



District of Columbia Sentencing Commission

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MINUTES OF VIRTUAL COMMISSION MEETING

November 15, 2022

Via WebEx

Voting Members in Attendance:

Hon. Milton Lee	Renata Cooper
Hon. Marisa Demeo	Katerina Semyonova
Hon. Juliet McKenna	Cedric Hendricks
Dave Rosenthal	

Non-Voting Members in Attendance:

Cristina Hillyer for Sonya Thompson	Leslie Parsons
Kevin Whitfield for Charles Allen	Eric Glover

Staff in Attendance:

Linden Fry	Basil Evans	Maeghan Buckley	Emily Blume
Brittany Bunch	Taylor Tarnalicki		

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

Judge Lee called the November monthly meeting to order at 5:11 p.m. A roll call was completed, and a quorum could not be established. Initially the meeting proceeded with non-voting discussions.

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

Linden Fry provided a brief overview of the Commission's recent activities since the previous Commission meeting.

The presentation began with a brief synopsis of the Commission's fiscal year (FY)2024 budget request to the Mayor. Mr. Fry reviewed the Commission's previous budgets, operational needs, potential budget reductions, and the Mayor's Maximum Allowable Request Ceiling (MARC) for the agency which required a 2.5% reduction in spending. Mr. Fry noted that the Commission requested the following budget enhancements:

- Removal of MARC Reductions;
- Funding for a Data System Upgrade/Replacement Project Manager (\$140,000);
- Funding for a Data System Operations and Maintenance Cost Increase (\$18,000);
- Funding to Allow the Data System to Handle Odyssey Upgrade Issues (\$30,000);
- Staff Merit Based Pay Increases - 4% average (\$43,000).

Next, Mr. Fry updated the Commission on the agency's progress towards hiring of two new staff positions to work on Revised Criminal Code Act of 2022 (RCCA) projects. Working with District of Columbia Human Resources (DCHR), the Commission is in the final stages of getting the position descriptions approved and posted. Members will be kept abreast of updates and are encouraged to send the descriptions to candidates that they believe will be a good fit.

---These minutes were amended by vote during the Commission's January 17, 2023, meeting---

Commission members were also given a first glimpse of the new conference room setup which featured capabilities to host hybrid (partially in-person and partially remote) monthly Commission meetings.

Lastly, Mr. Fry reviewed the findings of the Criminal Justice Coordinating Council's (CJCC) recent Analysis of the Youth Rehabilitation Amendment Act of 2018. The Commission contributed data to and worked with CJCC on this report.

Some of the key findings include:

- Our of 6,517 cases sentenced - 1,492 sentenced cases (23%) were eligible for a YRA sentence;
- Of the 1,492 eligible cases, 820 (55%) received a YRA sentence and 384 cases (26%) had their convictions set aside (as of Summer 2022);
- Of 2,116 eligible counts, 1,104 (52%) sentenced under the YRA;
- 45 YRA eligible counts were subject to a mandatory minimum. 28 of these counts were sentenced below the mandatory minimum.
- A YRA sentence was significantly associated with fewer rearrests among youth offenders ages 22 to 24. This effect was not significant among younger youth under ages 22;
- Persons whose convictions were set aside were likely to have a lower number of rearrests and reconvictions than persons whose convictions were not set aside, controlling for other factors.

Review and approval of a modification to the minutes from June 20, 2022, Commission meeting – Action Item, Judge Lee, Chairman.

During the Commission's September meeting, Katerina Semyonova, of the Public Defender Service for the District of Columbia, questioned the language used in the Minutes from the Commission's June meeting when explaining one of the 2022 Guidelines changes. Judge Lee asked that she propose new language for the Commission to vote on. Ms. Semyonova's proposed change was shared with the Commission. The change ensures readers are aware that the updated language was to be considered amongst a number of factors. A voting quorum was established, and the Commission voted by roll call to approve revising the minutes (seven votes in favor and no votes not in favor).

Review and approval of the minutes from September 20, 2022, Commission meeting – Action Item, Judge Lee, Chairman.

The Commission was sent a draft September meeting minutes for final review prior to the November meeting. A voting quorum was established, and the Commission voted by roll call to approve the minutes (seven votes in favor and no votes not in favor).

Issue Paper: New Mitigating Factor and Modified Short Split Definition: A Year in Review – Information Item, Taylor Tarnalicki, Statistician.

Taylor Tarnalicki presented the Commission's recent Issue Paper analyzing the impact of changes made to the 2021 D.C. Voluntary Sentencing Guidelines. The changes directly addressed the impact of COVID-19 and the delays to the District's criminal justice system. These changes include:

- A modification to the definition of a Short Split sentence (to view the full definition visit <https://scdc.dc.gov/node/1545946>)
- A new mitigating factor (M11) (to view the full definition visit <https://scdc.dc.gov/node/1551141>)

Before delving into the data collected, the analysis procedure and the amount of work associated with obtaining this information were outlined to the Commission.

---These minutes were amended by vote during the Commission's January 17, 2023, meeting---

The presentation focused on sentencing trends in respect to the two substantive Guidelines changes. The timeframe for the analysis was June 2021-June 2022 (the first year after the changes were enacted). A few highlights from the presentation include:

- Twenty-nine percent of individuals who were incarcerated for six months or more prior to their sentencing date were eligible for a modified short split sentence;
- Twenty percent of the 29 counts associated with short split eligibility receive a short split sentence;
- Sentences associated with low level weapons offenses and violent crime represented 70 percent of sentences that were associated with the modification of the short split sentence;
- Sentences imposed under the modified definition of a short split represent less than two percent of all cases over a year which makes it difficult to generalize the findings; and
- It would be difficult to recreate the analysis with a larger number of cases because the work requires manual case reviews and relied heavily on docket dates.

To view the full report visit, <https://scdc.dc.gov/node/1622581>.

Staff members will continue to monitor these trends moving forward

Following the presentation, Commission members were given the opportunity to ask questions. Judge Lee asked if the staff had explored looking at the use of departure factors. Ms. Tarnalicki noted that the Commission's recent Issue Paper on Compliant Departures offered a deeper dive into the topic of departure use. She also mentioned that historically, complaint departures have represented a small proportion of the sentences imposed each year, and that the addition of a new departure factor has not significantly impacted the rate of departure factors cited. It was noted that although the timeframe in which the data was received was different from the Commission's standard reporting timeframe (either fiscal year or calendar year) this timeframe did not have an impact on the total number of departures.

Criminal Rule 11(c)(1)(C) Quarterly Report – Information Item, Emily Blume, Research Analyst

Emily Blume delivered a summary of the Commission's recent Criminal Rule 11(c)(1)(C) Quarterly Report as well as an overview of the Rule 11(c)(1)(C) trends for the entire 2022 fiscal year. Before delving into the report, Commission members shared their observations of the use of Rule 11(c)(1)(C) pleas in practice. The Commission was informed of the updates that were made since the quarter four report was published. The updates included receiving criminal history scores that had been completed but not previously reported.

To view the quarter four Criminal Rule 11(c)(1)(C) Quarterly Report, visit, <https://scdc.dc.gov/node/1624701>.

Some of the key findings from this presentation include:

- There were 25 11(c)(1)(C) pleas sentenced in FY 2022, representing 17% of the total counts sentenced;
- 76% of the 11(c)(1)(C) pleas were compliant in the box;
- 82% of the 11(c)(1)(C) outside of the box counts were given a sentence below the Guidelines recommended sentence;
- Violent offenses represented the greatest number of 11(c)(1)(C) pleas (41%);
- 71% of sentences following a 11(c)(1)(C) plea were prison sentences;
- 67% of individuals sentenced to a 11(c)(1)(C) plea were in Criminal History Groups A and C; and
- Only 2% of the 11(c)(1)(C) pleas had no confirmed criminal history score.

Information for the FY 2022 Criminal Rule 11(c)(1)(C) Analysis will be shared in a future Fast Fact Report.

---These minutes were amended by vote during the Commission's January 17, 2023, meeting---

Preparing for the Revised Criminal Code Act of 2022 – Discussion Item, Judge Lee and Linden Fry

Judge Lee opened the discussion by announcing that the Council unanimously passed the RCCA earlier in the afternoon. Kevin Whitfield, for Charles Allen of the Council of the District of Columbia, thanked agencies that participated in the passage of the RCCA for their hard work. Linden Fry thanked those that participated in the RCCA's development and noted that the District is still waiting on the response from the Mayor for the next steps in the Bill's passage. To continue preparing for the legislation (if passed), members were sent a draft high-level timeline in order for the Commission to meet the October 1, 2025 enactment date.

Mr. Fry noted that this timeline is not permanent and welcomed feedback from the Commission.

Judge Lee echoed Mr. Fry's call for Commission member input regarding the timeline. The floor was given to other Commission members to voice their comments and questions. Kevin Whitfield offered his support during this process and inquired about what portions of the timeline relied on other agencies, such as the CJCC, to ensure that the timeline moves forward. Mr. Fry noted that the plan is designed in a decoupled manner, however things such as the statement of work and building the new data system are contingent on changes in the data structure as well as how D.C. Superior Courts decides to structure the data. Dave Rosenthal, of the Office of the Attorney General of the District of Columbia, mentioned that the new Guidelines would have to maintain the current system so that offenses that occurred prior to the enactment of the new code would be sentenced appropriately. Simultaneously the Commission would have to build a new system to correlate with the RCCA. This discussion will continue in upcoming meetings.

Meeting Adjourned 6:25 pm.

NEXT MEETING:
December 20, 2022
Via WebEx