minor changes. The Commission added a new enhancement: Human Trafficking Enhancement. The Enhancement is based on certain factors which include trafficking of individuals, involuntary servitude, and the age of the victim.



Frequently Asked Questions Sentencing Guidelines

County Intermediate Punishment (CIP)

What is County Intermediate Punishment (CIP)?

The County Intermediate Punishment Act was enacted by the legislature in December 1990 (Act 1990-193). Related legislation, Act 1990-201, amended the Judicial Code to provide judges with the authority to sentence offenders to county intermediate punishment.

CIP primarily targets offenders who would otherwise be serving a sentence of confinement in a county facility to a community based sentence. CIP is used in lieu of a sentence of partial or total confinement. In order to incorporate CIP into the sentencing levels, the Commission has classified CIP as restrictive (i.e., work release, electronic monitoring, residential treatment) and restorative (i.e., probation supervision, community service, drug testing) sanction programs. Sentence recommendations which include an option of CIP for certain offenders are designated in the guideline matrices. See §303.12(a)

How does the court order county intermediate punishment, either as a stand-alone sentence or in conjunction with incarceration?

Statute (42 Pa.C.S. §9763) provides the general rules and eligibility/ineligibility definition for a sentence of county intermediate punishment. The Commission on Sentencing has always considered a sentence of county intermediate punishment to be a flat sentence. This policy is further supported by the absence of any language requiring a minimum sentence as found in §9755 [sentence of partial confinement] or §9756 [sentence of total confinement]. 42 Pa.C.S. §9763 [sentence of county intermediate punishment] does provide special rules for the appropriate application of a sentence of county intermediate punishment, including the following: §9763(a) the court may order the defendant to serve a portion of the sentence under section 9755 (relating to sentence of partial confinement) or 9756 (relating to sentence of total confinement) and to serve a portion in a county intermediate punishment program or a combination of county intermediate punishment programs. This section is consistent with §9721 [sentencing generally], under which the court may consider and select one or more sentencing alternatives and may impose them consecutively or concurrently.

However, it is clear in §9763(a) that any portion of the sentence which includes partial or total confinement must be served under the applicable rules, each of which includes a minimum/maximum provision. If the court is considering some kind of incarcerative sentence to be used with community based programs, the Sentencing Commission recommends one of the following options: [1] the court may sentence the defendant to a flat period of incarceration for a period of 90 days or less as permitted under §9755(h)(2) or 9756(c.1) but only when a consecutive term of county intermediate punishment is also imposed. The second component of county intermediate punishment must include one or more RIP programs with the balance on restorative sanctions. The combination of both flat term of confinement plus the flat CIP portion may not exceed the statutory maximum for the grade of the conviction offense. [2] The court may sentence the defendant to a flat period of county intermediate punishment involving a combination of authorized intermediate punishment programs, the first of which may begin with work release utilized as a RIP, with a step-down to less restrictive intermediate punishment programs over the course of the sentence.

What remedies are in place for violations of county intermediate punishment sentences? Who handles such violations?

42 Pa.C.S. §9773 provides procedures for the modification or revocation of a county intermediate punishment sentence. These procedures are based on those available for modification or revocation of an order of probation, and require a preponderance of the evidence. All original sentence options are available to the court for violation of county intermediate punishment sentences. Due to the unique circumstances that may be associated with the violations, the Commission does not provide a recommendation regarding such sentences. Policies and procedures guiding the operation of the county intermediate punishment program should include assignment of responsibility for processing violations; such procedures should be approved by the prison/county intermediate punishment board and the court. The agency charged with program supervision generally handles violation.



Frequently Asked Questions Sentencing Guidelines

How do some of the programs listed as restorative sanctions address victim needs? What are some examples of such programs for non-violent offenders?

On the surface, some restorative sanction programs do not seem to address victim needs as required by definition. While not the single purpose of sentencing at these levels, the intent of the Commission in recommending non-confinement sentencing alternatives (i.e. fine, restitution, GWFP, probation) at Level 1 and Level 2 is to encourage courts to require defendants, as a condition of any restorative sanction, to make amends for damages resulting from the criminal activity. This focus on victim restoration differs from the focus at other levels, where punishment is a primary consideration.

Are there requirements for mental health facilities which function as restrictive intermediate punishment programs?

No.

Are assessments/evaluations required for these defendants?

No. The sentencing guidelines do not require specific assessments and/or evaluations for mental health services, although individual county plans may require this as a means of maximizing program utilization.



Frequently Asked Questions Sentencing Guidelines

State Intermediate Punishment (SIP)

What is State Intermediate Punishment (SIP)?

State Intermediate Punishment (SIP) targets drug-dependent offenders who otherwise would be serving a sentence of confinement in a state facility. Prior to sentencing, and upon motion by the prosecutor, the court commits the offender to the Department of Corrections (DOC) for an evaluation to determine if the offender is in need of drug and alcohol addiction treatment and appropriate for participation in the program.

If the DOC recommends the offender for participation and the prosecutor does not object, the court may sentence the offender to the 24 month SIP sentence. The court may impose a consecutive period of probation. The total sentence may not exceed the maximum term for which the offender could otherwise be sentenced.

The 24 months of SIP is comprised of: a minimum of seven months in a state correctional institution, of which not less than four months must be spent in an institutional therapeutic community; a minimum of two months in a community-based therapeutic community; a minimum of six months in treatment through an outpatient treatment facility; and a period of supervised reintegration into the community for the balance of the sentence. See §303.12(c).

61 Pa.C.S. Chapter 41 governs the operation of and eligibility for SIP.

Once an individual is sentenced to SIP, can the court award credit for time served for any time spent in custody in the county jail?

No. The SIP statute permits only time during which the offender is being evaluated by the Department of Corrections (DOC) to be credited toward the 24-month sentence.

Can a court sentence an offender to a longer period of time than the standard 24 months for SIP?

No. The amount of the SIP sentence is limited to 24 months. However, the court is not prohibited from sentencing an offender to a consecutive period of probation. The total sentence may not exceed the maximum term for which the offender could otherwise be sentenced.

Who supervises the SIP offender during the 24-month period?

The entire portion of the SIP sentence is supervised by the DOC. A participant who successfully completes treatment through an outpatient addiction treatment facility and any additional required programming will begin supervised reintegration into the community for the remaining portion of his or her sentence. The participant may continue to or be permitted to begin to reside in a community corrections center, group home, or an approved transitional residence during the period of supervised reintegration into the community.

Who would supervise a consecutive term of probation if the court orders to follow the SIP program? Typically, county probation would supervise a probation term that is consecutive to a term of SIP. The court has the option to request "special probation" to be supervised by the Pennsylvania Board of Probation and Parole (PBPP).

Have there been any recent changes to the SIP statute?

Act 2008-81 (effective 11/24/2008) allows the DOC to request an eligible state prisoner be considered for SIP. It still requires the prosecutor's consent to the modification/resentence. The resentencing must occur within 365 days of the placement in DOC custody.

Act 2012-122, (effective 9/2012) permits the prosecuting attorney to advise the court that the Commonwealth has elected to waive the eligibility requirements if the victim has been given notice of the prosecutor's intent to waive eligibility and an opportunity to be heard on the issue. Additionally, the offender no longer has to agree to SIP.

Part of Act 2012-122 (effective July 2013) reflects a new ten year look back for convictions on offenses making a person ineligible for SIP. Additionally, a person who has been convicted or adjudicated delinquent of a crime requiring registration under 42 Pa.C.S. Chapter 97, subchapter H (relating to registration of sexual offenders) is ineligible for SIP.



Frequently Asked Questions Sentencing Guidelines

Drug Violations

Does the same penalty apply for forgery and misrepresentation to a doctor under 35 P.S. §780-113(a)(12)?

The sentencing recommendations are based on the offense of conviction. Therefore, a person convicted under (a)(12) for either misrepresentation or forgery would be treated the same. However, if the forgery conviction was based on a charge under another section [e.g. -- 63 P.S. §390-8], the recommended sentence would be related to the penalties that apply to that section.

For second and subsequent drug offenses, why is there no doubling of the guideline recommendation to reflect the doubling of the maximum as provided in statute?

The guidelines have been developed with some consideration of proportionality: primary consideration of the current offense, and secondary consideration of the previous criminal convictions. Through this structure, previous drug offenses are taken into account systematically via the prior record score, just as occurs with other criminal offenses. However, a number of provisions are available in both Pennsylvania and federal statutes to address certain serious and repeat offenses [drug offenses, DUI, etc.].



Frequently Asked Questions Sentencing Guidelines

Driving Under the Influence (DUI)

When calculating a Prior Record Score (PRS), do I need to limit prior criminal history information to include only prior convictions within the past 10 years when the current conviction is a DUI?

No. The Sentencing Commission's PRS policy requires consideration of an offender's entire lifetime of prior convictions for possible point scoring. The consideration of a 10-year look back period is a statutory requirement when the current conviction is a DUI and this look back period is only used to determine: 1) the grading of the current DUI and 2) the mandatory minimum penalty of the current DUI.

An amendment to 75 Pa.C.S.A. §3806 changes the definition of prior offenses to include convictions whether or not sentence has been imposed for violations within 10 years before sentencing on the present violation. These changes apply to individuals sentenced on or after December 26, 2014.

When the current conviction offense is a DUI, do I factor in a prior DUI offense that resulted being accepted into ARD?

Yes and No.

No, as to the Prior Record Score (PRS) calculation. The Sentencing Commission's PRS policy clearly states that prior ARDs are never scored in a PRS calculation.

Yes, as to the grade and mandatory penalty. Under 75 Pa.C.S.A. §3806(a), the rule used to determine "prior offenses" includes a ". . . prior conviction, adjudication of delinquency, juvenile consent decree, and acceptance of ARD. . ." which will impact the grading and penalty of the current DUI.



Frequently Asked Questions Sentencing Guidelines

Miscellaneous

Do Magisterial District Judges (MDJ) have to submit sentencing guidelines after imposing sentence?

No. The Commission only requires courts of record to submit the sentencing guidelines electronically to the Pennsylvania Commission on Sentencing (via SGS Web). Therefore, MDJs are not required to submit their sentences to the Sentencing Commission.

Statute requires consideration of sentencing guidelines for the sentencing of all misdemeanor and felony convictions. Therefore, all sentencing for such offenses should consider the guidelines.

Would a RRR (Recidivism Risk Reduction Incentive) minimum apply to an offender receiving a confinement sentence to be served in a county jail?

No. Only offenders who are being committed to the custody of the PA Department of Corrections would be considered for a RRR minimum.

What factors may be considered for aggravating/mitigating?

The court may consider any factor which is legally cognizable, except a factor which is included in determining the offense gravity score, prior record score, or enhancement.

Who has the burden of proof for guideline-related determinations? Is burden 'reasonable doubt' or is it 'preponderance?'

In general terms, the court is required to make a determination based on a preponderance of the evidence, with the burden placed on the prosecution. An exception to this rule is related to calculation of the prior record score, in which the burden of alleging invalid prior convictions rests on the defense.

Can a judge grant early parole to an inmate who is serving a county jail sentence?

No. County inmates cannot be paroled prior to the expiration of their minimum sentence unless at sentencing, the judge made the defendant eligible for a "reentry plan" (effective 11/24/2008, Act 2008-81).