



District of Columbia Sentencing Commission

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MINUTES OF VIRTUAL COMMISSION MEETING

February 15, 2022

Via WebEx

Voting Members in Attendance:

Hon. Milton Lee	Renata Cooper
Hon. Juliet McKenna	Katerina Semyonova, Esq.
Hon. Marisa Demeo	Frederick Cooke, Jr.
Cedric Hendricks	Dave Rosenthal
Molly Gill	
Julie Samuels	

Non-Voting Members in Attendance:

Cristina Hillyer for Sonya Thompson
Leslie Parsons
Steve Husks
Kevin Whitfield for Charles Allen

Staff in Attendance:

Linden Fry	Taylor Tarnalicki	Maeghan Buckley
Mia Hebb	Brittany Bunch	Basil Evans

Guests:

Elana Suttentberg (USAO)
Emily Blume

Judge Lee called the meeting to order at 5:05 p.m.

Chairman Monthly Meeting Introduction – Action Item, Judge Lee, Chairman

Judge Lee called the February monthly meeting to order and completed a membership roll call. The meeting proceeded with a quorum of voting members present. Judge Lee welcomed Elana Suttentberg of the United States Attorney’s Office to the meeting and encouraged her to engage with the Commission during the discussion on the impact of Criminal Code Reform (CCR) legislation on the D.C. Voluntary Sentencing Guidelines and the agency.

Review and approval of the minutes from January 18, 2022, Commission meeting – Action Item, Judge Lee, Chairman.

The Commission was sent the draft January meeting minutes for final review prior to the February meeting. There was one requested edit to the minutes which was to add Dave Rosenthal’s name to the list of “Voting Members in Attendance.” The Commission voted to approve the minutes (10 votes in favor and no votes opposed).

Director's Report - Information Item, Linden Fry, Interim Executive Director.

Linden Fry greeted the Commission members and Commission staff. He proceeded to give a brief overview of the current activities of the Commission's staff starting with an update on the agency's access to criminal history data contained in presentence investigation reports (PSR). During the previous meeting, the Commission discussed working with the Court Services and Offender Supervision Agency (CSOSA) to receive defendant criminal history score data, contained in the PSR. This data would allow the Commission to analyze the potential effect of Guidelines rule changes on previously sentenced defendants. Cedric Hendricks, of the Court Services and Offender Supervision Agency, has been working with CSOSA's General Counsel's office and leadership team to determine if or how they could provide the Commission with the data. During this meeting, Mr. Hendricks and Mr. Fry discussed some of the challenges presented by sharing the data. Due to the federal Privacy Act, CSOSA cannot provide unredacted PSI information to the Commission. The Commission and CSOSA are exploring other ways of sharing data from PSRs without compromising the personal identifying information (PII) contained in PSRs. Due to the format of the current PSRs, extracting prior criminal history information or redacting PII may be more laborious than previously assumed. One solution discussed was receiving a one-time transfer of redacted data from approximately 200 recent PSRs. This data would include a set of 100 PSRs completed before the pandemic and a set of 100 PSRs during the pandemic. Mr. Fry noted that this information can be used as a base to study potential changes to the Guidelines. The Commission will continue to work with CSOSA as well as explore other options to obtain PSR data. Chairman Lee and Mr. Fry thanked Mr. Hendricks and CSOSA for their efforts trying to assist the Commission.

Mr. Fry provided a brief update on the Commission staff's return to working in the office. As of Monday, February 14th, 2022, staff members returned to working in the physical office. The staff's schedule will follow three days a week in the physical office and two days of remote work, varying by staff member. Mr. Fry, in consultation with Chairman Lee, will continue to monitor the effects of the ongoing pandemic and reevaluate the agency's telework policies if there is another spike in COVID-19 transmission or another public health emergency occurs.

Judge Lee and Mr. Fry will testify on behalf of the Commission at the D.C. Council Annual Performance Hearing on Friday, February 18, 2022. Prior to the Hearing, the Council sent the agency 55 questions regarding the tasks and goals of the Commission which were responded to on Monday, February 14, 2022.

Mr. Fry discussed a change to the Commission's monthly meeting minutes. He noted that the new minutes format is designed to be more substantive and will increase transparency. The monthly meeting recordings will continue to be available for all to view on the Commission's website and social media platforms.

Mr. Fry also announced that the agency's Research Analyst position will be filled by Emily Blume. Ms. Blume will be starting on February 28th but will be working remotely for the first month. Ms. Blume was in the audience observing the meeting. With this addition, the Commission staff will be fully staffed.

Rule 11(c)(1)(C) Quarterly Report – Informational Item, Taylor Tarnalicki, Statistician

Judge Lee began by describing how plea bargains under Superior Court Criminal Rule 11(c)(1)(C) plea work and how they are used in Court. A Rule 11(c)(1)(C) plea is an agreement between the government, the defense that sets out a specific sentence or sentencing range. The Court can accept or reject the plea, but if the Court accepts the plea, it must impose a sentence pursuant to the terms of the plea. All felony sentences pursuant to a Rule 11(c)(1)(C) pleas are deemed Guideline compliant.

Taylor Tarnalicki gave a brief overview of the Rule 11(c)(1)(C) Quarterly Report and how the reports will be handled moving forward. Every quarter the Commission will be publishing a brief report that highlights sentencing trends for sentences that were imposed under this rule. The report covers the first quarter of fiscal year 2022.

Quick reference charts provide a high-level summary of the data contained in the body of the report, including information on the historical trends for the previous fiscal year. The report found that between October and December 2021, 20% of counts sentenced due to a plea agreement, were pursuant to Rule 11(c)(1)(C). This is slightly higher than the 13-16% the Commission observed the year before. As the year continues, the report will be updated providing a quarter-by-quarter breakdown. The last section of the report highlights sentencing trends at a count level and on an individual level.

The goal of these reports is to monitor the imposition of sentences under this Rule 11(c)(1)(C) and any sentencing trends that can be observed. Katerina Semyonova, Esq., of the Public Defenders Service of the District of Columbia, noted that analysis at a case level as well as at a count level would be helpful. Ms. Tarnalicki intends to add this additional analysis in the next quarterly report and encouraged other Commission members to offer feedback and suggestions on how the report can be improved. Judge Lee requested that future reports break down whether the sentences deviate above or below the Box. In response to a question from Mr. Fry, Judge McKenna, Ms. Semyonov, and Renata Cooper, of the United States Attorney Office, confirmed that the data depicted in the report was consistent with their in-court observations.

2022 Sentencing Guidelines Manual Schedule, Information Item, Maeghan Buckley, Attorney Advisor

Maeghan Buckley announced that the agency was beginning to plan for revisions to the 2022 Guidelines Manual. She requested that Commission members review the Manual and contact her if they have any suggested changes or edits. During the March 2022 meeting, the Commission will set a date for the Guidelines Implementation Committee to meet to discuss any proposed changes. Judge Lee encouraged members to submit revision and language changes as early as possible to ensure that the Commission staff can make the edits in a timely manner.

Potential Effects of Criminal Code Reform on the Sentencing Guidelines – Discussion Item, Judge Lee, Chairman.

Judge Lee asked Dave Rosenthal to provide an introduction to the Criminal Code Reform legislation. Judge Lee noted that this change would be a major undertaking for the Commission and D.C.'s criminal justice system. If the legislative package is approved, D.C. transition from a common law jurisdiction to a Model Penal Code jurisdiction. Mr. Rosenthal, who has also worked on the code reform project, discussed the drastic change to the system the legislation could have and its impact on the Commission and the Guidelines. As a result of current statutes being changed or replaced, the Commission will likely need to re-rank most offenses. When the current Guidelines and rankings were put into place, the Commission was able to use historical sentencing data when determining offense rankings. That data would not be available for the new or changed offenses that are part of the code reform package. Mr. Rosenthal suggested that the Commission set up a small group to begin developing a plan for how the Commission will approach issues surrounding code reform.

Kevin Whitfield agreed with Mr. Rosenthal's recommendation and noted that the change will not only affect the Guidelines, but it will also require adjustments to criminal justice data systems and other parts of the Court process. He noted that he is a strong proponent for delayed implementation of the law due to the many agencies involved. He encouraged the agency to be very transparent with the Council regarding

challenges code reform will pose and additional resources that may be needed. The Council understands the challenges associated with passing such a major bill and they are willing to support criminal justice agencies to ensure a smooth transition. Mr. Whitfield estimated that if code reform is passed, it will come with a implementation period so that agencies have time to adjust.

Additional Commission members expressed their agreement with the concerns mentioned above, noting the impact on the Commission and other agencies' workloads. Frederick D. Cooke, Jr., of the D.C. Bar, suggested additional time and research was needed to understand the impact of these changes on the District's judicial system. Ms. Cooper agreed with Mr. Cooke, also expressing concern regarding the timeline of proposing budgets before the Council. Mr. Whitfield urged District agencies to reach out to the Council as soon as possible regarding any funding needed. Throughout the discussion, members emphasized the effort implementing the new Code would take. Ms. Semyonova agreed, however, she reminded members the District successfully shifted from an indeterminate sentencing structure to a determinate system and believed that code reform would not pose as many challenges.

Mr. Fry suggested having a representative from the Criminal Code Reform Commission provide the Commission with a briefing on the legislative package as part of an upcoming Commission meeting or a standalone meeting. Judge Lee and other Commission members agreed this would be helpful. Judge Lee reiterated how this change will impact the Commission's small staff and may require additional employees.

Continued Discussion of the Guidelines Lapse and Revival Provision – Discussion Item, Judge Lee, Chairman.

Judge Lee began the continuation of the Guideline Lapse and Revival Provision discussion by praising the work of staff members Maeghan Buckley and Taylor Tarnalicki researching the issue and providing possible Guideline's modifications. As mentioned in the previous meeting, the next step is to evaluate each option to understand its potential implications. If the Commission remains unable to obtain PSR data from CSOSA or another organization, it will be difficult for the members to make an informed decision. Mr. Fry and Mr. Hendricks continue to work diligently on this matter.

Judge Lee postponed further discussions on possible changes to the ten-year window definition until more is known about accessing PSR data. Members were encouraged to consider and share any potential alternatives for how the Commission could test the impact of potential changes. Mr. Fry and Mr. Hendricks will provide an update at the Commission's next meeting on the status of obtaining PSR data from CSOSA. Based on that update the Commission will determine what next steps to take.

Judge Lee confirmed that the next virtual Commission meeting will be held on March 15, 2022.

Meeting Adjourned at 6:30 pm.

NEXT MEETING:
March 15, 2022
Via WebEx