

# ***District of Columbia Truth-in-Sentencing Commission***

950 Pennsylvania Avenue Northwest, Washington, D.C. 20530

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**UNITED STATES ATTORNEY'S OFFICE  
FOR THE DISTRICT OF COLUMBIA**

The Honorable Linda Cropp  
The District of Columbia Council  
441 Fourth Street, N.W.  
Suite 704  
Washington, D.C. 20001

Dear Chairman Cropp:

I am pleased to submit "The Commentary and Suggestions Report of the District of Columbia Truth In Sentencing Commission" for the District of Columbia Council's consideration. As indicated in my letter of January 31, 1998, transmitting the Commission's mandatory recommendations made pursuant to Section 11212 of the National Capital Revitalization and Self-Government Improvement Act of 1997, this report includes explanatory materials; conforming amendment suggestions; and a summary of the ideas, alternatives and options developed during the Commission's deliberations but not included in the formal legislative package.

As you know, mindful of the requirement in section 11214 of the Act that the District of Columbia Council must "enact in whole the recommendations of the Commission," and believing, as we do, that significant changes in sentencing policies in the District of Columbia are best accomplished by Council action, the Commission made a concerted effort to reduce the formal recommendations to the minimum revisions of the District of Columbia Code necessary to comply with the Act and the Commission's mandate.

Because of this minimalist approach, there are a number of important policy recommendations which the Commission chose not to include in the mandatory recommendations -- even when the Commission unanimously supported the specific policy itself. The Commission instead chose to address these matters as well as issues on which there was less consensus in "The Commentary and Suggestions Report." Omission of these issues from the mandatory recommendations transmitted for Council action pursuant to Section 11214 of the Act in no way indicates that they are any less important than those issues on which we made formal recommendations. To the contrary, the Commission strongly believes that legislative policy action on these matters is absolutely essential to assure a fair, functional and rational sentencing system for the District of Columbia.

The Honorable Linda Cropp  
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As the previously provided transcripts indicate, during the Commission's deliberations, there was much review of options as well as discussion and debate regarding just what such legislative action should be. In order to provide the Council with as broad a perspective as possible, the Commission's Report includes not only legislative proposals and sectional analysis with majority support but also options, dissenting views and selected submissions made by individual Commissioners.

It should also be noted again that the Commission's efforts were frustrated by the lack of reliable data on current sentencing and parole practices in the District of Columbia which we view as essential to making fully informed policy choices on many of these issues. As promised, the Commission continues to work to assure that the Council and any advisory group it may establish will have the benefit of the necessary baseline data.

My colleagues and I are available to provide whatever consultation or assistance you deem appropriate as you seek to address these important issues in the coming months.

Sincerely,



Eric H. Holder, Jr.  
Chairman

Enclosure

## INTRODUCTION

Pursuant to section 11212(a) of the National Capital Revitalization and Self-Government Improvement Act of 1997 ("Act"), on January 31, 1998, the District of Columbia Truth in Sentencing Commission ("Commission") transmitted its formal recommendations for amendments to the District of Columbia Code that were deemed necessary for compliance with the Act's mandate. In adopting that formal recommendation package, the Commission also unanimously agreed to compile a "Commentary and Suggestions" Report including explanatory materials; conforming amendment recommendations; and a summary of the ideas, alternatives and options developed and considered during the Commission's deliberations but not included in the mandatory legislative recommendation package.

This Commentary and Suggestions Report of the District of Columbia Truth in Sentencing Commission is intended to supplement -- not replace -- the materials already provided to the District of Columbia Council for review, including copies of the full transcripts and minutes from each of the Commission's meetings; the literature review and data reports; the public hearing transcript, testimony, comments and all related correspondence; and other materials referred to during the Commission's work.

The ideas and proposals included in this Report are not part of the formal recommendations transmitted for action pursuant to section 11214 of the Act. As described at the January 27, 1998 meeting of the Commission, this Report is intended to outline options for the Council's consideration and to provide the Council with the benefit of the Commission's members' "various thinking on various issues". This Report is meant to be inclusive rather than exclusive and as such includes extensive appendices amplifying views referenced in the text. We hope that this approach will convey the combined wisdom of all the members of the Commission while distinguishing as necessary between the views held by a majority and minority of its members.

## UNITARY v. DUAL SENTENCING SYSTEM

The Revitalization Act requires determinate sentencing for felonies enumerated in subsection (h) of section 11212 of that Act. The Commission's mandatory recommendations do not alter the existing indeterminate sentencing system for non-subsection (h) felonies. Nor do the Commission's mandatory recommendations repeal D.C. Code § 24-208, which allows parole for misdemeanants.<sup>1</sup> Thus, the District of Columbia Council must decide whether to maintain a bifurcated (or trifurcated) sentencing system in the future.<sup>2</sup>

Although, as a matter of policy, a majority of the Commission members strongly support the creation of a unitary sentencing system for all adult felony and misdemeanor offenses, they agreed that mandatory recommendations were not appropriate in this area because the Revitalization Act does not require the Commission to create a determinate sentencing system for non-subsection (h) felonies or misdemeanors.

The Commissioners who favor a unitary system view a bifurcated or trifurcated system as profoundly unwise. In their view, such a system would result in a needlessly complex sentencing structure, with parole for some offenses and not for others; shift more power to prosecutors in the plea bargaining process; deprive criminal defendants of readily understandable information about the potential penalties for their criminal conduct; and frustrate the public's right to know and understand what sentences actually mean. Moreover, because individual offenders could receive multiple sentences for subsection (h) and non-subsection (h) felonies and parolable misdemeanors, the unnecessary danger of even more complexity and uncertainty in an already complex system would be greatly increased in a bifurcated or trifurcated system.<sup>3</sup>

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<sup>1</sup> The Revitalization Act, however, abolishes the D.C. Board of Parole and shifts parole authority for misdemeanants to the Superior Court.

<sup>2</sup> In fact, absent additional changes, the resulting system is not bifurcated, but trifurcated: no parole for subsection (h) felonies; parole through the U.S. Parole Commission for all other felonies; and parole through the Superior Court for misdemeanants.

<sup>3</sup> The hypothetical sentence computations described below in a relatively simple example demonstrate the complexity of a bifurcated or trifurcated system.

An offender receives a sentence of 10 years imprisonment with three years of supervised release for a subsection (h) felony (determinate) and a consecutive term of 2-6 years (indeterminate) for a non-subsection (h) felony.

If the judge orders the 10 year sentence to run first, the inmate will be given a Statutory Release Date that is 16 years in the future less 54 days credit for each year served. His parole eligibility date will be in 8½ years (10 years less good time on the determinate sentence) plus 2 years less good time (on the indeterminate sentence). The indeterminate sentence does not begin to run until the Statutory Release Date assigned for the determinate sentence. The inmate could be released on parole after spending approximately 10 1/4 years in prison; if not paroled the inmate would remain in prison until his statutory release date. Once released from prison, the offender's term of supervised release would begin to run and if paroled, his parole term would begin to run. Accordingly, the inmate would be on supervised release and parole at the same time and the same

Those who support the retention of a system involving indeterminate sentences and parole for non-subsection (h) felonies do so for several reasons: 1) it is consistent with a "minimalist" approach to implementing the Revitalization Act's reforms; 2) it preserves as much as possible of the existing parole-based system; and 3) it preserves the prospect that some defendants may serve less time in prison because they may be admitted to parole before they would serve 85% of a determinate sentence.

The members of the Commission who support a unitary system agree that the Council should decide how much, if any, of a parole based system to preserve. They point out, however, that felony parole in the future would be administered exclusively by federal officials, applying rules and policies that would be developed and implemented by the United States Parole Commission. In addition, with few exceptions, the non-subsection (h) felonies are the less serious felony offenses, for which lengthy incarceration is not the norm. It is very unlikely that retention of parole for these offenses would result in significantly less incarceration than would be the case with determinate sentencing. For these reasons and for the reasons previously set forth in this section, the majority of the Commission urges the Council to adopt a unitary determinate sentencing structure for all offenses, including misdemeanors.<sup>4</sup>

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agency would supervise both terms.

If the judge ordered the 2-6 year term to be served first, the inmate would be given a Statutory Release Date (16 years less 54 days per year good time). A parole eligibility date would be set at 2 years (less good time), and a "hidden date" would be computed to indicate the expiration of the 2-6 year sentence (in the event the inmate is denied parole) to ensure the Parole Commission does not erroneously attempt to grant parole once the inmate has begun serving the determinate term. The determinate 10 year term would begin to run at the time the inmate is granted parole or at the Statutory Release Date of the 2-6 year sentence if parole is denied.

If the inmate is paroled from the 2-6 year sentence, he would serve the parole term while in prison serving the determinate sentence (and the Statutory Release Date would be modified accordingly). The United States Parole Commission would have the option of revoking parole in the event the inmate engages in certain types of misconduct while serving the determinate term. If this were to occur, the inmate would serve the parole revocation term at the expiration of the determinate sentence. Once he completed this revocation term his term of supervised release would commence.

As noted, the above example is relatively simple. The computations and variations become much more complex as the number of sentences imposed on a given offender is multiplied. By contrast, in a unitary system multiple consecutive sentences are simply aggregated and the release date is easily calculated by subtracting allowable good time credit from the aggregate term. For example, if an offender received a determinate sentence of 10 years imprisonment with 3 years of supervised release, and also received a consecutive determinate sentence of 2 years imprisonment with one year of supervised release, the offender would have a statutory release date of approximately 10 years and 3 months in the future (= 12 years minus 15%), to be followed by 3 years of supervised release.

<sup>4</sup> The Commission majority believes that retaining parole for misdemeanors makes little sense regardless of what the Council decides regarding parole for non-subsection (h) felonies. If parole were to be retained for both non-subsection (h) felonies and misdemeanors, two separate paroling authorities would be operating side by side (the U.S. Parole Commission and the Superior Court), risking confusion and inconsistency, particularly in cases of defendants serving sentences for both categories of offenses.

## UNWARRANTED SENTENCING DISPARITY

For felonies enumerated in section 11212(h) of the Act, the sentences must be determinate and offenders must serve 85% of the sentence. Under a determinate sentencing system, the sentencing judge will impose a specific term of imprisonment (not a range), subject to the requirement that the offender serve not less than 85% of the sentence imposed. The effect of this change is to increase the sentencing judge's control over the actual length of confinement. In light of this determinate sentencing for subsection (h) felonies and the Commission majority's recommendation that the Council adopt a unitary sentencing system, the majority of the Commission strongly encourages the Council to put in place a mechanism that will promote consistency in sentencing among judges exercising their increased discretion under the new system.

An example will help illustrate the need for further reform in this area. The statutory maximum sentence for first degree burglary is thirty years. In the previous indeterminate system, the longest sentence a judge could impose was ten to thirty years. Under that sentence, the offender would be required to serve not less than ten years minus any applicable good time, and the parole board would thereafter decide when the offender would be released on parole up to the mandatory release date. Under the determinate system, the sentencing judge can impose any sentence up to thirty years, and the offender will be required to serve 85% of the sentence imposed. The Commission recognizes that the new system of determinate sentencing could result in changes in the average length of incarceration, depending on what the Board of Parole would have done with its release discretion at the back end relative to what the sentencing judges will do with their sentencing discretion at the front end.

While the Commission has no reason to expect that judges will use their additional sentencing discretion to impose terms of incarceration which differ markedly from those that result under the current system, an issue of unwarranted disparity in sentencing could arise in the future under the new regime. The Commission subscribes to the principle that similar offenders convicted of like offenses should receive comparable sentences. In any system where there are many different judges imposing sentences, perfect uniformity is, of course, impossible. No system can call itself just, however, if sentences vary widely for no other reason than that two different judges see the "same" case differently.

Additionally, there is a need to develop guidance concerning the use of community-based sentencing and intermediate sanctions. In that regard, the Commission observes that the underutilization of intermediate sanctions and alternatives to incarceration in the past has occurred because credible sanctioning programs have not been available, and those programs that have been established have often been poorly managed and underfunded. By and large, judges are willing to consider alternatives to prison in appropriate cases, but they are unwilling to take unreasonable risks with community safety. It is hoped that the federal assumption of responsibility for incarceration and supervision of sentenced felons will result in the development of cost-effective and credible alternatives to imprisonment and

intermediate sanctions for judges to consider in appropriate cases. Guidance is needed to promote consistency in the use of intermediate sanctions to maintain an appropriate balance between the needs of the offender and community safety.

The Commission discussed various options for limiting the possibility of unwarranted disparity in sentences. It was suggested that the Commission should include in its mandatory recommendations either new statutory maximum terms for each offense, or provisions that the incarceration portion of any sentence not exceed a certain percentage of the statutory maximum, with the remainder taken up by supervised release. Several of the options discussed are provided for the Council's review in the attached appendix at Tabs 1-2. However, the majority of the Commission rejected these and other similar suggestions as unwarranted intrusions on Home Rule. The Commission also noted the lack of adequate data to make reasoned decisions on these and many other related issues. Instead, the Commission voted to devote its resources to the collection and analysis of the needed data and recommends that the Council put in place an advisory sentencing commission to review that data and use it to study the full range of options for structuring the discretion of sentencing judges so as to avoid unwarranted disparities in sentencing, avoid unintended changes in the length of imprisonment, and promote the appropriate use of intermediate sanctions. Toward that end, a majority of the Commission offers the following proposal as a way in which the Council could establish such a body and define its mandate:

Add a new provision of D.C. Law as follows:

§ 24-201. *District of Columbia Sentencing Commission*

(a) **Purposes.** There is established the District of Columbia Sentencing Commission. The Commission's purpose shall be to review and analyze pertinent sentencing data and to make recommendations to the Council of the District of Columbia, in the form of proposed legislation or otherwise, for the establishment of a fair and rational sentencing system that takes full account of the structural changes enacted pursuant to the National Capital Revitalization and Self-Government Improvement Act of 1997, P.L. 105-32, Title XI, Subtitle C, Chapter 2. Specifically, the Commission shall consider recommendations to ensure that for all offenses, an offender will have a sentence imposed that:

- (1) reflects the seriousness of the offense and the criminal history of the offender;
- (2) provides for just punishment;
- (3) affords adequate deterrence to potential future criminal conduct of the offender and others;

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<sup>5</sup> An alternate proposal for a sentencing commission is attached at Tab 4, p. 3.

- (4) provides the offender with needed educational or vocational training, medical care, and other correctional treatment;
- (5) provides for community-based sentencing and intermediate sanctions in appropriate cases; and
- (6) provides, following any sentence of imprisonment, for an adequate period of supervised release.

(b) **Recommendations.** The Commission shall also consider recommendations designed to avoid any unwarranted disparities in sentencing, to avoid any unwarranted or unintended changes in length of incarceration, and to ensure that sentences are neutral as to the race, creed, gender, ethnic or national origin, sexual orientation, marital status, religion and socioeconomic status of the offender. The Commission's recommendations in carrying out this subsection and subsection (a) may include proposed rules or principles for determining the sentence to be imposed in particular cases, including --

- (1) whether to impose a sentence of probation, a term of imprisonment and/or a fine and the length or amount thereof; and

- (2) whether multiple sentences of terms of imprisonment should run concurrently or consecutively.

(c) **Membership of Commission.** The Sentencing Commission shall consist of thirteen voting members and five nonvoting members who shall be appointed by the Chief Judge of the Superior Court of the District of Columbia. The Commission may act by an affirmative vote of at least seven of its voting members. The voting members of the Commission shall consist of the following:

- (1) Three judges of the Superior Court, one of whom shall be designated by the Chief Judge of the Superior Court to chair the Commission;
- (2) The Chair of the Council of the District of Columbia and the Chair of the Judiciary Committee of the Council;
- (3) The Attorney General or the Attorney General's designee, and the United States Attorney for the District of Columbia;
- (4) The Director of the D.C. Public Defender Service;
- (5) A member of the District of Columbia Bar who engages in the practice of criminal law;
- (6) The Corporation Counsel of the District of Columbia;

- (7) An academician in the field of law or criminal justice, with recognized expertise in the area of sentencing;
- (8) Two citizens of the District of Columbia, who have a demonstrated interest in criminal justice issues, at least one of whom has experience as an advocate for victims of crime.

The non-voting members of the Commission shall consist of the following:

- (1) The Director of the District of Columbia Department of Corrections or her designee;
- (2) The Pretrial Services, Defense Services, Parole, Adult Probation and Offender Supervision Trustee or Director of the Offender Supervision, Defender, and Courts Services Agency, or his designee;
- (3) The Director of the United States Bureau of Prisons, or her designee;
- (4) The Chair of the District of Columbia Board of Parole, or her designee;
- (5) The Chair of the United States Parole Commission, or his designee.

(d) **Compensation.** Members of the Commission shall serve without compensation.

(e) **Term of Office.** Members appointed in their official capacity shall continue to serve as long as the member occupies the position which made him or her eligible for the appointment. Other members shall serve terms determined by the Chief Judge of the Superior Court. Members of the Commission shall be subject to removal by the Chief Judge of the Superior Court only for neglect of duty or malfeasance in office or for other good cause.

(f) **Commission Staff and Meeting Procedures.** The Commission shall hire a director and other necessary personnel, who shall serve at the discretion of the Commission. The Commission shall also contract for appropriate office space, equipment, and other materials as necessary to carry out the Commission's official functions. The Commission shall meet as frequently as may be necessary to conduct the Commission's official business.

(g) **Report of the Commission.** Not later than April 5, 2000, the Commission shall submit to the Council of the District of Columbia its report containing its recommendations to the Council consistent with the purposes of the Commission as set forth in subsections (a) and (b).

## SUPERVISED RELEASE

Section 11212(b)(2)(C) of the Revitalization Act requires that the Truth-in-Sentencing Commission's recommendations to the District of Columbia Council ensure that sentences for all felonies (both subsection (h) and non-subsection (h)) include "an adequate period of supervision" to follow release from imprisonment. The Revitalization Act also provides that the newly established and federally funded Offender Supervision, Defender, and Courts Services Agency will supervise released adult offenders and that these offenders will be subject to the authority of the United States Parole Commission until completion of the term of supervised release. See Section 11233(c)(2). The United States Parole Commission will generally have and exercise the same authority in relation to D.C. offenders on supervised release as is vested in the United States district courts in relation to federal offenders on supervised release pursuant to 18 U.S.C. § 3583(d)-(i). The Commission's mandatory recommendations to the Council tracked the Revitalization Act by requiring an "adequate" period of supervised release to follow any felony sentence of imprisonment. This leaves room for the Council to define more specifically what is "adequate" and raises a number of other issues requiring the Council's attention.

### Purpose of post-incarceration supervision:

Nearly all offenders sent to prison are eventually released into the community. The release of an offender creates apprehension in both the individual and the community regarding the offender's employment and living arrangements upon release. Post-incarceration supervision can effectively address these fears and reduce the risk of future criminal conduct by the released offender.

Supervised release provides an offender with a variety of resources for reintegration back into the community. Job training, employment counseling, family services, drug and mental health treatment and residence in a community treatment center or halfway house can be provided (or required) when necessary to facilitate a successful transition. The threat of being returned to custody for failing to abide by the conditions of release provides an incentive for the released offender to utilize aftercare services and to avoid situations which might encourage recidivism.

With respect to defining periods of supervision, some members of the Commission believed that the maximum period of supervision for most offenders should be five years. The federal statute and sentencing guidelines call for supervised release of no more than five years for most federal offenses. Others on the Commission noted that federal offenders differ in many respects from District of Columbia offenders and, that for the benefit of the offender and the protection of the community, certain offenders -- such as sex offenders or serious repeat violent offenders -- should be subject to potentially much longer periods of supervision up to and including lifetime supervision. It also was noted that longer periods of supervision in such cases were generally preferable to longer periods of incarceration.

Some Commission members suggested that a minimum period of supervised release -- possibly two or three years -- should be required for most felony offenses. The rationale for this position is that programs designed to habilitate and successfully reintegrate offenders into society take time; that acquiring job skills and finding employment following release from prison are difficult and offenders need substantial support from the supervising agency; that substance abusing offenders and others disposed to recidivism benefit from the conditions of supervision, including the incentive created by a potential return to custody for a substantial period of time in case of further criminality or misconduct; and that time is needed to assess adequately an offender's successful transition.<sup>6</sup>

Requirements for subsection (h) felons:

Under the Act, subsection (h) felons must receive a determinate sentence without parole, and the judge must in addition impose a period of supervised release. Under the federal system, the sentence to a term of imprisonment is separate from the sentence to a term of supervised release, and the federal term of imprisonment is completed upon the release of the offender. This contrasts with the concept of parole, which is the balance of the term of imprisonment left at the time of the offender's release on parole.

Some members of the Commission suggested that the Council apply the parole model to determinate sentences and consider limiting the sentencing judge to a combination of imprisonment and supervised release that did not exceed the existing statutory maximum for imprisonment. Other members of the Commission believed that any such restriction clearly would violate the Revitalization Act's dual requirements that sentences of imprisonment be adequate to achieve such objectives as just punishment and deterrence and that offenders also be subject to adequate periods of supervision following release. They also believed that such a restriction would unduly constrain judicial discretion in certain cases. Public safety, the risk of recidivism, and the serious consequences of recidivism were cited as factors that may warrant both lengthy imprisonment and lengthy post-release supervision for certain sex offenders and serious violent offenders. Concern was raised regarding the type of offender whose prior record may be so bad or the nature of the offense so serious that the sentencing court imposes the maximum term or a near-maximum term of imprisonment for the offense of conviction, leaving little or no time for needed post-imprisonment supervision.

The Commissioners who favor a system in which terms of supervised release would not be limited by current statutory maximum terms of imprisonment pointed out that the vast majority of convictions are obtained as a result of guilty pleas. It is not uncommon for a defendant to plead guilty to a lesser included offense that carries a short statutory maximum,

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<sup>6</sup> Research on the federal level suggests that two or three years of supervision is often necessary to determine whether a releasee is likely to engage in further anti-social activities. See Hoffman and Stone-Meierhoefer, "Post-Release Arrest Experience of Federal Prisoners," Journal of Criminal Justice, V. 7, No. 3, pp. 193-216 (1979) (copy appended at Tab 8).

thereby avoiding a lengthy prison term<sup>7</sup>. This is especially true where the prosecutor is under pressure to enter into plea negotiations because of such problems as an unsympathetic victim, an intimidated witness, or the nature of the offense. Sex offenders, for example, frequently benefit from such negotiations because of a desire to protect the victim from having to testify and be subject to humiliating and traumatic cross-examination. In such cases, if the sentencing judge imposed a determinate period of incarceration at or near the statutory maximum, there would not be enough time remaining upon release to ensure an adequate period of supervision if the statutory maximum term of imprisonment operated as an aggregate cap. Since the Revitalization Act requires that an "adequate period of supervision will be imposed to follow release from the imprisonment," the Council may conclude that constraining the potential term of supervised release by the statutory maximum term of imprisonment without adjusting that maximum not only conflicts with the Act, but is also bad public policy.

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<sup>7</sup> The District of Columbia Code has several offenses for which the current maximum term of imprisonment is relatively short. For example, the maximum penalty for the following offenses is only five years, and is likely to be inadequate in some cases if the period of imprisonment, when combined with the period of supervision, must fit within the maximum penalty:

- Assault on a police officer, § 22-505(a),
- Assault with intent to commit other offenses, § 22-503,
- Attempted assault with a dangerous weapon, § 22-103,
- Attempted aggravated assault, § 22-504.1,
- Attempted burglary, § 22-103,
- Attempted escape, § 22-2601,
- Attempted kidnapping, § 22-103,
- Attempted manslaughter, § 22-103,
- Attempted mayhem, § 22-103,
- Attempted murder, § 22-103,
- First offense CDW, § 22-3204,
- PWID schedule I or II non-narcotic, § 33-541,
- Escape from institution, § 22-2601,
- Pandering, § 22-2705,
- Attempted third degree sexual abuse, § 22-4104, 4118,
- Assault w/intent to commit third degree sexual abuse, § 22-503,
- Assault w/intent to commit fourth degree sexual abuse, § 22-503,
- Attempted second degree child sexual abuse, §§ 22-4109, 4118,
- Attempted first degree sexual abuse of a ward, §§ 22-4113, 4118,
- Unauthorized use of a vehicle, § 22-3815.

As is clear from this list, an offender who has pleaded guilty to one of these offenses may actually be a much more serious risk to the community, and may require a period of supervision upon release that would exceed the maximum period of incarceration when aggregated with the prison term imposed.

### Requirements for non-subsection (h) felons:

If the Council retains parole for non-subsection (h) felonies, using the current parole model for determining an "adequate" period of supervision for non-subsection (h) felons is not appropriate for reasons similar to those discussed above for subsection (h) offenders. If parole is retained for the non-subsection (h) offenders, there would not automatically be "an adequate period of supervision" to follow release from prison in the form of parole. However, relying on parole alone cannot ensure an adequate period of supervision consistent with the statute.

In the pure parole context, the decision of when to parole an offender determines the length of time available to supervise an offender in the community. Offenders who have adjusted well to prison and present a good risk for early release to the community will be able to serve the balance of the sentence imposed under supervision in the community. However, offenders who present a high risk to the community (because of their poor criminal or institutional history or both) may be released under the parole system with little or no supervision to follow. Hence, paradoxically, the type of offender for which the need for supervision in the community is most acute is the type of offender for which there is little or no time provided for supervision under the parole system. Since the Revitalization Act requires that an "adequate period of supervision will be imposed to follow release from the imprisonment," the time available for supervision cannot turn solely upon the parole decision because the poorest risks would have the least supervision.

### Proposed criteria for an "adequate" period of supervision:

Some members of the Commission suggested the following statutory criteria for imposing an adequate period of supervised release:

The court, when imposing a sentence of imprisonment, shall also impose a term of supervised release after imprisonment that will be adequate to; (1) foster the rehabilitation of the defendant; (2) protect the public safety; and (3) provide a sufficient sanction upon revocation or modification.

These criteria are more concise than the corresponding federal criteria and omit reference to federal sentencing guidelines and to policies provided by the United States Sentencing Commission.<sup>8</sup> Although brief, the proposed criteria contain the necessary factors for the

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<sup>8</sup> The federal statute requires United States District Courts, when imposing a term of supervised release, to consider: (1) the nature and circumstances of the offense and the history and characteristics of the defendant; (2) to afford adequate deterrence to criminal conduct; (3) to protect the public from further crimes of the defendant; (4) to provide the defendant with needed educational or vocational training, medical care, or other correctional treatment in the most effective manner; (5) the applicable sentencing guidelines; (6) any pertinent policy statement issued by the United States Sentencing Commission; and (6) the need to avoid unwarranted

imposition of a term of supervised release that takes account of both the requirements of public safety and the rehabilitative needs of the offender.

### DEFINITION OF LIFE

A number of offenses described in subsection (h) of the Revitalization Act carry a maximum period of incarceration of "life" in prison, including all crimes of violence committed while armed with a deadly weapon. Under current law, the Board of Parole takes a "life" sentence to mean that an inmate can be denied parole until he dies, or if paroled, can remain on parole for the rest of his life. Under the new determinate sentencing scheme, without further definition, any sentence of life imprisonment would, in effect, become a sentence of "life without parole." The Commission is presenting for the Council's consideration several options about how to treat these life sentences.

First, the Council could redefine life as a specific term of years, for example, by tripling the current maximum minimum term for life offenses. Under this option, for all offenses other than murder, "life" would be changed to a maximum of 45 years. The maximum sentence for second degree murder would become 60 years, and the maximum sentence for first degree murder would be 90 years. Thus, for second degree murder the defendant could be sentenced to 0 to 60 years and for first degree murder 0 to 90 years. See Tab 2.

Second, the Council could redefine life to a specific term of years for all offenses other than first degree murder, leaving "life" as a possible sentence for first degree murder. The Commission notes that under present law a sentence of "life without parole" may be imposed for first degree murder if one or more aggravating circumstances are found<sup>9</sup> and a sentence up to life (with parole) must be imposed absent aggravating circumstances. The current 30 year mandatory minimum penalty for first degree murder must be retained pursuant to the Revitalization Act.

Finally, the Council might conclude that "life" is an appropriate option for all or some of the current life offenses. Thus, the Council could chose not to define life but, rather, to provide guidance to judges through sentencing guidelines.

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sentence disparities among defendants with similar records who have been found guilty of similar conduct.  
18 U.S.C. § 3583(c).

<sup>9</sup> A penalty of life without parole is also presently available under the D.C. Code for convictions of a third crime of violence or for convictions of first degree sexual abuse or first degree child sexual abuse if aggravating circumstances are found. Life without parole is mandated for murder of a law enforcement officer.

## YOUTH REHABILITATION ACT

No other single issue provoked as much debate in the Commission as did the Youth Act. The debate included whether there should be a Youth Act, what a Youth Act should look like, and what type of offender truly could benefit from a Youth Act. The following are observations made by the Commissioners and proposals for furthering the goals of the YRA. As a threshold matter, many Commissioners noted that:

1. The primary objectives of the Youth Act are (a) to give the court flexibility in sentencing a youth offender according to his individual needs; (b) to separate youth offenders from more mature, experienced offenders; (c) to provide an opportunity for a deserving youth offender to start anew through expungement of his criminal record; and (d) to provide treatment and rehabilitation rather than punishment.
2. The mandatory segregation of youth offenders from adults may not best serve the needs of youth offenders. Research indicates that age is the single most powerful predictor of serious misconduct in prison. Younger offenders have much greater difficulty than older offenders in adjusting to the rules and procedures of institution life and can benefit substantially from being integrated with the more mature inmates. The presence of older inmates can have a calming effect on the youth offenders and reduce serious misconduct.
3. The Bureau of Prisons employs a sophisticated classification system and does not house any felons who are under 18 years of age in Federal Correctional Institutions. Rather, such offenders are placed in private facilities that house juvenile offenders, or in state facilities dedicated to housing juvenile or youthful offenders. The Bureau of Prisons classifies all offenders to ensure they are placed in facilities that provide appropriate security, education and rehabilitation programs, and that house inmates who have similar characteristics.
4. Problems with implementation of the existing Youth Act have severely limited the rehabilitative value of the Act. The problems have included the lack of appropriate education and rehabilitative services; the inclusion of many serious, violent offenders in the program; and the impact of such offenders on the segregated facilities in which they are housed.

The majority of the Commission agreed that these findings may suggest that the rehabilitative goals of the Youth Act would be better served if the Youth Act were retained only for non-subsection (h) offenders. Commission members also voiced a concern over the practice of some judges of imposing a Youth Act sentence for a violent youthful offender, where the effect is to override the mandatory minimum penalty the Council prescribed for the crime the youth committed. Several Commissioners observed that the inclusion of violent youthful offenders destroyed the federal Youth Correction Act and was wreaking havoc on the D.C. Youth Rehabilitation Act. It was pointed out that many deserving

youthful offenders ask not to be sentenced under the Youth Act because they fear the violent offenders at the Youth Center.

For these reasons, the Commission considered a proposal to make the Youth Act available for nonviolent youthful offenders for whom the Council would design a more carefully targeted Youth Rehabilitation Act. The Act's express intent would be to rehabilitate non-violent offenders who are young enough and not too far along in their criminal careers to benefit from intervention and rehabilitative treatment. This would best be accomplished for many youthful offenders in minimum security community-based facilities that had the resources to provide rehabilitative services including real counseling and education, real job training, and real job placement, some of which could be accomplished by enlisting help from private sector resources. Under this option, early release upon successful completion of a rehabilitation program designed to accomplish these objectives could be maintained.

During the debate, some Commissioners expressed the view that, to the extent possible, the Youth Act should be preserved for all youthful offenders. Under this approach, youthful offenders convicted of subsection (h) offenses would have to serve 85% of any Youth Act commitment imposed. The Youth Rehabilitation Act could be amended to allow the court to reduce the sentence of youth offenders who could demonstrate successful rehabilitation, and even subsection (h) youthful offenders would remain eligible for record expungement. Proponents of this view noted that this result was more consistent with the Youth Rehabilitation Act passed by the Council in 1987. Finally, there was some discussion that the Council could establish a separate, shorter sentencing scheme for youthful offenders. Discussion of these options is presented at Tab 1, para. 4 and Tab 5, p.2.

However, in keeping with the minimalist approach, the Commission's mandatory recommendations to the Council required only that youthful offenders convicted of subsection (h) offenses satisfy federal truth-in-sentencing standards -- i.e., determinate sentencing and an 85% time-served rule -- and that sentences for all felonies do the following: (1) reflect the seriousness of the offense and the criminal history of the offender, (2) provide for just punishment, adequate deterrence, and needed rehabilitative measures, and (3) provide an adequate period of post-release supervision. In addition, pursuant to Section 11212(b) of the Revitalization Act, federal law standards for "good time" must apply to all D.C. felons, including youthful offenders.

Whether or not the Council undertakes a general legislative reform of the YRA, some changes to the existing YRA will be needed purely for reasons of conformity to the Revitalization Act. In addition to the reforms in sentencing policies described above, the Revitalization Act, in §§ 11231-33, transfers various functions which have heretofore been carried out by D.C. agencies to existing or new federal agencies. This includes transfer of responsibility for housing D.C. felons sentenced to terms of imprisonment to the Bureau of Prisons and transfer of functions relating to offender release and supervision to the U.S. Parole Commission and a new federal Offender Supervision Agency. The YRA as currently

formulated is incompatible with the Revitalization Act's assignment of responsibilities, and needs to be amended to reflect these changes.

The following textual amendments (preceded by an analysis statement) might be used to conform the existing YRA provisions to the Revitalization Act's reforms:

§ 24-801. Definitions.

In this section, the definition of "committed youth offender" is amended because commitments pursuant to the YRA can no longer be exclusively for purposes of "treatment." As explained above, the Revitalization Act requires that sentences achieve several objectives, including just punishment and deterrence, as well as rehabilitation.

§ 24-802. Facilities for treatment and rehabilitation.

This section, which provides in part for treatment-oriented facilities for YRA offenders, is perpetuated, subject to conforming changes reflecting that correctional functions for misdemeanants remain with the Mayor and that imprisoned or committed felons are transferred to the Bureau of Prisons.

§ 24-803. Sentencing alternatives.

Subsection (a)(3) of this section currently directs the Mayor to develop and furnish to the court a youth offender community service plan meeting certain specifications. The revision changes this provision for conformity to the transfer of the offender supervision function to the new Offender Supervision Agency.

§ 24-804. Conditional release; unconditional discharge.

This section currently authorizes the D.C. Parole Board to conditionally release committed YRA offenders at any time. The revision limits this provision's scope to non-subsection (h) offenders because that is necessary for consistency with the Revitalization Act's requirement that subsection (h) felons serve at least 85% of the sentence imposed. In addition, the revision specifies that the release and discharge functions authorized by this section will be performed by the U.S. Parole Commission, reflecting the Revitalization Act's abolition of the D.C. Parole Board and transfer of its functions to the U.S. Parole Commission.

§ 24-805. Determination that youth offender will derive no further benefit; appeal.

This section now effectively authorizes the D.C. Department of Corrections to terminate YRA treatment of a committed offender, and to transfer him into the general correctional population, based on a determination that he will derive no benefit from continued YRA treatment. It further specifies appeal rights of an offender whose status is

changed based on such a determination. The revision changes this section for conformity to the Revitalization Act's transfer of responsibility for incarceration of felons to the Bureau of Prisons.

§ 24-806. Setting aside conviction.

The revision perpetuates the authority under this section for setting aside the convictions of YRA offenders who have completed their commitment and supervision periods in such a manner as to demonstrate their rehabilitation, subject to conforming amendments required by the Revitalization Act's abolition of the D.C. Parole Board and transfer of its functions to the U.S. Parole Commission.

§ 24-807. Rules; division of responsibility.

This section currently authorizes the Mayor to issue rules to implement the YRA, including the division of responsibility between the D.C. Department of Corrections and the D.C. Parole Board. The revision conforms this section to the Revitalization Act's transfer of most of the pertinent functions to federal agencies. As revised, it provides that the Attorney General and the Director of the Offender Supervision Agency may issue implementing rules, including rules regarding the division of responsibility among the Bureau of Prisons, the Offender Supervision Agency, and the D.C. Department of Corrections.

The general division of responsibility would be that required by the Revitalization Act: The Bureau of Prisons would be responsible for incarceration of D.C. felons; the D.C. Department of Corrections would remain responsible for incarceration of misdemeanants; and the Offender Supervision Agency would be responsible for supervision of persons on probation and other forms of supervised release. The rules authority of the Attorney General and the Director of the Offender Supervision Agency will provide a means of coordinating the activities of the various agencies having responsibilities under the YRA, and of resolving any specific questions that may arise concerning the division of responsibilities.

The possible textual technical amendments to the YRA are as follows:

Sec. 6. The Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Code § 24-801 *et seq.*), is amended as follows:

(a) Section 2(1) (D.C. Code § 24-801(1)) is amended to read as follows:

"(1) 'Committed youth offender' means an individual committed pursuant to this act."

(b) Section 3 (D.C. Code § 24-802) is amended as follows:

(1) Subsection (a) is amended to read as follows:

"(a) The Mayor shall provide facilities and personnel for the treatment and rehabilitation of youth offenders convicted of misdemeanor offenses under District of Columbia law and sentenced according to this act. Youth offenders convicted of felony offenses and sentenced to commitment will serve those sentences in institutions operated or contracted for by the Federal Bureau of Prisons."

(2) Subsection (b)(2) is amended to read as follows:

"(2) Insofar as practical, these institutions maintained by the District of Columbia shall treat committed youth offenders only, and the youth offenders shall be segregated from other offenders, and classes of committed youth offenders shall be segregated according to their needs for treatment."

(c) The lead-in language to section 4(a)(3) (D.C. Code § 24-803(a)(3)) is amended to read as follows:

"(3) The District of Columbia Offender Supervision, Defender, and Courts Services Agency may develop and furnish to the court a youth offender community service plan. The plan may include:"

(d) Section 5 (D.C. Code § 24-804) is amended to read as follows:

"(a) A youth offender committed for an offense other than a felony described in section 11212(h) of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (P.L. 105-33; to be codified at D.C. Code § 24-1212(h)) ("National Capital Revitalization and Self-Government Improvement Act of 1997"), may be released conditionally by the United States Parole Commission under supervision whenever appropriate.

"(b) A committed youth offender may be unconditionally discharged by the United States Parole Commission at the end of 1 year from the date of conditional release."

(e) The lead-in language to section 6(a) (D.C. Code § 24-805(a)) is amended to read as follows:

"If the Director of the Federal Bureau of Prisons or, in relation to a misdemeanor, the Director of the District of Columbia Department of Corrections, determines that a youth offender will derive no further benefit from the commitment pursuant to this act, the Director may transfer the youth offender."

(f) Section 7 (D.C. Code § 24-806) is amended to read as follows:

"(a) Upon the completion by a youth offender of any commitment and of any subsequent period of supervision, the United States Parole Commission or, in relation to a misdemeanor, the Superior Court, may set aside the conviction and issue to the youth offender a certificate to that effect if it finds that the youth offender has satisfactorily demonstrated his rehabilitation while under supervision.

"(b) Where a youth offender has been placed on probation by the court, the court may, in its discretion, unconditionally discharge the youth offender from probation before the end of the maximum period of probation previously fixed by the court. The discharge shall automatically set aside the conviction and the court shall issue to the youth offender a certification to that effect."

(g) Section 8 (D.C. Code § 24-807) is amended to read as follows:

"The Attorney General and the Director of the District of Columbia Offender Supervision, Defender, and Courts Services Agency may jointly issue rules to implement the provisions of this act, including the division of responsibility among the Federal Bureau of Prisons, the District of Columbia Offender Supervision, Defender, and Courts Services Agency, and the District of Columbia Department of Corrections."

### **ENHANCING THE DRUG COURT**

The most striking and heartening finding of the Drug Court in the District of Columbia and other such courts throughout the country is the effectiveness of imposing graduated sanctions for drug use by defendants under supervision in the criminal justice system. Of all the treatment modalities that have been studied, graduated sanctions, uniformly applied immediately upon drug use or relapse, have been by far the most successful in weaning criminal defendants subject to the coercion of the Court from substance abuse. The amendments included in the Commission's formal recommendations provide explicit authority for imposing graduated sanctions as an alternative to detention, contempt proceedings or revocation for defendants on pretrial conditional release or on probation.

The proposed amendment of the Bail Reform Act would require that before graduated sanctions can be ordered pretrial, the defendant must "volunteer" for such treatment. A majority of Commissioners agreed that once a person has volunteered for treatment through a sanctions program, that person cannot then be permitted to opt out of the treatment at a point where sanctions are about to be imposed. Permitting one to opt out of treatment at the point at which he no longer likes the treatment only serves to frustrate the rehabilitative process, to make the criminal justice system an "enabler" to the person's continued drug use, and to provide other defendants with an incentive to drop out of treatment.

### **COMMUNITY CORRECTIONS**

Pursuant to § 11233 of the Revitalization Act, supervision of adult offenders on probation, parole and supervised release will be provided by the Offender Supervision, Defender, and Courts Services Agency. That agency, through federal appropriations, will assume responsibility for funding and overseeing operations of adult probation and offender supervision. These responsibilities and operations include developing community-based

corrections programs by hiring and supervising supervision officers, establishing substance abuse and other treatment and rehabilitative programs, and developing and operating intermediate sanctions programs. The Agency will carry out its responsibilities on behalf of the court or agency having jurisdiction over the offender being supervised. The Superior Court will have such jurisdiction over offenders on probation and misdemeanants on parole (if misdemeanor parole is retained), while the U.S. Parole Commission will have such jurisdiction over offenders on supervised release and felons on parole.

Currently, the District of Columbia Code authorizes Superior Court judges to exercise broad discretion in determining whether to impose a sentence of probation. However, as discussed earlier, judges have hesitated to utilize community sanctions in some cases because of a lack of credible programs. The Commissioners believe that judges will be more inclined to impose sentences of probation with appropriate conditions (such as residing in community corrections centers, participating in residential or outpatient drug treatment programs, participating in mental health programs, engaging in community service, day fines, etc.) when effective programs are sufficiently available in the District.

To encourage judges to utilize community corrections alternatives, some Commissioners believe it would be beneficial for the Council to consider amplification of the D.C. Code through either legislation or sentencing guidance to describe available conditions of release or probation. Examples exist in federal law, such as 18 U.S.C. 3563(b), which lists discretionary requirements such as that the offender meet family responsibilities; conscientiously pursue work or school; remain in a correctional facility at night, on weekends, or for other limited periods; reside at or participate in a program of a community corrections facility; or stay at home during non-working hours (possibly with electronic monitoring). They also suggest the Council might consider whether it is appropriate to modify the existing probation provision of the D.C. Code to allow for terms of probation beyond the current five year limit. Other Commission members believe that the courts have ample authority to impose appropriate conditions of probation absent any legislation and that Council action in this regard would be unnecessary and undesirable.

The Commission believes that community corrections and intermediate sanctions will provide an important tier of punishments that is more effective than traditional probation but less restrictive than incarceration. As the Council contemplates sentencing reform options, it can and should give the Offender Supervision Agency ample opportunity to develop and operate these programs by creating a sentencing system that fully incorporates community corrections and intermediate sanctions as sentencing options where they are consistent with public safety and just punishment.

## **PAROLE AND RELEASE ISSUES**

Although the Commission's formal recommendations relate only to sentencing for offenses committed on or after August 5, 2000, the Council should be aware that there are

other changes under the Revitalization Act that will affect "old law" offenders. First, the functions of the District of Columbia Board of Parole will be turned over to the federal government in stages. Second, all prisoners serving sentences for felony violations of the District of Columbia Code must be designated to institutions run by the Bureau of Prisons no later than October 1, 2001, and the facility at Lorton must be closed not later than December 31, 2001. Third, the Revitalization Act provides that the newly created Offender Supervision Agency will supervise released offenders (both "new law" and "old law") in the community.

With regard to parole, the District of Columbia Board of Parole currently has the authority to grant parole, revoke parole and supervise parolees in the community. The Revitalization Act reassigns this authority in stages and splits the authority between two federal agencies. The power to grant and deny parole for all D.C. inmates will be moved from the D.C. Board of Parole to the United States Parole Commission on August 5, 1998. See § 11231 of the Revitalization Act. The U.S. Parole Commission will, from that day forward, conduct all parole release hearings, and will make all parole decisions (grants and denials), for D.C. prisoners, wherever confined. Every D.C. prisoner who would normally receive a parole hearing on or after August 5, 1998, will still receive his parole hearing, according to current time deadlines. However, examiners of the U.S. Parole Commission, not examiners from the D.C. Board of Parole, will conduct the hearing.

Until August 5, 1998, the D.C. Board of Parole will continue to make parole decisions for all D.C. Code inmates in District facilities. The U.S. Parole Commission will continue (as it has in the past) to make parole decisions for D.C. offenders currently housed in federal institutions pursuant to D.C. procedures. Any decision made by the D.C. Board of Parole prior to August 5, 1998, (grant, deny, revoke, set-off, etc.) will automatically become a decision of the U.S. Parole Commission, subject to change only for good cause.

The U.S. Parole Commission is required by the Revitalization Act to exercise its paroling authority pursuant to the parole laws and rules of the District of Columbia. The Council and the District of Columbia Board of Parole may not revise the parole laws and regulations in effect on August 5, 1997, without the concurrence of the Attorney General.

The Parole Commission will have the power to amend and supplement the rules applicable to parole eligible D.C. Code felons just as the D.C. Board of Parole has had in the past. D.C. parole rules and guidelines are currently under review for updating and clarification by the Parole Commission, and proposed changes will be published shortly for public and inmate comment. The Parole Commission will not be bound by court judgments against the D.C. Board of Parole, but will take account of certain judgments (e.g., as to time deadlines) in any revised rules it adopts.

Although the U.S. Parole Commission will start making parole release decisions for D.C. offenders on August 5, 1998, the D.C. Board of Parole will keep the power to supervise and revoke paroles for all D.C. Code parolees until the end of the transition, which will occur at the latest on August 5, 2000. At that time, the U.S. Parole Commission will

assume plenary jurisdiction over all adult D.C. Code felony offenders, and the D.C. Parole Board will be abolished. This means that the D.C. Code inmates who are paroled by the U.S. Parole Commission between August 5, 1998, and the end of the transition will be under the jurisdiction of the D.C. Board of Parole. If the D.C. Board of Parole revokes parole and sends the violator back to prison, the U.S. Parole Commission can grant reparole.

After the end of the transition, supervision of D.C. Code offenders on parole will be provided by a new federal agency, the D.C. Offender Supervision, Defender, and Courts Services Agency. Moreover, during the transition, the Offender Supervision Trustee established by § 11232 of the Revitalization Act has the authority to direct the actions of the Board of Parole, and may exercise all the powers and functions authorized for the new federal supervision agency.

Even though the Revitalization Act will result in the eventual abolition of parole for some or all (depending on what the Council decides to do for non-subsection (h) felons) types of D.C. crimes, this change will only apply to "new law" offenders who commit crimes on or after August 5, 2000. Parole will not be retroactively abolished, and sentences imposed for offenses committed prior to August 5, 2000, will not be affected. Even if a prisoner's parole eligibility date is after August 5, 2000, the prisoner will be heard for parole at the scheduled time.

#### **OTHER D.C. CODE PROVISIONS THAT WILL OR MAY NEED CONFORMING AMENDMENTS**

Sections 11231-33 of the Revitalization Act require the transfer of some functions from District of Columbia agencies to federal agencies. As a result, conforming changes throughout the District of Columbia Code are necessary. The following are some D.C. Code sections that have been identified as needing or possibly needing conforming amendments.

§ 3-436: This section concerns assessments on offenders and the collection of such assessments. It assigns responsibilities relating to collection of assessments to the probation office of the Superior Court, the Department of Corrections, and the Parole Board in relation to offenders released on probation, incarcerated, or eligible for or out on parole respectively.

However, under the Revitalization Act's reforms the relevant functions would largely need to be transferred to the new Offender Supervision Agency, the Bureau of Prisons, and the U.S. Parole Commission. Also, there is no provision relating to collection of assessments from offenders on supervised release, as opposed to probation or parole.

§ 22-104a: This is a "three strikes" law. It authorizes sentences of up to imprisonment for life (subject to parole) on a third felony conviction, and sentences of up to imprisonment for life without possibility of parole on a third conviction for a crime of violence as defined in § 22-3201. Conforming changes may be required in light of the elimination of parole for subsection (h) felonies.

**§§ 22-2404, -2404.1:** These sections specify penalties for murder. The penalty for first degree murder is life imprisonment, with parole eligibility after 30 years, except that life imprisonment without parole may be imposed if specified aggravating factors are found. The maximum period of incarceration for second degree murder is between 20 years and life, with parole eligibility after not more than 20 years in case of a life sentence. Conforming changes will be needed because murder is a subsection (h) felony under the Revitalization Act, subject to determinate sentencing with no parole.

**§ 22-2406:** This section requires life imprisonment without parole for murdering a law enforcement officer. This would translate into a determinate sentence of natural life under the Revitalization Act's reforms.

**§ 22-3202:** This section authorizes or requires enhanced penalties for committing crimes while armed. Various provisions in the section presuppose indeterminate sentencing and the availability of parole. Conforming changes will be needed to the elimination of parole for subsection (h) felonies.

**§ 22-3204:** This section specifies penalties for carrying concealed weapons and possession of weapons during the commission of crimes of violence. The final sentence in subsection (b) contains some language which presupposes indeterminate sentencing and the availability of parole. This is not a subsection (h) felony, but a conforming change would be needed if determinate sentencing is extended to non-subsection (h) offenses.

**§ 22-4120:** This section provides enhanced penalties for sex offenses when specified aggravating factors are present. Offenses under this section are subsection (h) felonies. The section's authorized penalties include "a life sentence without parole, if life imprisonment is the maximum penalty prescribed for the offense." Under the Revitalization Act's reforms, this translates into authorizing a determinate sentence of natural life in these circumstances.

**§ 24-106:** This section directs the Mayor to appoint a qualified psychiatrist and a qualified psychologist to assist various agencies and actors in the justice system, including the Board of Parole, which will be abolished under the Revitalization Act's reforms.

**§ 24-201c:** This section currently provides that an offender can receive a reduction in his minimum sentence "by reason of his training and response to the rehabilitation program of the Department of Corrections" if certain criteria are satisfied, except that reduction below a minimum sentence prescribed by § 24-203(b) is not allowed. The Superior Court has the authority to grant such a reduction on motion of the D.C. Parole Board. Retention of this so-called meritorious release provision was debated by the Council and the Commission at their joint meeting on January 13, 1998. After much discussion, the Council declined to request that the Commission include such a mechanism in the mandatory recommendations. As written, section 24-201c cannot survive the Revitalization Act's reforms, including the requirement of determinate sentences for at least subsection (h) felonies, the abolition of the Parole Board, and the transfer of felons to Bureau of Prisons facilities. The Council remains

free to enact a provision for meritorious reduction of sentence, as long as the provision does not conflict with the changes mandated by the Revitalization Act. Discussion of enactment of such a provision is provided at Tab 1, para. 5.

**§§ 24-201.1, -201.2, -201.3:** These sections contain the general provisions relating to powers and composition of the Board of Parole. However, the Board of Parole will be abolished and its functions will be transferred to the U.S. Parole Commission and the new Offender Supervision Agency under the Revitalization Act's reforms.

**§ 24-203:** This is the general sentencing statute for felonies under current law. Its provisions for indeterminate sentencing and parole will have to be inapplicable to subsection (h) felonies in light of the Revitalization Act's reforms. Also, its specifications of mandatory penalties for certain offenses include language which assumes that these offenses will be subject to indeterminate sentencing, but the specified offenses are mostly subsection (h) felonies.

**§§ 24-204, -205, -206, -208:** These sections specify various powers and functions of the Board of Parole. The Revitalization Act abolishes the Board of Parole at the end of the transition, and transfers its functions to the U.S. Parole Commission. Also, the provisions authorizing parole in these sections will have to be inapplicable to subsection (h) felons under the Revitalization Act's reforms.

**§ 24-251:** This section authorizes the Mayor to carry out an interstate parole and probation compact. However, the new federal Offender Supervision Agency will be responsible for supervision of persons on parole and probation in D.C. under the Revitalization Act's reforms. Also, the compact does not refer explicitly to supervised release, as opposed to probation and parole.

**§§ 24-261 through -267:** These are the geriatric and medical parole provisions. Their specifications of functions to be carried out by the Parole Board and the Department of Corrections will largely not be feasible in the future, absent conforming amendments, in light of the transfer of responsibilities under the Revitalization Act to the U.S. Parole Commission and the Bureau of Prisons. The Commission's formal recommendations to the Council include provisions governing geriatric and medical release for offenders sentenced to determinate sentences under the new system.

**§§ 24-801 through -807:** This is the Youth Rehabilitation Act. Conforming changes will be needed to the sentencing reforms of the Revitalization Act and to the transfer of correctional, offender supervision, and parole functions to federal agencies. Possible conforming amendments in the YRA are set out in another part of this report.

## APPENDIX

1. February 5, 1998, Memorandum From Commissioner Quick
2. October 10, 1997, Memorandum From Commissioner Wilkins Bureau of Prisons Views on "Bad Time" From Commissioner Kane
3. Proposed Statutory Language From Commissioner Wilkins
4. January 22, 1998, Memorandum From Commissioner Wilkins February 2, 1998, Memorandum From Commissioner Wilkins
5. January 28, 1998, Memorandum From Commissioner Wilkins
6. January 19, 1998, Letter From Commissioners Quick and Wilkins
7. Proposed Statutory Language and Section-by-Section Analysis From Commissioner Quick
8. Hoffman and Stone-Meierhoefer, "Post-Release Arrest Experience of Federal Prisoners," Journal of Criminal Justice, V. 7, No. 3, pp. 193-216 (1979)
9. March 3, 1998, Letter from Jay Carver to Commission Chairman Eric H. Holder, Jr.
10. February 26, 1998, Letter from Executive Director, Samuel F. Harahan, Council for Court Excellence