

GENERAL ASSEMBLY

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

COMMISSION ON SENTENCING

PART VIII. CRIMINAL SENTENCING

[204 PA. CODE CH. 303a]

Proposed 8th Edition Sentencing Guidelines

[53 Pa.B. 125]
[Saturday, January 7, 2023]

The Pennsylvania Commission on Sentencing hereby publishes for public comment a proposed 8th Edition Sentencing Guidelines, 204 Pa. Code §§ 303a.1—303a.8, to replace the 7th Edition Sentencing Guidelines, 204 Pa. Code §§ 303.1—303.18(c), for offenses committed on or after January 1, 2024, the effective date of the proposed 8th Edition Sentencing Guidelines. The proposed 8th Edition Sentencing Guidelines are set forth in Annex A.

The Commission adopted the 7th Edition Sentencing Guidelines on September 13, 2012, and published the same in the *Pennsylvania Bulletin* on September 29, 2012 (42 Pa.B. 6072). Following numerous amendments, the Commission most recently adopted Amendment 6 of the 7th Edition Sentencing Guidelines on September 10, 2020, and published the same in the *Pennsylvania Bulletin* on September 26, 2020 (50 Pa.B. 5341). All editions and amendments to sentencing guidelines remain in effect for offenses committed on or after the effective date of the edition or amendment, but do not apply to offenses committed on or after the effective date of subsequent editions or amendments to the sentencing guidelines.

On December 8, 2022, the Commission approved for the purpose of public comment proposed 8th Edition Sentencing Guidelines. Due to extensive amendments, the Commission proposes adding a new Chapter 303a, applicable to offenses committed on or after January 1, 2024, to replace the 7th Edition Sentencing Guidelines, Amendment 6. Proposed amendments include substantive changes to the assignment of offense gravity scores, the determination of the prior record score, and the targeting of sentence recommendations. The proposed amendments also address editorial changes, including to provide a summary of general provisions, to improve the clarity of the language, and to change the grouping and sequencing of various provisions.

In accordance with 42 Pa.C.S. § 2155 (relating to publication of guidelines for sentencing, resentencing and parole, risk assessment instrument and recommitment ranges following revocation), the Commission shall publish in the *Pennsylvania Bulletin* the proposed sentencing guidelines and hold public hearings not earlier than 30 days and not later than 60 days thereafter to afford an opportunity for the following persons and organizations to testify:

Pennsylvania District Attorneys Association
Chiefs of Police Associations
Fraternal Order of Police
Public Defenders Organization
Law School faculty members
Pennsylvania Parole Board
Pennsylvania Department of Corrections
Pennsylvania Bar Association
Pennsylvania Wardens Association
Pennsylvania Association on Probation, Parole and Corrections
Pennsylvania Conference of State Trial Judges
Any other interested person or organization

The Commission has scheduled the following hearings to receive public comment on the proposed sentencing guidelines:

Justice Juanita Kidd Stout Center for Criminal Justice
Courtroom 507
1301 Filbert Street
Philadelphia, PA
Wednesday, February 8, 2023, at 1:30 p.m.

Northampton County Courthouse
Courtroom 1
669 Washington Street
Easton, PA
Friday, February 17, 2023, at 10:00 a.m.

Duquesne University Thomas R. Kline School of Law
208 Hanley Hall
900 Locust Street
Pittsburgh, PA
Wednesday, February 22, 2023, at 1:30 p.m.

Pennsylvania Department of Corrections (remote hearing)
Registration open to the public; testimony limited to incarcerated individuals
Zoom Webinar (registration for public access):
<https://bit.ly/DOCPubHrng2023Feb27>
Monday, February 27, 2023, at 10:00 a.m.

Erie County Courthouse
Courtroom D-214
140 West 6th Street
Erie, PA
Thursday, March 2, 2023, at 10:00 a.m.

K. Leroy Irvis Office Building (hybrid hearing)
Room 523
450 Commonwealth Avenue
Harrisburg, PA
Zoom Webinar (registration for public access):
<https://bit.ly/PCSPubHrng2023March8>
Wednesday, March 8, 2023, at 9:00 a.m.

Those wishing to attend or testify at Zoom Webinar hearings may register at the link provided. Those wishing to testify in person may register by contacting the Commission (Cathy Dittman—814 863-5729, cwd2@psu.edu).

Persons or organizations wishing to testify in-person or via Zoom Webinar are asked to register and provide an electronic copy of any testimony at least five business days prior to the hearing. Written comments from persons or organizations not wishing to testify should be received by the Commission at least five business days before the last-scheduled public hearing. Forward all testimony and documents to Cathy Dittman (cwd2@psu.edu).

JUDGE TAMARA R. BERNSTEIN,
Chair

Commentary on Annex A

On January 22, 2022, the Commission published a working draft of sentencing guidelines proposals in the *Pennsylvania Bulletin* (52 Pa.B. 583) and held six public hearings. The working draft was developed following a comprehensive review of the sentencing guidelines, which began in 2014, and considered recommendations from the following:

- Strategic Planning Work Group (SPWG, 2014—2016)
- Model Penal Code: Sentencing (MPCS, 2001—2017)
- Justice Reinvestment Initiative (JRI-II, 2016—2019)
- Academic Review Panel (ARP, 2020-2021)

As noted in the publication of the working draft, the comprehensive review provided an opportunity to study current practices and research best practices; to consider approaches to streamline, automate, and update the sentencing guidelines; to promote greater certainty in sentencing and more efficient use of resources and programs; and to harmonize the sentencing guidelines with amended statutes and with other Commission mandates, including the sentence risk assessment instrument, re-sentencing guidelines, parole guidelines, and recommitment ranges. The working draft proposals suggested restructuring of the sentencing guidelines by providing more targeted sentence recommendations, redirecting the primary focus of the recommendations on factors associated with the conviction offense, and reducing the impact of the prior record.

During the public hearings, the Commission heard from over thirty agencies, associations, and individuals, including incarcerated individuals at four state correctional institutions. Many of those testifying supported the concepts and the approach outlined in the working draft, with most identifying areas of concern or providing suggestions for improvement, and most requesting additional detail.

Following the hearings, Commission staff met with numerous stakeholder groups to further discuss the proposals and review additional recommendations, including the Pennsylvania Conference of State Trial Judges, Pennsylvania District Attorneys Association, Public Defender Association of Pennsylvania, and the Pennsylvania Office of Victim Advocate; presented information during the Pennsylvania Bar Institute Criminal Law Symposium; and held regional meetings in Jefferson, Washington, and Tioga counties. During its quarterly meetings and several special policy meetings, the Commission prepared the proposed 8th Edition Sentencing Guidelines found in Annex A.

The proposed 8th Edition Sentencing Guidelines replace the current sentencing guidelines for offenses committed on or after January 1, 2024. If adopted, the 8th Edition Sentencing Guidelines will be added as a new chapter in the *Pennsylvania Code*, Chapter 303a, with earlier sentencing guidelines reserved in Chapter 303. Consistent with the working draft, the proposed 8th Edition Sentencing Guidelines:

- Recalibrate and expand the number of offense gravity score categories, from 14 general categories to 30 general categories, with an additional eight categories established for the three degrees of murder. The restructured offense gravity score categories are intended to provide more targeted recommendations and more uniform and proportional increases between categories.
- Rebuild the prior record score, reducing the number of categories from eight to five and focusing on the severity of the most serious prior offense and the number of prior offenses of equal seriousness; and reduce the overall impact of the prior record score for less serious offenders, by lowering sentence recommendations linked to criminal history, and by expanding lapsing provisions to include the removal of certain prior convictions.
- Streamline the application of enhancements, by using standardized adjustments to offense gravity score assignments to address the nearly twenty statutes and over 50 sentence factors considered; and restructure the offense gravity score assignments for DUI and BUI to address both the mandatory minimum sentencing requirements and the grade of the offense.
- Promote greater consideration of the aggregate sentence, whether confinement or probation, the use of clinical assessments and evaluations, and the programs and treatment alternatives available through correctional institutions and in the community.

Provided below is a description of each of the new sections of the proposed sentencing guidelines, with reference to similar sections contained in the current sentencing guidelines:

Section 303a.1. Preliminary provisions.

This is a new section that includes: the statutory authorization to adopt guidelines for sentencing, probation, restrictive conditions, fines, and community service; a new list of definitions of words and phrases used in the sentencing guidelines; a list of dispositions authorized by statute, also referred to as sentencing alternatives; and a list of sentencing and correctional programs authorized by statute. The authorized dispositions are found in part in § 303.9 of the current sentencing guidelines; the authorized programs are found in § 303.12 of the current sentencing guidelines.

Section 303a.2. Guideline sentencing standards.

This section addresses general provisions, procedures at sentencing, and the reporting of information to the Commission, and is substantially similar to §§ 303.1 and 303.2 of the current sentencing guidelines. A new table has been created to provide a listing of the editions of and amendments to the sentencing guidelines, and corresponding effective dates (see Table A).

Section 303a.3. Offense gravity score.

This section addresses policies related to the assignment of offense gravity scores, including assignments for enhancements and for mandatory minimum sentencing provisions. The general provisions are substantially similar to § 303.3 of the current sentencing guidelines, but as noted previously, increases the number of offense gravity score categories. The enhancement provisions are substantially similar to § 303.10 of the current sentencing guidelines, although OGS adjustments replace various other methods to enhance sentences. The mandatory sentencing provisions are substantially similar to § 303.9 of the current sentencing guidelines, although the OGS assignments for BUI and DUI have been updated to reflect recent legislative amendments and greater reliance on the mandatory requirements as the basis for OGS assignments. Three new OGS tables are created: a listing of offenses with OGS assignments, which is a revised version of § 303.15 of the current sentencing guidelines (see Tables B-1, B-2, B-3); a new listing of all enhancements, and the OGS assignment or adjustment (see Table C); and a listing of BUI and DUI offenses with OGS assignments, a revised version of § 303.15 of the current sentencing guidelines (see Tables D-1, D-2).

Section 303a.4. Prior record score.

This section addresses policies related to the determination of the prior record score, including general provisions, procedures for identifying previous offenses, lapsing provisions, procedures for determining the prior record score category, and miscellaneous provisions. These policies relate to but substantially change §§ 303.4—303.8 of the current sentencing guidelines. Substantive changes include increasing the age at which juvenile adjudications are considered in the prior record score from 14 years of age to 16 years of age; establishing four prior offense groups (POG) based on the grade and seriousness of any previous offenses, to replace the current point system; expanding the juvenile lapsing provisions and adding adult lapsing provisions; and streamlining the process for determining the prior record score, reducing the number of PRS categories, and limiting the impact of the prior record score for persons with less serious previous offenses.

Section 303a.5. Guideline sentence recommendation.

This section addresses general provisions, purposes of sentencing, sentencing levels and standard range recommendations, and is substantially similar to §§ 303.5, 303.9, and 303.11 of the current sentencing guidelines. However, two changes distinguish the proposed guidelines from the current guidelines: the proposed guidelines increase the number of sentencing levels from five to eight, with each of the new levels linked to a specific disposition, and in case of state confinement, further linked to the duration of the recommendation or the degree of murder, with the proposed guidelines adding a specific level to address murder of the third degree. Murder of the third degree was separated out due to the nature of the circumstances leading to a conviction and the wide distribution of sentences. The Commission sought to provide courts with broad discretion while at the same time requiring the reporting of reasons for sentences to provide a better basis for future OGS assignments.

Section 303a.6. Aggravated and mitigated circumstances.

This section addresses the consideration of aggravating and mitigating circumstances, the aggravated and mitigated ranges of the sentencing guidelines, sentences that depart from the guidelines, and the reporting of reasons to the Commission. While the section is substantially similar to § 303.13 of the current sentencing guidelines, the Commission has added a list of reasons to be considered by the court and requires the reporting of reasons to the Commission when a sentence imposed is outside the standard range of the guidelines and in every case when a sentence is imposed for murder of the third degree.

Section 303a.7. Judicial proceeding recommendations.

This is a new section which addresses the imposition of multiple sentences during a judicial proceeding and brings together provisions scattered throughout the current guidelines regarding concurrent and consecutive sentences, aggregate sentences, the consideration of sentencing programs, and the determination of eligibility and appropriateness for correctional programs. The Commission includes general recommendations, rather than specific guidelines, intended to promote greater consistency in the use of concurrent or consecutive sentences, and to encourage the consideration of evidence-based programs and practices.

Section 303a.8. Sentencing matrix.

This section contains the proposed sentencing matrix, which provides more targeted sentence recommendations, and more consistent and uniform increases across OGS and PRS categories, which supports the use of OGS increases for enhancements, thus eliminating multiple matrices. This matrix replaces those found at §§ 303.16(a), 303.16(b), 303.17(a), 303.17(b), 303.18(a), 303.18(b), and 303.18(c) of the current sentencing guidelines.

Annex A

**TITLE 204. JUDICIAL SYSTEM
GENERAL PROVISIONS**

PART VIII. CRIMINAL SENTENCING

CHAPTER 303a. SENTENCING GUIDELINES

Sec.

- 303a.1. Preliminary provisions.
- 303a.2. Guideline sentencing standards.
- 303a.3. Offense gravity score.
- 303a.4. Prior record score.
- 303a.5. Guideline sentence recommendation.
- 303a.6. Aggravated and mitigated circumstances.
- 303a.7. Judicial proceeding recommendations.
- 303a.8. Sentencing matrix.

§ 303a.1. Preliminary provisions.

(a) *Authorization for adoption of guidelines.*

(1) *Adoption of guidelines for sentencing and probation.* As authorized by 42 Pa.C.S. § 2154 (relating to adoption of guidelines for sentencing), the Commission shall adopt guidelines for sentencing within the limits established by law which shall be considered by the sentencing court in determining the appropriate sentence for persons who plead guilty or nolo contendere to, or who were found guilty of, felonies and misdemeanors.

(i) In adopting guidelines, the commission shall recommend confinement that is consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and the community and the rehabilitative needs of the person.

(ii) The guidelines shall address the following retributive factors:

(A) Seriousness of the offense, by specifying the range of sentences applicable to crimes of a given degree of gravity.

(B) Criminal history, by specifying a range of sentences of increased severity or intensity of intervention for persons previously convicted of or adjudicated delinquent for one or more misdemeanor or felony offenses committed prior to the current offense. The commission may exclude or reduce the valuation of less serious offenses and increase the valuation of offenses committed while under supervision or in a temporal or offense pattern.

(C) Criminal behavior, by specifying a range of sentences of increased severity or intensity of intervention for persons with increased culpability, including those who possessed or used a deadly weapon or inflicted substantial harm during the commission of the current conviction offense.

(D) Aggravated and mitigated ranges, by specifying variations from the range of sentences applicable on account of aggravating or mitigating circumstances.

(E) The impact of any amendments to 42 Pa.C.S. § 9756 (relating to sentence of total confinement).

(iii) The guidelines shall include the following risk-related adjustments:

(A) Incapacitation of serious violent persons.

(B) Modifications to criminal history to reflect risk to reoffend and substantial risk to public safety to adjust the length of total confinement for more serious criminal history.

(iv) The guidelines shall address the use of county intermediate punishment programs as restrictive conditions of probation and the duration of terms of probation.

(v) The guidelines shall include interactive information to support decisions with risk and recidivism information.

(2) *Adoption of guidelines for restrictive conditions and certification of compliance.* As authorized by 42 Pa.C.S. § 2154.1 (relating to adoption of guidelines for restrictive conditions), the Commission shall adopt guidelines to identify persons who would be eligible and appropriate for restrictive conditions of probation. These guidelines shall be considered by the sentencing court in determining whether to impose restrictive conditions pursuant to 42 Pa.C.S. § 9763 (relating to conditions of probation).

(i) The guidelines shall give primary consideration to reducing recidivism for the protection of the public safety.

(ii) The Commission shall certify compliance by each county with guidelines adopted by the commission for county intermediate punishment or for imposing restrictive conditions of probation, and with related statutory requirements and 42 Pa.C.S. § 9728(g.1) (relating to collection of restitution, reparation, fees, costs, fines and penalties), and report the results to the Pennsylvania Commission on Crime and Delinquency.

(3) *Adoption of guidelines for fines, other economic sanctions, and community service.* As authorized by 42 Pa.C.S. § 2154.3 (relating to adoption of guidelines for fines), the Commission shall adopt guidelines for fines or other lawful economic sanctions, within the limits established by law, which shall be considered by the sentencing court in determining the appropriate sentence for persons who plead guilty or nolo contendere to or who are found guilty of felonies and misdemeanors. The guidelines shall do all of the following:

(i) Specify the range of fines or other lawful economic sanctions, applicable to crimes of a given degree of gravity.

(ii) Specify a range of fines or other lawful economic sanctions of increased amount for persons previously convicted or adjudicated delinquent for one or more misdemeanor or felony offenses committed prior to the current offense. For purposes of this paragraph, the term "previously convicted or adjudicated delinquent" shall include any finding of guilt or adjudication of delinquency whether or not sentence has been imposed or disposition ordered prior to the commission of the current offense.

(iii) Prescribe variations from the range of fines applicable on account of aggravating or mitigating circumstances.

(iv) Prescribe community service alternatives which may be imposed in lieu of all or part of the fines where the sentencing court finds the person lacks the ability to pay all or part of the fine.

(b) *Definitions.* For the purposes of these guidelines, as codified in Part VIII of 204 Pa. Code (relating to criminal sentencing), the following words and phrases shall have the following meanings unless the context clearly indicates otherwise:

"Adjudication." A finding by a Juvenile Court that a juvenile has committed a delinquent act or that a child has committed an offense excluded from the definition of "delinquent act" and has been transferred from criminal proceedings pursuant to 42 Pa.C.S. § 6322 (relating to transfer from criminal proceedings).

"Adjudication of delinquency." Following an adjudication hearing in which a Juvenile Court finds the juvenile committed a delinquent act, a determination by a Juvenile Court that the juvenile is in need of treatment, supervision, or rehabilitation.

"Aggregated sentence." As required by 42 Pa.C.S. § 9762(f) (relating to sentencing proceeding; place of confinement), two or more consecutive sentences that have been combined, whereby the aggregate minimum term is the sum of the consecutive minimum terms, and the aggregate maximum term is the sum of the consecutive maximum terms.

"Aggregate term of probation." The sum of all consecutive terms of probation imposed during a judicial proceeding.

"Autism spectrum disorder." Any of the pervasive developmental disorders defined in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5), including autistic disorder, Asperger's disorder and pervasive developmental disorder not otherwise specified.

"Board." Pennsylvania Parole Board. An independent executive branch agency comprised of nine members appointed by the Governor and confirmed by the Senate for six-year terms. The Board has the responsibility to parole, recommit for violations of parole, and to discharge from parole offenders sentenced to confinement in a state facility.

"Bodily injury." Impairment of physical condition or substantial pain.

"CPCMS—common pleas case management system." A web-based application, operated by the Administrative Office of Pennsylvania Courts, which serves as a source of information from courts of common pleas on current and prior conviction offenses, used to prepare sentencing guidelines and sentence risk assessments.

"Commission." Pennsylvania Commission on Sentencing. A criminal justice agency of the General Assembly authorized to adopt and implement a sentence risk assessment instrument and guidelines for sentencing and resentencing to be considered by the court, and guidelines for parole and recommitment to be considered by the Board.

"Concurrent sentence." Sentences imposed to be served simultaneously or at the same time.

"Consecutive sentence." Sentences imposed to be served one after another. As provided in 42 Pa.C.S. § 9757 (relating to consecutive sentences of total confinement for multiple offenses) and 42 Pa.C.S. § 9762(f), consecutive confinement sentences shall be aggregated into a single sentence with one minimum term and one maximum term.

"Conviction." A finding of guilty or the entering of a plea of guilty or nolo contendere for a felony or misdemeanor, whether or not judgement of sentence has been imposed.

"Course of conduct." A pattern of actions composed of more than one act over a period of time, however short, evidencing a continuity of conduct.

"Court." Unless otherwise provided, a court of common pleas or any judge thereof, the Philadelphia Municipal Court or any judge thereof, the Pittsburgh Magistrates Court or any judge thereof, or any magisterial district judge.

"Crime-free." Following a conviction and sentence and subsequent release to the community, the completion of a prescribed period of time without commission of a new felony or misdemeanor, for which the person pleads guilty or nolo contendere or is found guilty. For non-confinement sentences, release to the community begins on the date of sentencing; for confinement sentences, release to the community begins on the date of initial release on parole, or release following completion of the confinement sentence, whichever is earlier.

"Crime of violence." An adjudication or conviction for an offense listed under 42 Pa.C.S. § 9714(g) (relating to sentences for second and subsequent offenses).

"Criminal gang." A formal or informal ongoing organization, association, or group, with or without an established hierarchy, that has as one of its primary activities the commission of criminal or delinquent acts and that consists of three or more persons.

"Deadly weapon." Any firearm, as defined in 42 Pa.C.S. § 9712 (relating to sentences for offenses committed with firearms), whether loaded or unloaded; or any dangerous weapon, as defined in 18 Pa.C.S. § 913 (relating to possession of firearm or other dangerous weapon in court facility); or any device, implement, or instrumentality designed as a weapon or capable of producing death or serious bodily injury, including where the court determines that the person intended to use the weapon to threaten or injure another person.

"Decay." A type of lapsing which involves the removal from the determination of the prior record score certain prior adjudication or conviction offenses following a prescribed period of time.

"Delinquent act." An act designated a crime under the law of this Commonwealth, or of another state if the act occurred in that state, or under Federal law.

"Department." Pennsylvania Department of Corrections (DOC). An executive branch agency responsible for operating the state prison system and providing parole supervision of reentrants.

"Disposition." The final determination made by a Juvenile Court after an adjudication of delinquency.

"Enhancement." An adjustment to the basic sentence recommendations based on a determination by the court that a specified factor is present. Enhancements may be incorporated into the offense gravity score assignments or may require an increase in the assignments.

"Family or household member." Spouses or persons who have been spouses, persons living as spouses, parents and children, other persons related by consanguinity or affinity, current or former sexual or intimate partners or persons who share biological parenthood.

"Gap." A type of lapsing which involves the removal from the determination of the prior record score certain prior adjudication or conviction offenses following a prescribed period of crime-free behavior.

"Guideline sentence form." A document or a computer generated sentence information report promulgated by the Commission. The form provides the court with a guideline sentence recommendation and other relevant information for each conviction offense for consideration prior to sentencing; following sentencing, the form includes information on the sentence imposed and reasons for the sentence. The form is generated by SGS Web based on information entered or verified by users authorized by the court; following sentencing, SGS Web is used to electronically submit all required information used to generate the form to the Commission.

"Inchoate offenses." The offenses of criminal attempt, criminal solicitation, and criminal conspiracy.

"Intellectual disability." Regardless of the age of the individual, significantly subaverage general intellectual functioning that is accompanied by significant limitations in adaptive functioning in at least two of the following skill areas: communications; self-care; home living; social and interpersonal skills; use of community resources; self-direction; functional academic skills; work; safety.

"Judicial proceeding." A sentencing hearing in which all offenses for which a person is convicted are pending before the court. A judicial proceeding may include multiple dockets and OTNs.

"Lapsing." The removal from the determination of the prior record score certain prior adjudication or conviction offenses. Lapsing includes decay and gap. Decay is the removal of a prior offense following a prescribed period of time. Gap is the removal of a prior offense following a prescribed period of crime-free behavior.

"MDJS—magisterial district judge system." A web-based application, operated by the Administrative Office of Pennsylvania Courts, which serves as a source of information from minor courts on charges filed and the disposition of charges filed, used to prepare sentencing guidelines and sentence risk assessments.

"Minor." A person who is less than 18 years of age.

"OGS—offense gravity score." An assignment in the sentencing guidelines reflecting the seriousness of the conviction offense. There are 30 general OGS categories, OGS 1 through OGS 30, and eight OGS categories limited to assignments for murder.

"OTN—offense tracking number." A unique identifying number assigned to an entire set of related charges. An OTN is generally assigned by the court at the time of arraignment.

"POG—prior offense group." Classification of previous adjudication and conviction offenses based on seriousness used to determine the prior record score. There are four groups, POG1 through POG4, with POG1 being the least serious previous offenses and POG4 being the most serious previous offenses.

"PRS—prior record score." A category in the sentencing guidelines reflecting the seriousness of the criminal history of a person, based on certain previous juvenile adjudications and/or convictions. There are five PRS categories, PRS 0 through PRS 4.

"Prior adjudication." A previous offense for which the commission of the offense and the adjudication of delinquency for the offense occurred prior to the commission of the current conviction offense.

"Prior conviction." A previous offense for which the commission of the offense and the conviction for the offense occurred prior to the commission of the current conviction offense.

"REVOC—repeat violent offender category." A prior record score category based on adjudications and/or convictions of two or more crimes of violence, as provided in 42 Pa.C.S. § 9714(g).

"RS—restorative sanctions." Non-confinement sentencing alternatives and penalties, including determination of guilt without further penalty, fine, community service, and restitution.

"School zone." Within 250 feet of the real property on which is located a public or private elementary or secondary school.

"Sentencing levels." Categories associated with recommended dispositions and durations, based on the combination of the offense gravity score and prior record score. There are eight sentencing levels (Level A—Level H).

"Serious bodily injury." Bodily injury which creates a substantial risk of death, or which causes serious, permanent disfigurement, or protracted loss or impairment of the function of any bodily member or organ.

"Serious crimes." Except for crimes of violence, an adjudication or conviction for any felony of the first degree or felony of the second degree, or an adjudication or conviction for a felony of the third degree or misdemeanor of the first degree as provided in the following: 18 Pa.C.S. Part II, Article B (relating to offenses involving danger to the person), 18 Pa.C.S. Chapter 61-A (relating to Uniform Firearms Act), and 42 Pa.C.S. § 9799.14 (relating to sexual offenses and tier system).

"SGS Web—sentencing guidelines software web application." A JNET web-based application developed and operated by the Commission and required to be used for the preparation of sentencing guidelines, sentence risk assessment instruments, and resentencing guidelines, and for the electronic reporting of all required information to the Commission.

"SID—state identification number." A unique number associated with each person based on fingerprints.

"Statutory limit." The longest minimum term of confinement permitted by law, which is one-half the statutory maximum.

"Statutory maximum." The maximum period of confinement or of probation authorized for the disposition of a person, as provided in 18 Pa.C.S. Chapter 11 (relating to authorized disposition of offenders).

(c) *Authorized dispositions.*

(1) The guidelines include recommendations regarding the type of disposition, referred to as sentencing alternatives; the duration of confinement and/or community supervision; the intensity of conditions; and the requirements associated with restitution and other economic sanctions.

(2) *Sentencing alternatives.* As provided in 42 Pa.C.S. Chapter 97 (relating to sentencing), courts are authorized to select one or more of the alternatives listed below when determining the sentence to impose. For purposes of the guidelines, the Commission has grouped these alternatives into four categories based on the increasing severity of the sanction to promote proportionality in sentencing.

(i) *Restorative sanctions*

(A) Determination of guilt without further penalty, pursuant to 42 Pa.C.S. § 9753 (relating to determination of guilt without further penalty).

(B) Fine, as provided in 42 Pa.C.S. § 9758 (relating to fine), including but not limited to:

(I) 18 Pa.C.S. § 1101 (relating to fines)

(II) 35 P.S. § 780-113(b)—(o) (relating to prohibited acts, penalties)

(III) 42 Pa.C.S. § 9726 (relating to fine)

(IV) 75 Pa.C.S. § 3804 (relating to penalties)

(C) Restitution, as provided in 42 Pa.C.S. § 9721(c) (relating to mandatory restitution), including but not limited to:

(I) 18 Pa.C.S. § 1106 (relating to injuries to person or property)

(II) 18 Pa.C.S. § 1107 (relating to theft of timber)

(III) 18 Pa.C.S. § 1107.1 (relating to restitution for identity theft)

(IV) 18 Pa.C.S. § 1110 (relating to restitution for cleanup of clandestine laboratories)

(V) 18 P.S. § 11.1302 (relating to restitution)

(D) Costs, as provided in 42 Pa.C.S. § 9721(c.1) (relating to mandatory payment of costs), including but not limited to:

(I) 18 Pa.C.S. § 1109 (relating to costs)

(II) 18 P.S. § 11.1101 (relating to costs)

(III) 18 P.S. § 11.1102 (relating to costs for offender supervision programs)

(IV) 42 Pa.C.S. § 1725.1 (relating to costs)

(V) 42 Pa.C.S. § 1726.1 (relating to forensic examination costs for sexual offenses)

(VI) 42 Pa.C.S. § 1726.2 (relating to criminal prosecutions involving domestic violence)

(E) Fees, including but not limited to:

(I) 42 Pa.C.S. § 1725 (relating to establishment of fees and charges)

(II) 42 Pa.C.S. § 1725.3 (relating to criminal laboratory user fees)

(III) 42 Pa.C.S. § 1725.4 (relating to fee increases and automation fee)

(IV) 42 Pa.C.S. § 1725.5 (relating to booking center fee)

(V) 42 Pa.C.S. § 1725.7 (relating to petition for expungement or order for limited access fee)

(ii) *Probation*. Order of probation, pursuant to 42 Pa.C.S. § 9754 (relating to order of probation), as provided in 42 Pa.C.S. § 9763(b) (relating to conditions of probation).

(iii) *Probation with restrictive conditions*. Order of probation, pursuant to 42 Pa.C.S. § 9754, as provided in:

(A) 42 Pa.C.S. § 9763(c); and

(B) 42 Pa.C.S. § 9763(d)

(iv) *Confinement*

(A) Partial or total confinement in a county facility, pursuant to 42 Pa.C.S. § 9755 (relating to sentence of partial confinement) and § 9756 (relating to sentence of total confinement), as provided in:

(I) 42 Pa.C.S. § 9762(b)(2) and (3) (relating to sentencing proceeding; place of confinement); and

(II) 75 Pa.C.S. § 3804(d) (relating to extended supervision of court)

(B) Total confinement in a state facility, pursuant to 42 Pa.C.S. § 9756, as provided in 42 Pa.C.S. § 9762(b)(1) and (2).

(d) *Authorized programs*.

(1) The guidelines include recommendations and requirements for sentencing and reentry programs for consideration by the court, as well as correctional programs operated by the Department for which the court determines eligibility and appropriateness.

(2) *Sentencing and reentry programs*. The following sentencing and reentry programs are authorized by statute for consideration by the courts:

(i) County intermediate punishment programs as restrictive conditions of probation, as provided in 42 Pa.C.S. § 9804 (relating to county intermediate punishment programs).

(A) *Purpose*. County intermediate punishment programs are developed, implemented and operated for the following purposes: to protect society and promote efficiency and economy in the delivery of correctional services; to promote accountability of persons to their local community; to fill gaps in local correctional systems and address local needs through expansion of punishment and services available to the court; and to provide opportunities for persons who demonstrate special needs to receive services which enhance their ability to become contributing members of the community.

(B) *Eligibility*. The following regulations and statutes govern operation of and eligibility for county intermediate punishment programs as restrictive conditions of probation:

(I) 37 Pa. Code § 451.111 et seq.

(II) 42 Pa.C.S. §§ 2154, 2154.1, 9754, 9763, 9773 and Chapter 98.

(III) Sentence recommendations which include an option of county intermediate punishment programs as restrictive conditions of probation for certain persons are described in sections 303a.3(c) and 303a.5(c).

(C) *Plan*. The county intermediate punishment plan, as described in 42 Pa.C.S. Chapter 98 (relating to county intermediate punishment), provides a mechanism to advise the court of the extent and availability of services and programs authorized in the county. This plan includes information on the appropriate classification and use of county programs based on program-specific requirements.

(D) *Restrictive conditions of probation.* Restrictive conditions of probation, as provided in 42 Pa.C.S. § 9763(d), are defined as programs that provide for strict supervision of the person. The county intermediate punishment board is required to develop assessment and evaluation procedures to assure the appropriate targeting of persons. All programs must meet the statutory requirements of 42 Pa.C.S. § 9763, satisfy the minimum standards of the Pennsylvania Commission on Crime and Delinquency regulations found at 37 Pa. Code Chapter 451 (relating to intermediate punishment programs), and comply with the guidelines adopted pursuant to 42 Pa.C.S. § 2151.1 (relating to adoption of guidelines for restrictive conditions).

(I) Restrictive conditions of probation: house the person full time or part time; or significantly restrict the person's movement and monitor the person's compliance with the program, including electronic monitoring or home confinement.

(II) A person under consideration for restrictive conditions of probation at Level C or D shall have a diagnostic assessment of dependency on alcohol or other drugs conducted by one of the following: the Pennsylvania Department of Drug and Alcohol Programs or a designee; the county authority on drugs and alcohol or a designee; or clinical personnel of a facility licensed by the Department of Drug and Alcohol Programs.

(III) A person assessed to be dependent on alcohol or other drugs shall be evaluated for purposes of a treatment recommendation by one of the above listed assessors. The evaluation shall consider the level of motivation of the person. If sentenced to a restrictive condition of probation, the sentence shall be consistent with the level of care and length of stay prescribed in the treatment recommendation, regardless of the standard range sentencing recommendation.

(IV) A person assessed as not in need of drug or alcohol treatment may be placed in any approved restrictive condition of probation. Each day of participation in a restrictive condition of probation shall be considered the equivalent of one day of confinement for guideline sentence recommendations.

(E) *Restrictive DUI probation conditions.* Restrictive DUI probation conditions, as provided in 42 Pa.C.S. § 9763(c), are specified programs that may be used to satisfy the mandatory minimum sentencing requirements of certain convictions under 75 Pa.C.S. § 1543(b), former 75 Pa.C.S. § 3731 or 75 Pa.C.S. § 3804 for a first, second or third offense under 75 Pa.C.S. Chapter 38. The county intermediate punishment board is required to develop assessment and evaluation procedures to assure the appropriate targeting of persons. All programs must meet the statutory requirements of 42 Pa.C.S. § 9763, satisfy the minimum standards of the Pennsylvania Commission on Crime and Delinquency regulations found at 37 Pa. Code Chapter 451, and comply with the guidelines adopted pursuant to 42 Pa.C.S. § 2151.1. Unless otherwise provided in statute, restrictive DUI probation conditions include:

(I) If the person is determined to be in need of drug and alcohol treatment, and receives a penalty imposed under 75 Pa.C.S. § 1543(b), former 75 Pa.C.S. § 3731, 75 Pa.C.S. § 3804 or a first, second or third offense under 75 Pa.C.S. Chapter 38, a sentence with restrictive DUI probation conditions shall include participation in drug and alcohol treatment under 75 Pa.C.S. § 3815(c), and shall have restrictive DUI probation conditions of: a residential inpatient program or residential rehabilitative center; house arrest with electronic surveillance; a partial confinement program such as work release, a work camp or a halfway facility; or any combination of these programs.

(II) If the person is determined not to be in need of drug and alcohol treatment, the person shall have restrictive DUI probation conditions of: house arrest with electronic surveillance; or partial confinement programs such as work release, a work camp or a halfway facility; or any combination of these programs.

(ii) County reentry plan, as provided in 42 Pa.C.S. § 9756(b)(3).

(A) A release plan that may include drug and alcohol treatment, behavioral health treatment, job training, skills training, education, life skills or any other condition deemed relevant by the court.

(B) A county reentry plan is not authorized where the maximum sentence imposed is two years or more, or where a mandatory minimum sentence of imprisonment or total confinement is required by law.

(C) At the time of sentencing, the court shall state whether or not the person is eligible to participate in a county reentry plan at any time prior to the expiration of the minimum sentence or at the expiration of a specified portion of the minimum sentence.

(D) The county reentry plan eligibility shall be considered a part of the sentence and subject to the requirements related to the entry, recording and reporting of sentences.

(iii) Partial release from a county facility (work release), as provided in 42 Pa.C.S. § 9755(c).

(A) An order, imposed with a partial confinement sentence, granting a person the privilege of leaving the county correctional facility during necessary and reasonable hours, for employment, education, medical treatment, or any other purpose approved by the court.

(B) At the time of sentencing, the court shall state whether partial release is authorized, and any conditions ordered, with a partial confinement sentence.

(C) Correctional authorities shall determine when and under what conditions consistent with the order issued the person shall be permitted to be absent from the correctional institution.

(iv) Mandatory period of probation for certain sexual offenders, as provided in 42 Pa.C.S. § 9718.5 (relating to mandatory period of probation for certain sexual offenders).

(A) Requirement that applies to persons convicted of an offense under 42 Pa.C.S. § 9799.14(d) (relating to sexual offenses and tier system).

(B) At the time of sentencing, a mandatory period of probation of three years shall be imposed consecutive to and in addition to any other lawful sentence issued by the court.

(C) The court may impose the term of probation required in addition to the maximum sentence permitted for the offense for which the person was convicted.

(v) State reentry supervision, as provided in 61 Pa.C.S. § 6137.2 (relating to reentry supervision).

(A) Requirement that applies to persons committed to the Department with an aggregate minimum sentence of total confinement of four years or more.

(B) At the time of sentencing, a period of reentry supervision of 12 months shall be imposed consecutive to and in addition to any other lawful sentence issued by the court.

(C) The Court may impose the period of reentry supervision required in addition to the maximum sentence permitted for the offense for which the person was convicted.

(D) Persons who have been granted any period of parole during the same period of incarceration shall be deemed to have served the reentry supervision requirement.

(3) *Correctional programs.* The following correctional programs are authorized by statute and operated by the Department for which the court determines eligibility and appropriateness:

(i) State motivational boot camp program, as provided in 61 Pa.C.S. Chapter 39 (relating to motivational boot camp).

(A) A program for eligible persons committed to the Department in which the person participates for a period of six months in a humane program which provides rigorous physical activity, intensive regimentation and discipline, work on public projects, substance abuse treatment services licensed by the Department of Health, continuing education, vocational training, prerelease counseling, and community corrections aftercare.

(B) *Eligibility.* The following statute governs operation of and eligibility for the state motivational boot camp: eligible persons, as provided in 61 Pa.C.S. § 3903 (relating to definitions).

(C) Boot camp is recommended for eligible persons less than 40 years of age committed to the Department with a minimum term not more than two years and a maximum term of five years or less; or a minimum term not more than three years and within two years of completing the minimum term. The court may exercise discretion to exclude the person from eligibility. If eligible, the person must give consent to enter the program.

(D) The court shall indicate on the person's commitment order and the guideline sentence form if the person is excluded from eligibility for the boot camp program. The Department makes the final determination as to whether the person will be accepted into the boot camp program.

(E) Upon successful completion of the program, the person shall be immediately released on parole, subject to intensive supervision. Expulsion from the program results in the person's continued service of the original sentence imposed, with consideration of parole upon completion of the minimum term.

(ii) State drug treatment program, as provided in 61 Pa.C.S. Chapter 41 (relating to state drug treatment program).

(A) A 24-month program for drug-related persons committed to the Department designed to address the individually assessed drug and alcohol abuse and addition needs of a participant and to address other issues essential to the participant's successful reintegration into the community, including, but not limited to, educational and employment issues.

(B) *Eligibility.* The following statute governs operation of and eligibility for the state drug treatment program: eligible person, as provided in 61 Pa.C.S. § 4103 (relating to definitions).

(C) State drug treatment program is recommended for eligible persons convicted of drug-related offenses committed to the Department with a minimum term not more than two years and a maximum term of five years or less; or a minimum term not more than five years and within two years of completing the minimum term. The court and the prosecutor may exercise discretion to exclude the person from eligibility. If eligible, the person must give consent to enter the program, and the DOC assessment must conclude that the person is in need of drug and alcohol addiction treatment.

(D) The court shall indicate on the person's commitment order and the Guideline sentence form if the person is excluded from eligibility for the state drug treatment program. The Department makes the final determination as to whether the person will be accepted into the state drug treatment program.

(E) Upon successful completion of the program, the entire term of confinement that rendered the person eligible to participate in the state drug treatment program shall be deemed to have been served. Expulsion from the program results in the person's continued service of the original sentence imposed, with consideration of parole upon completion of the minimum term.

(F) The court may impose a consecutive period of probation. The total duration of a sentence of state confinement and consecutive probation may not exceed the maximum term for which the eligible person could otherwise be sentenced.

(iii) Recidivism risk reduction incentive (RRRI) program, as provided in 61 Pa.C.S. Chapter 45 (relating to recidivism risk reduction incentive).

(A) A program to encourage eligible non-violent persons committed to the Department to participate in and successfully complete evidence-based programs that reduce the likelihood of recidivism and improve public safety.

(B) *Eligibility.* The following statute governs operation of and eligibility for the recidivism risk reduction incentive program: eligible person, as provided in 61 Pa.C.S. § 4503 (relating to definitions).

(C) Recidivism risk reduction incentive program is an individualized plan that contains approved treatment and other approved programs designed to reduce recidivism risk of a specific person. If the court determines the person committed to the Department is statutorily eligible, the court shall provide notice of eligibility to the person, and the court shall direct the Department to calculate the RRRI minimum sentence.

(D) The court shall indicate on the person's commitment order and the guideline sentence form if the person is eligible and direct the Department to calculate the RRRI minimum sentence. The RRRI minimum sentence is three-fourths of the minimum sentence when the minimum sentence is three years or less. The RRRI minimum sentence is five-sixths of the minimum sentence when the minimum sentence is greater than three years.

(E) Upon certification by the Department that the person has completed all requirements of the program and remains an eligible person, the Board may grant parole upon the expiration of the RRRI minimum sentence.

(iv) Short sentence parole (SSP) program, as provided in 61 Pa.C.S. § 6137.1 (relating to short sentence parole).

(A) A program for eligible non-violent persons committed to the Department with an aggregate minimum sentence of confinement of two years or less for which parole at minimum without an interview is authorized

(B) *Eligibility.* The following statute governs operation of and eligibility for short sentence parole: 61 Pa.C.S. § 6137.1(a).

(C) Short sentence parole requires the Board to approve for parole an eligible person at the expiration of the minimum date or RRRI minimum date, whichever is shorter, without requiring an interview.

(D) A person shall not be eligible for short sentence parole if found guilty of a major disciplinary infraction while confined in a county or state correctional institution or has pending felony charges.

§ 303a.2. Guideline sentencing standards.

(a) *General provisions.*

(1) The court shall consider the sentencing guidelines in determining the appropriate sentence for persons convicted of, or pleading guilty or nolo contendere to, felonies and misdemeanors. Where crimes merge for sentencing purposes, the court shall consider the sentencing guidelines only on the offense assigned the higher offense gravity score.

(2) The sentencing guidelines do not apply to sentences imposed as a result of the following: accelerated rehabilitative disposition; disposition in lieu of trial; direct or indirect contempt of court; violations of protection from abuse orders; revocation of probation, except as provided in 204 Pa. Code Chapters 307 and 307a (relating to resentencing guidelines for 7th edition sentencing guidelines; and resentencing guidelines for 8th edition sentencing guidelines); or revocation of parole, except as provided in 204 Pa. Code Chapter 311 (relating to State parole recommitment ranges).

(3) The sentencing guidelines shall apply to all offenses committed on or after the effective date of the guidelines. Editions or amendments to the sentencing guidelines shall apply to all offenses committed on or after the effective date of the edition or amendment to the guidelines.

(i) The effective date of the initial sentencing guidelines and effective dates of editions and amendments to the sentencing guidelines are provided in Table A.

(ii) On October 7, 1987, the Pennsylvania Supreme Court invalidated the sentencing guidelines due to a procedural error that occurred in 1981, when the General Assembly rejected the initial sentencing guidelines adopted by the Commission. As a result, sentencing guidelines adopted prior to April 25, 1988, were declared by the Court to be of no force.

(iii) For offenses committed on multiple dates, the guidelines shall be applied based on the date of each offense and the effective date of the editions or amendments to the guidelines. If the specific dates of the offenses cannot be determined, the later date shall be used to determine the applicable edition or amendment of the sentencing guidelines.

(4) In every case in which a court of record imposes a sentence for a felony or misdemeanor, the court shall make as a part of the record and disclose in open court at the time of the sentencing a statement of the reason or reasons for the sentence imposed. In every case in which a court of record imposes a sentence or resentence outside the guidelines, the court shall report the reason or reasons for the deviation from the guidelines to the Commission.

(b) *Procedures at sentencing.*

(1) Determining the guideline sentence recommendations for the judicial proceeding:

(i) Determine the offense gravity score for each conviction offense as described in § 303a.3.

(ii) Determine the corresponding prior record score as described in § 303a.4.

(iii) Determine the guideline sentence recommendation for each conviction offense as described in § 303a.5.

(2) Consideration of recommendations and imposition of sentence:

(i) Consider the standard range recommendation as provided in § 303a.8, and any circumstances that warrant consideration of a sentence in the aggravated or mitigated ranges, or a departure above or below the guidelines, as provided in § 303a.6.

(ii) Consider the judicial proceeding recommendations, as provided in § 303a.7, including the imposition of concurrent or consecutive sentences and the authorization of any sentencing or correctional programs based on the aggregate sentence.

(3) Report the sentence(s) and reasons as required to the Commission via SGS Web.

(c) *Reporting information to the Commission.*

(1) As authorized by 42 Pa.C.S. § 2153(a)(14) (relating to power and duties of commission) and as required by 42 Pa.C.S. § 9721(b) (relating to sentencing generally), the court shall submit required guidelines and sentencing information to the Commission for each conviction offense and for the judicial proceeding.

(2) The full submission of data to the Commission, and certification of compliance with guidelines and with the county's intermediate punishment plan for imposing restrictive conditions, is required by Act 2019-114 and 42 Pa.C.S. § 2151.1(b) regarding adoption of guidelines for restrictive conditions.

(3) Unless otherwise provided by the Commission, the JNET-based SGS Web application shall be used at the court's direction to prepare the guideline sentence form for each conviction offense, and the sentence guideline form for any resentence for a revocation of probation, as provided in 204 Pa. Code Chapters 307 and 307a.

(4) Following imposition of the sentence, a completed guideline sentence form, including the state identification number (SID), the sentence imposed, reasons for deviation from the sentencing guidelines, and all required guidelines and sentencing information for each conviction offense and for the judicial proceeding, shall be made a part of the record, and the information electronically submitted to the Commission using SGS Web no later than 30 days after the date of sentencing.

(5) Following revocation of probation and resentencing, a completed guideline sentence form, including the state identification number (SID), the resentence imposed, reasons for deviation from the resentencing guidelines, and all required guidelines and resentencing information, including information from the completed sentence guideline form associated with the initial order of probation, shall be made a part of the record, and the information electronically submitted to the Commission using SGS Web no later than 30 days after the date of resentencing.

§ 303a.3. Offense gravity score.

(a) *General provisions.*

(1) The offense gravity score (OGS) measures the seriousness of the current conviction offense and is the primary determinant of the guideline sentence recommendation. An OGS is assigned to each conviction offense, based on the elements of the offense and the classification of the crime. There are 30 general OGS categories, with another six OGS categories for assignments limited to murder of the first or second degree.

(2) *Subcategorized offenses.* Certain conviction offenses are subcategorized and may be assigned more than one OGS based on the presence of specific sentencing factors determined by the court at sentencing and/or mandatory minimum sentencing provisions. Subcategorized offenses are included in the offense listings in Tables B1—B3 and Tables D1-D2 and designated by an asterisk [*].

(3) Assignments for specific offense categories:

(i) *Inchoate offenses.* Inchoate offenses are scored as follows:

(A) Convictions for attempt, solicitation, or conspiracy to commit a Felony 1 offense receive an OGS of one point less than the offense attempted, solicited, or which was the object of the conspiracy.

(B) Convictions for attempt, solicitation, or conspiracy to commit any offense which is not a Felony 1 offense, receive the OGS of the offense attempted, solicited, or which was the object of the conspiracy.

(C) Convictions for attempt, solicitation, or conspiracy to commit any offense under The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144) receive the OGS of the offense attempted, solicited, or which was the object of the conspiracy.

(ii) *Offenses with classifications associated with underlying offenses.*

(A) Convictions for Ethnic Intimidation (18 Pa.C.S. § 2710), Terrorism (18 Pa.C.S. § 2717), Ecoterrorism (18 Pa.C.S. § 3311), and other offenses for which the grade is classified one degree higher than the underlying offense are assigned an OGS two points higher than the OGS of the underlying offense but cannot exceed OGS 30.

(B) Convictions for Obstruction of Justice (18 Pa.C.S. § 3016), Unlawful Contact with Minor (18 Pa.C.S. § 6318), and other offenses for which the grade is classified the same as an associated or underlying offense are assigned the same OGS as the associated or underlying offense, unless otherwise provided.

(iii) *Violations of The Controlled Substance, Drug, Device and Cosmetic Act (35 P.S. §§ 780-101—780-144).*

(A) If any mixture or compound contains any detectable amount of a controlled substance, the entire amount of the mixture or compound shall be deemed to be composed of the controlled substance. If a mixture or compound contains a detectable amount of more than one controlled substance, the mixture or compound shall be deemed to be composed entirely of the controlled substance with the highest OGS.

(B) Exception for prescription pills. For violations of § 780-113 (a)(12), (a)(14), and (a)(30) involving narcotic prescription pills of Schedule II, when both the weight and the number of pills are known, the higher OGS assignment applies.

(C) Subcategorization. OGS assignments for violations of § 780-113(a)(12), (a)(14), and (a)(30) are subcategorized based on the type and quantity of the controlled substance, and the statutory maximum of the controlled substance, including the applicability of § 780-114 or § 780-115.

(4) *Omnibus offense gravity score.* The omnibus OGS is assigned based on the grade of the conviction offense and applies to any offense not listed in Tables B1—B3 or Tables D1-D2, and as provided below, may apply to new or amended sections of statute enacted by the General Assembly.

(i) The omnibus OGS assignments are as follows:

(A) Felony 1 (statutory maximum greater than 20 years)
OGS 22

(B) Felony 1
OGS 14

(C) Felony 2
OGS 11

(D) Felony 3 and unclassified felonies
OGS 9

(E) Misdemeanor 1
OGS 7

(F) Misdemeanor 2
OGS 4

(G) Misdemeanor 3 and unclassified misdemeanors
OGS 2

(ii) For an addition of a new subsection of statute:

(A) The lowest OGS assigned within the section based on the grade or statutory maximum of the offense shall apply to the new subsection.

(B) When the grade or statutory maximum of the new subsection is higher than the highest grade or statutory maximum in the section, the highest assigned OGS in the section shall apply to the new subsection, unless the omnibus OGS is higher.

(C) When the grade or statutory maximum of the new subsection is lower than the lowest grade or statutory maximum in the section, the lowest assigned OGS in the section shall apply to the new subsection, unless the omnibus OGS is lower.

(iii) For an amendment to an existing section of statute:

(A) When the definition of an offense listed in Tables B1—B3 is changed, the previously assigned OGS shall apply.

(B) When the grade or statutory maximum of a subsection listed in Tables B1—B3 has increased, the omnibus OGS shall apply, unless the previously assigned OGS is higher.

(C) When the grade or statutory maximum of a subsection listed in Tables B1—B3 has decreased, the omnibus OGS shall apply, unless the previously assigned OGS is lower.

(b) *Enhancements.*

(1) Enhancements are increases to the initial OGS assignment that apply when a court determines one or more specified sentencing factors were present during the commission of the crime. The application of an enhancement is determined by the court at sentencing, based on a preponderance of the evidence. Sentence enhancements may be mandated by statute or established by the Commission.

(2) Enhancements are included in guideline sentence recommendations through two approaches:

(i) Subcategorization, in which one or more sentencing factors identified for enhancement are included in the OGS assignment in Tables B1—B3; and/or

(ii) Adjustment, in which the OGS assignment in Tables B1—B3 is increased when it is determined that one or more sentencing factors identified for enhancement were present during the commission of the crime.

(3) An enhancement shall apply to each conviction offense for which the court determines the sentencing factor is present, unless the sentencing factor is an element of the crime or a sentencing factor considered in the OGS assignment, or the sentencing factor has been applied through another enhancement. The OGS may not exceed OGS 30 based on an enhancement adjustment. An enhancement may apply generally to any offense or a category of offenses or may be limited to specified offenses.

(4) *Descriptions of general enhancements.*

(i) Deadly Weapon Enhancement, as provided in 42 Pa.C.S. § 2154(b)(3).

(A) *Deadly Weapon Possessed.* When the court determines that the person possessed a deadly weapon during the commission of the current conviction offense, the court shall adjust the OGS as provided in Table C. The person has possessed a deadly weapon if the deadly weapon was on the person's person or within his immediate physical control.

(B) *Deadly Weapon Used.* When the court determines that the person used a deadly weapon during the commission of the current conviction offense, the court shall adjust the OGS as provided in Table C. The person has used a deadly weapon if a deadly weapon was employed by the person in a way that threatened or injured another person.

(C) The deadly weapon enhancements shall not apply to the following offenses: (I) 18 Pa.C.S. § 907 (relating to possessing instruments of crime)

(II) 18 Pa.C.S. § 908 (relating to prohibited offensive weapons)

(III) 18 Pa.C.S. § 912 (relating to possession of weapon on school property)

(IV) 18 Pa.C.S. § 913 (relating to possession of firearm or other dangerous weapon in court facility)

(V) 18 Pa.C.S. § 2701(a)(2) (relating to simple assault with deadly weapon)

(VI) 18 Pa.C.S. § 2702(a)(4) (relating to aggravated assault with deadly weapon)

(VII) Any offense assigned to Level G or Level H in the sentencing guidelines.

(VIII) Any offense for which possession of a deadly weapon is an element of the statutory definition, including theft when property stolen is a firearm and any violation of the Pennsylvania Uniform Firearms Act.

(ii) School/Youth Enhancement, as provided in 42 Pa.C.S. § 2154(b)(3).

(A) The school/youth drug enhancement applies when the court determines that the person: distributed a controlled substance to a person or persons under 18 years of age and/or manufactured, delivered, or possessed with intent to deliver a controlled substance within a school zone. When the court determines one or both sentencing factors were present, the court shall adjust the OGS as provided in Table C.

(B) The enhancement only applies to violations of 35 P.S. § 780-113(a)(14) and (a)(30).

(iii) Criminal Gang Enhancement, as required by 42 Pa.C.S. § 9720.4.

(A) When the court determines that the person committed a crime of violence in association with a criminal gang, the court shall adjust the OGS as provided in Table C.

(B) When the court determines that the person committed a violation of 35 P.S. § 780-113(a)(30) in association with a criminal gang, the court shall adjust the OGS as provided in Table C.

(C) The Criminal Gang Enhancement shall apply to each violation which meets the criteria above.

(iv) Domestic Violence Enhancement, as required by 42 Pa.C.S. § 9720.8.

(A) When the court determines that the person committed an offense under 18 Pa.C.S. Chapters 25, 27, 29, 30, 31, or 49 against a family or household member as defined in 23 Pa.C.S. § 6102, the court shall adjust the OGS as provided in Table C.

(B) When the court further determines that a person knew the crime was witnessed, either through sight or sound, by a minor who is also a family or household member of the person or the victim, the court shall consider ordering the person to pay the costs or fees associated with the assessment and treatment of the minor for exposure to domestic violence.

(5) *Descriptions of crimes code enhancements.*

(i) Third Degree Murder of a Victim Younger than Age 13 Enhancement, as required by 42 Pa.C.S. § 9711.1. When the court determines the victim of murder in the third degree as defined in 18 Pa.C.S. § 2502(c) was less than 13 years of age at the time of the offense, the court shall consider the enhanced sentence recommendations provided in Tables B1—B3.

(ii) Causing or Aiding Suicide Enhancement, as required by 18 Pa.C.S. § 2505(c). When the court determines the person who died by suicide or was aided or solicited to die by suicide was under 18 years of age and has an intellectual disability or autism spectrum disorder, the court shall consider the enhanced sentence recommendations provided in Tables B1—B3.

(iii) Trafficking in Individuals and Involuntary Servitude Enhancement, as required by 18 Pa.C.S. § 3024. When the court determines that the person violated 18 Pa.C.S. § 3011 (relating to trafficking in individuals) or § 3012 (relating to involuntary servitude) and any of the following factors were present, the court shall adjust the OGS as provided in Table C:

(A) The person committed a violation involving sexual servitude; or

(B) The victim was a minor less than 18 years of age; or

(C) The victim was a minor less than 13 years of age; or

(D) In the course of committing a violation, the person also violated one or more of the following offenses:

- (I) 18 Pa.C.S. § 2901 (relating to kidnapping); or
- (II) 18 Pa.C.S. § 3121 (relating to rape); or
- (III) 18 Pa.C.S. § 3123 (relating to involuntary deviate sexual intercourse).
- (iv) Sexual Extortion, as required by 18 Pa.C.S. § 3133(e).

(A) When the court determines that the person violated 18 Pa.C.S. § 3133 (relating to sexual extortion) and the complainant is under 18 years of age or has an intellectual disability or the actor holds a position of trust or supervisory or disciplinary power over the complainant, the court shall consider the enhanced sentence recommendations provided in Tables B1—B3.

(B) When the court determines that the person violated 18 Pa.C.S. § 3133 (relating to sexual extortion) and the complainant attempts suicide resulting in serious bodily injury or dies by suicide, within 90 days of the commission of the offense, as a proximate result of the trauma that the complainant experienced during or following the commission of the offense, the court shall adjust the OGS as provided in Table C.

- (v) Arson Enhancement, as required by 42 Pa.C.S. § 9720.6.

(A) When the court determines that one or more of the following factors relating to arson as defined in 18 Pa.C.S. § 3301 are present, the court shall consider the enhanced sentence recommendations provided in Tables B1—B3:

- (I) Bodily injury results to a firefighter, police officer or person actively engaged in fighting the fire; or
- (II) Serious bodily injury results to a civilian.

(B) When the court determines that one or more of the following factors relating to arson as defined in 18 Pa.C.S. § 3301 are present, the court shall adjust the OGS as provided in Table C:

- (I) More than three persons were present inside the property at the time of the offense; or
- (II) The fire caused more than \$1,000,000 in property damage; or
- (III) The actor used, attempted to use or possessed an explosive or incendiary device as defined in 18 Pa.C.S. § 5515(a) (relating to prohibiting paramilitary training).

- (vi) Burglary Enhancement, as required by 18 Pa.C.S. § 3502(d.1) and 42 Pa.C.S. § 9720.7.

(A) When the court determines that the person violated 18 Pa.C.S. § 3502(a)(1)(i) (relating to burglary), regarding burglary of a structure adapted for overnight accommodations in which at the time of the offense any person is present and the person commits, attempts or threatens to commit a bodily injury therein, the court shall consider the enhanced sentence recommendations provided in Tables B1—B3.

(B) When the court determines that the person violated 18 Pa.C.S. § 3502 (relating to burglary) and a domestic animal was harmed or killed in the course of the burglary, the court shall adjust the OGS as provided in Table C.

(vii) Robbery of Motor Vehicle Enhancement, as required by 18 Pa.C.S. § 3702(b). When the court determines that the person violated 18 Pa.C.S. § 3702 (relating to robbery of motor vehicle), the court shall consider the enhanced sentence recommendations provided in Tables B1—B3.

(viii) Person Not to Possess, Use, Manufacture, Control, Sell or Transfer Firearms Enhancement, as required by 18 Pa.C.S. § 6105(a.1)(1.1)(ii). When the court determines that the person violated 18 Pa.C.S. § 6105(a)(1) (relating to person not to possess, use, manufacture, control, sell or transfer firearms), regarding person not to possess a firearm; conviction for enumerated felony or drug felony, and was previously convicted or was in physical possession or control of a firearm, the court shall consider the enhanced sentence recommendations provided in Tables B1—B3.

- (ix) Sexual Abuse of Children Enhancement, as required by 42 Pa.C.S. § 9720.5.

(A) When the court determines that the person violated 18 Pa.C.S. § 6312 (relating to sexual abuse of children) and that indecent contact with a child is depicted and the child depicted is under 10 years of age or prepubescent, the court shall consider the enhanced sentence recommendations provided in Tables B1—B3.

(B) When the court determines that the person violated 18 Pa.C.S. § 6312 (relating to sexual abuse of children) and that the person possessed more than 50 images, the court shall adjust the OGS as provided in Table C. For purposes of this enhancement, the number of images is defined as follows:

- (I) Each photograph, picture, computer generated image, or any similar visual depiction shall be considered to be one image.
- (II) Each video, video-clip, movie, or similar visual depiction shall be considered to have 50 images.

(C) When the court determines that the person violated 18 Pa.C.S. § 6312 (relating to sexual abuse of children) and that the abuse depicted in the images possessed by the person are of a sexual or violent nature or character, the court shall adjust the OGS as provided in Table C. This enhancement shall apply to any image possessed by the person which portrays or contains any of the following:

- (I) The bondage of a child; or
- (II) A dangerous weapon as defined in 18 Pa.C.S. § 913 used in a sexual context; or
- (III) Penetration or attempted penetration of a child; or

(IV) An act which would constitute a crime under 18 Pa.C.S. Chapter 25 (relating to criminal homicide), 18 Pa.C.S. Chapter 27 (relating to assault) or 18 Pa.C.S. Chapter 31 (relating to sexual offenses).

(D) Sexual Abuse of Children Enhancement shall apply to each violation which meets the criteria above.

(6) *Descriptions of vehicle code enhancements.*

(i) Homicide by Vehicle Enhancements, as provided in 42 Pa.C.S. § 2154(b)(3) and required by 75 Pa.C.S. § 3732. When the court determines that the person violated 75 Pa.C.S. § 3732 (relating to homicide by vehicle) and that one or more of the following sentencing factors are present, the court shall consider the enhanced sentence recommendations as provided in Tables B1—B3:

(A) *Category A:* violation of 75 Pa.C.S. § 3802 (relating to driving under the influence) or 75 Pa.C.S. § 3316 (relating to prohibiting text-based communications).

(B) *Category B:* violation of 75 Pa.C.S. § 3326 (relating to duty of driver in construction and maintenance areas or on highway safety corridors), 75 Pa.C.S. § 3325 (relating to duty of driver on approach of emergency vehicle), or 75 Pa.C.S. § 3327 (relating to duty of driver in emergency response areas and in relation to disabled vehicles).

(C) *Category C:* violation of 75 Pa.C.S. § 1501 (relating to drivers required to be licensed) or 75 Pa.C.S. § 1543 (relating to driving while operating privilege is suspended or revoked).

(ii) Aggravated Assault by Vehicle Enhancements, as provided in 42 Pa.C.S. § 2154(b)(3) and required by 75 Pa.C.S. § 3732.1. When the court determines that the person violated 75 Pa.C.S. § 3732.1 (relating to aggravated assault by vehicle) and that one or more of the following sentencing factors are present, the court shall consider the enhanced sentence recommendations as provided in Tables B1—B3:

(A) *Category A:* violation of 75 Pa.C.S. § 3802 (relating to driving under the influence) or 75 Pa.C.S. § 3316 (relating to prohibiting text-based communications).

(B) *Category B:* violation of 75 Pa.C.S. § 3326 (relating to duty of driver in construction and maintenance areas or on highway safety corridors), 75 Pa.C.S. § 3325 (relating to duty of driver on approach of emergency vehicle), or 75 Pa.C.S. § 3327 (relating to duty of driver in emergency response areas and in relation to disabled vehicles).

(C) *Category C:* violation of 75 Pa.C.S. § 1501 (relating to drivers required to be licensed) or 75 Pa.C.S. § 1543 (relating to driving while operating privilege is suspended or revoked).

(iii) Accidents Involving Death Enhancement, as provided in 75 Pa.C.S. § 3742(b)(3)(ii). When the court determines that the person violated 75 Pa.C.S. § 3742 (relating to accidents involving death or personal injury) and the victim dies, the court shall consider the enhanced sentence recommendations as provided in Tables B1—B3.

(iv) Driving Under the Influence of Alcohol or Controlled Substance Enhancement, as required by 75 Pa.C.S. § 3732. When the court determines that the person violated 75 Pa.C.S. § 3802(a)(1) where the person refused testing of breath or chemical testing or 75 Pa.C.S. § 3802(c) or (d) and where the person has four or more prior offenses, the court shall consider the enhanced sentence recommendations as provided in Tables B1—B3.

(c) *Mandatory sentencing provisions.*

(1) The court has no authority to impose a sentence less than that required by a mandatory minimum provision established in statute. 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.

(2) For mandatory sentencing provisions provided for in Title 30, Chapter 55 (relating to operation of boats) and in Title 75, Section 1543(b) (relating to driving while operating privilege is suspended or revoked), Chapter 37-B (relating to serious traffic offenses), Chapter 37-C (relating to accidents and accident reports), and Chapter 38 (relating to driving after imbibing alcohol or utilizing drugs), the court shall consider the OGS assignments as provided in Tables D1-D2.

(3) Mandatory sentences for which restrictive DUI probation conditions (42 Pa.C.S. § 9763(c)) are authorized.

(i) The court shall consider the sentence recommendations for a person convicted under 75 Pa.C.S. § 1543(b) (relating to driving while operating privilege is suspended or revoked), former 75 Pa.C.S. § 3731 (relating to driving under the influence of alcohol or controlled substance), or 75 Pa.C.S. § 3804 (relating to penalties) for a first, second, or third offense under 75 Pa.C.S. Chapter 38 (relating to driving after imbibing alcohol or utilizing drugs).

(ii) The court may use restrictive DUI probation conditions or a combination of confinement and restrictive DUI probation conditions to satisfy the mandatory minimum requirement as provided by law.

§ 303a.4. Prior record score.

(a) *General provisions.*

(1) The prior record score (PRS) is a measure of a person's criminal history, reflecting the number and seriousness of certain previous juvenile adjudications and adult convictions. The PRS addresses the greater culpability and risk to reoffend of repeat offenders. There are five PRS categories (PRS 0—PRS 4).

(2) The PRS is determined by identifying the most serious offense for which a person was adjudicated or convicted prior to the commission of the current offense, and then considering the number of previous adjudications or convictions of equal seriousness.

(3) Prior offense groups (POG) distinguish the seriousness of previous adjudications and convictions and are defined in paragraph (b). Certain previous adjudication and conviction offenses may be removed from consideration in the prior offense groups following prescribed periods of decay or gap, as described in paragraph (c).

(b) Procedure for identifying previous offenses.

(1) Identify prior offenses for which the person was adjudicated delinquent or convicted prior to the date of the current offense. The prosecution has the burden of proof in determining previous adjudications and convictions based on a preponderance of the evidence.

(2) Juvenile adjudications—consider the most serious offense for which the person was adjudicated delinquent from each disposition hearing that meets the following criteria:

(i) person 16 years of age or older at the time of the offense.

(ii) There was an express finding by the juvenile court that the adjudication was for a felony or a misdemeanor of the first degree (exclude consideration of all lesser offenses).

(3) Adult convictions (including juvenile transfers)—consider every offense for which the person was convicted. For former Pennsylvania offenses and out-of-state offenses:

(i) Determine the current equivalent Pennsylvania offense.

(ii) Determine the current equivalent grade of this offense.

(4) Excluded prior offenses.

(i) Exclude prior adjudications or convictions for offenses that contribute to an increase in the grade or maximum penalty of a subsequent adjudication or conviction. Prior DUI convictions shall not be considered in determining the PRS for any DUI sentence recommendation.

(ii) Exclude lapsed previous adjudication and conviction offenses as set forth in paragraph (d).

(5) Determine the seriousness of previous adjudications and convictions based on the following groups:

(i) POG1 includes all misdemeanors, unless designated as serious crimes.

(ii) POG2 includes all felonies of the third degree and all unclassified felonies, unless designated as serious crimes.

(iii) POG3 includes all serious crimes, defined as:

(A) All felonies of the first and second degree, unless designated as crimes of violence.

(B) All felonies of the third degree and misdemeanors of the first degree if:

(I) 18 Pa.C.S. Article B (Chapters 25—32)

(II) 18 Pa.C.S. Chapter 61-A (Uniform Firearms Act)

(III) 42 Pa.C.S. § 9799.14 (sexual offenses)

(iv) POG4 includes all crimes of violence (42 Pa.C.S. § 9714(g)).

(c) Lapsing of previous offenses.

(1) Exclude prior adjudications or convictions for offenses as set forth below. The burden of proof is on the person, based on a preponderance of the evidence.

(2) Juvenile adjudications:

(i) At 21 years of age (decay), remove prior adjudications for misdemeanor offenses (POG1), unless designated as a serious crime.

(ii) At 25 years of age (decay), remove prior adjudications for felony offenses (POG2), unless designated as a serious crime or crime of violence.

(iii) Following completion of a 10-year crime-free period since the last adjudication or conviction (gap), remove prior adjudications for misdemeanor and felony offenses (POG3), unless designated a crime of violence.

(iv) Following completion of a 15-year crime-free period since the last adjudication or conviction (gap), remove prior adjudications for offenses (POG4) designated crimes of violence.

(3) Adult convictions:

(i) Following completion of 15 years since the conviction date of the offense (decay), remove prior convictions for misdemeanor offenses (POG1), unless designated a serious crime.

(ii) Following completion of a 15-year crime-free period since release from confinement (gap), remove prior convictions for misdemeanor or felony offenses (POG2, POG3), unless designated a crime of violence.

(iii) Following completion of a 25-year crime-free period since release from confinement (gap), remove prior convictions for offenses (POG4) designated crimes of violence.

(d) *Procedure for determining the prior record score category.*

(1) Based on the offenses identified and excluding those removed through lapsing, select the prior offense group based on the most serious prior adjudication or conviction offense. Next, count the number of prior adjudication or conviction offenses contained in that prior offense group.

(2) Determine the PRS category based on the prior offense group and number of previous adjudications and convictions in the group, as provided in Table E:

(i) *PRS 4 (REVOC)*. The category includes sentence recommendations that include the statutory limit at Level D and higher, with the category defined by two or more previous crimes of violence.

(ii) *PRS 3*. The category includes sentence recommendations of confinement that are generally no more than double the base recommendation, with the category defined by:

(A) One previous crime of violence; or

(B) Two or more previous serious crimes; or

(C) Three or more previous felonies (excluding crimes of violence and serious crimes).

(iii) *PRS 2*. The category is defined by:

(A) One previous serious offense; or

(B) No more than two previous felonies (excluding crimes of violence and serious crimes); or

(C) Three or more previous misdemeanors (excluding serious crimes).

(iv) *PRS 1*. The category is defined by:

(A) No more than two previous misdemeanors (excluding serious crimes).

(v) *PRS 0*. The category includes sentence recommendations that serve as the base recommendations, with the category defined by:

(A) No previous adjudications or convictions; or

(B) Previous adjudications or convictions that have lapsed.

(e) *Miscellaneous provisions.*

(1) *Adequacy of prior record score*. The court may consider at the time of sentencing prior adjudications or convictions not counted in the calculation of the PRS, including lapsed offenses, and other factors deemed appropriate by the court.

(2) When a previous adjudication or conviction offense was committed over a range of dates, the later date shall be used to determine if the prior offense meets the criteria in paragraph (b)(1) for determining the PRS.

(3) Unless otherwise provided, the classification of a previous adjudication or conviction for an inchoate offense or an offense with classification associated with an associated or underlying offense is used to determine the prior offense group.

(4) When a previous adjudication or conviction offense was misclassified, the classification of the current equivalent Pennsylvania offense is used to determine the prior offense group.

(5) *Former Pennsylvania offenses.*

(i) For a previous adjudication or conviction offense under a former Pennsylvania law, the classification of the current equivalent Pennsylvania offense is used to determine the prior offense group.

(ii) Incomplete information.

(A) When there is no current equivalent Pennsylvania offense, the classification of the previous adjudication or conviction offense is used to determine the prior offense group.

(B) When the previous adjudication or conviction offense was a felony, but the grade of the felony is unknown, it shall be treated as a felony of the third degree. When the previous adjudication or conviction offense was for a misdemeanor, but the grade of the misdemeanor is unknown, it shall be treated as a misdemeanor of the third degree.

(C) When the classification of the previous adjudication or conviction offense cannot be determined, it shall be treated as a misdemeanor of the third degree.

(D) When the previous adjudication or conviction is for an offense which includes a summary classification, and the classification of the previous adjudication or conviction offense is unknown, it shall not be included in the PRS.

(6) *Out-of-state, federal, or foreign offenses.*

(i) For a previous adjudication or conviction for an out-of-state, federal, or foreign offense, the classification of the current equivalent Pennsylvania offense is used to determine the prior offense group.

(ii) For a court-martial for a criminal offense under the Uniform Code of Military Justice, which is considered a federal conviction, the classification of the current equivalent Pennsylvania offense is used to determine the prior offense group.

(iii) Non-judicial punishments or administrative actions (e.g., Article 15, Article 134) which are not convictions shall not be included in the PRS.

(iv) When there is no current equivalent Pennsylvania offense, the classification of the previous adjudication or conviction offense based on the maximum sentence permitted is used to determine the prior offense group.

(7) *Excluded offenses, charges, and convictions.* The following types of offenses, charges, and convictions shall not be scored in the PRS:

(i) Summary offenses, violations of local ordinances, direct or indirect contempt of court, violation of protection from abuse orders, and dispositions under Pa.R.Crim.P. Rules Chapter 3 (relating to accelerated rehabilitative disposition), 35 P.S. § 780-117 or 35 P.S. § 780-118.

(ii) A charge which is nolle prossed, dismissed, or on which a demurrer is sustained.

(iii) Any prior conviction which contributed to an increase in the grade of a subsequent conviction.

§ 303a.5. Guideline sentence recommendation.

(a) *General provisions.*

(1) In writing the sentencing guidelines, the Commission strives to provide a benchmark for the judges of Pennsylvania. The guidelines serve as a common starting point at sentencing, with a standard range of recommendations for the typical circumstances, based on the seriousness of the conviction offense and the consideration of relevant criminal history and criminal behavior of the person. As required by statute, aggravated and mitigated ranges are included to support the exercise of discretion when other circumstances are present, and adjustments to the guidelines are incorporated to address factors that may increase or decrease risk to public safety.

(2) Through the establishment of sentencing levels, the sentencing guidelines are anchored to the purposes of sentencing and to the authorized dispositions provided in statute. Within these levels, a specific guideline sentence recommendation is provided for each conviction offense, based on the combination of OGS and PRS, intended to promote uniformity and proportionality. General guideline sentence recommendations are provided for the aggregation of multiple sentences imposed during judicial proceedings, intended to promote greater consistency in the use of concurrent or consecutive sentences, and to encourage the consideration of various sentencing and correctional programs. "The guidelines were designed to bring greater rationality and consistency to sentences and to eliminate unwarranted disparity in sentencing." *Commonwealth v. Mouzon*, 812 A.2d 617 (Pa., 2002).

(3) While courts are required to consider the recommendations, Pennsylvania's sentencing guidelines are advisory, and courts are required to individualize sentences. "Guidelines serve the laudatory role of aiding and enhancing the judicial exercise of judgement regarding case-specific sentencing. Guidelines may help frame the exercise of judgement by the Court in imposing a sentence. . .they are advisory guideposts that are valuable, may provide an essential starting point, and that must be respected and considered; they recommend, however, rather than require a particular sentence." *Commonwealth v. Walls* (926 A.2d 957) (Pa., 2007).

(b) *Purposes of sentencing.*

(1) As provided in the Model Penal Code: Sentencing (Model Penal Code § 1.02(2)), the general purposes in decisions affecting the sentencing of persons include:

(i) To render sentences in all cases within a range of severity proportionate to the gravity of offenses, the harm done to victims, and the blameworthiness of persons; and

(ii) When reasonably feasible, to achieve person rehabilitation, general deterrence, incapacitation of dangerous persons, restitution to crimes victims, preservation of families, and reintegration of persons into the law-abiding community, provided these goals are pursued within the boundaries of proportionality.

(2) The sentencing guidelines provide a system with a primary focus on retribution, but one which allows for the fulfillment of other utilitarian sentencing purposes, including person rehabilitation, general deterrence, incapacitation to protect the public, and victim restoration.

(3) While the guidelines provide a retributive framework for sentencing, other factors may impact the sentencing decision and other information may assist the court in determining an appropriate and individualized sentence. These include:

(i) Mandatory minimum sentencing provisions, which when applicable supersede the sentencing guidelines recommendations.

(ii) Diagnostic evaluations of dependency on alcohol and other drugs and clinically prescribed treatment.

(iii) The use of validated assessments of risk, needs and responsivity and related evidence-based practices to guide decisions related to the intensity and duration of community supervision.

(c) *Sentencing levels and standard range recommendations.*

(1) Eight sentencing levels are associated with recommended dispositions and durations, to allow for more consistent consideration of the authorized sentencing alternatives, and to address mandates related to the adoption of guidelines for probation, the use of restrictive conditions, and fines and community service. This also allows for the consideration of the risk and needs of the person, and for the use of sentencing and correctional programs.

(i) The sentencing levels increase in severity from restorative sanctions (Level A) to total confinement in a state facility (Level D through Level H, depending on the duration of the recommendation).

(ii) Consistent with retribution as the primary purpose of the guidelines, the increases in the severity of the recommendations are proportionate with increases in the seriousness of the offenses and the extent of the criminal history. The sentencing levels provide a rational basis for the consideration of both retributive and utilitarian purposes of sentencing.

(2) *Standard range recommendations*

(i) Standard range recommendations, based on each combination of the OGS, assigned pursuant to § 303a.3, and the PRS, determined pursuant to § 303a.4, are provided in the Sentencing Matrix, located at § 303a.8. The standard range serves as a common starting point for sentencing and includes sentence recommendations that apply to typical circumstances.

(ii) The standard range include specific recommendations, consistent with the sentencing level, that address the disposition and duration of a sentence, as well as the intensity of community supervision and the consideration of sentencing programs and are intended to promote uniformity and proportionality of sentencing.

(iii) When the guideline sentence recommendation exceeds that permitted by 18 Pa.C.S. § 1103 (relating to sentence of imprisonment for felony) and § 1104 (relating to sentence of imprisonment for misdemeanors), the guideline sentence recommendation is capped at the statutory limit. For the purposes of the guidelines, the statutory limit is the longest legal minimum sentence, which is one-half the maximum period allowed by law.

(iv) Treatment alternatives, including medically assisted treatment and behavioral therapies when clinically appropriate, may be considered to address substance use or behavioral health issues. The specialized jurisdiction of problem-solving courts, as authorized by 42 Pa.C.S. § 916 (relating to problem-solving courts), provide an avenue for the use of court-supervised individualized treatment programs and services. Other treatment programs, such as those described in § 303a.1(d) (relating to preliminary provisions), may be considered:

(A) Probation with restrictive conditions, including the use of the use of clinically prescribed treatment, may be considered for eligible persons in lieu of recommendations for confinement in a county facility.

(B) Restrictive DUI probation conditions may be used to satisfy the mandatory minimum sentencing requirements for eligible persons.

(C) Persons committed to the Department may be recommended or made eligible by the Court for certain correctional programs, including the state motivational boot camp program and the state drug treatment program.

(3) The sentencing levels and related standard range recommendations are described below:

(i) Level A, generally limited to restorative sanctions recommendations.

(A) The guidelines encourage consideration of the use of restorative sanctions, including community service, economic sanctions, or other authorized sanctions not requiring probation or confinement. The use of restorative sanctions at this level, with a focus on reparations and restorative justice, supports the utilitarian purpose of restoration.

(B) Restorative sanctions recommendations may be satisfied by the following:

(I) Guilt without further penalty when the court determines probation would be appropriate but unnecessary.

(II) A fine, within the limits provided by law, or any amount equal to double the pecuniary gain derived from the offense by the person, or the use of community service as a non-monetary alternative, may be ordered as a restorative sanction without probation or confinement. The fines/community service guidelines, included with each guideline sentence recommendation, provide a range of recommended community service hours; the comparable fine is determined by multiplying the number of hours recommended by the person's hourly wage, or by the current minimum wage.

(III) Restitution as a mandatory requirement. The court is required to order the person to compensate the victim for damage or injury sustained because of the offense. Restitution as a restorative sanction may be ordered without probation or confinement.

(IV) Costs as a mandatory requirement. The court is required to order the person to pay costs. Costs as a restorative sanction may be ordered without probation or confinement.

(V) Probation in limited circumstances as necessary to fulfill court-ordered obligations.

(ii) Level B, limited to probation recommendations.

(A) The guidelines encourage consideration of the use of probation to provide community supervision with the minimal control necessary to fulfill court-ordered obligations. The use of probation at this level, with consideration of restorative sanctions, supports the utilitarian purposes of rehabilitation and restoration.

(B) Probation recommendations include:

(I) The use of probation, not to exceed two years and as provided, with general conditions; and the consideration of fines/community service or other restorative sanctions as general conditions of probation.

(II) The use of probation, not to exceed two years and as designated, with restrictive conditions for a period less than three months and as designated (RC) for persons with greater criminal history, to increase the intensity of supervision and services; and the consideration of fines/community service or other restorative sanctions as general conditions of probation.

(iii) Level C, limited to confinement in a county facility, while providing for the use of probation with restrictive conditions as an alternative when eligible and appropriate.

(A) The guidelines encourage the consideration of confinement in a county facility, or an equivalent period of restrictive conditions of probation, with the court retaining jurisdiction of the case. The use of county confinement with the court authorized to consider county programs and county parole, or in the alternative, the court having the discretion to use probation with restrictive conditions to provide community supervision and/or treatment, supports multiple utilitarian purposes including deterrence, rehabilitation, and restoration.

(B) Confinement recommendations include:

(I) The use of confinement consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the person.

(II) The use of confinement in a county facility, with a minimum term less than 12 months and as designated, and a maximum term of less than 24 months; with the court authorized to consider a county reentry program or partial release program as provided in § 303a.1(d), and county parole pursuant to 42 Pa.C.S. § 9776 (relating to judicial power to release inmates).

(III) Unless otherwise designated, the range of months in the standard range refers to the recommended minimum term of confinement.

(C) Probation with restrictive conditions recommendations include:

(I) Consideration of the eligibility requirements, as provided in § 303a.1(d), for the use of county intermediate punishment programs as restrictive conditions of probation.

(II) The use of probation, not to exceed two years and as designated, with restrictive conditions for a period less than 12 months and as designated (RC) for persons with greater criminal history, to increase the intensity of supervision and services; and the consideration of fines/community service or other restorative sanctions as general conditions of probation.

(III) Unless otherwise designated, the range of months in the standard range refers to the recommended period of restrictive conditions.

(iv) Level D, while recommending confinement in a state facility, provides for confinement in a county facility when authorized by statute or the use of probation with restrictive conditions when eligible and appropriate.

(A) The guidelines encourage the consideration of confinement in a state facility with consideration of certain correctional programs; or if authorized by statute, confinement in a county facility, with the court authorized to consider county programs and county parole; or the use of probation with restrictive conditions as an alternative to or in combination with confinement in a county facility to provide community supervision and/or treatment. The use of confinement, with consideration of sentencing and correctional programs, supports multiple utilitarian purposes including incapacitation, deterrence, rehabilitation, and restoration.

(B) Confinement recommendations include:

(I) The use of confinement consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the person.

(II) The use of confinement in a state facility, with a minimum term of 12 months or more but less than 30 months and as provided in 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement), and a maximum term of less than 60 months; with the court authorized to determine the eligibility and appropriateness of specified Department programs as provided in § 303a.1(d); and with parole authority under the jurisdiction of the Board pursuant to 61 Pa.C.S. § 6132 (relating to specific powers of board involving offenders).

(III) The use of confinement in a county facility, with a minimum term of 12 months or more but less than 30 months and as provided in 42 Pa.C.S. § 9762 (relating to sentencing proceeding; place of confinement), and a maximum term of less than 60 months; with the court authorized to consider a county reentry program or partial release program as provided in § 303a.1(d), and county parole pursuant to 42 Pa.C.S. § 9776 (relating to judicial power to release inmates).

(IV) Unless otherwise designated, the range of months in the standard range refers to the recommended minimum term of confinement.

(C) Probation with restrictive conditions recommendations include:

(I) Consideration of the eligibility requirements, as provided in § 303a.1(d), for the use of county intermediate punishment programs as restrictive conditions of probation.

(II) The use of probation, not to exceed two years, with restrictive conditions for a period of 12 months or less and as designated (RC); and the consideration of fines/community service or other restorative sanctions as general conditions of probation.

(III) Unless otherwise designated, the range of months in the standard range refers to the recommended period of restrictive conditions.

(v) Level E, limited to confinement in a state facility.

(A) The guidelines encourage the consideration of confinement in a state facility with consideration of certain correctional programs. While rehabilitation and restoration are under consideration at all levels, the primary utilitarian purposes of confinement at Level E are incapacitation and deterrence.

(B) Confinement recommendations include:

(I) The use of confinement consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the person.

(II) The use of confinement in a state facility, with a minimum term of 30 months or more recommended, including consideration of the statutory limit for repeat violent offenders (REVOC), with the maximum term at least double the minimum term as provided in 42 Pa.C.S. § 9756 (relating to sentence of total confinement); with the court authorized to determine the eligibility and appropriateness of specified Department programs as provided in § 303a.1(d); and with parole authority under the jurisdiction of the Board pursuant to 61 Pa.C.S. § 6132 (relating to specific powers of board involving offenders).

(III) Unless otherwise designated, the range of months in the standard range refers to the recommended minimum term of confinement.

(vi) Level F, limited to confinement in a state facility for offenses with a statutory maximum greater than 20 years.

(A) The guidelines encourage the consideration of confinement in a state facility with consideration of certain correctional programs. While rehabilitation and restoration are under consideration at all levels, the primary utilitarian purposes of confinement at Level F are incapacitation and deterrence.

(B) Confinement recommendations include:

(I) The use of confinement consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the person.

(II) The use of confinement in a state facility, with a minimum term of 90 months or more recommended, including consideration of the statutory limit for repeat violent offenders (REVOC), with a maximum term at least double the minimum term as provided in 42 Pa.C.S. § 9756 (relating to sentence of total confinement); with the court authorized to determine the eligibility and appropriateness of specified Department programs as provided in § 303a.1(d); and with parole authority under the jurisdiction of the Board pursuant to 61 Pa.C.S. § 6132 (relating to specific powers of board involving offenders).

(III) Unless otherwise designated, the range of months in the standard range refers to the recommended minimum term of confinement.

(vii) Level G, limited to confinement in a state facility for the offense of murder of the third degree, which has a statutory maximum of 40 years.

(A) The guidelines encourage the consideration of confinement in a state facility with consideration of certain correctional programs. While rehabilitation and restoration are under consideration at all levels, the primary utilitarian purposes of confinement at Level G are incapacitation and deterrence.

(B) Confinement recommendations include:

(I) The use of confinement consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the person.

(II) The use of confinement in a state facility, with a minimum term standard range recommendation of no less than 72 months and including the statutory limit of 240 months; with a maximum term at least double the minimum term as provided in 42 Pa.C.S. § 9756 (relating to sentence of total confinement); with the court authorized to determine the eligibility and appropriateness of specified Department programs as provided in § 303a.1(d); and with parole authority under the jurisdiction of the Board pursuant to 61 Pa.C.S. § 6132 (relating to specific powers of board involving offenders).

(III) Because of the wide range of circumstances contributing to convictions for murder of the third degree, the Commission has provided an extraordinarily wide standard range for consideration by the court, with a lower limit of 72 months and an upper limit of 240 months, which is the statutory limit. An enhancement, which increases the lower limit to 90 months, applies when the victim is less than 13 years of age. In order to refine future guidelines and promote greater proportionality and uniformity in sentencing, the Commission requires the court to report reasons for all sentences imposed for murder of the third degree.

(IV) Unless otherwise designated, the range of months in the standard range refers to the recommended minimum term of confinement.

(viii) Level H, limited to confinement in a state facility for the offenses of murder of the first degree and murder of the second degree.

(A) Level H includes convictions for which the penalty is the same as the penalty for murder of the first degree or murder of the second degree, including but not limited to:

(I) 18 Pa.C.S. § 2507 (relating to criminal homicide of law enforcement officer).

(II) 18 Pa.C.S. § 2604 (relating to murder of unborn child).

(III) 18 Pa.C.S. § 2716 (relating to weapons of mass destruction).

(IV) 18 Pa.C.S. § 3301 (relating to arson and related offenses).

(B) Three age categories apply: (A) persons 18 years of age or older at the time of the offense; (B) persons 15 years of age or older but less than 18 years of age at the time of the offense; and (C) persons 10 years of age or older but less than 15 years of age at the time of the offense.

(C) If person is under 18 years of age at the time of the offense and the conviction occurred after June 24, 2012, the court shall consider the recommendations provided in Level H. The court has no authority to impose a sentence less than that required by the mandatory minimum provision established in statute and may impose a minimum sentence up to and including life (18 Pa.C.S. § 1102.1).

(D) The statute requires confinement in a state facility, and the mandatory minimum requirements provide the lower limit of the recommendations in Level H, with recommendations increasing based on criminal history. While rehabilitation and restoration are under consideration at all levels, the primary utilitarian purposes of confinement at Level H are incapacitation and deterrence.

(E) Confinement recommendations include:

(I) The use of confinement consistent with the protection of the public, the gravity of the offense as it relates to the impact on the life of the victim and on the community, and the rehabilitative needs of the person.

(II) The use of confinement in a state facility, for those under 18 years of age at the time of the offense, considers the mandatory minimum sentencing requirements and criminal history in determining the minimum sentence recommendation. The maximum sentence authorized by statute is life, including life without the possibility of parole (LWOP), but excluding the death penalty. When sentenced to a minimum term of less than LWOP, parole authority is under the jurisdiction of the Board pursuant to 61 Pa.C.S. § 6132 (relating to specific powers of board involving offenders).

(III) The use of confinement in a state facility, for those 18 years or age or older at the time of the offense, penalties are limited to LWOP or death.

(F) Unless otherwise designated, the range of months in the standard range refers to the recommended minimum term of confinement.

§ 303a.6. Aggravated and mitigated circumstances.

(a) *Aggravated and mitigated ranges.* As required by 42 Pa.C.S. § 2154(b)(4) (relating to adoption of guidelines for sentencing), the sentencing guidelines provide aggravated and mitigated ranges as variations from the standard range on account of aggravating and mitigating circumstances.

(b) *Aggravated ranges.* When the court determines that aggravating circumstances are present, the court may consider the aggravated range of the sentencing guidelines. The aggravated range is determined by adding the designated number of months listed on the Sentencing Matrix (AGG/MIT column) to the top of the standard range recommendation as follows:

(1) At Level A, the aggravated range is determined by adding three months of probation to the top of the standard range recommendation. When the top of the standard range recommendation is RS, the aggravated range recommendation is a period of probation up to and including three months of probation; when the top of the standard range recommendation is 6 months of probation, the aggravated range recommendation is any period of probation greater than six months up to and including nine months of probation.

(2) At Level B, the aggravated range is determined by adding six months of probation to the standard range recommendation. When the standard range recommendation is 6 months of probation, the aggravated range recommendation is a period of probation greater than six months up to and including twelve months of probation; when the standard range recommendation is 24 months of probation, the aggravated range recommendation is any period of probation greater than 24 months up to and including 30 months of probation. The use of confinement, or the use of restrictive conditions for a period longer than designated in the standard range recommendation, is a departure from the guidelines.

(3) At Level C through Level H, the aggravated range recommendation is determined by adding the number of months designated below to the top of the standard range recommendations:

(i) Level C = 3 months.

(ii) Level D = 4 months.

(iii) Level E = 6 months.

(iv) Level F = 12 months.

(v) Level G = 12 months.

(vi) Level H = 24 months.

(4) As an example, when the top of the standard range recommendation is a minimum term of confinement of four months (Level C), the aggravated range recommendation is a minimum term of confinement of greater than four months up to and including a minimum term of confinement of seven months; when the top of the standard range recommendation is a minimum term of confinement of 60 months (Level E), the aggravated range recommendation is a minimum term of confinement of greater than 60 months up to and including a minimum term of confinement of 66 months.

(5) When the guideline sentence recommendation is higher than the statutory limit, the statutory limit shall be the upper limit of the aggravated range.

(c) *Mitigated ranges.* When the court determines that mitigating circumstances are present, the court may consider the mitigated range of the sentencing guidelines. The mitigated range is determined by subtracting the designated number of months listed on the Sentencing Matrix (AGG/MIT column) from the bottom of the standard range recommendation as follows:

(1) At Level A, the mitigated range is determined by subtracting three months of probation from the bottom of the standard range recommendation. There is no mitigated range at Level A, since the bottom of the standard range is restorative sanctions, which excludes probation.

(2) At Level B, the mitigated range is determined by subtracting six months of probation from the standard range recommendation. When the standard range recommendation is 6 months of probation or less, the mitigated range recommendation is RS (restorative sanctions); when the standard range recommendation is 24 months of probation, the mitigated range recommendation is any period of probation of 18 months or greater but less than 24 months of probation. The recommended duration of restrictive conditions is reduced by one month.

(3) At Level C through Level H, the mitigated range recommendation is determined by subtracting the number of months designated below from the bottom of the standard range recommendations:

- (i) Level C = 3 months.
- (ii) Level D = 4 months.
- (iii) Level E = 6 months.
- (iv) Level F = 12 months.
- (v) Level G = 12 months.
- (vi) Level H = 24 months.

(4) As an example, when the bottom of the standard range recommendation is a minimum term of confinement of three months or less (Level C), the mitigated range recommendation is RS (restorative sanctions); when the bottom of the standard range recommendation is a minimum term of confinement of 60 months (Level E), the mitigated range recommendation is a minimum term of confinement of 54 months or greater but less than 60 months.

(5) When the guideline sentence recommendation is lower than the sentence required by a mandatory sentencing statute, the mandatory minimum sentence shall be the lower limit of the mitigated range.

(d) *Departures from the guidelines.* Any sentence imposed with a disposition or duration more severe than the aggravated range recommendation is considered a departure above the guidelines. Any sentence imposed with a disposition or duration less severe than the mitigated range recommendation is considered a departure below the guidelines. Any sentence imposed without consideration of applicable guideline requirements, such as completion of a diagnostic assessment for use of certain restrictive conditions of probation, is considered a procedural departure.

(e) *Reasons for sentence.*

(1) When the court imposes a sentence for murder of the third degree, or imposes a sentence in the aggravated or mitigated range, or departs from the sentencing guidelines, it shall consider and state on the record a reason or reasons for the sentence, including but not limited to the following:

- (i) Nature and circumstances of the offense:
 - (A) Neither caused nor threatened serious harm.
 - (B) Conduct substantially influenced by another person.
 - (C) Acted under strong provocation.
 - (D) Substantial grounds to justify conduct.
 - (E) Role in offense.
 - (F) Purity of controlled substance.
 - (G) Abuse of position of trust.
 - (H) Vulnerability of victim.
 - (I) Temporal pattern.
 - (J) Offense pattern.
- (ii) History and character of the person:
 - (A) No history of criminal conduct.
 - (B) Substantial period of law abiding behavior.
 - (C) Circumstances unlikely to recur.
 - (D) Likely to respond affirmatively to probation.
 - (E) Imprisonment would entail excessive hardship.

- (F) Accepts responsibility.
- (G) Provides substantial assistance.
- (H) Compensated victim or community.
- (I) Character and attitude.

(2) Unless otherwise prohibited by statute, the consideration of validated assessments of risk, needs and responsivity, or clinical evaluations may be considered to guide decisions related to the intensity of intervention, use of restrictive conditions, and duration of community supervision.

(3) Adequacy of the prior record score. The court may consider at sentencing prior convictions, juvenile adjudications, or dispositions not counted in the calculation of the PRS, in addition to other factors deemed appropriate by the court.

(f) *Reporting of reasons.* When the court imposes a sentence for murder of the third degree, or imposes an aggravated or mitigated sentence, or departs from the guidelines, the court shall include the reasons on the guideline sentence form, and electronically transmit the information to the Commission in the manner described § 303a.2.

§ 303a.7. Judicial proceeding recommendations.

(a) *General guideline sentence recommendations.* General guideline sentence recommendations are provided to address the imposition of multiple sentences during a judicial proceeding to promote greater consistency in the use of concurrent or consecutive sentences, and to encourage the consideration of various sentencing and correctional programs.

(b) *Concurrent and consecutive sentences.* As provided in 42 Pa.C.S. § 9721(a) (relating to sentencing generally), the court may impose one or more sentencing alternatives consecutively or concurrently. When a judicial proceeding includes sentences for multiple convictions, the guidelines encourage the consideration of imposing concurrent sentences for lesser conviction offenses within the same criminal incident. Exceptions include:

- (1) Sentences for crimes of violence.
- (2) Consecutive sentences are required by law, including but not limited to:
 - (i) 18 Pa.C.S. § 2703(b) (relating to assault by prisoner).
 - (ii) 42 Pa.C.S. § 9711.1(c) (relating to sentencing for certain murders of infant persons).
 - (iii) 42 Pa.C.S. § 9718.5 (relating to mandatory period of probation for certain sexual offenders).
 - (iv) 61 Pa.C.S. § 6137.2 (relating to reentry supervision).
 - (v) 75 Pa.C.S. § 3735 (relating to homicide by vehicle while driving under the influence).
 - (vi) 75 Pa.C.S. § 3804(c.2) and (c.3) (relating to penalties for driving under the influence).
- (3) Proceedings in which there are multiple crime victims.

(c) *Consecutive sentences of total confinement.* As provided in 42 Pa.C.S. § 9757 (relating to consecutive sentences of total confinement for multiple offenses), when the Court determines that a sentence should be imposed consecutive to one being then imposed or one previously imposed, the Court shall indicate the minimum sentence to be served for the total of all offenses; the minimum sentence shall not exceed one-half of the maximum sentence imposed. For purposes of the guidelines, the total confinement sentence imposed during the judicial proceeding shall be considered the aggregate confinement sentence.

(d) *Consideration of sentencing and correctional programs.* When the aggregate confinement sentence authorizes the use of a county facility, the guidelines encourage consideration of a county reentry program or partial release program as provided in § 303a.1(d) (relating to preliminary provisions), and county parole pursuant to 42 Pa.C.S. § 9776 (relating to judicial power to release inmates). When the aggregate confinement sentence authorizes the use of a state facility, the guidelines encourage the court to determine the eligibility and appropriateness of the specified Department programs provided in § 303a.1(d); parole authority in such cases is under the jurisdiction of the Board pursuant to 61 Pa.C.S. § 6132 (relating to specific powers of board involving offenders).

(e) *Consecutive sentences of probation.* Unless otherwise provided, the guidelines recommend the duration of the aggregate term of probation imposed during a judicial proceeding not exceed five years; and that the duration of the restrictive conditions of probation, or a combination of confinement without parole, as provided in 42 Pa.C.S. §§ 9755(h) (relating to sentence of partial confinement) and 9756(c.1) (relating to sentence of total), and restrictive conditions of probation, not exceed the months of confinement recommended in the guidelines.

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