

Current Developments in Sentencing and Supervision: Act 44 Appellate Decisions and Enhancements in Practice

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Today's Roadmap

Setting the Stage

- Why Act 44 matters
- The statutory framework for probation revocation

Lessons from the Appellate Courts

- Emerging themes from recent appellate decisions
- Practical application through cases

Sentencing Enhancements

- Practical considerations under the 8th Edition Sentencing Guidelines

Why Are We Here?

Act 44 changed probation law.

- Since its enactment, courts have been asked to answer important questions regarding:
 - **The scope of judicial authority**
 - **Technical violations and sanctions**
 - **Revocation and resentencing procedures**
 - **The practical implementation of new statutory requirements.**

The appellate decisions discussed today continue to shape the practical application of Act 44 across Pennsylvania.

Five Lessons Emerging in Post-Act 44 Practice

1. Judicial authority begins with the statute.
2. Technical violations mean what the statute says.
3. Statutory findings matter.
4. The record remains critically important.
5. The appellate courts are shaping post-Act 44 practice.

Act 44: A Shift in Pennsylvania Probation Policy

What Act 44 Sought to Accomplish

- Encourage a graduated statutory response to technical violations.
- Limit the circumstances under which total confinement may be imposed for technical violations.
- Provide mechanisms supporting successful completion of probation through review conferences and early termination provisions.
- Provide a more structured statutory framework for probation supervision and revocation.

Statutory Framework

- **42 Pa.C.S. § 9771** – Revocation of probation
- **42 Pa.C.S. § 9771.1** – Court-imposed sanctions
- **42 Pa.C.S. § 9774.1** – Probation review conferences

Recurring Themes in Post-Act 44 Appellate Decisions

The appellate courts have established several guiding principles that will appear throughout today's cases.

- Statutory language controls judicial authority.
- Appellate courts expect compliance with statutory procedures.
- Meaningful appellate review depends upon the record.

Through our time together, consider these recurring themes.

- What authority does the statute grant?
- Were the required procedures followed?
- Does the record support more meaningful appellate review?

Lesson 1: Judicial Authority Begins with the Statute

The appellate courts consistently reinforced three principles:

- Courts possess only the authority granted by statute.
- Revocation proceedings remain subject to statutory limitations.
- The appellate courts begin their analysis with the statutory language.

Practical Question

What authority does the statute actually give the court?

That question appears repeatedly throughout the recent appellate decisions.

Lesson 1: Judicial Authority in Practice

Case	Issue	Key Principle
Charles-Richardson	When can probation be revoked?	A court may revoke probation only after the probationary term has begun.
Seals	What type of appellate claim is this?	Challenges to compliance with § 9771(c) implicate the legality of sentence.
Hoege	Can courts expand statutory authority?	Act 44 may affect the legality of continued confinement even where the original sentence was lawful when imposed.

Remember: Before asking what result seems appropriate, first identify what authority the statute grants.

Lesson 2: Technical Violations Mean What the Statute Says

The appellate courts consistently reinforced three principles:

- Act 44 establishes a graduated statutory response to technical violations.
- Courts must satisfy each statutory requirement before increasing sanctions.
- Judicial findings—not merely the underlying conduct—are central to the statutory analysis.

Practical Question

When has a defendant actually accumulated three qualifying technical violations?

The recent appellate decisions demonstrate that this question is more nuanced than it first appears.

Lesson 2: Technical Violations in Practice

Case	Question Answered	Key Principle
Goodwin	How should prior technical violations be counted?	Prior judicial determinations of technical violations establish the graduated sanction structure.
Oglesby	What qualifies as a prior technical violation?	Judicial findings—not merely conduct—determine prior violations.
Potoczny	When is total confinement authorized?	Every statutory prerequisite must be satisfied before total confinement may be imposed.

Remember: Courts should evaluate technical violations sequentially, ensuring each statutory prerequisite is satisfied before progressively greater sanctions become available.

Lesson 3: Statutory Findings Matter

The appellate courts reinforce three principles:

- The authority to impose total confinement depends upon the findings required by statute.
- Total confinement requires more than the existence of a technical violation.
- The required statutory findings must appear on the record before total confinement is imposed.

Key Question

Has the court made every finding required before imposing total confinement?

The appellate courts continue to emphasize that the required statutory findings must appear on the record before total confinement is imposed.

Lesson 3: Statutory Findings in Practice

Case	Question Answered	Key Principle
Morton	What findings must a court make before imposing total confinement?	Total confinement is illegal unless the requirements of § 9771(c) are satisfied.
Clayborne	What constitutes “assaultive behavior” under Act 44?	The statutory exceptions authorizing total confinement are interpreted according to the plain language of statute and legislative intent.

Remember: Procedure protects the sentence. A legally correct outcome may still be reversed if the statutory requirements are not followed.

Lesson 4: The Record Remains Critically Important

The recent appellate decisions consistently reinforce four principles:

- Plain statutory language controls.
- Judicial discretion exists within the authority defined by statute.
- The sentencing record must demonstrate compliance with statutory requirements.
- The appellate decisions provide additional guidance for applying Act 44 consistently.

Looking Ahead

What should judges and practitioners expect moving forward?

Lesson 5: The Appellate Courts Are Shaping Post-Act 44 Practice

What recent decisions tell us:

- Recent decisions have resolved several foundational questions, while others remain for future appellate review.
- Courts continue to emphasize careful adherence to statutory language and statutory requirements.
- Compliance with statutory requirements remains central to lawful probation revocation proceedings.
- Practitioners should expect continued appellate guidance as Act 44 matures.

Key Takeaway

Staying current with appellate decisions is an essential part of probation and sentencing practice.

Five Questions Before Revocation

Before imposing sentence following a probation violation, ask:

- Does the statute authorize the court's action?
- What technical violation number is before the court?
- Have all statutory prerequisites been satisfied?
- Are the required findings clearly stated on the record?
- Will the record support meaningful appellate review?

Sentencing Enhancements in Practice

Five principles every practitioner should remember

- Enhancements increase the Offense Gravity Score (OGS)—not the grade of the offense.
- Enhancements are applied only when authorized by the Sentencing Guidelines.
- Some enhancements are built into OGS, others require and OGS adjustment.
- Multiple enhancements may apply, but important limitations exist.
- The guideline edition depends on the date of the offense.

Today's focus is on practical principles rather than a comprehensive review of every enhancement.

The Three Questions to Ask

Three Questions Before Applying an Enhancement:

1. Does an enhancement actually apply?
2. How do the guidelines apply it?
3. Is it already accounted for somewhere else?

Four Enhancement Rules Worth Remembering

Rule	Practice Tip
OGS Change—not grade	Don't confuse statutory grading with guideline calculations.
Apply to each eligible conviction	Analyze each count separately.
OGS capped at 30	Check the final calculation before sentencing.
Guideline edition is based on offense date	Verify the offense date before selecting the edition to use.



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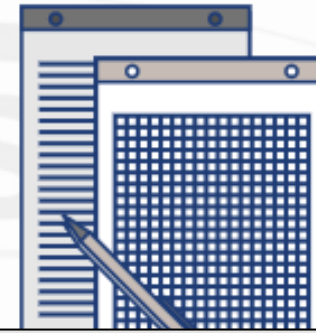
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Thank you!

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