

# THE GENERAL ASSEMBLY

## Title 204—JUDICIAL SYSTEM GENERAL PROVISIONS

### COMMISSION ON SENTENCING PART VIII. CRIMINAL SENTENCING [ 204 PA. CODE CH. 305 ]

#### Adopted Sentence Risk Assessment Instrument

On June 13, 2019, the Pennsylvania Commission on Sentencing approved for purposes of public comment a proposed Sentence Risk Assessment Instrument, 204 Pa. Code §§ 305.1—305.9. The proposal was published in the *Pennsylvania Bulletin* on July 20, 2019 (49 Pa.B. 3718). Public hearings were held on August 20, 2019 (Philadelphia), August 21, 2019 (Harrisburg), and August 22, 2019 (Pittsburgh).

On September 5, 2019, the Commission on Sentencing adopted the Sentence Risk Assessment Instrument. Proposals adopted by the Commission will be submitted to the General Assembly for review by way of publication in the *Pennsylvania Bulletin*, and will become effective 90 days after publication unless rejected by concurrent resolution of the General Assembly.

The Sentence Risk Assessment Instrument, authorized by Act 2010-95, mandates the Commission to “. . .adopt a Sentence Risk Assessment Instrument for the sentencing court to use to help determine the appropriate sentence within the limits established by law. . . The risk assessment instrument may be used as an aide in evaluating the relative risk that an offender will reoffend and be a threat to public safety” (42 Pa.C.S. § 2154.7). In addition to considering the risk of re-offense and threat to public safety, Act 2010-95 also permits the risk assessment instrument to be used to determine whether a more thorough assessment is necessary, or as an aide in determining appropriate candidates for alternative sentencing (e.g., County Intermediate Punishment, State Intermediate Punishment, State Motivational Boot Camp, and Recidivism Risk Reduction Incentive).

The Sentence Risk Assessment Instrument has been under development by the Commission since 2010; five proposals were published, 19 public hearings were held, and an external review was conducted by Carnegie Mellon University. The Instrument is an empirically based worksheet which uses factors that are relevant in predicting recidivism; it provides an actuarial assessment of static criminal justice and demographic factors used to estimate risk of re-offense. The Instrument is automated and incorporated into the existing JNET-based Sentencing Guidelines Software Web application (SGS Web), with the risk assessment determined upon the preparation of the guideline sentence forms. In order to avoid the labeling of offenders, the guideline sentence form will include the notation “Additional Information Recommended” in any case where an offender is determined to be low risk or high risk. In such cases, the Commission recommends, as provided in the legislation, consideration by the court of whether a more thorough assessment or additional information is necessary to aid in determining appropriate candidates for alternative sentencing. This recommendation, similar to a sentencing guideline recommendation, is advisory.

The Sentence Risk Assessment Instrument, as adopted by the Commission, is summarized below and set forth in Annex A.

JUDGE SHEILA A. WOODS-SKIPPER,  
*Chair*

#### Commentary on Annex A

This Commentary provides information on the adopted Sentence Risk Assessment Instrument. The adopted Sentence Risk Assessment Instrument is set forth in Annex A.

#### *Legislative Mandate*

Act 2010-95 mandates the Commission to “. . .adopt a Sentence Risk Assessment Instrument for the sentencing court to use to help determine the appropriate sentence within the limits established by law. . . The risk assessment instrument may be used as an aide in evaluating the relative risk that an offender will reoffend and be a threat to public safety” (42 Pa.C.S. § 2154.7). In addition to considering the risk of re-offense and threat to public safety, Act 2010-95 also permits the risk assessment instrument to be used to determine whether a more thorough assessment is necessary, or as an aide in determining appropriate candidates for alternative sentencing (e.g., County Intermediate Punishment, State Intermediate Punishment, State Motivational Boot Camp, and Recidivism Risk Reduction Incentive).

#### *Development of a Sentence Risk Assessment Instrument*

The Commission undertook extensive research as part of the development of the Sentence Risk Assessment Instrument. The following reports, available on the Commission’s website, document the research completed as part of the initial construction of the Instrument:

Interim Report 1: Review of Factors used in Risk Assessment Instruments (2011)

Interim Report 2: Recidivism Study: Initial Recidivism Information (2011)

Interim Report 3: Factors that Predict Recidivism for Various Types of Offenders (2011)

Interim Report 4: Development of Risk Assessment Scale (2012)

Interim Report 5: Developing Categories of Risk (2012)

Interim Report 6: Impact of Risk Assessment Tool for Low Risk Offenders (2012)

Interim Report 7: Validation of Risk Scale (2013)

Interim Report 8: Communicating Risk at Sentencing (2014)

Special Report: The Impact of Juvenile Record on Recidivism Risk (2014)

The Commission approved a preliminary Sentence Risk Assessment Instrument on March 19, 2015, published the same in the *Pennsylvania Bulletin* on April 11, 2015 (45 Pa.B. 1751), and held three public hearings: May 13, 2015 (Philadelphia), May 15, 2015 (Pittsburgh), and June 3, 2015 (Harrisburg).

The following reports were published, addressing issues raised concerning the preliminary Instrument:

Phase II/Special Report: Impact of Removing Demographic Factors (2015)

Phase II/Interim Report 1: Development of a Risk Assessment Scale by Offense Gravity Score for All Offenders (2015)

Phase II/Interim Report 2: Validation of Risk Assessment Instrument by OGS for All Offenses (2016)

Based on the comments received regarding the preliminary Instrument, the Commission approved a more detailed version of the Sentence Risk Assessment Instrument, including risk scales and recidivism rates, on March 16, 2017, published the same in the *Pennsylvania Bulletin* on April 8, 2017 (47 Pa.B. 1999), and held five public hearings: May 17, 2017 (Hollidaysburg), May 18, 2017 (Greensburg), May 19, 2017 (Pittsburgh), May 23, 2017 (Philadelphia), and May 31, 2017 (Harrisburg).

The following reports were published, addressing issues raised and modifications under consideration:

Risk Assessment Update: Conviction as a Predictive Factor (2017)

Risk Assessment Update: Arrest as a Predictive Factor (2018)

Development and Validation of the Risk Assessment Scale (May 2018)

Racial Impact Analysis of Proposed Risk Assessment Scales (May 2018)

The Commission approved a revised Sentence Risk Assessment Instrument on March 8, 2018, published the same in the *Pennsylvania Bulletin* on April 28, 2018 (48 Pa.B. 2367), and held three public hearings: June 4, 2018 (Pittsburgh), June 6, 2018 (Philadelphia), and June 13, 2018 (Harrisburg).

The following reports were published, addressing issues raised and modifications under consideration:

Revisions to the Proposed Risk Assessment Instrument (November 2018)

Impact of Removing Gender as a Risk Factor (November 2018)

Racial Impact Analysis of the Proposed Risk Assessment Scales (November 2018)

On September 1, 2018, the Commission published in the *Pennsylvania Bulletin* (48 Pa.B. 5445) detailed responses to comments received during the public hearings and published a Request for Proposals (RFP) for alternate sentence risk assessment instruments.

The Commission approved another revision of the Sentence Risk Assessment Instrument on September 6, 2018, published the same in the *Pennsylvania Bulletin* on November 3, 2018 (48 Pa.B. 6961), and held five public hearings: December 6, 2018 (Harrisburg), December 10, 2018 (Stroudsburg), December 12, 2018 (Philadelphia), December 13, 2018 (Pittsburgh), and December 14, 2018 (Warren).

In May of 2019, the Commission received an external review of the Sentence Risk Assessment Instrument, completed as a Heinz College System Synthesis Project by graduate students of Carnegie Mellon University. The final report is posted on the Commission's website (*Validation and Assessment of Pennsylvania's Risk Assessment Instrument*, May 2019).

The Commission approved another revision of the Sentence Risk Assessment Instrument on June 13, 2019, published the same in the *Pennsylvania Bulletin* on July 20, 2019 (49 Pa.B. 3718), and held three public hearings:

August 20, 2019 (Philadelphia), August 21, 2019 (Harrisburg), and August 22, 2019 (Pittsburgh).

#### *Final Adoption*

On September 5, 2019, the Commission adopted the Sentence Risk Assessment Instrument set forth in Annex A. The Instrument is an empirically based worksheet which uses factors that are relevant in predicting recidivism; it provides an actuarial assessment of static criminal justice and demographic factors used to estimate risk of re-offense. The Instrument is automated and incorporated into the existing JNET-based Sentencing Guidelines Software Web application (SGS Web), with the risk assessment determined upon the preparation of the guideline sentence forms. In order to avoid the labeling of offenders, the guideline sentence form will include the notation "Additional Information Recommended" in any case where an offender is determined to be low risk or high risk. In such cases, the Commission recommends, as provided in the legislation, consideration by the court of whether a more thorough assessment or additional information is necessary to aid in determining appropriate candidates for alternative sentencing.

The Commission has spent nearly a decade conducting research and public hearings on a Sentencing Risk Assessment Instrument. From the start, including the preliminary work with four pilot counties (Philadelphia, Allegheny, Westmoreland, Blair), there has been no public support for the development and use of risk assessment at sentencing. The Commission has tried repeatedly throughout this process to engage with counties, professional organizations, academics, and the public in developing an instrument that balances many interests and satisfies the provisions contained in Act 2010-95, even to the point of publishing a Request for Proposals for alternative instruments, for which the Commission received no response. To the degree actionable suggestions were made throughout the process, the Commission and staff worked to modify the instrument and the procedures to incorporate changes, and then sought further public comment. The result has been five proposals, and the outcome has been continued public dissatisfaction, with many suggesting the Commission abandon the project and that the General Assembly repeal the mandate.

The criticisms the Commission has received of a Sentencing Risk Assessment Instrument fall into several broad categories: (1) all criminal justice data are tainted and limited and therefore no valid risk assessment can be developed; (2) the instruments developed by the Commission and/or used by counties should not be adopted because they are discriminatory or inaccurate or provide no meaningful value; (3) implementation of any instrument will increase dis-proportionality and/or incarceration; (4) implementation of any instrument will increase the workload and slow the processing of cases in courts of common pleas; and (5) the information recommended (RNR PSI, RNR Report, etc.) is already considered by the court or is not necessary or is discriminatory or inaccurate. For many commentators, even a perfect instrument would not be supported, either because the data are tainted or the implementation is problematic. By adopting this Instrument, the Commission has determined that there is value in identifying cases for which additional information may lead to increased use of sentencing alternatives, or more careful consideration of the duration and intensity of community supervision.

However, because of the concerns raised about improper utilization and negative impacts, the Commission includes the following requirements as part of the implementation strategy:

(1) Upon the effective date following adoption, a six-month education and training period would commence before the deployment of the instrument. During this period, Commission staff would provide education and training to judges and practitioners to address the use of the Sentence Risk Assessment Instrument, the purpose of the recommendation, and the type of information recommended; and

(2) Following the first year of utilization, Commission staff will collect and analyze data on the sentences imposed and publish information on sentencing patterns and racial impacts.

#### *Resource Utilization*

Pursuant to 42 Pa.C.S. § 2153(a)(15), prior to the adoption of a risk assessment instrument, the Commission is required to use a correctional population simulation model to determine resources required under the current risk assessment instrument, and resources that would be required to carry out any proposed changes to the risk assessment instrument. Since this is an initial adoption of a risk assessment instrument, the Commission has investigated current practices authorized by statute, Rule or guidelines, and the changes to these practices required or recommended by the proposed Sentence Risk Assessment Instrument. Resource utilization could occur at two points: the use of the Instrument to determine low risk and high risk cases for which the notation “Additional Information Recommended” is added to the sentencing guideline form; and the preparation of the additional information recommended that the court may use to determine appropriate candidates for alternative sentencing.

Regarding the use of the Instrument, the sentencing guidelines, 204 Pa. Code § 303.1(e), require that the Commission’s JNET-based Sentencing Guidelines Software Web application (SGS Web) shall be used at the court’s direction to prepare all guideline-required sentencing information. The Sentence Risk Assessment Instrument is a module built within SGS Web. Upon completion of the sentence guideline form using SGS Web, the offender’s risk category will automatically be determined, and a notation “Additional Information Recommended” will be included on the guideline sentence form for low risk and high risk offenders. For counties preparing guideline sentence forms via SGS Web prior to sentencing as recommended by the Commission, no change in practices and no additional resources are required.

Regarding the preparation of additional information for consideration by the court, the Pennsylvania Rules of Criminal Procedure, Rule 702, provide that a court may order a pre-sentence investigation report in any case, and includes circumstances for which the court shall place on the record reasons for dispensing with the pre-sentence investigation report. The court is also authorized by Rule 702 to order a psychiatric or psychological examination of the defendant, including remanding the defendant to the Department of Corrections Diagnostic and Classification Center for a period not to exceed 60 days. While practices differ greatly from county to county, the *County Adult Probation and Parole Annual Statistical Report* documented the preparation of 23,248 pre-sentence reports in 2017, and over 15,000 additional investigations and reports (e.g., D&A, IP, Psychological, Specialty Courts).

Based on the Commission’s proposal, “Additional Information Recommended” would apply to approximately 24% of non-DUI offenders, or just over 14,000 offenders in 2017. The impact will vary by county, based on the interest of courts in obtaining additional information and the resources currently available for this purpose. In some counties, no substantial changes in practices will be required, while others may benefit from re-targeting the cases and for which additional information is provided to the court, and still others may require substantial reworking if they wish to follow the recommendation.

Many sentencing alternatives are under-utilized, and concerns have been raised in recent years about the over-utilization of probation and community supervision, often for low risk/low needs offenders. Based on 2017 non-DUI sentences, the Commission’s proposal would have recommended additional information be provided to the court for a total of 14,161 low risk and high risk offenders. Of these, 1,730 (12%) may have been considered for a sentencing alternative to state prison, or 4,486 (32%) diverted from county jail, or the duration or intensity of probation considered for 7,945 (56%). Providing additional information to the court prior to sentencing may promote the appropriate and individualized use of sentencing alternatives and community supervision.

#### *Effective Date*

The Sentence Risk Assessment Instrument shall become effective July 1, 2020, unless disapproved by the General Assembly, pursuant to 42 Pa.C.S. § 2155(b). Effective January 1, 2020, the Commission shall conduct a six-month training and orientation for judges and practitioners related to the use of the Sentence Risk Assessment Instrument, the purpose of the recommendation, and the type of information recommended.

### **Annex A**

## **TITLE 204. JUDICIAL SYSTEM GENERAL PROVISIONS**

### **PART VIII. CRIMINAL SENTENCING**

#### **CHAPTER 305. SENTENCE RISK ASSESSMENT INSTRUMENT**

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#### **§ 305.1. Preliminary provisions.**

##### *(a) Authorization.*

(1) As authorized by 42 Pa.C.S. § 2154.7 (relating to adoption of risk assessment instrument), the Commission shall adopt a Sentence Risk Assessment Instrument for the sentencing court to use to help determine the appropriate sentence within the limits established by law for defendants who plead guilty or nolo contendere to, or who were found guilty of, felonies and misdemeanors.

(2) The Sentence Risk Assessment Instrument may be incorporated into the sentencing guidelines under 42 Pa.C.S. § 2154 (relating to adoption of sentencing guidelines).

(3) The Sentence Risk Assessment Instrument may be used to determine whether a more thorough assessment is necessary and to order a presentence investigation report.

(4) The Sentence Risk Assessment Instrument may be an aid to help determine appropriate candidates for alternative sentencing.

(b) *Definitions.* For the purposes of this chapter:

(1) “Actuarial risk assessment.” A statistical method of estimating the risk of recidivism; the probability of recidivating is related to the proportion of offenders in a risk category who recidivate.

(2) “Common Pleas Case Management System (CPCMS).” A web-based application operated by the Administrative Office of Pennsylvania Courts which serves as the source of data for determining number of prior convictions and associated offense type.

(3) “Conviction.” An offense for which a defendant pleads guilty or nolo contendere, is found guilty following a bench or jury trial, or is accepted for participation in an authorized diversion program, including Probation without Verdict (relating to 35 P.S. § 780-117) or Disposition in Lieu of Trial or Criminal Punishment (relating to 35 P.S. § 780-118).

(4) “DUI offender.” An offender for whom the most serious offense of the judicial proceeding is DUI. The Sentence Risk Assessment Instrument does not apply if DUI is the most serious offense of the judicial proceeding. The Sentence Risk Assessment Instrument does apply if DUI is an offense other than the most serious offense in the judicial proceeding.

(5) “Judicial proceeding.” A sentencing hearing in which all offenses for which the offender is convicted are pending before the court for sentencing at the same time. A judicial proceeding may include multiple OTNs.

(6) “Magisterial District Judge System (MDJS).” A web-based application operated by the Administrative Office of Pennsylvania Courts which serves as the source of data for determining the number of prior convictions and associated offense type following a final disposition by a minor court.

(7) “Minor courts.” A court of limited jurisdiction with authority to preside at preliminary arraignments and preliminary hearings, dismiss complaints, conduct trials and/or accept guilty pleas for misdemeanors, and hold cases for trial in the courts of common pleas. This includes Philadelphia Municipal Court and Magisterial District Judges.

(8) “Offense gravity score (OGS).” An assignment in the sentencing guidelines reflecting the seriousness of a conviction offense. The OGS assigned to the most serious offense in the judicial proceeding (and if more than one offense, then the offense with the highest OGS, longest statutory maximum, and then the offense entered first in SGS Web) is used to determine the risk factors and associated values to be included in the risk scales.

(9) “Offense tracking number (OTN).” A unique identifying number assigned to an entire set of charges related to a conviction. An OTN is generally assigned by the court at the time of arraignment.

(10) “Offense types.” The classification of prior convictions and current convictions, including inchoates, as provided follows:

- (i) Murder;
- (ii) Danger to person:
  - (A) felonies;
  - (B) misdemeanors;
- (iii) Sexual:
  - (A) felonies;
  - (B) misdemeanors;
- (iv) Burglary;
- (v) Property:
  - (A) felonies;
  - (B) misdemeanors;
- (vi) Public administration;
- (vii) Public order;
- (viii) Firearms;
- (ix) Other weapons;
- (x) Drug:
  - (A) felonies;
  - (B) misdemeanors;
- (xi) DUI;
- (xii) Other.

A detailed description of the offense types is located at § 305.6. Any unlisted offense, or any new or amended offense, will be assigned an offense type by the Commission based on the current equivalent offense type.

(11) “Pre-sentence investigation (PSI) report.” A report, authorized by the Rules of Criminal Procedure (Pa.R.Crim.P. Rules 702-703), that includes information regarding the circumstances of the offense and the character of the defendant sufficient to assist the judge in determining sentence.

(12) “Recidivism.” A re-offense for any crime, defined as a re-arrest for a felony or misdemeanor in Pennsylvania within three years of the imposition of a sentence to the community or within three years of release from confinement resulting in a conviction. Re-offense does not include out-of-state, federal or foreign charges or technical violations.

(13) “Risk assessment instrument.” An empirically based worksheet which uses factors that are relevant in predicting recidivism. A risk assessment instrument is often identified with a specific ‘generation’ of development:

(i) *1st generation.* “Professional judgment,” with assessments based on training and experience;

(ii) *2nd generation.* “Risk assessment,” an actuarial assessment of static criminal justice and demographic factors used to estimate risk of re-offense;

(iii) *3rd generation.* “Risk-needs assessment (RNA),” an actuarial assessment of static and dynamic factors and changing circumstances, such as relationships, employment, and substance abuse, used to estimate risk of re-offense and to assess criminogenic needs to be addressed through treatment and supervision;

(iv) *4th generation.* “Risk-needs-responsivity (RNR) assessment,” an actuarial assessment of static and dynamic factors used to match the level of service to the offender’s risk to re-offend; assess criminogenic needs and target

them in treatment; and structure the sentence to address the learning style, motivation, abilities and strengths of the offender.

(14) "Risk category." The relative risk of recidivism as compared to other offenders, based on the Sentence Risk Assessment Instrument:

(i) "Typical risk offender." An offender with a risk score of 5 points or greater but less than 12 points who shares characteristics with offenders at typical risk of recidivism. This middle category contains approximately 78% of offenders.

(ii) "Low risk offender." An offender with a risk score less than 5 points who shares characteristics with offenders at lower risk of recidivism. This low category contains approximately 18% of offenders.

(iii) "High risk offender." An offender with a risk score of 12 points or greater who shares characteristics with offenders at higher risk of recidivism. This high category contains approximately 4% of offenders.

(15) "Risk factors." The variables obtained from AOPC or Commission data and determined to be statistically significant in relation to the risk of recidivism. Risk factors selected by the Commission and included in the Sentence Risk Assessment Instrument include:

(i) "Age." Based on Commission data, the age of the offender calculated using date of birth as reported on guideline sentence form and the date the Sentence Risk Assessment Summary is generated.

(ii) "Gender." Based on Commission data, the sex of the offender reported on the guideline sentence form.

(iii) "Number of prior convictions." Based on prior conviction data provided by AOPC, the number of unique OTNs associated with Pennsylvania convictions occurring before the date the Sentence Risk Assessment Summary is generated.

(iv) "Prior conviction offense type." Based on prior conviction data provided by AOPC, all offense types identified for any felony or misdemeanor convictions.

(v) "Current conviction offense type." Based on Commission data, the offense type of the most serious offense of the judicial proceeding.

(vi) "Multiple current convictions." Based on Commission data, more than one current conviction offense in the current judicial proceeding.

(viii) "Prior juvenile adjudication." Based on Commission data, any juvenile adjudication included in the prior record score for the judicial proceeding is used in the risk scales. This may include prior juvenile adjudications that lapse for purposes of the calculation of the Prior Record Score.

(16) "Risk scale." Measures of the outcomes derived from statistical models used to determine the relative risk to recidivate based on identified factors.

(17) "Sentencing Guidelines Software Web Application (SGS Web)." A JNET-based application operated by the Commission which includes the modules for Sentencing Guidelines and for the Sentence Risk Assessment Instrument. SGS Web serves as the source of data for determining an offender's age, gender, current conviction offense type, multiple current convictions and prior juvenile adjudications, as well as determining the most serious offense of a judicial proceeding.

(18) "Sentence Risk Assessment Instrument." The actuarial tool, adopted by the Commission and deployed

through SGS Web, used to identify cases for which the guideline sentence form includes the notation "Additional Information Recommended." The Instrument uses factors that are relevant in predicting recidivism to estimate risk.

(c) *Findings and Purposes.*

(1) *Findings.*

(i) As defined in statute, 42 Pa.C.S. § 2154.7(e), the term "risk assessment instrument" means an empirically based worksheet which uses factors that are relevant in predicting recidivism.

(ii) The following concerns regarding proposed instruments were consistently raised during public hearings:

(A) Distrust of a risk assessment instrument for use at sentencing due to concerns about data quality, including the impact of differential treatment throughout the criminal justice system resulting in racial bias, and the construction and validity of any instrument;

(B) Concerns related to the impact of actuarial data on individualized sentencing, including the labeling of offenders based on risk category, the prospect of increased punishment for high risk offenders, and the impropriety of providing information on prognostic risk without including information on criminogenic needs and responsibility.

(iii) The Commission analyzed issues related to data quality, construction and validity, including the impact of race and gender, during the development of the instrument.

(A) Race is excluded from the instrument, as is county, which many commentators viewed as a proxy for race. The Commission undertook other steps to reduce racial impact, including using convictions rather than arrests. In the final analysis, the accuracy of the instrument is similar across race. To the degree there is a difference in accuracy, Black offenders are favored. This moderate bias in the form of under-estimation of risk for a minority group appears to be accepted in the risk assessment field; these findings are not inconsistent with other demographic impact assessments of risk instruments.

(B) Gender is included in the instrument as a risk factor. The ratio of males to females in the sample is 80%/20%. Removing gender has the greatest impact on females, reducing the accuracy of the instrument in predicting female recidivism and incorrectly resulting in fewer females classified as low risk and more females classified as high risk. Removing gender or retaining gender has no impact on the accuracy of predicting male recidivism, because males account for the overwhelming majority of offenders in the sample.

(iv) As part of the Evidence-Based Practices Strategic Plan, the County Chief Adult Probation and Parole Officers Association of Pennsylvania has been working with counties to adopt and validate risk and needs assessment tools and to provide training for use in guiding effective supervision and treatment strategies for community corrections.

(v) Research supports the finding that judges tend to over-estimate risk of offenders at sentencing, and that professional judgement informed by actuarial data is more accurate than either alone. Research on the use of information on prognostic risks and criminogenic needs to inform supervision strategies for drug offenders supports the use of intensive treatment and supervision, consistent with the alternative sentencing programs identified in the

statute, for high risk/high needs offenders, and consideration of reduced duration and intensity of supervision for low risk/low needs offenders.

(vi) Under Pennsylvania's Rules of Criminal Procedure, Rule 702, the sentencing judge may order a pre-sentence investigation (PSI) report at any time, but shall place on the record the reason for dispensing with a PSI in the following instances: when incarceration of one year or more is possible; when the defendant is less than 21 years of age; or when the defendant is a first-time offender. The Commission found that PSI Reports were ordered in less than one third of all cases, and at varying rates and of varying quality across counties, but rarely included information on criminogenic needs or responsibility. Other assessments and evaluations, including those for drug and alcohol dependency, mental illness, and for sexual offenders, were also ordered.

(2) *Purposes of sentence risk assessment instrument.*

(i) To identify individuals, determined to be low risk or high risk using the Commission's sentence risk assessment instrument, for whom additional information may assist the court in determining candidates for alternative sentencing, such as state intermediate punishment, state motivational boot camp, county intermediate punishment, recidivism risk reduction incentive; appropriateness for problem-solving courts; and the duration and intensity of community supervision or other programs or services.

(ii) To assist courts in determining whether a more thorough assessment is necessary and to order a PSI Report as provided in Pa.R.Crim.P. Rule 702(a) or a psychiatric or psychological evaluation as provided for in Pa.R.Crim.P. Rule 702(b), or to request any other assessment or information on criminogenic needs and responsibility to consider prior to sentencing; and in determining whether to dispense with a PSI Report.

(iii) Similar to the sentencing guidelines adopted by the Commission, a recommendation to obtain additional information based on the sentence risk assessment instrument is advisory.

(iv) The Commission supports the values of transparency and responsiveness in the development and use of empirically-based risk assessment instruments. Information on the development and validation of the sentence risk assessment instrument, including the risk factors, scales and recidivism rates, and all internal and external reports related to construction of the instrument and predictive validity, are published.

(v) The Commission expressly disavows the use of the sentence risk assessment instrument to increase punishment, and expressly disavows the use of county risk assessments tools at sentencing that are not designed for use at sentencing, are not transparent or employ static factors rejected by the Commission.

**§ 305.2. Sentence Risk Assessment Instrument methodology.**

(a) *Development and validation.*

(1) The Commission conducted a study using offenders sentenced during 2004—2006 (n=131,055) to allow for a three-year follow-up period for all offenders, while taking advantage of improvements in data quality and a more recent time period. Additional information on the development and validation of the Sentence Risk Assessment Instrument is available from the Commission.

(2) The Commission developed risk scales for all offenders, except those with DUI as the most serious offense of the judicial proceeding.

(3) In developing the risk scales, the following analyses were conducted:

(i) bivariate analyses to determine which factors were related to recidivism;

(ii) multivariate logistic regression to determine which factors best predicted recidivism while holding other factors constant;

(iii) rotation of all categories for factors that were multi-categorical to ensure that reported differences were real and not due to a particular comparison category;

(iv) Receiver Operating Characteristic (ROC) analysis, which plots the true positive rate (i.e., how many people were predicted to recidivate and did recidivate) against the false positive rate (i.e., how many people were predicted to recidivate but did not recidivate); and

(v) validation of the final scales with both samples.

(b) *Risk factors and scales—general.*

(1) Based upon the analyses conducted by the Commission, the following factors were found to be predictive of recidivism, and thus, used in the risk assessment scales:

(i) age;

(ii) gender;

(iii) number of prior convictions;

(iv) prior conviction offense type;

(v) current conviction offense type;

(vi) multiple current convictions;

(vii) prior juvenile adjudication.

(2) The risk scale for recidivism is located at § 305.7.

(c) *Recidivism rates—general.*

(1) The Sentence Risk Assessment Instrument provides the probability of recidivism based on the proportion of offenders in the development and validation samples who recidivate. Offenders identified as low risk or high risk were found to be significantly different in risk of recidivism than the typical offender.

(2) Recidivism rates by risk score for recidivism are located at § 305.8.

(d) *Review and Re-validation.*

(1) Following the first year of utilization, the Commission shall analyze the impact of the Instrument and the source of the information provided to the court, and shall publish information on sentencing patterns and racial impact.

(2) The Commission shall re-validate the Instrument every three years.

**§ 305.3. Sentence Risk Assessment Instrument standards.**

(a) Effective January 1, 2020, the Commission shall conduct a six-month training and orientation for judges and practitioners related to the use of the Sentence Risk Assessment Instrument, the purpose of the recommendation, and the type of information recommended.

(b) Effective July 1, 2020, the court shall use the SGS Web-based Sentence Risk Assessment Instrument to identify cases for which additional information is recommended to help determine the appropriate sentence for non-DUI offenders who plead guilty or nolo contendere to or who were found guilty of felonies or misdemeanors.

(c) The Sentence Risk Assessment Instrument does 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; or revocation of probation, county intermediate punishment, state intermediate punishment or parole.

(d) In every case in which additional information is recommended and provided to the court, the additional information shall be considered by the court prior to sentencing. The court is encouraged to determine procedures for the preparation of additional information.

(e) In every case in which a court of record imposes a sentence for a felony or misdemeanor, and additional information is recommended, the court shall make as a part of the record, and shall record on the guideline sentence form, whether the court received and considered additional information prior to sentencing. The guideline sentence form shall be electronically transmitted to the Pennsylvania Commission on Sentencing in the manner described in § 303.1(e).

(f) Unless otherwise provided by the Commission, the JNET-based Sentencing Guidelines Software Web application (SGS Web) shall be used at the court's direction to prepare all guideline-required sentencing information prior to sentencing.

**§ 305.4. Sentence Risk Assessment Instrument procedures.**

(a) For each judicial proceeding, the procedure using the SGS Web-based Sentence Risk Assessment Instrument shall be as follows:

(1) Prepare all guideline sentence forms prior to sentencing using SGS Web as required by § 303.1(e):

(i) create a Judicial Proceeding;

(ii) complete the Prior Record Score module;

(iii) complete the Offense module, including all offenses for which the offender has been convicted and are pending before the court for sentencing at the same time;

(iv) upon completion of the Offense module, guideline sentence forms are available;

(v) for cases identified by the Sentence Risk Assessment Instrument, "Additional Information Recommended" is included on the guideline sentence form;

(vi) additional information, if prepared, shall be provided to the court for consideration prior to sentencing.

**§ 305.5. Sentence Risk Assessment Instrument recommendation—general.**

(a) The risk score for the offender and the associated risk category is calculated based on the most serious conviction offense in the judicial proceeding.

(b) Typical risk offenders. For offenders who are identified as typical risk, the Commission makes no additional recommendation.

(c) Low risk or high risk offenders. For offenders who are identified as low risk or high risk, the guideline sentence form will include a notation "Additional Information Recommended." No information on risk category will be provided. Courts are encouraged to adopt procedures to permit the preparation of additional information based on the guideline sentence form recommendation.

(d) The additional information recommended may assist the court in determining an appropriate and individualized sentence, including the suitability of various sentencing alternatives and programs as well as the duration and intensity of supervision.

(e) An example of sentence guideline form with the "Additional Information Recommended" notation is found at § 305.9.

§ 305.6. Offense Types. Classification of Prior Convictions and Current Convictions, including Inchoates.

Offense Type	Title	Chapter	Description		
Murder	18	Misc. 25	Criminal Homicide - Murder 1, Murder 2, Murder 3, and Voluntary Manslaughter		
		Misc. 26	Crimes Against an Unborn Child - Murder 1, Murder 2, Murder 3, and Voluntary Manslaughter		
		Misc. 27	Weapons of Mass Destruction; Use-Results in Death		
		Misc. 33	Arson - Endangering Persons; Murder 1, Murder 2 - 18 § 3301(a)(2)		
Danger to Person - felony and misdemeanor	18	Misc. 25	Criminal Homicide - Involuntary Manslaughter 18 § 2503		
		Misc. 26	Aggravated Assault of an Unborn Child - 18 § 2606		
		27	Assault		
		29	Kidnapping		
		30	Human Trafficking		
		32	Abortion		
		Misc. 33	Arson Endangering Person - 18 § 3301(a) and (a.1) Ecoterrorism - 18 § 3311(b)(3)		
		Misc. 35	Burglary-Home/Person - 18 § 3502(a)(1)		
		37	Robbery		
		43	Offenses Against the Family		
		Misc. 47	Threats - 18 § 4702 Retaliation - 18 § 4703		
		Misc. 49	Intimidation of Witness/Victim - 18 § 4952 Retaliation Against Witness/Victim - 18 § 4953, 18 § 4953.1		
		Misc. 63	Corruption of Minors - 18 § 6301		
		Misc. 75	Homicide by Vehicle - 75 § 3732 Aggravated Assault by Vehicle - 75 § 3732.1 Homicide by Vehicle while DUI - 75 § 3735 Aggravated Assault by Vehicle While DUI - 75 § 3735.1 Accident Involving Death/Personal Injury - 75 § 3742, 75 § 3742.1		
		Sexual - felony and misdemeanor	18	Misc. 29	Kidnapping of a Minor - 18 § 2901(a.1) Unlawful Restraint of a Minor/Non-parent - 18 § 2902(b) False Imprisonment of a Minor/Non-parent - 18 § 2903(b) Interference with Custody of Children - 18 § 2904 Luring a Child into a Vehicle/Structure - 18 § 2910
				Misc. 30	Human Trafficking - 18 § 3011(b)
				31	Sexual Offenses
Misc. 43	Incest of a Minor - 18 § 4302(b)				
Misc. 59	Promoting Prostitution of a Minor - 18 § 5902(b.1) Obscene and Other Sexual Materials - 18 § 5903(a)(3)(ii), (4)(ii), (5)(ii) or (6)				
Misc. 63	Corruption of Minors - 18 § 6301(a)(1)(ii) Sexual Abuse of Children - 18 § 6312 Unlawful Contact/Communication with Minor - 18 § 6318 Sexual Exploitation of Children - 18 § 6320				
Misc. 75	Invasion of Privacy - 18 § 7507.1				
Burglary	18			Misc. 35	Burglary and Other Criminal Intrusion
Property - felony and misdemeanor	18			Misc. 9	Manufacture/Etc. Master Key Motor Vehicles - 18 § 0909 Manufacture/Etc. Device for Theft of Telecommunications - 18 § 0910
				33	Arson, Criminal Mischief, and other Property Destruction
				35	Burglary and Other Criminal Intrusion
				39	Theft and Related Offenses
		41	Forgery and Fraudulent Practices		
		76	Computer Offenses		
		77	Vehicle Chop Shop and Illegally Obtained and Altered Property		
Public Admin.	18	Misc. 9	Corrupt Organizations - 18 § 0911		
		47	Bribery and Corrupt Influence		
		49	Falsification and Intimidation		
		51	Obstructing Governmental Operations		
		53	Abuse of Office		
		23	63 Child Protective Services		
		42	45 Juries and Jurors		
	97	Sentencing			

Offense Type	Title	Chapter	Description	
Public Order	18	21	Offenses Against the Flag	
		55	Riot, Disorderly Conduct, and Related Offenses	
		57	Wiretapping and Electronic Surveillance	
		59	Public Indecency	
		63	Minors	
		65	Nuisances	
		67	Proprietary and Official Rights	
		69	Public Utilities	
		71	Sports and Amusements	
		73	Trade and Commerce	
		75	Other Offenses	
Firearms - VUFA	18	61	Firearms and Other Dangerous Articles	
Other Weapons	18	Misc. 9	Possessing Instruments of Crime - 18 § 0907	
			Prohibited Offensive Weapons - 18 § 0908	
			Electric Incapacitation Device - 18 § 0908.1	
			Possession of Weapon on School Property - 18 § 0912	
			Possession of Weapon in Court Facility - 18 § 0913	
		Misc. 63	Sale/Lease of Weapons/Explosives (to Minors) - 18 § 6302	
			Sale of Starter Pistols (to Minors) - 18 § 6303	
			Sale/Use of Air Rifles (to Minors) - 18 § 6304	
Drug - felony and misdemeanor	18	Misc. 51	Contraband of Controlled Substance - 18 § 5123	
		Misc. 63	Solicitation of Minors to Traffic Drugs - 18 § 6319	
		Misc. 75	Operate Meth Lab/Cause Chemical Reaction - 18 § 7508, 18 § 7508.2	
			Furnishing Drug-Free Urine - 18 § 7509	
			Criminal Use of Communication Facility - 18 § 7512	
		35	Controlled Substance, Drug, Device and Cosmetic Act - 35 § 780-113(a)(1) - (a)(39)	
			Liquefied Ammonia Gas - 35 § 780-113.1	
			Operating a Meth Lab - 35 § 780-113.4	
DUI*	30	Misc. 55	Boating Under the Influence - 30 § 5502	
		75	Misc. 37	Driving Under the Influence - 75 § 3731
			38	Driving Under the Influence - 75 § 3802
Other			Miscellaneous Titles and Chapters	

\*Only applicable for Prior Conviction Offense Type, Current Conviction Offense Type does not include DUI.

Exceptions are due to Personal Injury Crimes (18 P.S. § 11.103), Crimes of Violence (42 Pa.C.S. § 9714), and offenses requiring registration under (42 Pa.C.S. § 9799.14).

§ 305.7. Recidivism Risk Scales.

Risk Factors		Risk Score
Gender	Male	1
	Female	0
Age	<21	5
	21-25	4
	26-29	3
	30-39	2
	40-49	1
	>49	0
Current Conviction Offense Type	Murder	1
	Person-Felony	1
	Person-Misd.	1
	Sex-Felony	0
	Sex-Misd.	0
	Burglary	2
	Property-Felony	2
	Property-Misd.	2
	Drug-Felony	1
	Drug-Misd.	1
	Public Admin.	1
	Public Order	1
	Firearms	2
	Other Weapons	2
	Other	1
Number of Prior Convictions	None	0
	1	1
	2-3	2
	4-5	3
	>5	4
Prior Conviction Offense Type	Person/Sex	0
	Property	1
	Drug	1
	Public Order	1
	Public Admin.	1
	DUI	0
	Firearm/Weapon	-1
Multiple Current Convictions	Yes	1
	No	0
Prior Juvenile Adjudication	Yes	1
	No	0
Scale		0 to 18

§ 305.8. Recidivism Rates by Risk Score.

Risk Scale	Total	Number		Percent		Mean	St. Dev. (SD)
		No	Yes	No	Yes		
0-1	537	504	33	94%	6%	7.1	2.6
2	3,131	2,790	341	89%	11%	+1 SD	9.6
3	7,625	6,568	1,057	86%	14%	-1 SD	4.5
4	11,645	9,569	2,076	82%	18%		
5	14,133	11,021	3,112	78%	22%		
6	17,962	13,289	4,673	74%	26%		
7	20,577	14,003	6,574	68%	32%		
8	18,611	11,406	7,205	61%	39%		
9	13,929	7,825	6,104	56%	44%		
10	10,044	5,076	4,968	51%	49%		
11	6,554	3,209	3,345	49%	51%		
12	3,640	1,614	2,026	44%	56%		
13	1,719	716	1,003	42%	58%		
14	701	269	432	38%	62%		
15-18	256	83	173	32%	68%		
<b>Total</b>	<b>131,064</b>	<b>87,942</b>	<b>43,122</b>	<b>67%</b>	<b>33%</b>		

§ 305.9. Guideline Sentence Form.

PENNSYLVANIA COMMISSION ON SENTENCING

[7th Ed. (12/28/2012), 7th Amend 1 (9/27/2013),

Date printed: 5/2/2019

Date submitted:

SGS Web ID Number

W9999991

SGS Web Generated Form (PCS 12D 4/2016)

7th Amend 2 (9/26/2014), 7th Amend 3 (9/25/2015)]

PO Box 1200  
State College, PA 16804

Offender's Name (Last, First Middle) <b>Doe, John Christopher</b>		Date of Birth <b>10/20/1992</b>	Gender <b>Male</b>	Race <b>White</b>	Form <b>1 of 1</b>
County <b>PA County</b>	Police Photo ID Num.	Judge's Name <b>County Judge</b>	Person printing form <b>testuser</b>		Date of Sentence
Offender Employed <b>Unknown</b>	Offender Wage Rate	JP Sentence Risk Assessment	Additional Information Recommended		

  

Prior Offenses	Juvenile Adjudication	Adult Convictions	
Murder & inchoates	0	0	
Vol. Manslaughter	0	0	
Rape	0	0	
Kidnapping	0	0	
I.D.S.I.	0	0	
Arson Endangering Persons (F1)	0	0	
Robbery (F1)	0	0	
Rob. Motor Veh	0	0	0
Agg. Assault (F1-Cause SBI)	0	0	
Burglary (house/person)	0	0	
Agg. Indecent Assault	0	0	
Incest	0	0	
Sexual Assault	0	0	
Ethnic Intimidation to Any F1	0	0	
Drug Delivery/Death & Inchoate	0	0	
Weapons of Mass Destruction	0	0	
Other 4 Point Offenses	0	0	
Subtotal	0	0	x4= 0

  

Inchoate to 4 point offenses	0	0	
Burglary (other F1)	0	0	
[Other] Felony 1 offenses	0	0	0
Subtotal	0	0	x3= 0
[Other] Felony 2 Offenses	0	0	x2= 0

  

Felony Drugs (>=50gr.)	0	0	x3= 0
[Other] Felony Drugs	0	0	x2= 0
[Other] Felony 3 Offenses	0	0	
M1 Offenses Involving Death	0	0	
M1 Offenses Involving Weapons	0	0	
M1 Offenses Involving Children	0	0	0
Subtotal	0	0	x1= 0

  

DUI Offenses [Do not include 1st DUI in total]			
Uncl. Misd.		0	
M-2		0	
M-1	0	0	
Subtotal	0	0	x1= 0
Other Misd.	0	0-1=0	4-6=2
		2-3=1	7+=3
			0 = 0

  

If A is 8 points or greater, and the OGS=9 or more: REVOC	
PRIOR	Otherwise, if A + B is 6 points or greater: RFEL
RECORD	Otherwise, PRS= A + B + C (maximum of 5): 0
SCORE	Juvenile adjudications do NOT lapse: 0
	* Juvenile adjudications lapse: 0

  

Negotiated Plea as to Sentence:	
Problem Solving Court:	
Total amount of supervision (all sanctions) for this offense	
<b>0 Month(s)</b>	
Is this offense Totally Concurrent to any other offense? <b>No</b>	
Reasons for Sentence:	

  

Offense Name/Description <b>Burglary-not a home/no person present</b>			
Title & Section <b>18 3502 A4</b>	Date of Offense <b>3/3/2019</b>	Age at Offense <b>25</b>	OTN <b>Z1234567</b>
Grade <b>F-2</b>	OGS <b>5</b>	PRS <b>0</b>	Docket# <b>CP-54-CR-0000805-2018</b>
Count# <b>1</b>			
Guideline Ranges	Mitigated <b>~</b>	Standard <b>RS - 9</b>	Aggravated <b>12</b>
Level <b>2</b>			
Fines <b>\$1631 - \$1813</b>	Community Service <b>225 - 250 hours</b>	Statutory Limits: <b>60</b>	Maximum <b>120</b>
Mandatory Minimum:	Mandatory		
Enhancements			
<input checked="" type="checkbox"/> None	<input type="checkbox"/> Youth/Drug	<input type="checkbox"/> DWE-Possessed	
<input type="checkbox"/> Sexual Abuse-Images	<input type="checkbox"/> School/Drug	<input type="checkbox"/> DWE-Used	
<input type="checkbox"/> Sexual Abuse-Nature	<input type="checkbox"/> Criminal Gang	<input type="checkbox"/> Murder, victim<13	
<input type="checkbox"/> Human trafficking	<input type="checkbox"/> Arson		
Other Information			
Y N	Y N	Victim Age: _____	JP Sexual Offender Info
<input type="checkbox"/> D&A Eval./Prelim	<input type="checkbox"/> D&A Eval./Full		Y N Assessment:
<input type="checkbox"/> D&A Dependent	<input type="checkbox"/> PSI Completed		<input type="checkbox"/> Required
<input checked="" type="checkbox"/> Offense SIP Eligible	<input checked="" type="checkbox"/> Offense CIP Eligible		<input type="checkbox"/> Ordered
<input type="checkbox"/> Prosecutor Waived Inelig.	<input type="checkbox"/> Prosecutor Waived Inelig.		<input type="checkbox"/> Completed
<input type="checkbox"/> Judge Authorized Waiver	<input type="checkbox"/> Judge Authorized Waiver		<input type="checkbox"/> Hearing held
			<input type="checkbox"/> Sexually Viol. Predator
RRRI Minimum Information (Entire JP)			
Y N	Number of prior RRRI sentences: _____		
<input type="checkbox"/> Judge approved (w/ prior RRRI)			
<input type="checkbox"/> Offender ineligible (prior off.)			
<input type="checkbox"/> Offender ineligible (prior beh., mand.)			
<input type="checkbox"/> Prosecutor Waived Inelig.	JP Minimum Sentence	JP RRRI Sentence	
<input type="checkbox"/> Judge authorized DA Waiver			
<input type="checkbox"/> Judges State RRRI			
Confinement			
<input type="checkbox"/> State Facility	<input type="checkbox"/> County Facility		
Minimum: _____ (mos.)	<input type="checkbox"/> County Reentry Authorized		
Maximum: _____ (mos.)	<input type="checkbox"/> Boot Camp Authorized		
Credit for time served: _____	<input type="checkbox"/> Work Release Authorized		
<input type="checkbox"/> County Intermediate Punishment (CIP)	<input type="checkbox"/> State IP (SIP)		
RIP period: _____ (mos.)	Program (1st): _____		
RS period: _____ (mos.)	Program: _____		
Community Service hours: _____			
If DRUG DEPENDENT, is IP consistent with clinical recommendation?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	
Restorative Sanctions			
<input type="checkbox"/> Probation Period _____ (mos.)	<input type="checkbox"/> Concurrent	<input type="checkbox"/> Consecutive	
<input type="checkbox"/> Conditions _____	to the incarceration for this offense		
<input type="checkbox"/> Fines: \$ _____			
<input type="checkbox"/> Restitution: \$ _____	<input type="checkbox"/> Concurrent	<input type="checkbox"/> Consecutive	
<input type="checkbox"/> JP Costs: \$ _____	to the CIP for this offense?		
<input type="checkbox"/> JP Fees: \$ _____			
<input type="checkbox"/> Guilty without further penalty [NFP]	Community Service hours: _____		
Conformity			
<input type="checkbox"/> Standard	Departure:		
<input type="checkbox"/> Aggravated	<input type="checkbox"/> Below	<input type="checkbox"/> Neg Guilty Plea	
<input type="checkbox"/> Mitigated	<input type="checkbox"/> Above	<input type="checkbox"/> Non-Neg Guilty Plea	
		<input type="checkbox"/> Jury Trial	
		<input type="checkbox"/> Bench Trial	