



# District of Columbia Sentencing Commission

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## MINUTES OF FULL COMMISSION MEETING

May 22, 2018

One Judiciary Square, Suite 430S, Washington, DC 20001

### **Voting Members in Attendance:**

Milton C. Lee

Frederick Weisberg

Katerina Semyonova

Molly Gill

Marvin Turner

David Rosenthal

Julie Samuels

Renata Kendrick Cooper

Danya Dyson

William Martin via phone

Frederick D. Cooke, Jr.

### **Non-Voting Members in Attendance:**

Robert Contee

Kevin Whitfield for Charles Allen

### **Guest in Attendance:**

Andie Moss, The Moss Group

Reggie Wilkinson, The Moss Group

Jeff Sorba, The Moss Group

### **Staff in Attendance:**

Barbara Tombs-Souvey

Mia Hebb

Linden Fry

Miatta Sesay

Taylor Tarnalicki

Mehmet Ergun

- I. Chairman Lee called the meeting to order at 5:05 p.m.
- II. The minutes from April 10, 2018 were briefly discussed and approved.
- III. Introduction of Moss Group - Information Item, Barbara Tombs-Souvey

***Introduction of Moss Group:*** Barbara Tombs-Souvey introduced The Moss Group as the selected vendor to facilitate the focus groups for the Survey and Focus Group Project. Ms. Tombs-Souvey provided a brief background of the D.C. based, criminal justice consulting firm who specialize in developing strategic solutions to sensitive issues surrounding the criminal justice community. Ms. Tombs-Souvey stated that the findings used in the Sentencing Guidelines Survey will be used to formulate the questions for the focus groups. The Moss Group team introduced themselves and thanked the Commission for the opportunity to participate in the Survey and Focus Group project. The Commission members also introduced themselves and welcomed them to the meeting.

IV. Overview of Sentencing Guidelines Survey Results– Informational Item, Taylor Tarnalicki and Barbara Tombs-Souvey

**Sentencing Guidelines Survey Results:** Barbara Tombs-Souvey briefly informed the Commission members that Taylor Tarnalicki will discuss the Guidelines survey results. Ms. Tarnalicki thanked the representatives of the target agencies and their participants for their participation in the survey. Ms. Tarnalicki gave an overview of the Sentencing Guidelines Survey results as set forth in the distributed memorandum. She noted that the Commission received a total of 81 completed surveys out of 226 that were distributed, representing a 36% response rate. Ms. Tarnalicki stated that the survey findings were categorized in the areas of agreement and disagreement among the respondents. The survey addressed various structural and operational components of the guidelines such as:

- Offense Rankings
- Sentence Types
- Criminal History

Ms. Tarnalicki stated that this survey has allowed the agency to identify key areas of the Guidelines where users are in agreement and disagreement with one another. Ms. Tarnalicki informed the Commission members that the findings will be used to develop a list of questions and topics that will be discussed during the focus group to obtain a deeper understanding of the user's responses, and that the findings will be presented to the Commission for review and possible action. Ms. Tarnalicki provided an opportunity for Commission members to ask questions.

V. Proposed Changes to 2018 Sentencing Guidelines Manual – Action Item, Linden Fry

**Proposed Changes to 2018 Sentencing Guidelines Manual:** Mr. Fry gave a brief overview of the proposed changes to the 2018 Voluntary Sentencing Guidelines Manual. Mr. Fry informed the Commission members that the Guidelines implementation Committee met to discuss offense rankings and proposed changes to the Guidelines Manual on May 15, 2018. The Committee preliminarily agreed to the offense rankings and Manual revisions as set forth in the distributed memorandum, which included minor changes to the Guidelines and four offenses the Commission should consider ranking:

- Felony Attempt to Evade or Defeat Tax (D.C. Code § 47-4101(a));
- Financial Exploitation of a Vulnerable Adult-\$1000 or More (D.C. Code §§ 22-933.01, 933.06(a)(1));
- Financial Exploitation of a Vulnerable Adult – Two or More Prior Convictions (D.C. Code §§ 22-933.01, 933.06(b)); and
- Interception, Disclosure, and Use of Wire or Oral Communications (D.C. Code § 23-542).

Mr. Fry gave an overview of the proposed ranking for the four offenses and minor changes to the Guidelines Manual. The Commission members reviewed and discussed the proposed offense rankings, including the minor Guidelines changes.

**Commission Action#1:** The Commission unanimously voted to rank Felony Attempt to Evade or Defeat Tax in Master Group 9 by an 11-0 vote.

**Commission Action#2:** The Commission unanimously voted to rank Financial Exploitation of Vulnerable Adult or Elderly Person – 1000 or More in Master Group 8 by an 11-0 vote.

**Commission Action#3:** The Commission unanimously voted to rank Financial Exploitation of Adult or Elderly Person – Repeat Offense in Master Group 8 by an 11-0 vote.

**Commission Action#4:** The Commission unanimously voted to rank Interception, Disclosure, and Use of Wire or Oral Communications in Master Group 9 by an 11-0 vote.

**Commission Action#5:** The Commission unanimously voted to accept the proposed Guidelines Manual changes, including the agreed upon language by an 11-0 vote.

**VI.** Continued Discussion of Double Counting from April 10, 2018 Commission Meeting – Action Item, Linden Fry and Chairman Lee

**Continued Discussion of Double Counting:** Chairman Lee briefly gave a brief summary of the previous Commission discussions regarding the Double Counting of certain prior offenses. Chairman Lee then turned the discussion over to Linden Fry to give an overview of the possible approaches to avoid double counting for two specific prior offenses: Unlawful Possession of a Firearm, Prior Conviction (UPF-Prior Felony) and Unlawful Possession of Firearm, Prior Crime of Violence (UPF-Prior-COV).

Mr. Fry stated that during the April Commission meeting, the Commission discussed re-ranking Unlawful Possession of a Firearm, Prior Conviction (UPF-Prior Felony) from Master Group 7 to Master Group 8. This change would negate the double counting of prior offenses, and would move UPF-Prior Felony into the same group as offense severity groups as Carrying a Pistol Without a License/Carrying a Dangerous Weapon, which is the equivalent offense though without a prior conviction. By changing the ranking of UPF-Prior Felony from Master Group 7 to Master Group 8, a defendant's prior conviction might increase their criminal history score, as it would for any other offense, but will not simultaneously place defendant in more severe ranking group. Mr. Fry noted that both of these modifications allow for compliance with UPF-Prior Felony's one year mandatory minimum sentence.

The Chairman opened the floor for feedback on the proposed solutions presented. The Commission members raised several questions on the proposed approaches. The Commission members expressed further discussion on re-ranking UPF- Prior Felony from Master Group 7 to Master Group 8. Chairman Lee extended the discussion to allow Commission members to re-evaluate the proposed solutions before ranking at the June Commission meeting.

**VII.** Prioritization of Criminal History Related Issues – Informational, Chairman Lee and Barbara Tombs-Souvey

Chairman Lee postponed the discussion on prioritization of Criminal History Related Issues until the next Commission meeting.

**VIII.** Meeting Adjourned at 7:02 p.m.

NEXT MEETING:

June 19, 2018  
One Judiciary Square (441 4<sup>th</sup> Street, NW) Suite 430S.