

Pennsylvania Updates Sentencing Guidelines (Cont.)

The new guidelines are much more comprehensive than the previous addition, which were in place for more than decade prior to this revision. These new guidelines consider and assign numbers to enhancements such as deadly weapons used or possessed. In addition, the guidelines assign points to situations where a crime or offense is committed within a domestic relationship either against a member of a household, spouse, or significant other.

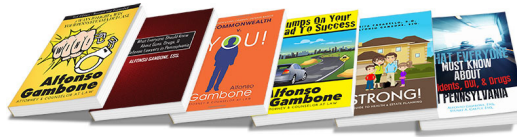
The guidelines also are much more precise in determining prior record scores based on convictions. There are four separate categories of crimes ranging from nonviolent misdemeanor to violate felonies. Previous guidelines did not use such detailed calculations and there was a significant amount of gray area due to this issue.

Finally, the guidelines have created more categories and offense gravity scores to correspond to those categories in an attempt to consider a specific situation which arises during the course of sentencing.

Why You Must Understand the New Guidelines?

If you are charged with a crime in Pennsylvania, your criminal defense lawyer must review the guidelines with you to properly advise you on your options in your case. The guidelines should not be utilized simply during post-Trial but rather to determine the strength of a plea offer, assist in plea negotiations and weigh the consequences if the individual is convicted following a Trial as opposed to accepting a plea.

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Question of the Month
Your Memorial Holiday Day Weekend Reminder

Summer weekends are a great time to spend with our friends and family. Please enjoy responsibly! There is always an increased police presence on the state and local highways in Pennsylvania and New Jersey on these weekends. As we begin Summer 2024, please keep in mind the following:

1. Never give police consent to search your house or car without a warrant but don't argue or put your hands on them if they do it anyway.
2. You're not required to tell the officer where you are going, where you have been, or what you did (or drank) following a traffic stop.
3. Never refuse a DUI chemical test (breathalyzer or blood draw).
4. Your Pennsylvania license to carry is not valid in New Jersey.
5. If you're transporting a gun or firearm through New Jersey or Pennsylvania, make sure it is unloaded and the ammunition is kept separate from the weapon.

Our law firm wishes you and your family a happy and safe Summer 2024



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Newsletter



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Pennsylvania Updates Sentencing Guidelines – What you need to know and why they're important

Recently the Pennsylvania put out new guidelines for Judges and attorneys regarding sentencing. These guidelines are incredibly important because Judges use them to fashion appropriate sentences following a conviction at a Judge or Jury Trial. In addition, these guidelines are used during plea negotiations by district attorneys and criminal defense lawyers. Finally, the sentencing guidelines are utilized when determining whether a plea offer is appropriate and the probability of a certain sentence following a plea before a Judge.

What is Prior Record Score?

Sentencing guidelines are composed of two main elements- offense gravity score and prior record score. Prior record score as the name implies is a number based on a person's prior criminal history within the

criminal justice system. This prior record score calculation would include convictions not only in Pennsylvania but also out of State in places like New Jersey, New York, and Delaware, which border the Commonwealth.

What is an Offense Gravity Score?

Offense gravity score is a number which is based on the seriousness of the crime or offense. The higher the number, the more serious of an offense. Judges utilized prior record scores and offense gravity scores to arrive at sentencing guidelines. In Pennsylvania, unlike New Jersey there are few mandatory minimum sentences and Judges do not need to impose guidelines sentences on a defendant that was convicted following Trial or following an open or negotiated plea for the Court.

Why Judges Follow Guidelines?

Judges typically, however, make sentences within the guidelines to avoid being overturned on appeal by the Pennsylvania Supreme

Court or Supreme Court. When Judges deviate either upward or downward from the guidelines there is a better possibility that a higher Court will overturn the sentence and send the case back down to the lower Court to reconsider the matter.

What Makes the New Guidelines different?

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Pretextual Traffic Stop, Racial Profiling, Reasonable Suspicion, and Probable Cause

Are pretextual traffic stops constitutional? If so, what is the problem?

The United States Supreme Court has already held that pretextual traffic stops are permitted (constitutional) under the Fourth Amendment to the United States Constitution as long as there is probable cause for the stop. Probable cause for the stop in most situations means a violation of the traffic code. While pretextual stops are constitutional, stops based on racial profiling are strictly prohibited.

Racial discrimination requires the defense, however, to establish that race was the motivating factor to initiate the stop. Previous studies conducted by the Attorney General's office in various states have concluded that whites and African Americans violate traffic laws at almost equal rates. While only 14% of cars on the road had African American drivers, they represent over 73% of those arrested following traffic stops.

To combat this issue Supreme Court established the three part equal protection test to establish the appropriate framework for establishing discrimination based on racial profiling. In the Supreme Court case of *Batason v. Kentucky*, an individual challenging racial discrimination must offer statistical and circumstantial evidence to create a rebuttal,

prima facie case that race was the motivating factor.

Once a prima facie case is established, the government (prosecution) must articulate a race neutral reason for its action. It must also identify compelling government interest. If the government meets the burden, the defendant bears the ultimate burden of proving discrimination.

Police traffic stops based on race are illegal

In cases where a stop is based on a specific suspect's description that relies primarily on race or ethnic background, the Courts will not find proper justification. In *Brown vs. City of Oneonta*, the Court observed that the description of race in general alone will rarely provide reason of suspicion. The police department in *Brown* had gone to extraordinary lengths to locate an assailant of an elderly woman and who was able to describe the attacker as only a young black male who possibly had a cut on his hand. Over several days, police questioned and located over 200 African American residents in the city who fit that description. The Court found that the police had seized several plaintiffs which led to Fourth Amendment claims based on inadequacy of the suspect's description. Based on this analysis, therefore, police departments may not use race as a motivating factor to arrest someone.

A description which simply identifies a person as simply black, white, or Asian,

along with their age is simply insufficient to establish probable cause for a vehicle stop. It will also not establish reasonable suspicion. Reasonable suspicion is a lower form of probable cause. Police need probable cause to stop a car, obtain a search warrant, or arrest an individual for a crime. Police only need reasonable suspicion, however, to detain someone for questioning following a stop.

Racial profiling is an issue which a criminal defense lawyer may sometimes need to address if he or she is representing a member of a minority group such as African American, Hispanic, Asian, or a Native American person. Generally, an individual's appearance doesn't provide law enforcement or police with reasonable suspicion of criminality as is required by the Fourth Amendment to the United States Constitution and The Pennsylvania Constitution.

Reasonable Suspicion

Remember, as I've written literally thousands of times in my blogs, newsletters and E-Books, reasonable suspicion is lower form



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of probable cause and requires less articulable facts to justify police (government) intrusion on an individual's right to privacy. Reasonable suspicion doesn't allow the police officer to perform a warrantless search of you or your property but does allow further investigation in the form of pat down search (frisk for officer safety) or of items (frisk based on the belief that the item contains contraband (illegal drugs, narcotics, firearms, handguns). Police need probable cause to search and or to arrest a suspect.

But there are exceptions to racial profiling

There are exceptions, however, to this general rule. For example, federal courts have found that stops of suspected gang members are justified. In this situation, the federal court (8th Circuit) found that there was a history of street gangs moving narcotics through the airport and this case (US v. Weaver) occurred long before the 9/11 attacks. The US Supreme court has held that border searches based on an individual's Hispanic appearance alone does not provide reasonable suspicion of criminality (US v. Vrignoni-Ponce). Further, federal courts

have ruled that a person's appearance cannot be considered as a relevant factor where suspicion is required to make a police stop.

What your criminal defense attorney can do about racial profiling in your case

In situations where the defense believes that a police stop was based on a person's race, the defense can offer statistical and other evidence to create a rebuttable assumption that race is a motivating factor. Once that presumption is established, the government (Commonwealth) must articulate a race neutral reason for the police action or identify a compelling governmental interest for this stop. If the government (Prosecution) meets this burden, the defendant maintains the ultimate burden of proving discrimination (See Batson v. Kentucky -US Supreme Court Case).

What to do if you believe you are the victim of racial profiling

If you believe that you are the victim of racial profiling or even suspect it, you must bring it to your defense attorney's attention

for him to raise the issue through a pre-trial motion to suppress evidence. As I have stated in the past, a Motion to Suppress Evidence due to an illegal search and seizure is often the defense's most powerful tools to overcome charges involving illegal drugs, narcotics, guns, and firearms.



Schedule Your Appointment with Dr. Carabello Today



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YOUR HEALTH

Visceral fat vs. Subcutaneous fat

Visceral fat and subcutaneous fat are two distinct types of body fat with different functions and implications for our health. Visceral fat, also known as intra-abdominal fat, is stored deep within the abdominal cavity and surrounds our internal organs. On the other hand, subcutaneous fat is located right beneath the skin and is distributed throughout the body.

Why is Visceral Fat so bad for your health?

While visceral fat plays a role in protecting and cushioning organs, excessive amounts can be detrimental to our health. High levels of visceral fat are associated with an increased risk of several health issues, including type 2 diabetes, heart disease, high blood pressure, certain cancers, and fatty liver disease. This is due to the fact that visceral fat is metabolically active and

releases substances that can contribute to inflammation and insulin resistance, further exacerbating health problems.

What is the problem with Subcutaneous Fat?

Subcutaneous fat, on the other hand, acts as a source of energy, helps regulate body temperature, and provides padding and protection for underlying issues. While excess subcutaneous fat is associated with obesity, it is generally considered to be less harmful to health than visceral fat. Carrying excess subcutaneous fat, however, can still contribute to joint strain and limit mobility.

What can you do to lower your risks of problems associated with high levels of fat in your body?

You can reduce the risk of developing health problems associated with excess visceral and subcutaneous fat with healthy lifestyle choices. Set a goal of at least 150

minutes of moderate to vigorous exercise a week.

Read your food labels! Eat a diet that is rich in cruciferous vegetables (greens), grilled or air fried lean proteins, and fiber. Select dairy wisely and choose plain Greek Yogurt or cottage cheese which is high in protein. Eat low glycemic fruits (berries) and moderate healthy fats. Finally, avoid or substantially restrict foods like bread, crackers, and chips along other white flour, and foods high in sugar and alcohol.

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