

THE COURTS

Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

PENNSYLVANIA COMMISSION ON SENTENCING Impact of '3-Strikes' Legislation (Act 21 of 1995)

Act 21 of 1995, referred to as the '3-strikes' legislation, increased the mandatory penalties for certain repeat violent offenders. Act 21 further mandated the Pennsylvania Commission on Sentencing to provide an impact statement on the projected increases in the prison population as a result of this legislation. This impact analysis was conducted by the Correctional Population Projection Committee, which is comprised of the Lancaster County Prison Warden, the York County Chief Adult Probation Officer along with representatives of the following agencies: Commission on Crime and Delinquency, Commission on Sentencing, Department of Corrections, Board of Probation and Parole, and Office of the Budget. Questions concerning this impact statement should be directed to Doug Hoffman, Chair, at (717) 787-5152., of the Pennsylvania Commission on Crime and Delinquency.

SENATOR DAVID HECKLER,
Chair

Impact Summary: Violent Offense Mandatories—Act 21 of 1995 expands the definition of Act 54 of 1982 to include the offenses of robbery of a motor vehicle and burglary of an occupied dwelling. It also added solicitation or conspiracy to commit any of the designated offenses to the list of offenses for repeat offenders. The act increases the mandatory sentences for second offenses from 5 to 10 years if the presumption that the offender is a "High Risk

Dangerous" offender has not been rebutted. The act increases mandatory minimum sentences for third and subsequent offenses to 25 years and allows the court to sentence these offenders to life in prison.

Analysis and Assumptions: Consistent with all previous special session bill impact analyses, the Committee assumed that all new sentences would be effective January 1, 1996. For this analysis, the Committee assumed that 90% of the offenders who meet the criteria for the second offense mandatories will be found to be "High Risk Dangerous" and receive the 10 year mandatory minimum sentence. The other 10% of second time offenders will receive the mandatory 5 year minimum sentence. For third and subsequent offenders, it was assumed that all offenders who met the criteria would receive at least the 25 year mandatory minimum sentence and that 20% of these offenders would receive a sentence of life imprisonment. While the imposition of these mandatory sentences is currently subject to the discretion of the prosecution, the new criteria and sentence length is expected to affect plea bargains and other sentences by lengthening those sentences. The following tables show the estimated impact of this bill through the year 2005. However, the long sentences, defined as those with minimum sentences of up to 25 years or a life sentence, mean that the maximum impact will not be experienced for 40 years, assuming the average life sentence will be 40 years (average offender age = 32 years). That impact has been included below the projection for the year 2005.

Note: All analyses produced by the Committee unless, stated otherwise, assume only the changes described in the analyzed bill will occur. Total impact of all bills enacted will require a separate analysis. Since a single offender may be affected by more than one bill, simply adding the individual impact estimates will not produce an accurate total impact estimate.

Estimated Impact of Act 21 of 1995 (3-strikes legislation)¹

Department of Corrections

	<i>Past Policy</i>	<i>Impact of Act 21 of 1995</i>	<i>Prison Population Under Act 21 of 1995</i>
1996	35,606	+23	35,629
1997	35,557	+46	35,603
1998	35,132	+76	35,208
1999	34,773	+118	34,891
2000	34,739	+194	34,933
2001	34,742	+328	35,070
2002	34,833	+526	35,359
2003	35,025	+774	35,799
2004	35,345	+1044	36,389
2005	35,741	+1301	37,042

Eventual Impact (40 years) + 3069

¹ This assumes that 90 percent of second time offenders are determined to be "High Risk Dangerous".

Board of Probation and Parole

	<i>Past Policy</i>	<i>Impact of Special Session Act 21 of 1995</i>	<i>Prison Population Under Act 21 of 1996</i>
1996	22,111	0	22,111
1997	24,711	0	24,711
1998	27,317	-7	27,310
1999	29,709	-26	29,683
2000	31,556	-79	31,477
2001	33,153	-190	32,963
2002	34,675	-365	34,310
2003	36,015	-590	35,425
2004	37,165	-837	36,328
2005	38,070	-1071	36,999

Eventual Impact (40 years) + 2389

Jail Impact -45 within 2 years

[Pa.B. Doc. No. 96-1202. Filed for public inspection July 26, 1996, 9:00 a.m.]

Title 231—RULES OF CIVIL PROCEDURE

PART I. GENERAL

[231 PA. CODE CH. 2970]

Amendment of Rules Governing Confession of Judgment in Ejectment for Possession of Real Property; No. 263; Doc. No. 5

Amendatory Order

Per Curiam:

And Now, this 3rd day of July, 1996, Order No. 257, Civil Procedural Rules Docket No. 5, dated April 1, 1996 is amended by deleting Rule 2974.1 and substituting new Rule 2974.1 to read as follows.

This Order shall be effective immediately upon publication in the *Pennsylvania Bulletin* and shall be processed in accordance with Rule of Judicial Administration 103(b).

Annex A

TITLE 231. RULES OF CIVIL PROCEDURE

PART I. GENERAL

CHAPTER 2970. CONFESSION OF JUDGMENT FOR POSSESSION OF REAL PROPERTY

Rule 2974.1. Praeceptum for Writ of Possession.

The praecipe for a writ of possession shall be substantially in the following form:

[Caption]

PRAECIPE FOR WRIT OF POSSESSION UPON A CONFESSED JUDGMENT

To the Prothonotary:

Issue writ of possession upon the judgment in ejectment entered by confession in the above matter.

Certification

I certify that

- (1) This praecipe is based upon a judgment entered by confession, and (Delete three of the following paragraphs which are inapplicable.)
- (2) Notice pursuant to Rule 2973.2 has been served at least thirty days prior to the filing of this praecipe as evidenced by a return of service filed of record.
- (3) Notice pursuant to Rule 2973.3 will be served with the writ of possession.
- (4) Notice was served in connection with a prior execution on this judgment and, pursuant to Rule 2973.4(b), no further notice is required.
- (5) Notice is not required under Rule 2973.1(c) because a petition to open or strike the judgment was previously filed.

Attorney for

[Pa.B. Doc. No. 96-1203. Filed for public inspection July 26, 1996, 9:00 a.m.]

Title 234—RULES OF CRIMINAL PROCEDURE

PART I. GENERAL

[234 PA. CODE CH. 9000]

Order Amending Filings by Represented Defendants; No. 210; Doc. No. 2

Order

Per Curiam:

Now, this 9th day of July, 1996, upon the recommendation of the Criminal Procedural Rules Committee; this

Recommendation having been published at 25 Pa.B. 5920 (December 23, 1995) and in the *Pennsylvania Reporter* (Atlantic Second Series Advance Sheets Vol. 672) before adoption, with a *Final Report* to be published with this Order:

It Is Ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that Pa.R.Crim.P. 9022 is hereby amended in the following form.

This *Order* shall be processed in accordance with Pa.R.J.A. 103(b) and shall be effective September 1, 1996.

The Criminal Procedural Rules Committee has prepared a *Final Report* explaining the July 9, 1996 amendments to Rule of Criminal Procedure 9022 (Filing). The amendments provide that the clerk of courts forward to counsel of record any filings by a defendant represented by counsel, rather than docket such filings. The *Final Report* follows the Court's Order.

Annex A

TITLE 234. RULES OF CRIMINAL PROCEDURE

PART II. LOCAL AND MINOR COURT RULES

CHAPTER 9000. GENERAL PROVISIONS

Rule 9022. Filing.

(a) Except as otherwise provided in these rules, all written motions, and any notice or document for which filing is required, shall be filed with the clerk of courts.

(b) [When] Except as provided in paragraph (c), when a written motion, notice, or document is received by the clerk of courts, the clerk shall docket it and record the time of filing in the docket. A copy of these papers shall be promptly transmitted to such person as may be designated by the court.

(c) In any case in which a defendant is represented by an attorney, if the defendant submits for filing a written motion, notice, or document that has not been signed by the defendant's attorney, the clerk of courts shall not docket or record it, but shall forward it to the defendant's attorney within 10 days of receipt.

[(c)] (d) Filing may be accomplished by:

(1) personal delivery to the clerk of courts; or

(2) mail addressed to the clerk of courts, provided, however, that filing by mail shall be timely only when actually received by the clerk within the time fixed for filing.

Official Note: Adopted October 21, 1983, effective January 1, 1984; amended March 22, 1993, effective January 1, 1994; amended July 9, 1996, effective September 1, 1996.

Comment

This rule requires the filing of all written motions, but it applies to notices and other documents only if filing is required by some other rule or provision of law. As used here, "written motions" includes all motions, challenges, and applications or requests for an order or relief that must be made by written motion under Rule 9020(a). [Filing was covered by former Rule 309(a) before adoption of this rule in 1983.]

Those rules that provide for filing with the trial court or the sentencing court are not exceptions to the general requirement of this rule that filing be with the clerk of courts. As used in this rule, "clerk of courts" is intended to mean that official in each judicial district who has the

responsibility and function under state or local law to maintain the official court file and docket, without regard to that person's official title.

The second sentence of paragraph (b) is intended to provide flexibility to the local courts to designate the court official, such as a local court administrator, who processes motions and other matters for appropriate scheduling and disposition.

Paragraph (c) was added in 1996 to provide a uniform, statewide procedure for the clerks of courts to handle filings by represented defendants when the defendant's attorney has not signed the document being filed by the defendant. See Pa.R.A.P. 3304 (Hybrid Representation). Paragraph (c) only applies to cases in which the defendant is represented by counsel, not cases in which the defendant is proceeding pro se.

Committee Explanatory Reports: Final Report explaining the March 22, 1993 amendments published with the Court's Order at 23 Pa.B. 1699 (April 10, 1993).

Final Report explaining the July 9, 1996 amendments published with the Court's Order at 26 Pa.B. 3532 (July 27, 1996).

FINAL REPORT

*Amendments to Pa.R.Crim.P. 9022
Filings by Represented Defendants*

Introduction

On July 9, 1996, upon the recommendation of the Criminal Procedural Rules Committee, the Supreme Court amended Rule 9022 (Filing) to require, in any case in which a defendant is represented, that the clerk of courts forward to the attorney of record, within ten days of receipt, any documents filed by the defendant which have not been signed by the defendant's attorney. The amendment will be effective September 1, 1996. This Final Report highlights the Committee's considerations in formulating this amendment.¹

Discussion

The changes to Rule 9022 are necessary to address a recurring problem in criminal cases—how to handle cases in which a defendant who is represented by counsel submits documents to the clerk of courts for filing.

At the request of John P. Moses and James G. Morgan, Special Counsel and Solicitor, respectively, to the State Association of Prothonotaries and Clerks of Courts, the Committee reviewed the procedure set forth in Rule of Appellate Procedure 3304 (Hybrid Representation), which requires that submissions for filing by represented litigants be forwarded to the attorney of record without docketing. The Committee concluded that it made sense to establish a comparable procedure for criminal cases at the trial court level, thereby establishing a uniform procedure statewide for the handling of these "hybrid representation" cases, and that it made sense to incorporate the new procedure into Rule 9022 (Filing), which provides the procedures for the docketing and recording of papers submitted to the clerk of courts for filing in a criminal case. Specifically, new paragraph (c) requires that the clerk of courts forward to counsel of record, within ten days of receipt, any papers submitted for filing by a defendant who is represented by counsel if the papers are not signed by counsel. The last paragraph of

¹ Please note that the Committee's *Final Reports* should not be confused with the official Committee *Comments* to the rules. Also note that the Supreme Court does not adopt the Committee's *Comments* or the contents of the Committee's explanatory *Final Reports*.

the *Comment* makes it clear that the new provisions do not apply to any defendant who has elected to proceed *pro se*, and includes a cross-reference to Appellate Rule 3304.

Publication Responses

The Committee received nine letters in response to the publication of its explanatory *Report*. Four of the correspondents wrote in support of the proposed changes, three of the correspondents wrote to express their concern about the proposal, particularly in cases in which there is a dispute between the defendant and counsel. Other correspondents suggested different approaches for resolving the problem, such as returning the documents to the

defendant or accepting the filing if it relates to problems with counsel or a request for new counsel. After carefully reviewing all the correspondence, the Committee concluded that the proposal as published satisfactorily resolved the problem. However, paragraph (c) has been modified at the request of the Court to include a 10-day time limit. Accordingly, new paragraph (c) requires that the clerk of courts forward any filings within ten days of receipt.

[Pa.B. Doc. No. 96-1204. Filed for public inspection July 26, 1996, 9:00 a.m.]