

**REPORT OF THE
DISTRICT OF COLUMBIA
ADVISORY COMMISSION ON SENTENCING**

APRIL 5, 2000

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D.C. Advisory Commission on Sentencing Submits Recommendations to Council

(Washington, DC - 5 April 2000) -- The D.C. Advisory Commission on Sentencing, established by the Council of the District of Columbia in 1998 to study sentencing practices and recommend criminal sentencing reforms, submitted its recommendations to the Council today.

As the Council directed, the Commission's recommendations address fundamental changes to the District's criminal justice system resulting from Congress' enactment of the National Capital Revitalization and Self-Government Improvement Act of 1997 (the "Revitalization Act"), which will govern sentencing of all felony offenses committed on or after August 5, 2000. For the 37 most serious felony offenses, including all violent crimes, the Revitalization Act abolishes parole and requires convicted defendants to serve at least 85% of the prison sentence imposed by the judge. In addition, all District of Columbia prisoners will serve their felony sentences in facilities run by, or under contract with, the federal Bureau of Prisons, and every felony prison sentence must be followed by a period of post-release supervision in the community, known as supervised release. The Act also abolished the District of Columbia Board of Parole, but it did not mandate the abolition of parole for offenders convicted of felony offenses other than the 37 most serious crimes. If Parole were to be retained for the less serious felonies, it would be under the auspices of the U.S. Parole Commission.

The Commission recommends that the Council establish a "unitary" sentencing system by abolishing parole for all felony and misdemeanor offenses. The alternative of a bifurcated system, with parole for some offenses, is viewed as needlessly complex, particularly since all of the parole authority would be in the hands of federal agencies. By contrast, a unitary system will provide predictability and certainty in sentencing, which many view as more fair to the victim and the general public, as well as the offender. Further, while there is concern that sentences might increase in the new system, the Commission predicts that judges will attempt to keep the new system neutral by imposing determinate sentences that will be equivalent to what the defendant would serve under the present system with parole. In that regard, the Commission proposes extensive training on the new sentencing system for judges, prosecutors and defense attorneys prior to August 5.

Supervised release is new in the District of Columbia. The Commission recommends initial supervision periods of three or five years, depending on the seriousness of the crime, which may be shortened for good behavior. Data presented to the Commission indicate that offenders who return to crime are most likely to commit new offenses within the first 3 to 5 years after their release from imprisonment. In order to deter these and other offenders from committing new crimes and to foster rehabilitation, the Commission recommends that supervision efforts focus primarily on an offender's successful re-entry into the community, through, for example, substance abuse treatment and job training. For certain sex offenders, the Commission recommends longer periods of supervised release, and for felony offenders whose prison sentences are shorter than one year, the recommendations would give the judge discretion to impose a shorter period of supervised release. If the Council adopts the Commission's recommendations, most felony offenders will be under supervised release for less time than they would be under parole in the present system. Sentences to probation are not affected by the Commission's recommendations and will be available in the new system to the same extent as such sentences are available now, except that the Commission recommends that judges be given new authority to include short periods of custody or work release as part of probation in felony cases.

*D.C. Advisory Commission on Sentencing
Submits Recommendations to Council*

Because nearly 1 in 10 District of Columbia felony convictions involves an offense for which the maximum penalty is life imprisonment, the Commission made recommendations concerning appropriate length of a "life" sentence in a determinate sentencing system. Currently, "life" means life imprisonment only if parole is denied; most offenders serving life sentences are released on parole at some point and remain subject to parole supervision for life. Under the new determinate, no-parole system, absent Council action, a life sentence would mean "life without release." The Commission recommends that the Council retain "life without release" as a sentencing option for crimes such as first-degree murder. However, for other crimes currently carrying a life sentence, the Commission recommends that the Council enact provisions to establish a maximum sentence of 60 years (or life without release) for first-degree murder, 40 years for second-degree murder and 30 years for other life offenses. If the Council adopts the Commission's recommendation, the maximum sentence for armed robbery would become 30 years rather than life, but without parole, the defendant would be required to serve at least 85% of the sentence imposed.

The Commission's recommendations urge the extension of a system of graduated sanctions available to judges at time of sentencing, operating along the lines pioneered by the nationally acclaimed D.C. Drug Court. These "intermediate sanctions" fall between the traditional sentencing alternatives of either probation or prison, and combine stringent supervision of offenders in the community with a focus on rehabilitation.

The Commission has several tasks remaining in the months ahead. Three major areas requiring further study are: 1) the need for, or the advisability of, sentencing guidelines or some other form of limiting judicial discretion in sentencing; 2) the development of a wider array of intermediate sanctions and alternatives to incarceration; and 3) assessing the impact on correctional populations of the change from indeterminate sentencing to determinate sentencing.

Copies of the Commission's Report can be obtained by writing to the Executive Director, Dr. Kim S. Hunt, 800 K Street, N.W., Suite 450 South, Washington D.C. 20001, or by calling 202-353-7797.

TABLE OF CONTENTS

CHAPTER 1.	
INTRODUCTION	1
Commission Organization and Activities	5
Data Collection and Analysis.....	8
Mission Statement.....	9
Timetable	9
Overview of the Report.....	10
CHAPTER 2.	
CONVERSION TO DETERMINATE SENTENCING.....	11
Concurrent and Consecutive Sentences	18
CHAPTER 3.	
SUPERVISED RELEASE.....	19
Authorized Maximum Terms of Supervised Release	20
Conditions of Supervised Release	28
Modification and Termination of the Term of Supervision.....	30
Revocation of Supervised Release and Imprisonment upon Revocation Of Supervised Release	32
Imposition of Supervised Release Following Imprisonment upon Revocation for Violation of a Condition of Supervised Release	35
Miscellaneous Provisions	36
CHAPTER 4.	
LIFE SENTENCES	39
Anomalies	46
CHAPTER 5.	
YOUTH REHABILITATION ACT.....	51
CHAPTER 6.	
INTERMEDIATE SANCTIONS	57
Overview of Intermediate Sanctions.....	57
Intermediate Sanctions in the District of Columbia.....	60
Intermediate Sanctions in the Sentencing Process	69
CHAPTER 7.	
Unfinished Business.....	72
Structured Sentencing	72
Structured Sentencing and Intermediate Sanctions	78
Computer Simulation for Correctional Population Projection.....	80

CHAPTER 1

INTRODUCTION

In 1997, the United States Congress enacted the National Capital Revitalization and Self-Government Improvement Act of 1997 (the “Revitalization Act”).¹ This legislation set the stage for major changes to the District’s criminal justice system. Among other things, the Revitalization Act established the District of Columbia Truth in Sentencing Commission (“TIS Commission”), and directed it to make recommendations to the Council of the District of Columbia (“Council”) for amendments to the District of Columbia Code with respect to the sentences to be imposed for felonies committed on or after August 5, 2000.² The TIS Commission recommendations had to ensure that, for all felony offenses, an offender will receive a sentence 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 the potential criminal conduct of the offender and others; (4) provides the offender with needed educational

¹Title XI of Pub.L. 105-33, 111 Stat. 712 (August 5, 1997), *amended* Pub.L. 105-274, 111 Stat. 2419 (October 21, 1998). Among other things, the Revitalization Act mandated the following:

- transfer of responsibility for housing felony offenders from the District of Columbia Department of Corrections to the Federal Bureau of Prisons;
- closure of the Lorton Correctional Complex, and the transfer of its felony population to penal or correctional facilities operated or private facilities contracted by the Federal Bureau of Prisons;
- appointment of a Corrections Trustee, an independent officer of the District of Columbia government, to oversee the financial operations of the D.C. Department of Corrections until Lorton’s felony population is transferred to Federal of Bureau of Prisons control;
- appointment of a Court Services and Offender Supervision Trustee;
- transfer from the District of Columbia Board of Parole to the United States Parole Commission the jurisdiction and authority to grant and deny parole, to impose conditions upon an order of parole, and to revoke or modify conditions of parole;
- abolition of the Board of Parole upon the establishment of the Court Services and Offender Supervision Agency; and
- establishment of the District of Columbia Truth in Sentencing Commission.

Other major provisions of the Revitalization Act dealt with the District’s liability for pension benefits, the creation of the National Capital Revitalization Corporation for economic development, and funding the Superior Court of the District of Columbia and the District of Columbia Court of Appeals.

² 111 Stat. 741, Pub. L. 105-33, § 11212; D.C. Code § 24-1212(a).

and vocational training, medical care, and other correctional treatment; (5) provides for community based sentences and intermediate sanctions in appropriate cases; and (6) provides, following any sentence of imprisonment, for an adequate period of supervised release.³

As to all felonies described in subsection (h) of section 11212 of the Revitalization Act,⁴ TIS Commission recommendations had to comply with the truth-in-sentencing standards of section 20104(a)(1) of the Violent Crime Control and Law Enforcement Act of 1994.⁵ The principal effect of these changes was to convert the District's sentencing system for all subsection (h) felonies from an indeterminate system of minimum and maximum prison terms, with parole, to a determinate system with a single prison term imposed, at least 85% of which the defendant would be required to serve.

The TIS Commission proceeded from the premise that the Council should be the body to decide significant changes to sentencing policy in all areas where Congress did not mandate TIS Commission action. For this reason, the TIS Commission limited its proposed legislation to the absolute minimum necessary to comply with the Revitalization Act, leaving a number of important issues for ultimate resolution by the Council. On February 1, 1998, the TIS Commission submitted its recommendations to the Council of the District of Columbia in the form of proposed legislation. The Council ultimately adopted this proposal, known as the Truth in Sentencing Amendment Act of 1998.⁶ In a second submission to the Council, the TIS Commission generally described outstanding issues and recommended the creation of an entity within the District government to serve as an advisory body to assist the Council in addressing

³ Revitalization Act, § 12112(b)(2); D.C. Code § 24-1212(b)(2).

⁴ A list of the subsection (h) offenses is provided in Appendix A-1.

⁵ Revitalization Act, § 11212(b)(1); D.C. Code § 24-1212(b)(1).

⁶ Truth in Sentencing Amendment Act of 1998, effective October 10, 1998 (D.C. Law 12-165; D.C. Code § ____).

these issues. In response, the Council enacted the Advisory Commission on Sentencing Establishment Act of 1998, establishing the Advisory Commission on Sentencing (“Commission”) and delineating its role.⁷

The Council’s legislative mandate to the Commission was to make recommendations that would, if adopted:

- ensure that, for all felonies, the sentence imposed on an offender reflect the seriousness of the offense and the offender’s criminal history; provide for just punishment; afford adequate deterrence to any offender; provide the offender with needed educational or vocational training, medical care and other correctional treatment;
- provide for the use of intermediate sanctions in appropriate cases;
- provide for an annual review of sentencing data, policies, and practices in the District of Columbia; and
- enhance the fairness and effectiveness of criminal sentencing policies and practices in the District of Columbia.

No later than April 5, 2000, the Commission was to submit a report and recommendations to the Council on the following matters:

- report on sentencing and release practices in the District of Columbia;
- recommend whether the new truth-in-sentencing sentencing structure should apply to offenses other than subsection (h) offenses, for which it was mandated;
- recommend appropriate limits and conditions of supervised release;

⁷ Advisory Commission Sentencing Establishment Act of 1998, effective October 16, 1998 (D.C. Law 12-167; D.C. Code § 2-4201 *et seq.*).

- project the impact, if any, on the size of the District’s populations of incarcerated offenders and offenders on supervised release if any Commission recommendation is implemented;
- recommend an appropriate length of a life sentence in a determinate sentencing scheme for all “life” offenses;
- assess intermediate sanctions currently available;
- recommend intermediate sanctions, which may include alternatives to incarceration, that should be made available, estimate the cost of such programs, and recommend rules or principles to guide a judge in imposing intermediate sanctions; and
- recommend whether multiple sentences should run concurrently or consecutively, and what guidance, if any, should be provided to judges in imposing consecutive sentences.

If the Commission recommends a system of sentencing guidelines as part of the April report, any such recommendations must address:

- whether and under what circumstances to impose probation, imprisonment and a fine, and the length or amount of each;
- the application of intermediate sanctions in appropriate cases; and
- appeal rights considered appropriate or constitutionally required.

Any recommendation must take into consideration the impact on existing correctional or offender supervisory resources, and on the size of the correctional or supervised offender population. Further, the Commission must assess the cost of any recommendation.

Commission Organization and Activities

The Commission is composed of the following 13 voting members and 4 non-voting members:

Voting members

The Hon. Harold Brazil, Chair, Committee on the Judiciary, Council of the District of Columbia

The Hon. Harold L. Cushenberry, Associate Judge, Superior Court of the District of Columbia

J. William Erhardt, Esq., Counselor to the Trustee, Court Services and Offender Supervision Agency

Linda Harlee, appointed by the Mayor

Patrick Hyde, Esq., a criminal defense attorney in private practice

J. Ramsey Johnson, Esq., Special Counsel to the United States Attorney for the District of Columbia

Robert R. Rigsby, Esq., Corporation Counsel

Audrey Rowe, appointed by the Council of the District of Columbia

Earl J. Silbert, Esq., an attorney in private practice

The Hon. Mary Gooden Terrell, Associate Judge, Superior Court of the District of Columbia

The Hon. Frederick H. Weisberg, Associate Judge, Superior Court of the District of Columbia and Chair of the Commission

Charles F. Wellford, Ph.D., appointed by the Chief Judge of the Superior Court

Robert L. Wilkins, Esq., Chief, Special Programs, Public Defender Service

Non-voting members

Sharon Gervasoni, Esq., Office of the General Counsel, United States Parole Commission

Nola M. Joyce, Senior Executive Director, Metropolitan Police Department

Thomas R. Kane, Ph.D., Assistant Director for Information, Policy and Public Affairs,
Federal Bureau of Prisons

Gregory E. Jackson, Esq., General Counsel, District of Columbia Department of
Corrections

Other participants⁸

James Abely, Office of Councilmember Harold Brazil

Jay Carver, Director, Court Services and Offender Supervision Agency

Judi Garrett, Esq., Federal Bureau of Prisons

Laura E. Hankins, Public Defender Service

Jasper Ormond, Court Services and Offender Supervision Agency

Marie Ragghianti, Vice Chair, United States Parole Commission

Patricia Riley, Esq., Office of the United States Attorney for the District of Columbia

John Sassaman, Esq., Office of the Corporation Counsel

Karen Severy, Esq., Committee on the Judiciary, Council of the District of Columbia

The Commission met over the course of approximately 15 months prior to submission of this report. In total, the Commission held 38 meetings.⁹ In addition to these meetings, the Commission conducted two all-day working sessions. The Commission's first retreat, on November 3-4, 1999 at the Georgetown University Conference Center, took place with the assistance of the National Associates Program on State Sentencing and Corrections, a cooperative project between the Vera Institute and the U.S. Department of Justice Corrections

⁸ The Commission also wishes to express appreciation to Peter B. Hoffman, Ph.D., consultant in criminal justice, and to Eric R. Lotke, D.C. Prisoners' Legal Services Project, Inc.

⁹ December 14, 1998; January 6, 1999; January 13, 1999; January 27, 1999; February 3, 1999; February 17, 1999; February 24, 1999; March 3, 1999; March 17, 1999; March 24, 1999; April 7, 1999; April 14, 1999; April 28, 1999; May 5, 1999; May 19, 1999; June 2, 1999; June 23, 1999; July 7, 1999; July 28, 1999; August 4, 1999; August 18, 1999; September 1, 1999; September 15, 1999; October 6, 1999; October 20, 1999; November 10, 1999; December

Program Office.¹⁰ Representatives from North Carolina, Delaware, and Missouri sentencing commissions made presentations on sentencing practices and community supervision programs in their respective jurisdictions, and provided useful comments from a practitioner's perspective to assist the Commission in addressing sentencing-related issues peculiar to the District of Columbia. The Commission's second retreat took place on March 8, 2000 at the Kellogg Conference Center at Gallaudet University. In addition to discussing preliminary recommendations to the Council, the Commission heard from representatives of the Urban Institute regarding the collection, analysis, and reliability of the District's sentencing-related data.

The Commission conducted two public hearings. The first hearing took place on December 14, 1999 at the Martin Luther King, Jr. Memorial Library. The Commission invited public comment on all issues about which the Commission is to make a recommendation to the Council. The second public hearing took place on March 22, 2000 in the Council Chamber. At that time, the Commission heard public comment regarding its preliminary recommendations, which were distributed in advance of the hearing.

The Commission conducted four focus group interviews: two groups consisted of judges of the Superior Court of the District of Columbia (December 7, 1999 and January 4, 2000), one group of defense attorneys (December 9, 1999), and one group of prosecutors (February 1, 2000). Focus group interviews were conducted in a setting designed to encourage a frank discussion of conflicting viewpoints. In order to foster an uninhibited atmosphere, the Commission declared that no opinion expressed during the session would be attributed to a

8, 1999; December 15, 1999; January 12, 2000; February 2, 2000; February 18, 2000; February 23, 2000; March 1, 2000; March 15, 2000; and March 27, 2000.

¹⁰ The Commission wishes to thank Mr. Nicholas R. Turner, Director of the National Associates program, for coordinating the two-day meeting and providing other forms of assistance.

particular participant, and that the participants' identities would remain confidential. Each focus group had 8-15 participants, who shared their opinions on the range of issues before the Commission.

Finally, the Commission held two public meetings for the purpose of taking formal votes on each of its two reports to the Council.

Data Collection and Analysis

On September 30, 1999, the Commission submitted a study of criminal sentencing practices in the District of Columbia, which specifically addressed the following matters:

- the length of sentences imposed;
- the length of sentences served; and
- the proportion of offenders released upon their first parole eligibility date.

A considerable amount of the Commission's attention and effort, before and after September 30, was focused on working with the Urban Institute (UI) to obtain reliable and valid data on the time served on sentences for felony offenses.¹¹ This effort became an iterative process of reviewing data gathered by UI from computerized information systems of the Pretrial Services Agency ("PSA"), the D.C. Superior Court ("DCSC"), the D.C. Department of Corrections ("DOC"), and the D.C. Parole Board ("Parole Board") and "debugging" UI's computer programs to account for the complexities of actual time served by offenders.¹² Reliable time served

¹¹ The Commission wishes to thank William Sabol, Ph.D., Mary Shelley, and Avi Bhati of the Urban Institute and James Lynch, Ph.D. of American University for their efforts to provide valid and reliable data for the Commission's deliberations.

¹² During the course of the Commission's work, the complexity in obtaining accurate data on length of stay under the existing indeterminate sentencing system has become clear. Producing accurate historical data on length of stay is complicated by such factors as properly crediting presentence time in custody, identifying overlapping sentences, accounting for earlier commitments on which the defendant was on parole or probation, determining when the defendant was in fact "committed to serve" the sentence, etc. The Commission continues its work on length of stay data, and will report to the Council when the analysis is completed. The figures previously

calculations are important for analyzing whether or not sentences or sentence lengths have changed as the system moves from indeterminate to determinate sentences and for forecasting the impact of sentencing structure changes on correctional populations.¹³

Mission Statement

Having reviewed its legislative charge and the mission statements of sentencing commissions in other jurisdictions, the Commission approved the following mission statement:

Sentencing policies should be just, fair, consistent and certain: similarly situated offenders should receive similar sentences. Sentencing policies should be truthful: the offender, victim, and the public should understand what a sentence means at the time it is imposed. Sentencing policies should make judicious use of resources: incarceration should be used for violent and repeat offenders, while intermediate sanctions should be considered for other offenders as appropriate. Sentencing policies should reflect the goals of sentencing: incapacitation of the violent or habitual offender, deterrence of the offender and others from future crime, reintegration of the offender into the community following release from incarceration, rehabilitation of the offender, and restitution to victims and the public. Sentencing policies should be supported by adequate prison, jail, and community resources.

Timetable

The Revitalization Act has a dramatic impact on sentencing in the District of Columbia; Congress established a determinate sentencing scheme for the District of Columbia that abolishes parole for subsection (h) offenses committed on or after August 5, 2000 and requires offenders to serve at least 85% of the determinate sentence. Further, the Act requires the court to impose an “adequate” period of supervision following an offender’s release from imprisonment. Congress

provided to the Council on historical length of stay on indeterminate sentences are likely to undergo revision at that time.

¹³ See Chapter 7.

did not resolve all issues in the Revitalization Act, however. This report identifies outstanding issues on which the Council must focus and provides recommendations for their resolution.

Overview of the Report

This report contains seven chapters. Chapter 2 discusses the conversion from indeterminate sentencing to determinate sentencing and presents the Commission's recommendation for the elimination of parole for all offenders. Chapter 3 explains the Commission's recommended design of the new system of supervised release mandated by the Revitalization Act and proposes legislative language to codify supervised release. Chapter 4 identifies the offenses that currently carry a potential maximum sentence of life imprisonment, discusses the impact of the Revitalization Act on these offenses, and outlines options for converting those life sentences to terms of years. Chapter 5 discusses the Youth Rehabilitation Act of 1985 ("YRA") and the changes required by the Revitalization Act, and presents the Commission's recommendations regarding YRA sentencing in the new system. Chapter 6 reviews the most common forms of intermediate sanctions nationwide and the intermediate sanctions options available in the District of Columbia, and presents the Commission's recommendations regarding the imposition of intermediate sanctions. The final chapter reviews the Commission's proposals for future action, including consideration of structured sentencing, but makes no specific recommendations for structured sentencing at this time. Instead, the Commission recommends training in anticipation of change, monitoring of sentencing practices, and further study of structured sentencing. Finally, the Commission explains the development of a tool to monitor sentencing practice: a computer simulation model of incarcerated populations.

CHAPTER 2

CONVERSION TO DETERMINATE SENTENCING

The Revitalization Act abolished the District of Columbia Board of Parole and mandated determinate sentencing without parole for all of the most serious felony offenses in the District of Columbia Code – the so-called “subsection (h) offenses.”¹ The principal effect of these changes is to convert the District’s sentencing system for all subsection (h) offenses from an indeterminate system of minimum and maximum prison terms, with the timing of release determined by the parole board after the offender serves the minimum term, to a determinate system with a single term imposed. Offenders may serve the entire determinate sentence imposed, but may earn up to 15% good conduct credit (54 days per year). The Council does not have the authority to restore parole for subsection (h) offenders, but may retain parole for non-subsection (h) offenders and misdemeanants. In the Advisory Commission on Sentencing Establishment Act of 1998, the Council directed the Commission to make “a recommendation as to whether determinate sentencing should be extended to all felonies, or to additional criminal offenses under District of Columbia law beyond those specified in section 11212(h) of the Revitalization Act.” This Chapter sets forth the Commission’s recommendation for a unitary sentencing system for all offenses, and explains the reasoning that led the Commission to that conclusion.

At two public hearings and several focus group interviews, a number of witnesses and participants, including some judges, expressed concern about the abolition of parole, focusing generally on three virtues the parole system was said to offer:

¹ See Subsection 11212(h) of the Revitalization Act. For a list of the subsection (h) offenses, see Appendix A-1.

- (1) in an indeterminate sentencing system, parole provides an incentive to an offender to behave in prison and participate in available rehabilitative programs;
- (2) parole provides a “second look” at the offender years into his sentence, based on factors which often cannot be known at the time the sentence was imposed; and
- (3) parole provides an equalizing device to alleviate perceived disparity in sentences, whereby persons who receive longer indeterminate sentences can be made to serve approximately the same time as similarly situated offenders who receive shorter sentences for similar crimes, by granting “earlier” parole release to the former group and “later” parole release to the latter.

The Commission took all of these views seriously in its deliberations, and it debated at great length the relative advantages and disadvantages of a bifurcated sentencing system, with no parole for subsection (h) offenses and parole for the other felony offenses.²

For a variety of reasons, the Commission has concluded that a unitary sentencing system is distinctly preferable to the alternative. First, it was apparent to the Commission that the proponents of retaining parole either did not appreciate or failed to take adequate account of the fact that the Revitalization Act had already abolished parole for all the major felony offenses for which defendants have been in the past, and would be in the future, sentenced to relatively long terms of imprisonment.

The largest single category of non-subsection (h) felony convictions are first time drug offenses (distribution and possession with intent to distribute),³ and the remainder are mostly

² In fact, if the Council rejects the Commission’s recommendation, 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 misdemeanors.

³ Repeat drug felony offenses are subsection (h) offenses. Distribution and possession with intent to distribute marijuana are misdemeanors under current law.

non-violent property offenses such as theft, second-degree burglary, unauthorized use of a motor vehicle, and the like. By and large, offenders convicted of these crimes are rarely sentenced to lengthy periods of incarceration – many receive probation and those who are sentenced to prison typically receive short terms of incarceration.⁴ Therefore, it is exceedingly unlikely that retention of parole for these offenses would result in shorter periods of incarceration in an indeterminate system than would be the case with determinate sentencing. To the contrary, the available evidence strongly suggests that judges sentencing in a determinate system would attempt to replicate the sentencing patterns of the past by placing many of these offenders on probation and imposing short determinate sentences on the others. If this proves true, parole for these offenders would serve few, if any, of the purposes advocated by its proponents.

Second, because virtually all offenders sentenced to lengthy terms will have been convicted of subsection (h) crimes, with no prospect of parole, the arguments for retaining parole, even if otherwise meritorious, are beside the point. Good behavior and participation in prison programs cannot shorten their sentences beyond the 15% good conduct credit they can earn, and there will be no opportunity to take a “second look” at the offender several years down the road or to “equalize” sentences perceived to be disparate.

Third, retention of a bifurcated or trifurcated system, with parole for some offenses and not for others, would be needlessly complex, would potentially shift more power to the prosecutor in the charging and plea bargaining process, would make it harder for defendants to

⁴ For example, 18% of offenders convicted of second-degree burglary offenders, 37% of those convicted of first-degree theft offenders, and 28% of those convicted of unauthorized use of a motor vehicle received a sentence to probation during the period 1993 through 1998. Fifty percent of those receiving a prison sentence for these 3 offenses received a minimum sentence of 2 years or less, 18 months or less, and 1 year or less respectively. First time drug offenders (non-subsection (h)) could not be separated from repeat drug offenders (subsection (h)), but the numbers clearly reflect a similar trend. See “Criminal Sentencing Practices in the District of Columbia, 1993-1998,” Advisory Commission on Sentencing, Chapter 4. The Advisory Commission on Sentencing did not conduct a comprehensive study of misdemeanor convictions.

know exactly how much time they face for criminal conduct, and would frustrate the victim's right and the public's right to know and understand what sentences really mean, which is the essence of any truth-in-sentencing reform.

Under the indeterminate sentencing law currently in effect, the announced sentence represents a wide range of possible punishments, with the minimum sentence no greater than one-third of the maximum sentence. The parole authority, within bounds set by the initial sentence, determines the actual length of imprisonment in these cases. Because parole policies often change over time, the announced sentence deprives defendants of predictable information about potential penalties for criminal conduct. If parole is abolished for all felonies and misdemeanors, criminal defendants and other interested parties will know that an offender sentenced to a fixed period of incarceration will serve at least 85% of that sentence. Public understanding and, hopefully, public trust in the system will thereby be enhanced.

The retention of some parole-eligible offenses would also create the potential for a transfer of power to prosecutors. Typically, prosecutors hold the power to select the charge at the indictment and have leverage in the plea bargaining process. In a bifurcated or trifurcated system, many occasions would arise in which the prosecutor could select between one charge that carries parole and another that does not.⁵

By abolishing parole for all felonies and misdemeanors, the Council would create a "unitary" system, in which all offenders are subject to the same rules regarding release, and all announced sentences for crimes occurring after August 5, 2000 would be readily understandable. Failure to create a unitary system, with parole for some offenses and not for others, can lead to needless complexity and confusion, particularly in cases involving multiple sentences of a single

⁵ For example, whether or not to charge the drug distributor with a prior drug conviction would mean the difference between a parolable charge and one not subject to parole because a second or subsequent drug felony is a subsection (h) offense.

offender, which could easily include both subsection (h) felonies and non-subsection (h) felonies or parolable misdemeanors.⁶

Fourth, retaining parole for non-subsection (h) offenses would not be a way of retaining local control over offenders in the wake of the Revitalization Act. The Parole Board no longer exists. If parole were retained, the U.S. Parole Commission would make parole release and revocation decisions in accordance with its own policies and procedures.⁷ Parole supervision

⁶ 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 8 and one-half years (10 years less good time on the determinate sentence) plus 2 years less good time (on the indeterminate 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 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 based on the total 16-year aggregate sentence less 54 days of good time per year. A parole eligibility date would be set at 2 years (less 54 days of good time per year served). Staff would have to manually track a "hidden statutory release date" of the indeterminate sentence to ensure that the U.S. Parole Commission did not grant parole after the sentence would have expired if standing alone. If the inmate were granted parole, the determinate sentence would be moved up in time to commence on the parole date of the first sentence (In essence, reducing the aggregate term of imprisonment imposed by the Court). If the inmate does not make parole, the original statutory release date for the 16-year aggregate sentence would remain.

If the inmate is paroled from the 2-6 year sentence, he would serve the parole term while in prison serving the determinate sentence. The U.S. 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 permutations 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 three years of supervised release, the offender would have a statutory release date of approximately 10 years and 3 months in the future (12 years less 15%), to be followed by 3 years of supervised release.

⁷ The Commission concludes 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 groups, two separate paroling authorities – the U.S. Parole Commission (felonies) and the Superior Court (misdemeanors) – would be operating side by side, sometimes in the same case with both felony and misdemeanor convictions, risking confusion and inconsistency.

would be done by agents of the Court Services and Offender Supervision Agency (CSOSA), also a federal agency, albeit one with significant local roots and connections. The home rule argument for retaining parole, which was articulated to the Commission by some proponents, loses much of its force in the context of a system where all of the relevant authority is to be exercised by federal agencies.

Fifth, to the extent that parole supervision is a vehicle for providing rehabilitative services to offenders released from prison and for assisting their transition back into the community, that function will no longer be necessary because it has been replaced by supervised release for all felony offenders, whether the conviction is a subsection (h) crime or a non-subsection (h) crime. Supervised release and the Commission's recommendations regarding supervised release are discussed in detail in Chapter 3 of this report. It will suffice here to point out that offenders on supervised release will be supervised by the same agency (CSOSA) that would supervise them if they were on parole. And, while there are significant differences between supervised release and parole, the purposes of supervised release, if the Council adopts the Commission's recommendations, will be rehabilitation and reintegration into the community rather than further punishment or incapacitation.

Finally, while the existence or non-existence of parole does not, by itself, determine the time a defendant will actually serve, parole undoubtedly plays a role in that calculus. It appeared to the Commission that the underlying premise (often unstated) of those who favor retention of parole is that offenders would serve less time in a parole-based system than they would without parole, because they would be admitted to parole on an indeterminate sentence before they would serve 85% of a corresponding determinate sentence. If true, these concerns are not insignificant. Until the new system goes into effect, however, it is not possible to know what

impact it will have on length of time served. It is at least possible that sentence lengths will decrease in terms of time served, depending on what judges do relative to what the Parole Board would have done. An example may help illustrate the point. Under current law, if a judge imposes a sentence of five to 15 years, the defendant will serve the first five years and as much of the remaining 10 years as the Parole Board determines. Assume parole release at the end of seven years and successful completion of parole. In the new system, if a judge gave that same defendant a determinate sentence of eight years and he earned all his good conduct credit, he would serve 85% of that sentence and would be released to supervised release after 81.6 months, or a few months less than seven years. Unfortunately, our data does not tell us with precision how much actual time defendants served in the past, and we do not know with certainty what judges will do in the future. The Commission's working assumption, however – and there is both anecdotal evidence and evidence from the focus groups to support it – is that in most cases judges will attempt to replicate the past, as they understood it.

The fear that sentences will increase is real: all fear is real. The Commission concludes, however, that the best way to address concerns about increased sentences or increased disparity in sentences is not to retain parole for the lower level felonies, where it makes the least difference, but to collect data, educate judges and explore various alternatives to structuring the exercise of judicial discretion in sentencing. These activities are discussed in more detail in Chapter 7 of this report.

For all the foregoing reasons, the Commission concludes that a unitary system is vastly superior to the bifurcated or trifurcated system that would exist if parole were retained for non-subsection (h) felonies and/or misdemeanors.

Recommendation 1: *That the Council establish a “unitary” sentencing system by abolishing parole for all offenders.*

Concurrent and Consecutive Sentences

Currently, when a defendant is convicted of multiple counts at trial, a separate sentence is imposed for each conviction offense. In such cases the judge generally has the discretion to order each sentence to be served concurrently with each other sentence or consecutively to each other or, where there are more than two convictions, partially concurrent and partially consecutive. More detail on consecutive and concurrent sentencing is available in the Commission's earlier report.

Regarding the issue of consecutive and concurrent sentencing, the Council directed the Commission to provide "a recommendation as to whether multiple sentences should run concurrently or consecutively, and what guidance, if any, should be provided regarding imposition of consecutive sentences." There appears to be no reason to suggest that the court's discretion to impose concurrent or consecutive sentences should be restricted simply because of the conversion from an indeterminate sentencing system to a determinate sentencing system. Therefore, the Commission recommends no change regarding the imposition of consecutive sentences.

CHAPTER 3

SUPERVISED RELEASE

The Advisory Commission on Sentencing Establishment Act of 1998 directs the Commission to make a “recommendation as to appropriate limits and conditions on terms of supervised release, including whether there should be a mechanism for changing the length of a term of supervised release after its imposition, and any considerations that should apply with respect to the ratio between a prison term of sentence and a supervised release term.”

The Commission approached its task by identifying 6 issues to be addressed in designing a supervised release system:

- Authorized maximum term of supervised release;
- Conditions of supervised release;
- Modification of the term of supervised release;
- Revocation of supervised release, and imprisonment for a violation of a condition of supervised release;
- Imposition of supervised release following imprisonment upon revocation of supervised release; and
- Miscellaneous provisions

The chapter discusses each issue in turn.

Scattered throughout the discussion are references to federal law relevant to supervised release. Post-release supervision, or supervised release, in the federal system apparently is the model Congress borrowed and incorporated into the Revitalization Act. Supervised release in the federal system applies to offenses committed on or after November 1, 1987 and, because Congress abolished parole, it is the only form of supervision for offenders after their release from incarceration.¹ Pursuant to the

¹ The U.S. Parole Commission makes parole release and supervision decisions for the several thousand remaining federal prisoners who were sentenced for offenses committed before November 1, 1987. A

Revitalization Act, certain provisions in the U.S. Code relevant to supervised release are binding on the District, as explained in subsequent sections of this chapter.

Authorized Maximum Terms of Supervised Release

Consistent with the Section 11212(b)(2)(C) of the Revitalization Act, the Truth in Sentencing Amendment Act of 1998 directs that, upon sentencing a felon to imprisonment or commitment under the Youth Rehabilitation Act, “the court shall impose an adequate period of supervision to follow release from imprisonment or commitment.” While it is apparent that Congress intended periods of supervised release to be “adequate,” the Revitalization Act did not define what “adequate” means. Given Congress’ silence on the matter, the Commission concludes that the Council is free to set authorized maximum terms of supervised release.

Before deciding what an “adequate” term of supervised release is, the Commission first considered the following: (1) the purposes of supervised release and a reasonable time frame within which those purposes could be served; and (2) the relationship between the authorized maximum term of supervised release and the statutory maximum term of imprisonment.

Purposes of supervised release

The Commission considered the purposes of supervised release in order to determine a reasonable time frame within which its purposes could be satisfied. In

paroled prisoner remains subject to parole supervision for the balance of his sentence. Probation is a sentencing option in the federal system, and applies to offenders upon whom the court has imposed no prison term (except that the court may order a defendant sentenced to probation to spend up to 1 year in confinement as a condition of probation).

general, Commission members agreed that post-release supervision should not last any longer than necessary to achieve its stated purposes.

Commonly cited purposes for post-release supervision are: support and guidance, deterrence, and incapacitation. Support and guidance can be provided to offenders through programming designed to encourage or enable an offender to lead a crime-free life. Substance abuse testing and treatment, anger management counseling, and employment services are examples of programming designed to support and guide offenders in their transition to life in the community. Deterrence may occur by enforcing the conditions of supervision (for example, through office visits, home visits, employment checks, and periodic drug testing). Incapacitation may be accomplished by restricting an offender's activities (for example, through the use of curfews), by intervening at the early signs of negative behavior (for example, by increasing supervision or by use of short intermediate sanctions), and by punishing persistent or serious criminal behavior with a prison term. The expected length of time within which these purposes might be fulfilled influences the decision regarding the term of supervised release that will be "adequate."

Studies have shown that offenders who return to crime after release generally do so within the first three to five years following release from imprisonment.² Offenders who complete the first three to five years after release from imprisonment without committing another offense have been found to present a substantially lower risk in subsequent years. For these reasons, a policy of supervision and intervention in the early years is most effective, both for an individual offender and for the supervising agency. Generally, an offender who complies with the terms of his release during the early years

² See Hoffman, P., "Recidivism in Relation to Time after Release from Imprisonment" (January 2000).

after release neither needs nor deserves further attention by the supervising agency. Likewise, it is more cost-effective if the supervising agency can devote more of its resources to offenders as they are released, rather than continuing to monitor the activities of offenders who present less cause for concern.

Section 11233 of the Revitalization Act established a new federal agency, the Court Services and Offender Supervision Agency (“CSOSA”). Its mission is to provide supervision for offenders on probation, parole, and supervised release pursuant to the District of Columbia Code. CSOSA carries out its responsibilities on behalf of the court or agency having jurisdiction over the offender being supervised (either the Superior Court of the District of Columbia or the United States Parole Commission).

CSOSA is developing comprehensive screening and assessment instruments in order to draw a complete picture of each offender. Having accurate and timely information on offenders’ needs will enable CSOSA to develop a meaningful array of services to assist offenders’ transition from prison life to community life. Services will include drug testing, drug treatment, counseling, housing and job placement assistance, life skills training, and other vocational and educational programs. Although not all services are available today, it is expected that more resources will be available through CSOSA than ever were available to released offenders in the past. The anticipated increase in the quantity and quality of community supervision officers, coupled with other support services, will make it possible not only to monitor offenders more efficiently, but also to intervene promptly at the first signs of an offender’s noncompliance with conditions of release.

The Commission concludes that the primary purpose of supervised release is the successful re-entry of offenders into the community. With the combined resources of the Federal Bureau of Prisons, which provides programming while offenders are incarcerated, and of CSOSA, which encourages lawful behavior upon release, the Commission is confident that the system can reach two of its main objectives: the rehabilitation of offenders, and the prevention of crime.

***Recommendation 2:** That the Council adopt the Commission's conclusion that the successful reintegration of the offender into the community and the offender's transition to a productive, crime-free life are the main purposes of supervised release.*

Relationship between authorized maximum terms of supervised release and the authorized maximum term of imprisonment.

The Council directed the Commission to consider the relationship between the term of supervised release and the term of imprisonment. Under current law, if the statutory maximum sentence is 15 years, the maximum time to be spent in prison plus the maximum initial term of supervision after release (parole) cannot exceed 15 years. If authorized maximum terms of imprisonment remain unchanged in the new determinate sentencing system, and a term of supervised release is added, the effect is that the total authorized maximum term of imprisonment plus the authorized maximum period of supervised release will exceed the statutory maximum sentence. For example, if the statutory maximum sentence for an offense remains 15 years, and a three-year term of supervised release is authorized, the combined period of control will exceed 15 years. Thus, an offender upon whom the court has imposed the maximum authorized prison sentence would face a total period of control of up to 18 years. "Period of control" here

means the time within which an offender remains subject to the criminal justice system after conviction, either while incarcerated or while supervised in the community.

The Commission also considered the interaction between the statutory maximum sentence and the maximum term of imprisonment imposable upon revocation of supervised release (“revocation term”).³ In the federal system, pursuant to 18 U.S.C. § 3583(e)(3), if the statutory maximum sentence is, for example, 15 years, the revocation term is two years. Thus, the maximum combined period of imprisonment that can be imposed in such a case in the federal system is 17 years.

There is concern that, as the system shifts from indeterminate sentencing to determinate sentencing, the amount of time offenders serve in prison may tend to increase if judges do not adequately calibrate their sentences to the new system. If the court is no longer constrained to impose a minimum sentence not to exceed one-third of a maximum sentence, and parole is no longer an option, the court may impose a determinate sentence, eighty-five percent of which may exceed the number of years the offender likely would have served on an indeterminate sentence in the current system.

To address this concern, one option would be to mimic the current parole system by providing that the sum of the term of imprisonment imposed plus the maximum term of supervised release imposed may not exceed the existing statutory maximum sentence. While this option may work reasonably well in sentencing more serious offenders who likely receive lengthy prison sentences, it causes difficulty in the case of offenders convicted of less serious felonies carrying shorter sentences. In sentencing an offender convicted of a felony carrying a five-year maximum sentence, for example, there may be little time within which to punish the offender by imposing a prison sentence and still

³ Revocation of supervised release is discussed later in this chapter.

allow for adequate supervision following the offender's release from incarceration.

Moreover, under the Revitalization Act, every felony offender sentenced to a term in prison must have an adequate term of supervised release, and this may be particularly true of those on whom the judge felt constrained to impose a prison sentence at or near the maximum.

A second option would be to decide that the term of supervised release is separate from and runs independent of the term of imprisonment. This is the way supervised release works in the federal system. A probable result of this model is the extension of the length of time some offenders remain subject to the criminal justice system. If the court imposes the authorized maximum term of imprisonment and the authorized maximum term of supervised release on an offender, the offender may face a longer period of control than similarly situated offenders face under the current indeterminate sentencing structure.⁴

The Commission's recommendations in the area of supervised release, as in other areas, are not intended to cause offenders to serve more time in prison under determinate sentences than they currently serve under indeterminate sentences. Because the Commission has concluded that an overwhelming majority of offenders need some services upon their release from imprisonment, the Commission recommends a middle

⁴ It is worth noting that even in the present system the period of imprisonment plus the period of parole can exceed the statutory maximum sentence. If an offender on parole has his parole revoked, he does not receive credit for time spent under supervision – so called “street time.” As a result of the loss of “street time,” the total amount of time a prisoner serves in prison and on parole can exceed the statutory maximum sentence. For example, assume a conviction with a maximum sentence of 10 years. If the judge imposes a sentence of three to nine years and the offender is paroled after serving four years, he has five years of parole supervision. If the offender remains on parole for three years and is then revoked, he does not get credit for the time under supervision, and he still has five years remaining on his sentence. If he serves all five years, this offender will be in prison and on parole for a total of 12 years. In this sense, the Commission's recommendation is not a major departure from the present system. Moreover, under both the present system and the Commission's recommendation, an offender cannot serve more time in prison than the statutory maximum sentence for the conviction offense.

position: that (1) the term of supervised release will run separately and in addition to any sentence of imprisonment imposed, but (2) the sum of the initial prison sentence imposed plus the maximum prison sentence that can be imposed upon revocation of supervised release for violation of a condition of supervised release (revocation term) may not exceed the statutory maximum sentence. In other words, imprisonment plus supervised release may exceed the statutory maximum sentence, but the total number of years an offender can spend in prison is capped. No offender may serve more time in prison than permitted by the statutory maximum sentence. To use the earlier example, if the statutory maximum sentence is 15 years, the authorized term of supervised release is three years, and the revocation term is two years; the judge could impose any sentence up to 13 years imprisonment (15 – 2), with a three-year term of supervised release following the offender’s release from incarceration.

***Recommendation 3:** That the Council enact legislation providing that the term of imprisonment imposed at sentencing plus the authorized term of imprisonment imposed upon revocation of supervised release may not exceed the statutory maximum sentence for the offense of which the defendant was convicted.*

The Commission considered the relative needs of different types of offenders in considering an appropriate authorized maximum term of supervised release. An offender convicted of a violent crime is more likely to serve a longer prison sentence than an offender convicted of, say, a less serious property offense. The violent offender has a longer period within which he may benefit from programming the Federal Bureau of Prisons offers, but he may need more support upon his release from prison because he has spent a longer time away from the community. On the other hand, an offender who has been convicted of numerous nonviolent offenses fueled by a drug addiction may receive a short prison sentence. This offender, though, may require more intensive supervision

because he may return to the community with the same problems that prompted him to commit crimes in the first place. The experience of Commission members suggests that the offender upon whom the court imposes a relatively short prison term, depending on the nature of the offense of conviction, may be the offender most in need of supervision. Although there are offenders who may require little or no supervision following their release from imprisonment, it is believed that practically all offenders who receive terms of imprisonment of more than one year will need some supervision upon release. The Commission concludes that the courts should have greater flexibility in imposing a term of supervised release at the “low end.”

The experience of some Commission members also suggests that certain offenders may warrant special consideration. For example, studies show that certain sex offenders present a substantially higher risk of recidivism than other offenders.⁵ The likelihood of their committing another sex offense does not necessarily diminish with age. The type and intensity of support services for sex offenders differ. Frequently, sex offenders need far more supervision than other offenders. Therefore, the Council might want to give the court greater latitude in imposing longer terms of supervised release on sex offenders.

Recommendation 4: *That the Council set supervised release terms as follows:*

- a. If the court imposes a term of imprisonment of more than 1 year, the court shall:*
 - impose a term of supervised release of 5 years in the case of an offense for which the maximum term of imprisonment authorized by law is 25 years or more, or*

⁵ Clarkson, C. and Morgan, R., Sentencing Violent and Sexual Offenders in England and Wales, Federal Sentencing Reporter 7, 288-91 (1995). See also, Recidivism of Prisoners Released in 1983, Bureau of Justice Statistics (1989).

- *impose a term of supervised release of 3 years in the case of an offense for which the maximum term of imprisonment authorized by law is more than 1 year but less than 25 years.*
- b. If the court imposes a term of imprisonment of 1 year or less, the court may, at its discretion, impose a term of supervised release of:*
- *not more than 5 years in the case of an offense for which the maximum term of imprisonment authorized by law is 25 years or more, or*
 - *not more than 3 years in the case of an offense for which the maximum term of imprisonment authorized by law is more than 1 year but less than 25 years.*

Recommendation 5: *That the Council consider longer terms of supervised release for offenders convicted of sex offenses for which registration is required pursuant to the Sex Offender Registration Act of 1999, but that the terms not exceed the maximum periods for which a convicted sex offender is required to register under the Act, that is, 10 years or life.*

Conditions of Supervised Release

Section 11212(b)(2)(C) of the Revitalization Act authorizes the Superior Court of the District of Columbia to impose an adequate period of supervision following an offender's release from imprisonment, but it grants to the Superior Court no express authority to impose conditions of supervised release. Instead, section 11233(c)(2) of the Revitalization Act grants the U.S. Parole Commission the same authority as is vested in United States District Courts under 18 U.S.C. § 3583(d-i) with respect to offenders on supervised release. With respect to District of Columbia offenders, then, the U.S. Parole Commission has the authority to set the conditions of supervised release pursuant to 18 U.S.C. § 3583(d).

Under 18 U.S.C. § 3583(d), mandatory conditions of supervised release are:

- that the defendant not commit another federal, state or local crime during the term of supervision
- that the defendant not unlawfully possess a controlled substance

- that a defendant convicted for the first time of a domestic violence offense attend an approved rehabilitation program
- that certain sexual offenders (described in 18 U.S.C. § 4042(c)(4) comply with registration requirements, and
- that the defendant refrain from unlawful use of a controlled substance, and submit to drug tests (which the court may suspend pursuant to 18 U.S.C. § 3563(a)(4))

Further, the United States District Court or, with respect to District of Columbia

offenders, the U.S. Parole Commission may order additional conditions of supervised

release that:

- are reasonably related to the factors set forth in 18 U.S.C. § 3553(a)(1), (a)(2) (B), (a)(2)(C), and (a)(2)(D),
- involve no greater deprivation of liberty than is reasonably necessary for the purposes set forth in 18 U.S.C. § 3553(a)(2) (B), (a)(2)(C), and (a)(2)(D),
- are consistent with any pertinent policy statements issued by the U.S. Sentencing Commission and
- are listed in 18 U.S.C. §§ 3563(b)(1) through (b)(10) and (b)(12) through (b)(20) relating to discretionary conditions of probation, or are otherwise considered appropriate. Discretionary conditions of probation include requirements that a defendant: (1) make restitution to the victim, (2) work conscientiously at suitable employment, (3) refrain from frequenting specified kinds of places, or from associating unnecessarily with specified persons, (4) undergo medical, psychiatric or psychological treatment, including treatment for drug or alcohol dependency, (5) work in community services as directed by the court, (6) reside in or refrain from residing in a specified place or area, and (7) generally cooperate with the probation officer.

The range of conditions of supervised release authorized in the U.S. Code is broad and flexible enough to cover practically all circumstances.

Reading the Revitalization Act and the relevant provisions of Title 18 of the U.S. Code together, it appears that Congress intends that the judges of the Superior Court of the District of Columbia impose terms of supervised release, that the U.S. Parole Commission set conditions of supervised release, and that CSOSA carry out the supervision responsibilities. The procedure envisioned by Congress appears to be the procedure in existence prior to November 1, 1987 under “special parole term” provisions

of 21 U.S.C. § 841 (pertaining to certain drug offenses). Under this procedure, the U.S. District Court imposed a term of post-release supervision, and the U.S. Parole Commission determined the conditions and supervision. Although it may appear odd at first glance that the U.S. Parole Commission (rather than the court) sets the release conditions, there was nothing unworkable about the practice in the federal system before 1987. Indeed, in at least some cases, the U.S. Parole Commission may be in a better position to set appropriate conditions at the end of a term of imprisonment than the court is in at the time sentence is imposed.

In addition, under 18 U.S.C. §3583(e)(2), the U.S. Parole Commission also has the authority to modify, reduce or enlarge conditions of supervised release at any time prior to the expiration or termination of supervised release.

***Recommendation 6:** That the Council take no action, because the Revitalization Act authorizes the U.S. Parole Commission to impose, modify, reduce, or enlarge conditions of supervised release.*

Modification and Termination of the Term of Supervision

As noted, section 11233(c)(2) of the Revitalization Act gives the U.S. Parole Commission the same authority as is vested in United States District Courts under 18 U.S.C. § 3583(d-i) with respect to offenders on supervised release. The U.S. Parole Commission has the authority to “terminate a term of supervised release and discharge an offender at any time after the expiration of one year of supervised release...if it is satisfied that such action is warranted by the conduct of the defendant released and the interest of justice.” 18 U.S.C. § 3583(e)(1).

The authority to terminate jurisdiction before the expiration of the term of supervised release reflects sound correctional practice. It is the “carrot” to complement

the “stick” of sanctions for failure to comply with conditions of supervised release. Early termination is a reward for good behavior; it gives an offender an incentive to comply fully with conditions of supervised release.⁶ It allows CSOSA to allocate resources effectively by focusing supervision on those offenders who are most in need of supervision, rather than expending resources on offenders who have demonstrated by their conduct that supervision is no longer required.

If CSOSA and the U.S. Parole Commission determine that an offender requires a longer period of supervision, section 11233(c)(2)(B) of the Revitalization Act provides that “an extension of a term of supervised release under subsection (e)(2) of section 3583 [of Title 18] may only be ordered by the Superior Court upon motion from the [U.S. Parole Commission].” The court may order an extension only if the original term of supervised release is less than the authorized maximum term of supervised release.⁷

Given these provisions, it appears that Congress has spoken with respect to the modification or termination of a term of supervised release. The U.S. Parole Commission and CSOSA can develop supervision standards and early termination policies and procedures under existing rulemaking authority. Thus, no action by the Council appears necessary.

Recommendation 7: *That the Council take no action, because the Revitalization Act authorizes the U.S. Parole Commission to modify a term of supervised release, either by terminating the term of supervised release early, or by petitioning the Superior Court of the District of Columbia to extend a term of supervised release.*

⁶ In Chapter 5, we discuss the Youth Rehabilitation Act and recommend that Youth Rehabilitation Act convictions be set aside upon successful completion of supervised release.

⁷ Under our recommendations, extensions would be possible whenever the judge imposes a sentence to a term of imprisonment of less than one year and an initial term of supervised release that was less than the authorized maximum term.

Revocation of Supervised Release and Imprisonment upon Revocation of Supervised Release

Again, section 11233(c)(2) of the Revitalization Act gives the U.S. Parole Commission the same authority as is vested in United States District Courts under 18 U.S.C. § 3583(d-i) with respect to offenders on supervised release. Pursuant to 18 U.S.C. § 3583(e)(3), the U.S. Parole Commission may:

revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release authorized by statute for the offense that resulted in supervised release without credit for time previously served on post release supervision...except that a defendant whose term is revoked under this paragraph may not be required to serve more than 5 years in prison if such offense is a class A felony, more than 3 years in prison if such offense is a class B felony, more than 2 years in prison if such offense is a class C or D felony, or more than one year in any other case.

Classes of offenses are defined elsewhere in the U.S. Code. Under 18 U.S.C. § 3559, an offense not specifically classified by a letter grade in the statute defining the crime is classified as follows:

Maximum authorized term of imprisonment in statute defining crime:	Class
Life	A
25 years or more	B
at least 10 but less than 25 years	C
at least 5 but less than 10 years	D
more than 1 but less than 5 years	E

The Commission concludes that the revocation terms set forth in 18 U.S.C. § 3583(e)(3) control, and the Council is precluded by section 11233(c)(2) of the Revitalization Act from authorizing longer or shorter revocation terms. If, for example, District law authorizes a 15-year term of imprisonment as punishment for an offense, and the classification of offenses under 18 U.S.C. § 3559 applies, the offense would be a Class C felony, for which 2 years is the maximum revocation term under 18 U.S.C. § 3583(e)(3).

There is a question as to whether the Council may change the length of revocation terms within the limits of 18 U.S.C. § 3583(e)(3), either by expressly classifying offenses on an offense-by-offense-basis as Class A-E felonies for purposes of revocation of supervised release, or by enacting a statute parallel to 18 U.S.C. § 3559 but with different sentence lengths corresponding to the class of felony (e.g., to authorize a longer revocation term by classifying any felony punishable by 25 years or more as a Class A felony, or to authorize a shorter revocation term by classifying any felony punishable by 25 years or more as Class C felony). The best reading of these statutes seems to be that, in the absence of action by the Council, the statutory maximum sentences under D.C. law would be applied to 18 U.S.C. § 3559 to determine the class of felony for purposes of setting the revocation term. It seems that the Council might change the length of the authorized revocation term -- but only within the parameters of 18 U.S.C. § 3583(e)(3) -- by changing the classification of offenses on either an offense-by-offense basis or on a more generic basis.

There is an additional issue. If the Council takes no action, a defendant might argue that the classifications by letter 18 U.S.C. § 3559 only apply to federal offenses, and the Council's silence renders the available revocation term the lowest common denominator -- one year -- because every District of Columbia offense would fall in the "any other case" category of 18 U.S.C. § 3583(e)(3). This appears to be a weak argument. In any event, if the Council desires no change in these revocation terms, a short statutory provision could remove any question on the issue. By asserting the authority of the Council on this issue, it might also prevent the length of these revocation terms from being affected if Congress subsequently amends 18 U.S.C. § 3559.

For these reasons, and because the Commission concludes that the revocation terms in 18 U.S.C. § 3583(e)(3) are adequate and appropriate for District of Columbia offenders, the Commission recommends that the Council adopt a provision that makes revocation penalties for District of Columbia offenses explicit and consistent with 18 U.S.C. § 3583(e)(3).

Recommendation 8: *That the Council adopt a provision that makes revocation penalties consistent with 18 U.S.C. § 3583(e)(3) for District of Columbia offenses, according to the statutory maximum sentence, as follows:*

For purposes of revocation of supervised release, a defendant whose term is revoked may be imprisoned for a period of not more than:

- 1. 5 years, if the authorized maximum term of imprisonment for the offense of which the defendant was convicted is life imprisonment, including life offenses for which the Commission recommends conversion to a term of years;⁸*
- 2. 3 years, if the authorized maximum term of imprisonment for the offense of which the defendant was convicted is 25 years or more, but less than life;*

⁸ See recommendations 12-16 in Chapter 4.

3. *2 years, if the authorized maximum term of imprisonment for the offense of which the defendant was convicted is 5 years or more, but less than 25 years; or*
4. *1 year, if the authorized maximum term of imprisonment for the offense of which the defendant was convicted is more than 1 year, but less than 5 years.*

Neither CSOSA nor the U.S. Parole Commission intends to use imprisonment as the only sanction for violation of a condition of supervised release. CSOSA is developing a series of graduated sanctions, so that penalties short of imprisonment can be imposed. Offenders should have ample opportunity to comply with conditions of supervised release before the U.S. Parole Commission imposes a term of imprisonment, which the Commission considers the punishment of last resort.

Imposition of supervised release following imprisonment upon revocation for violation of a condition of supervised release

The U.S. Parole Commission, pursuant to Section 11233(c)(2) of the Revitalization Act, may impose a new term of supervised release to follow imprisonment upon revocation for a violation of a condition of the original term of supervised release, provided that the new term of supervised release does not exceed the maximum period of supervised release authorized for the offense of conviction less any prison time the offender has served for violations of supervised release, and provided further that a new term of supervised release may not be imposed if the offender has served the full term of imprisonment authorized for the offense upon revocation of the original term. Subsection 3583(h) of Title 18 of the U.S. Code provides:

When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of imprisonment authorized under subsection (e)(3), the [U.S. Parole Commission] may

include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such a term of supervised release shall not exceed the term of supervised release authorized by statute for the offense that resulted in the original term of supervised release, less any term of imprisonment that was imposed upon revocation of supervised release.

To release a violator to a new term of supervised release is consistent with sound correctional practice. If such “re-release” were not authorized, an offender who received a revocation term as short as 1 day would be exempt from any further supervision. The fact that the offender was found to have violated a condition of supervised release indicates a need for additional supervision. The Commission anticipates that the U.S. Parole Commission and CSOSA, working together, will develop a system of graduated intermediate sanctions, so that appropriate punishments short of revocation and imprisonment may address relatively minor violations of supervised release. The U.S. Parole Commission will have the necessary authority to require re-release on supervised release following a revocation term, subject to the limitations set forth in 18 U.S.C. § 3583(h). As is true under the current D.C. law, the offender does not get credit for time on supervision (“street time”). The offender does, however, receive credit against the supervised release term for any term of imprisonment imposed upon revocation.

Recommendation 9: *That the Council take no action, because the Revitalization Act authorizes the U.S. Parole Commission to impose a term of supervised release to follow incarceration upon revocation for violation of a condition of supervised release and 18 U.S.C. § 3583(h) imposes appropriate limits on the U.S. Parole Commission’s authority.*

Miscellaneous Provisions

There are a few “housekeeping” matters that the Revitalization Act does not address. It indicates neither when a term of supervised release commences, nor whether a

term of supervised release runs concurrently or consecutively to any other term of probation, parole, or supervised release to which an offender becomes subject.

The Commission concludes that supervised release should begin on the day the offender is released from imprisonment, and should run concurrently with any other supervised release, probation, or parole term. The provision that terms of supervised release terms run concurrently with other terms of supervision imposed at the same or different times prevents the type of anomaly illustrated in this example: If terms of supervised release run consecutively, an offender serving a five-year term of supervised release on one count of murder would have a lower term of supervised release than an offender sentenced to two consecutive three-year terms of supervised release on two counts of theft. The requirement for concurrent terms of supervised release better ensures proportionality of punishment and reflects the threat an offender poses to society. In addition, it simplifies the operation of the system.

Recommendation 10: *That the Council adopt a provision to read as follows:*

The term of supervised release commences on the day the person is released from imprisonment and runs concurrently with any federal, state, or local term of probation or supervised release, or parole for another offense to which the person is subject or becomes subject during the term of supervised release.

The Revitalization Act does not indicate whether a term of supervised release runs while an offender is serving another term of imprisonment for an unrelated offense. For example, if an offender is sentenced to a term of imprisonment for conduct occurring while on supervised release, and the U.S. Parole Commission does not revoke supervised release, (*e.g.*, an offender receives a 10-day sentence for driving while intoxicated (DWI)), it is unclear whether his or her term of supervised release would continue to run

for that 10-day period. Likewise, if an offender is serving a sentence of imprisonment for conduct that occurred before the start of the term of supervised release (*e.g.*, the defendant is released from the current term of imprisonment on detainer to Maryland authorities to serve an 18-month sentence in Maryland for another offense) it is unclear whether his or her term of supervised release would continue to run for that 18-month period.

The Commission recommends that a term of supervised release not run during any period in which the person is imprisoned in connection with a conviction for a federal, state, or local crime unless the period of imprisonment is for a period of less than 30 consecutive days. Under this provision, imprisonment following arrest for an offense that does not result in a conviction does not stop the running of a term of supervised release. Nor does a term of imprisonment of less than 30 days resulting from a conviction stop the term of supervised release. Only a term of imprisonment of 30 consecutive days or more resulting from a conviction stops the running of a term of supervised release. This provision appears consistent with sound correctional practice, and is less complex than a provision that would stop the running of the term of supervised release for very short sentences. In the examples above, the term of supervised release continues to run throughout the offender's 10-day sentence for DWI, and ceases to run while the offender serves the 18-month sentence in Maryland.

Recommendation 11: *That the Council adopt a provision to read as follows:*

A term of supervised release does not run during any period in which the person is imprisoned in connection with a conviction for a federal, state, or local crime unless the period of imprisonment is for a period of less than 30 consecutive days.

CHAPTER 4

LIFE SENTENCES

The Advisory Commission on Sentencing Establishment Act of 1998 directs the Commission to make a “recommendation regarding the appropriate length of life sentences for offenses under the determinate sentencing system.” The change to determinate sentencing with no parole creates a special problem for offenses that carry a maximum sentence of life imprisonment. This chapter discusses that problem, outlines several possible solutions considered by the Commission, and explains the reasoning behind the Commission’s recommendations with respect to life sentences under a determinate sentencing system.

Under current law, offenders are subject to a maximum sentence of life imprisonment for:

- Murder
 - First degree murder, D.C. Code §§ 22-2401, -2402, -2404
 - Second degree murder, D.C. Code §§ 22-2403, -2404
- Sex offenses
 - First degree sexual abuse, D.C. Code § 22-4102
 - First degree child sexual abuse, D.C. Code § 22-4108;
- Obstruction of justice, D.C. Code § 22-722;
- Kidnapping and conspiracy to kidnap, D.C. Code §§ 22-105a, -2101;
- any crime of violence or dangerous crime¹ committed while armed with a gun or any other deadly or dangerous weapon, D.C. Code § 22-3202; and

¹ Crimes of violence are defined as murder, manslaughter, first degree sexual abuse, second degree sexual abuse, child sexual abuse, mayhem, malicious disfigurement, abduction, kidnapping, burglary, robbery, assault with intent to kill, assault with intent to commit first degree sexual abuse, second degree sexual abuse, child sexual abuse, and robbery, assault with a dangerous weapon, assault with intent to commit any felony, arson, extortion or blackmail accompanied by threats of violence, aggravated assault, and attempts to commit foregoing offenses. D.C. Code § 22-3201(f). Dangerous crimes are defined as distribution of, or possession with intent to distribute, controlled substances excluding marijuana. D.C. Code § 22-3201(g).

- the third conviction of a felony in separate proceedings, D.C. Code § 22-104a(a)(1) (three strikes).

In addition, the Court may impose a sentence of life without parole when:

- an offender is convicted of first degree murder, the prosecutor gives notice prior to trial and the judge finds beyond a reasonable doubt that certain aggravating circumstances exist, D.C. Code § 22-2404.1;
- an offender is convicted of a crime of violence, having previously been convicted in the District of Columbia of 2 prior crimes of violence committed on different occasions. D.C. Code § 22-104a(a)(2);
- an offender is convicted of first degree sexual abuse or first degree child sexual abuse and the prosecutor gives notice prior to trial that aggravating circumstances exist. D.C. Code § 22-4120; and

and the Court must impose a sentence of life without parole when an offender is convicted of premeditated murder of law enforcement officer, D.C. Code § 22-2406.

Under current District of Columbia law, with the exception of life without parole, the court imposes an indeterminate sentence on an offender with a maximum term not exceeding the maximum fixed by law and a minimum term not exceeding one-third of the maximum term. The offender may be released on parole, but only after having served the minimum sentence.² If the court imposes a maximum sentence of life imprisonment, the minimum sentence cannot exceed 15 years, except for second degree murder where the minimum sentence cannot exceed 20 years, and first degree murder, where the minimum

² Offenders may receive educational and meritorious good time credits to reduce the minimum. D.C. Code §§ 24-429, -429.1. These credits cannot reduce the sentence of an inmate convicted of a crime of violence by more than 15%. D.C. Code §§ 24-429.2. As a general rule, most inmates do not earn enough good time credits to reduce their minimum sentence by more than a year or so.

sentence must be 30 years.³ Under current law, then, an offender upon whom the court imposes a life sentence does not normally serve his or her natural life in prison.

The Truth in Sentencing Amendment Act of 1998, consistent with the Revitalization Act, abolished parole for offenders convicted of “subsection (h)” offenses committed on or after August 5, 2000. The court must impose a determinate sentence on these offenders, and they must serve not less than 85% of the sentence imposed. All offenses for which life imprisonment is the maximum possible sentence are subsection (h) offenses. Because offenders must serve at least 85% of any sentence imposed, and it is impossible to calculate 85% of a “life sentence,” every life sentence would become, as a practical matter, a sentence of life without release, absent further Council action.

Moreover, if a maximum sentence of “life” remains an option in the new system, there would be no upper limit on the number of years a judge could impose, since any term of years theoretically would be encompassed within a life term. For example, the court would have the authority to impose a determinate sentence of 99 years, without finding an aggravating factor as would be required for most offenses under current law before a judge could impose a sentence of life without parole. This hypothetical offender would then be required to serve not less than 85% of the sentence imposed, which, in the case of a 99 year sentence, would effectively be a sentence of natural life for most offenders.

OPTION #1: “Life” means “natural life.”

As noted, in the new determinate sentencing system, assuming no change in law, a life sentence becomes, in effect, a sentence of “natural life,” or life without release.

³ D.C. Code §§ 22-2404, 24-203(a).

Florida, Virginia, Delaware, North Carolina, and Wisconsin have defined life as natural life.

This option offers the benefit of simplicity. It requires no statutory amendment. Further, this option provides the greatest flexibility in punishing extreme cases harshly. The court is free to incapacitate offenders who commit truly heinous crimes by imposing imprisonment for life. This option, however, would enable a judge to sentence an offender for his natural life for any life offense, including offenses for which “life without parole” is not an option under current law. It would enable a judge to impose a sentence of “life without release” without having to make the findings and without the procedural safeguards currently required for a sentence of “life without parole.”

OPTION #2: “Life” means “natural life.” In order for the court to impose a life sentence, the court must find that an aggravating factor exists.

To address some of the objections to the first option, the Council could retain all of the current life maximum sentences, but require the court to find the existence of an aggravating factor in order to impose a life sentence. The process could be similar to that set forth in the sentencing procedure for first degree murder and other offenses which allow for the possibility of a sentence of “life without parole.” In order for the court to impose a sentence of life imprisonment without parole, the prosecutor must give timely notice of intent to seek that sentence, and the court must find that an aggravating factor exists.⁴ Under D.C. Code § 22-2404.1, for example, aggravating factors include:

⁴ For first degree murder, the prosecutor must file a notice with the Court 30 days before trial that it intends to seek a sentence of life without parole, D.C. Code §§ 24-2404(a), and the Court must find beyond a reasonable doubt that aggravating circumstances exist. D.C. Code §§ 24-2404.1(b). For first degree sexual abuse and first degree child sexual abuse, the prosecutor must file a notice of aggravating circumstances upon which it will rely in seeking a sentence of life without parole. D.C. Code §§ 24-4120(c). For repeat violent offenders, the prosecutor must file a notice of the previous convictions upon which it will rely in seeking a sentence of life without parole. D.C. Code §§ 23-111. See D.C. Code §§ 24-104a(a)(2).

- That the murder was committed in the course of kidnapping or abduction, or an attempt to kidnap or abduct,
- That the murder was committed for hire
- That the murder was committed for the purpose of avoiding or preventing a lawful arrest or effecting an escape from custody
- That the murder was especially heinous, atrocious, or cruel
- That the murder was a drive-by or random shooting
- That there was more than 1 offense of first degree murder arising out of one incident
- That the murder was committed because of the victim's race, color, religion, national origin, or sexual orientation
- That the murder was committed while committing or attempting to commit a robbery, arson, rape, or sexual offense
- That the murder was committed because the victim was or had been a witness in any criminal investigation or judicial proceeding, or the victim was capable of providing or had provided assistance in any criminal investigation or judicial proceeding
- That the murder victim was especially vulnerable due to age or a mental or physical infirmity
- That the murder was committed after substantial planning, or
- At the time of the commission of the murder, that the defendant had previously been convicted and sentenced for murder, manslaughter, attempted murder, assault with intent to kill, assault with intent to murder, or at least 2 crimes of violence as defined in D.C. Code § 22-3201(f).

The court must state in writing that one or more of the aggravating factors exist in order to impose a sentence of life without parole.

Other aggravating factors might include:

- Serious, debilitating or permanent injury inflicted on the victim
- Offense was committed against or caused serious injury to a law enforcement officer, firefighter, emergency medical personnel, correctional officer, judicial officer, etc. while engaged in the exercise of that person's official duties or because of the exercise of that person's official duties
- Defendant involved a minor in the commission of the offense
- Defendant held public office at the time of the offense, and the offense was related to the conduct of that office

This second option does not solve the problem that arises if a judge, instead of imposing a life sentence, imposes a very long term of years which, as a practical matter, amounts to a natural life sentence without the requisite notice or findings.

OPTION #3: Define the term “life” to mean a term of years.

Life might be defined to mean “a term not to exceed x years.” This language allows the court to select any term of years, from no years (or any mandatory minimum term), up to x years. The court, then, cannot impose a term of imprisonment greater than x , regardless of the nature of the offense or the characteristics of the offender.

There is no apparent consistency among other jurisdictions in addressing this matter. Alaska eliminated the “natural life” sentence, and set 99 years as the maximum sentence in its place. Indiana converted life sentences to a term of 50 years for all offenses formerly carrying a life sentence, with the exception of first degree murder. Maine set the maximum sentence at 40 years for offenses formerly carrying a life sentence, with the exception of aggravated murder in the first degree.

The Commission recognizes a potential drawback of any system that replaces life sentences with maximum terms of years. These maximum terms then become sentence caps, which cannot be exceeded even in the most egregious cases. Therefore, under any such approach, while the court need not sentence up to the maximum, the maximum authorized term of imprisonment must be high enough to accommodate the most serious example of the crime in each category.

After considering these and other options, the Commission recommends that “life without release” be retained as a sentencing option for all offenses for which life without parole is available currently, and that the aggravating factors and procedural safeguards remain in place for sentences of “life without release” in the new determinate system. For all other life offenses, the Commission recommends that “life” remain the statutory maximum sentence, but that “life” be defined to mean 60 years for first degree murder,

40 years for second degree murder, and 30 years for the remainder of the current life offenses. The Commission considered several other numerical equivalents for life and, for the following reasons, ultimately settled on these as the maximum terms that best reflect the values embodied in current law.

First, by choosing graduated maximum penalties rather than the same maximum for all life offenses, the Commission's proposal reflects the value placed on human life, making the maximum sentence for a premeditated killing (and felony murder) the longest and making the maximum sentence for other malicious homicides somewhat shorter, but still longer than the maximum sentence for other serious offenses which do not involve the malicious or wanton taking of a human life.

Second, the Commission's proposal preserves the proportionality embodied in the D.C. Code. Under current law, the maximum (and mandatory) sentence for first degree murder is 30 years to life,⁵ the maximum sentence for second degree murder is 20 years to life, and the maximum sentence for all other life offenses is 15 years to life. In setting maximum sentences in the determinate sentencing scheme of the future, the Commission's proposal of 60, 40, and 30 years uses the same proportionality that exists in current law for maximum minimum sentences in the indeterminate sentencing scheme.

Having considered the various options, and their respective benefits and drawbacks, the Commission proposes the following recommendations with respect to life sentences in the new, determinate sentencing system:

Recommendation 12: *That the Council retain a maximum sentence of life without release for first degree murder and all other offenses currently carrying a potential sentence of life without parole.*

⁵ This example assumes that life without parole does not apply in a given case, or that the court elects not to impose a sentence of life without parole.

Recommendation 13: That the Council retain the requirement that an aggravating factor must be found present, pursuant to D.C. Code §§ 22-2404.1, 4120, in order for the court to impose a sentence of life without release.

Recommendation 14: That the Council adopt a provision that establishes 60 years imprisonment as the maximum sentence for first degree murder, in cases that do not meet the requirements for a sentence of life without release.

Recommendation 15: That the Council adopt a provision that establishes 40 years imprisonment as the maximum sentence for second degree murder.

Recommendation 16: That the Council adopt provisions that establish 30 years imprisonment as the maximum sentence for all other offenses currently carrying a maximum penalty of life imprisonment.

Anomalies

The interaction between the Revitalization Act, existing provisions of the D.C. Code, and the Commission's recommendations on supervised release and life sentences results in at least three anomalies of which the Council should be aware.

First, under the Commission's recommendations, the maximum allowable initial term of imprisonment for three felony offenses that do not now carry a penalty of life imprisonment can exceed the maximum allowable initial term of imprisonment for all life offenses except first and second degree murder. Under current law, the statutory maximum sentence for manslaughter, first-degree burglary, and felony drug offenses is 30 years. The recommended period of supervised release for these offenses is five years, and the maximum allowable term of imprisonment imposable upon revocation of supervised release ("revocation term") pursuant to 18 U.S.C. § 3583(e)(3) is three years. Under the Commission's recommendations regarding supervised release, the maximum initial period of imprisonment for these three felonies is 27 years (30 year statutory maximum sentence less a three year revocation term). Under the Commission's

recommendations regarding life offenses, the maximum sentence for life offenses other than first and second degree murder is 30 years. The recommended period of supervised release for these offenses is five years, but the maximum allowable revocation term pursuant to 18 U.S.C. § 3583(e)(3) is also five years. Accordingly, the maximum initial period of imprisonment for these life offenses becomes 25 years (30 year statutory maximum sentence less a five year revocation term), which is two years less than the maximum initial period of imprisonment for first-degree burglary, manslaughter, and felony drug offenses.

While anomalous and worthy of the Council's attention, the Commission does not view this as a serious problem. It is anticipated that maximum determinate sentences for these three non-life felony offenses will be exceedingly rare, if not non-existent, especially felony drug offenses and unarmed manslaughter. Moreover, whether the maximum initial period of imprisonment for any of these offenses is 25 or 27 years, either term is quite severe when one considers that the offender must serve 85% of whatever determinate sentence is imposed, and stands to serve three or five more years, as the case may be, if supervised release is revoked. However, if the Council wishes to address this problem, the Commission has considered several possible solutions, and stands ready to advise the Council further upon request.

Second, the Commission's recommendation regarding life offenses makes the maximum determinate sentence for manslaughter while armed (a life sentence pursuant to D.C. Code § 22-3202) and for unarmed manslaughter the same – 30 years. Again, the Commission does not view this as a major problem. Historically, the maximum sentence for unarmed voluntary and involuntary manslaughter was 15 years until recently, when

the Council increased the penalty to 30 years. In addition, under current law, the maximum sentence for second degree murder is the same as the maximum sentence for second degree murder while armed (20 years to life) and the sentence for first degree murder is the same as the sentence for first degree murder while armed (30 years to life or, in some cases, life without parole). Under the Commission's recommendations, those maximum sentences remain the same: 40 years for second degree murder and second degree murder while armed, and 60 years for first degree murder and first degree murder while armed. There is a certain symmetry, then, in having the maximum sentence for manslaughter and manslaughter while armed both set at 30 years, although it does represent a deviation from current law, under which manslaughter carries an indeterminate sentence of up to 30 years, and manslaughter while armed carries an indeterminate sentence of up to life imprisonment.

Third, the current mandatory sentence for carjacking while armed is 15 to 45 years. D.C. Code § 22-2903(b)(2). However, the Council chose not to classify carjacking as a crime of violence under D.C. Code § 22-3201(f), so that carjacking while armed does not carry a penalty of life imprisonment pursuant to D.C. Code § 22-3202. Since the statutory maximum sentence for armed carjacking is 45 years and not life, under the Commission's recommendations the maximum authorized term of supervised release is five years, and the revocation term is three years pursuant to 18 U.S.C. § 3583(e)(3). Also, since the current statutory maximum is for a term of years and not life, the maximum term of incarceration that can be imposed at initial sentencing is not 25 years, as with other crimes of violence while armed, under the recommendations of the Commission, but 42 years (45 year statutory maximum sentence less a three-year

revocation term). To address this anomaly, if the Council were to include carjacking in the definition of a “crime of violence,” pursuant to D.C. Code § 22-3201, the maximum indeterminate sentence for carjacking while armed, like all other crimes of violence, becomes 15 years to life instead of 15 to 45 years,⁶ and the mandatory minimum sentence of 15 years remains in place. Then, upon conversion, the maximum determinate sentence for carjacking while armed joins the other life offenses at 30 years. At that point, the maximum revocation term becomes five years, bringing carjacking while armed into line with all other armed crimes of violence.

Upon closer scrutiny, additional anomalies like those described above may be discovered. The Commission has identified these three to date. The Council may wish to address these matters as it considers the Commission’s recommendations.

⁶ To avoid ambiguity, it would also be advisable to amend D.C. Code § 22-2903(b)(2) by striking everything after the phrase “not less than 15 years.”

CHAPTER 5

YOUTH REHABILITATION ACT

The Youth Rehabilitation Act (“YRA”)¹ has as one of its central features an indeterminate sentence with release on parole for youthful offenders who demonstrate successful rehabilitation while under sentence. The Revitalization Act abolished parole and mandated determinate sentencing for all subsection (h) offenders, including those between the ages of 16 and 22 at the time of conviction, thus rendering the early release provisions of the YRA inapplicable to that group of offenders. For a variety of reasons discussed elsewhere in this report, the Commission recommends conversion to determinate sentencing for all felony offenses and misdemeanors, which, if adopted, would eliminate the possibility of early release for all youthful offenders. Nevertheless, because rehabilitation of youthful offenders remains an important sentencing goal, the Commission recommends retention of the YRA for all eligible youthful offenders, including the possibility of having the conviction set aside for youthful offenders who demonstrate successful rehabilitation while on probation or during their period of supervised release after incarceration.

This chapter describes briefly the history of the YRA, the sentencing options it provides for eligible youthful offenders, and the Revitalization Act’s impact on its applicability and effectiveness.

Congress enacted the Federal Youth Corrections Act (“FYCA”) in 1950. FYCA sentencing was available to young offenders sentenced in District of Columbia courts. Its

¹ Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Code § 24-801 *et seq.*).

approach to handling young offenders aged 18-22 years at the time of conviction emphasized rehabilitation, not punishment. In October 1984, Congress repealed the FYCA as part of its Omnibus Crime Control Act, the legislation that adopted determinate sentencing in the federal system.² In 1985, the Council enacted the “Youth Rehabilitation Act of 1985.” D.C. Code § 24-801 et seq. The legislation was intended to fill a void remaining after the Congress’ repeal of the FYCA. The Council record reflected widespread community support for the Youth Rehabilitation Act.

Generally, the YRA is designed to achieve three goals:

1. to give the court flexibility in tailoring sentences to a particular youth offender’s needs,
2. to separate young offenders from more mature, experienced offenders, and
3. to provide youth offenders a chance to start anew, free from the social and economic stigma of a criminal record, by setting aside the conviction of those who succeed.

For the purposes of YRA sentencing, a “youth offender” is a person less than 22 years old convicted of a crime other than murder. D.C. Code § 24-801(6). A “committed youth offender” means a youth offender committed for treatment under the YRA. D.C. Code § 24-801(1). Youth offenders are to be committed for treatment and rehabilitation in facilities separate from adults, with adequate programs for their care, education, training and protection. Within the separate facilities, youth offenders are to be separated according to their needs for treatment. D.C. Code § 24-802. The court has three sentencing options for eligible youth offenders. It may:

1. suspend the imposition or execution of sentence, place the youth offender on probation, and order the youth offender to perform community service (unless the youth offender is physically or mentally impaired in such a way that community service is unjust or unreasonable), D.C. Code § 24-803(a);

² Pub. L. 98-473.

2. sentence the youth offender for treatment and supervision for any period up to the maximum term of imprisonment otherwise provided by law, D.C. Code § 24-803(b); or
3. deny YRA benefits and sentence the youth offender under any other applicable penalty provision or sentencing alternative, if the court finds that he or she will *not* derive benefit from treatment, D.C. Code § 24-803(d).

If the court sentences a youth offender under option 2, the offender is eligible for release on parole “whenever appropriate,” i.e., whenever he or she has demonstrated successful completion of a rehabilitation program during the period of commitment. D.C. Code § 24-804(a).

The Revitalization Act preempts the YRA in at least two fundamental ways. First, the early release provisions of YRA sentencing are incompatible with the determinate, no-parole system the Revitalization Act mandates for all subsection (h) offenses, and which the Commission recommends for all other offenses. Second, because the Revitalization Act directs the Federal Bureau of Prisons (“BOP”) to house the District of Columbia’s felony offenders, including those sentenced under the YRA, young offenders will no longer be segregated from adult populations in separate institutions. Instead, they will be classified like all other offenders using the BOP’s scientifically validated, objective criteria, which allow the BOP to house offenders with others who have similar characteristics in terms of propensity for violence, history of escape, etc..

YRA begins with certain basic assumptions: that a young offender can be rehabilitated; that rehabilitation can happen when the young offender is provided treatment, supervision, and training in an appropriate setting; and that he or she should be released upon his or her rehabilitation. A youth offender, in effect, can and should be

“paroled” as soon as “rehabilitation” is accomplished. Pursuant to the terms of the Revitalization Act, a person who commits a subsection (h) felony on or after August 5, 2000 receives a determinate sentence, serves at least 85% of the sentence imposed in prison, and serves a term of supervised release following release from imprisonment. The Truth in Sentencing Amendment Act of 1998 does not expressly distinguish between youth offenders and adult offenders, but pursuant to the Revitalization Act, a youth offender convicted of a subsection (h) felony is subject to the same determinate sentencing system as any other adult offender, and cannot be released early from his or her determinate sentence.³ In this regard, the Revitalization Act has plainly preempted the early release provision of the YRA. YRA sentencing remains an option only for age-eligible youth offenders who are either:

- convicted of any offense other than murder *and* sentenced to probation only, or
- convicted of a non-subsection (h) offense and sentenced “for treatment and supervision,” to the extent that educational, vocational, training, or rehabilitative programs are available, although these offenders would no longer be segregated from adult offenders within BOP’s facilities.

The District of Columbia government retains little authority to house, control, supervise, educate, or treat YRA-sentenced offenders for extended periods. YRA probationers would be supervised by a federal agency, the Court Services and Offender Supervision Agency (“CSOSA”). YRA-sentenced felons will serve any period of confinement in a facility operated by, or providing services under contract with, the

³ The Commission’s recommendation of a unitary system for *all* offenders would eliminate the distinction between youth offenders convicted of subsection (h) felonies and those convicted of non-subsection (h) felonies.

federal Bureau of Prisons (“BOP”). As long as these youthful offenders are under the supervision of federal agencies (CSOSA and BOP), the District can neither control them, nor dictate the conditions of their confinement, treatment, education, or supervision.

The segregation of youthful offenders from more experienced adult offenders was a central ingredient of the YRA, and its predecessor, the FYCA. BOP, which is now responsible for housing the District’s sentenced felons, has found segregating young adult offenders from its general population is detrimental to the offenders and to the good order of the prisons. In fact, its experience conclusively links an inmate’s age to the likelihood of institutional misconduct; the younger the inmate, the more likely he will engage in disruptive behavior during his confinement. This disruptive behavior makes it difficult for the inmate and for others to participate effectively in the programs that assist inmates with successful re-entry to society following release from prison. BOP’s research demonstrates that, when young offenders are housed in facilities with the general adult population, the occurrence of serious misconduct decreases.⁴ To house young offenders together not only presents a significant security risk, but also decreases the chances that offenders may successfully complete available educational or training programs. From the perspective of the BOP, it is far more productive to integrate young offenders with other inmates having similar criminal histories and other characteristics. Accordingly, BOP intends to house YRA offenders with similarly-classified adult offenders. For example, medium security YRA offenders will be housed with other medium security prisoners, and will not be housed with either minimum security YRA offenders or maximum security YRA offenders. The District of Columbia has no authority to control

⁴ Saylor, W.G. YCA Age Blending and Misconduct. Manuscript, U.S. Bureau of Prisons, Washington, D.C., (1983).

the policies, procedures, or operations of a federal government agency, and the Council cannot enact legislation in the form of amendments to the YRA or in any other form by which the BOP would be bound.

Although youth offenders convicted of subsection (h) crimes cannot be released from their determinate sentences before serving 85% of the sentence imposed, and the same would be true of all youth offenders if the Council adopts the Commission's recommendation of a unitary system, and even though youth offenders will no longer be housed in separate facilities, the Commission strongly believes that the rehabilitative principles of the YRA should be preserved. To that end, the Commission recommends that a youth offender convicted of any crime other than murder continue to be eligible to have his or her conviction set aside under either of two circumstances:

1. if the judge places the youth offender on probation (suspending either the imposition of or execution of all or part of the sentence), and the youth offender demonstrates rehabilitation by successful completion of the probationary term; or
2. if the judge sentences the youth offender to prison and, during the period of supervised release following incarceration, the offender demonstrates rehabilitation by successful completion of the term of supervised release.

The Commission intends to provide the Council with proposed amendments to the YRA to reflect the elimination of parole, the elimination of the segregation requirement, and new references to the federal entities that will now be responsible for housing and supervising District youth offenders, as well as provisions that will tie set aside of conviction to successful completion of probation and supervised release in accordance with the foregoing recommendation.

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2. if the judge sentences the youth offender to prison and, during the period of supervised release following incarceration, the offender demonstrates rehabilitation by successful completion of the term of supervised release.

The Commission intends to provide the Council with proposed amendments to the YRA to reflect the elimination of parole, the elimination of the segregation requirement, and new references to the federal entities that will now be responsible for housing and supervising District youth offenders, as well as provisions that will tie set aside of conviction to successful completion of probation and supervised release in accordance with the foregoing recommendation.

Recommendation 17: *That the Council retain set aside provisions for all eligible young offenders tied to the successful completion of probation and supervised release.*

CHAPTER 6

INTERMEDIATE SANCTIONS

The Advisory Commission on Sentencing Establishment Act of 1998 directs the Commission to report to the Council on “the assessment of intermediate sanctions currently available in the District’s criminal justice system,” and to make “a recommendation for intermediate sanctions that should be made available in the District of Columbia’s criminal justice system, including (1) proposals for alternatives to incarceration for suitable offenders, (2) the estimated cost of such programs, and (3) recommendations for rules or principles to guide a judge’s imposition of intermediate sanctions as part of a criminal sentence.”

This chapter provides an overview of various forms of intermediate sanctions, a review of intermediate sanctions in the District of Columbia, the Commission’s proposal for expanding intermediate sanctions at time of sentencing, and the Commission’s current thinking regarding rules for the imposition of intermediate sanctions.

Overview of Intermediate Sanctions

Intermediate sanctions fall between the traditional sentencing alternatives of either probation or prison. However, intermediate sanctions may be used as conditions of probation, with more stringent conditions than those typically associated with standard probation. Intermediate sanctions can also be used as conditions of parole or supervised release, as an offender re-enters the community after prison release. Intermediate sanctions programs, sometimes called community corrections or alternatives to incarceration, serve multiple goals, including traditional goals of correctional programs

such as incapacitation, deterrence, and rehabilitation.¹ For example, incapacitation is an important goal of home confinement and electronic monitoring, restricting offenders to their homes as a means of eliminating opportunities for many crimes.² In many intermediate sanction programs, an offender's activities are tracked frequently; opportunities to observe and interdict criminal behavior are a hallmark of these programs.³ Another goal has emerged, cost control, as intermediate sanctions are viewed as less expensive alternatives to imprisonment.

However, the popularity of intermediate sanctions programs may be traceable to the rehabilitative emphasis of many programs. For example, drug courts focus on modifying offender behavior, typically using behavior contracts that ensure swift response to violations, while providing access to treatment programs that address underlying problems that may be motivating offender misbehavior. After reviewing national efforts, the District of Columbia and its Drug Court will be examined in greater detail later in this chapter.

Although most jurisdictions in the United States make use of intermediate sanctions programs, these programs can vary greatly in terms of type, content, and the

¹ Incapacitation restricts an offender's activities, thereby reducing the opportunities for criminal behavior. Of course, imprisonment is one of the criminal justice system's main methods of incapacitation. Increasingly, however, the surveillance activities entailed in many intermediate sanctions also serve to incapacitate offenders. Deterrence provides a disincentive to commit additional crimes, usually by increasing the certainty, severity or celerity of punishment. Enforcement of the conditions of supervision through drug testing and graduated sanctions are common forms of deterrence found in many intermediate sanctions programs. Rehabilitation focuses on treatment goals for offenders, goals that if met can lead to reduction or elimination of criminal behavior. Treatment goals can address offender attitudes in the areas of employment, peers, authority, and substance abuse. Evidence is growing that well-designed intermediate sanctions programs with treatment components do reduce re-offending (Gendreau, Cullen, and Bonta, 1994).

² Home detention may be an effective means of preventing future crimes such as burglary. However, home detention is not an effective means of incapacitation for drug distribution, as an offender can sell drugs from inside his home. For this reason, offenders should be carefully selected to provide good matches between programs and individual offender profiles.

³ Of course, other goals are often served simultaneously, including deterrence in the example in footnote 2.

amount and quality of research evaluating them. The literature on intermediate sanctions in the United States tends to fall into two categories: 1) programs that have been extensively evaluated and found ineffective in lowering recidivism,⁴ have higher technical violations and revocation rates, and are comparable to costs for imprisonment (intensive supervision, boot camps); and 2) programs that have had little systematic evaluation (community service, day fines, drug courts).

The largely negative evaluations of intermediate sanctions programs of the 1970's and 1980's are often traced to the failure of these programs to couple sanctions with effective treatment. One of the largest misperceptions regarding intermediate sanctions programs is that "nothing works" in the area of rehabilitation. Recent scientific studies demonstrate that some forms of correctional treatment "work."⁵ Existing intermediate sanctions programs, including those currently being developed in the District of Columbia, are actively using this scientific research to craft effective programs.

Another misperception commonly attributed to intermediate sanctions is that intermediate sanctions are a panacea to "fix" society's crime problems, promising unrealistically large cost savings and unrealistically high rehabilitation levels.⁶ Staggering increases in prison populations since the mid-1980's, coupled with unacceptable levels of drug addiction and recidivism, have led some observers to

⁴ Recidivism occurs when a released offender commits another offense. Estimates of recidivism vary with the length of the follow-up period and the measures selected. Common measures of recidivism include re-arrest for a felony or serious misdemeanor or reconviction for a felony or serious misdemeanor.

⁵ Andrews, D.A., Ivan Zinger, Robert Hoge, James Bonta, Paul Gendreau, and Francis T. Cullen, "Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-analysis," *Criminology* 28:374-409 (1990); Palmer, Ted, *The Re-emergence of Correctional Intervention*, Newbury Park, CA: Sage (1992); and Prendergast, Michael L., M. Douglas Anglin, & Jean Wellisch, "Treatment for Drug-abusing Offenders Under Community Supervision," *Federal Probation* 59:66-75 (1995).

⁶ *Preventing Crime: What Works, What Doesn't, and What's Promising*, L. Sherman, et. al., 1998, NIJ. See also, Dean-Myrda, M. and F. Cullen, *The Panacea Problem*, Community Corrections, edited by J. Petersilia (1985).

overlook the very real difficulties in producing effective intermediate sanctions at affordable costs. Scientific evaluations of intermediate sanctions programs provide caution in succumbing to this panacea approach.

Appendix A-2 summarizes features of many of the most common forms of intermediate sanctions, including intensive supervision, home confinement/electronic monitoring, day reporting centers, boot camps, community service, day fines, drug courts and drug treatment, and work release. A realistic view of intermediate sanctions combines the very real promise of improved criminal justice outcomes, with the very real problems of implementing effective programs.

Intermediate Sanctions in the District of Columbia

Historically, the District of Columbia has produced several innovations in the area of intermediate sanctions, including most prominently the District of Columbia Drug Court. However, attempts to use intermediate sanctions to combat drug abuse and crime have reached only a tiny fraction of the total offender population. As a result, judges and paroling authorities were often confronted with a dichotomous choice, either imprisonment or standard probation supervision. This system exhibits little flexibility in dealing with middle-range violations that should be taken seriously but may not merit a long period of imprisonment.

In recent years, three principle means have been used to deliver intermediate sanctions programs in the District of Columbia -- pretrial supervision (through the drug court and other interventions), probation services, and parole services. Under a system of graduated sanctions available in drug court, offenders may receive sanctions that correspond more closely to the degree of violation, for example short periods of shock

incarceration rather than longer prison sentences. Under a graduated system, offenders may also receive rewards or incentives for law-abiding behavior. Historically, while there is evidence that these drug court programs worked, because they tend to be labor intensive for both the court and supervision personnel, only a small fraction of offenders could be helped through these programs due to lack of resources.

Aspects common to intermediate sanctions programs include surveillance such as drug testing, curfews, frequent reporting requirements, and short periods of incarceration to sanction minor violations. Intermediate sanctions commonly include a services component, such as education services, basic life and job skills training, and drug treatment. In the District of Columbia, drug courts (and accompanying treatment programs), probation, and parole have provided some of these elements to offenders.

Drug Court

One of the primary intermediate sanctions programs in the District of Columbia, and one of the most successful, is the Drug Court. All offenders charged with nonviolent misdemeanors are eligible for the drug court programs at the pretrial stage, while the only felony charges that are eligible for drug court pretrial placement are distribution or possession with intent to distribute a controlled substance, theft, unauthorized use of a vehicle, uttering, forgery, receiving stolen property, Bail Reform Act violations, fraud, and escape/prison breach.⁷ These offenders must meet certain criteria such as having no pending charges for a violent offense (including weapons charges) and no prior violent felony convictions in the last 10 years, and all co-defendants must be eligible for the

⁷ The District of Columbia Pretrial Services Agency, Superior Court Drug Intervention Program: The Drug Court Manual of Policies and Procedures (1999).

program.⁸ In addition, the offender must not currently be on probation or parole for any violent misdemeanor or felony. The Drug Court utilizes four programs: 1) the Superior Court Drug Intervention Program (SCDIP); 2) Sanctions Team for Addiction and Recovery (STAR); 3) Pretrial HIDTA; and 4) Probation HIDTA (High Intensity Drug Trafficking Area).⁹

High Intensity Drug Trafficking Area

The HIDTA program is designed to provide a service delivery system that links criminal justice and treatment agencies through unified policies and procedures to reduce recidivism and substance abuse.¹⁰ The HIDTA treatment process consists of: 1) the intake phase; 2) pre-treatment assessment; 3) assignment to treatment. The first two stages are conducted at the Assessment Orientation Center (AOC) where offenders placed into the HIDTA program by the drug court are assessed. The AOC, a 21-bed unit on the grounds of the DC General Hospital, provides screening for all DC HIDTA clients for placement into the appropriate treatment program. Clients can remain at the facility for up to 28 days to allow sufficient time to clinically screen and assess each individual going through the intake process. During the pre-treatment assessment phase, the treatment team concludes its assessment with a recommendation for an inpatient or outpatient program(s) best suited to the client's specific psychological, social, physical, environmental, and spiritual needs.

⁸ Harrell, A., Drug Courts and the Role of Graduated Sanctions. Washington, DC: National Institute of Justice (1998).

⁹ Council for Court Excellence memorandum to the Commission (March 6, 2000).

¹⁰ Court Services and Offender Supervision Agency, Personal Communication (March 1, 2000).

To be eligible for the HIDTA program, an offender must: 1) be a D.C. resident who has been adjudicated as an adult; 2) be under the supervision of the criminal justice system; 3) have committed a drug-related offense or have had a previous drug treatment experience; 4) have a primary diagnosis of substance dependency; 5) not have any physical, medical, or psychiatric condition which would prevent the offender from participating fully in the treatment program; 6) have a minimum of 18 months community supervision (parole or probation clients).

The typical HIDTA client has two or more drug-related arrests, other criminal offenses, dependency problems, an inconsistent work pattern, and strong family support but high-risk community environment, but some may have a history of mental dysfunction and/or psychiatric problems, no marketable skills, no work history, little or no literacy, and no family support.

The Superior Court Drug Intervention Program

The Superior Court Drug Intervention Program (SCDIP) is an outpatient substance abuse treatment located at the Pretrial Services Agency's administrative offices. Offenders can also be assigned to other treatment facilities in and around the D.C. metropolitan area. The treatment program lasts a minimum of five months, after which, if successfully completed, the offender would likely receive a probation sentence. The SCDIP outpatient program consists of four phases of treatment: 1) an orientation and assessment phase during which each offender receives a complete diagnostic evaluation and is assigned a case manager who will develop a treatment plan for the offender; 2) stabilization and cognitive restructuring that focuses on relapse prevention and identifying and changing criminal thinking through therapy; 3) a transition phase that

prepares the offender for a drug-free community reintegration through continuing relapse prevention education and exploring educational and vocational opportunities; 4) a maintenance phase during which a discharge plan is developed that prescribes aftercare activities focusing on sobriety. During each of these four phases, the offender is subject to regular drug testing and must attend weekly meetings with other clients and the treatment team.¹¹

With funding from the National Institute of Justice (NIJ) and the Center for Substance Abuse Treatment (CSAT), the Urban Institute conducted an evaluation of the effectiveness of three SCDIP interventions between September 1994 and January 1996 in reducing drug use and criminal activity and increasing voluntary participation in drug treatment and aftercare following the program. The experiment compared the drug use and criminal behavior of drug felony offenders randomly assigned to one of three dockets: 1) a *sanctions docket*, which offered a program of graduated sanctions with weekly drug testing, referrals to community-based treatment, and judicial monitoring of the drug use of the offenders; 2) a *treatment docket*, which offered weekly drug testing and an intensive court-based day treatment program; or 3) a *standard docket*, which offered weekly drug testing and judicial monitoring of drug use and encouragement to seek community-based treatment programs, but did not allow for the transfer to dockets offering graduated sanctions or day treatment programs. Features of all three SCDIP programs include early intervention during the pre-trial stage, judicial involvement in monitoring offender progress in the program, frequent drug testing, and immediate access to information on offender drug use.

¹¹ D.C. Pretrial Services Agency (November 1999).

The two experimental programs (the sanctions and treatment dockets) tested alternative approaches to these objectives. The treatment approach was a comprehensive program designed to develop skills, boost self-esteem, and provide community resources needed by drug dependent offenders to abandon a drug use and criminal lifestyles. The sanctions approach, on the other hand, emphasized behavior modification, closely monitoring offender drug test results and following up with quick and certain administration of clearly defined punishments for positive drugs tests or missed tests. The focus of the sanctions approach was case management. Offenders were referred to community-based treatment only when needed.¹²

When examining offenders during the month before they were sentenced, offenders on the sanctions docket were more than three times as likely to be found drug free when tested compared to the standard docket group. Offenders on the treatment docket were less likely to report drug use, less likely to get arrested for drug offenses, but just as likely to be arrested for any other offense,¹³ compared to the standard docket group.

¹² Harrell, A., Cavanaugh, S., and Roman, J., Findings from the Evaluation of the D.C. Superior Court Drug Intervention Program. Unpublished Urban Institute Report (1998).

¹³ To compare repeat criminal activity, official D.C. arrest records were reviewed of the samples for the first year of release from the programs. After 100 days from release, 2% of the sanctions program participants had been rearrested compared to 6% of the control (standard) docket offenders. The rearrest rates were 11% for the sanctions group and 17% for the control group, respectively, after 1 year. Treatment participants were consistently less likely to report any or weekly use of drugs than the standard docket group. On the other hand, the researchers found that participants in the treatment group were not less likely than the standard docket sample to be arrested in the year following sentencing, 26% compared to 27% respectively. However, treatment clients were significantly, less likely than standard docket participants to be arrested for a drug offense during the same time period. Comparisons are hampered by the low participation rates in the treatment programs by those who were eligible. The researchers concluded that a more rigorous assessment procedure would better match treatment programs to clients' needs, a stronger incentive program for offenders to participate and remain in programs, and increases in treatment quality and facilities were needed to increase participation rates. Harrell, 1998; Harrell et al., 1998.

Intermediate Sanctions as Conditions of Probation

Intermediate sanctions are used in the District of Columbia as a condition of probation, parole, or supervised release, increasing sanctions and services beyond the standard levels. To provide a baseline of existing probation operations, CSOSA commissioned a study of existing supervision policies and practices in the District of Columbia. Dr. Faye Taxman and colleagues at the University of Maryland prepared a report that included a discussion of intermediate sanctions and risk assessment practices in the District in place in 1997. The study includes information drawn from active probation and parole case files during the period from October 1996 through October 1997, including 882 probationers, and included information on offender characteristics, supervision characteristics, supervision services, and the involvement of the court and service providers. In general, the study documented the limited access to programs to address offender needs and sanctions to address offender violations.¹⁴ Further, the study documented need for improvements in offender surveillance and sanctions.¹⁵

Risk assessment is an essential, formal process that assigns offenders to appropriate levels of surveillance using an empirically tested method. The study found that risk assessment practices varied considerably. Fifty-five percent of probationers received no classification. The study found that risk assessment instruments in use were not particularly effective at discriminating between higher and lower risk offenders. One

¹⁴ The study found that 42% of probationers had special conditions imposed by the Judiciary. The most common special conditions for probationers was residential treatment (22%) and intensive supervision (7%). The study found that probationers tended to have experience with detoxification programs (14%), outpatient treatment programs (20%), residential programs (17%), and day treatment programs (21%).

¹⁵ Among probation cases, offenders were under supervision for a median period of about 1 year, 4 months. During supervision, 45% of probationers had at least one infraction. About 18% had a positive drug test, while 12% had a new arrest. Failure to report occurred in 46% of cases.

means of assessing the effectiveness of classification is examination of re-arrests. The study concluded that relatively slight differences in re-arrest distinguished those classified as higher and lower risk offenders.

Intermediate Sanctions as Conditions of Parole and Supervised Release

As with probation, intermediate sanctions are used in the District of Columbia as a condition of parole and, in the future, will be used as a condition of supervised release at more intensive levels than standard parole supervision. CSOSA's study of existing supervision policies and practices in the District of Columbia includes information drawn from 407 parolees with active parole case files during the period from October 1996 through October 1997. Data collection included information on offender characteristics, supervision characteristics, supervision services, and the involvement of the Court and service providers. In general, the study found limited access to programs to address parolee needs and sanctions to address parole violations.¹⁶ This finding underlines the need for enhanced re-entry services in the new system of supervised release, as more offenders found treatment in prison than after re-entry to the community.

Risk assessment, assigning parolees to appropriate levels of surveillance, occurred in 83% of these cases. The study found that risk assessment instruments in use were not particularly effective at discriminating between higher and lower risk offenders. The study concluded that relatively slight differences in re-arrest distinguished those classified as higher and lower risk offenders.

¹⁶ The study found that 22% of parolees had special conditions imposed by the Parole Board. The most common special condition for parolees was drug treatment (6%). The study found that parolees tended to participate in treatment programs while in jail or prison (56%) and few participated in community treatment programs (less than 10%). The average parolee was under supervision for almost five years, with 34% on parole for between 5 and 10 years, and 15% on parole for more than 10 years. Among parole cases, 69% of parolees had at least one infraction. About 34% had a positive drug test, while 28% had a new arrest.

Treatment Needs

Treatment capacity fell well below treatment needs in the District of Columbia in 1999 according to CSOSA, but CSOSA is expanding its capacity. For example, CSOSA estimates that the annual need for residential treatment facilities was 784 beds, but capacity was 100 beds in FY 1999. Despite a 126% increase in residential beds in FY 2000 (to 226 beds), the District appears to need an additional 558 beds. According to CSOSA, a substantial gap exists between need and capacity in outpatient facilities, transitional programs, programs for women with children, sex offender programs, and detoxification centers. However, CSOSA continues to increase capacity in these areas.

Current Plans

CSOSA expects to reduce recidivism among probationers, parolees, and offenders on supervised release through the use of better risk and needs assessment instruments, individualized case management, appropriate treatment, and other services. The initial risk and needs assessment will classify offenders for the purposes of surveillance and rehabilitation. Risk assessment measures offender attributes, such as prior criminal activity, to assess current risk levels. Effective risk assessment can ease the public's fears regarding offender placement in the community by separating offenders with who pose "acceptable" risks from those whose risk is unacceptably high. Needs assessment is designed to identify and target areas of individual need, such as substance abusing behaviors, that are associated with criminal activity and become the focus of future programming.

CSOSA individualized case management refers to efforts to ensure that, after assessment, offenders are placed in appropriate treatment programs. Performance in these programs is monitored for signs of success and failure. The case management model is currently in use in most drug court programs including the successful Superior Court program. Case management can be coupled with surveillance¹⁷ to ensure that offenders adhere to the conditions of supervision while receiving services that address underlying risk factors such as drug addiction. CSOSA will enter into performance contracts with offenders, so that incentives and sanctions are laid out in advance as conditions of probation, parole or supervised release.

The next aspect of CSOSA's supervision programs is the provision of appropriate drug treatment and other support services, as determined by needs assessment, designed to assist offenders as they remain in or re-enter the community. Since 1993, treatment services in the District of Columbia have diminished dramatically. Detoxification beds available through the D.C. Addiction Prevention and Recovery Administration (APRA) between 1993 and 1999 decreased from 105 to 50. During the same period, the number of residential treatment slots fell from 379 to 153. The number of outpatient contracts dropped from 1,207 to 999. In FY 2000, CSOSA received a significant increase in resources for treatment services, but still well below the documented need. Additional increases will be sought to support offenders as they re-enter the community.

Intermediate Sanctions in the Sentencing Process

While intermediate sanctions are neither a panacea for all that is wrong with the criminal justice system, nor an idealized set of programs lacking hard empirical support

¹⁷ Taxman and Sherman (1998).

of effectiveness, they are an important and often missing element at sentencing. Judges should have a broader array of choices at sentencing than imprisonment or standard probation.

Intermediate sanctions programs can be ordered either on the back end of a term of imprisonment or on the front end, immediately following sentencing. Back-end sanctions serve the purpose of re-integrating incarcerated offenders into the community, coupled with surveillance and rehabilitation goals. Front-end sanctions admit offenders at the time of sentencing, or after only a short period of “shock” incarceration, to intermediate sanctions programs, and are aimed at offenders who do not require prison but whose risk may be too great to be managed with standard probation. A judge typically controls initial access to front-end sanctions programs. Corrections officials typically control access to back-end sanctions programs.

Currently in the District, judges are limited in their ability to authorize intermediate sanctions in felony cases. Judges are unable to impose, as a condition of probation, a direct sentence to short periods of confinement in a secure facility or a community care center, to be followed by other less restrictive conditions. Judges cannot order work release in felony cases, although they may make non-binding recommendations to the Department of Corrections. The Council can provide judges with the authority to expand intermediate sanctions on the front end by amending the D.C. Code as follows.

Recommendation 18: *That the Council adopt an amendment to D.C. Code § 16-710 to read as follows:*

- (d) *As a condition of probation the court may order that the defendant remain in custody or in a community correctional center during*

nights, weekends, or other intervals of time, totaling no more than one year during the term of probation.

Cost Estimate

The Commission expects that a portion of the cost of this extension of front-end intermediate sanctions for felons will fall on the Court Services and Offender Supervision Agency. Although CSOSA provides no secure confinement or community care facilities, since placement in such custody will be a condition of probation, CSOSA will coordinate with the custodian to provide supervision and transitional services as is now the case with parolees transitioning to the community through community care centers. Under the Revitalization Act the cost of incarceration of sentenced felons is a responsibility of the Federal Bureau of Prisons. It is not clear that the Revitalization Act contemplated the possibility of felons being ordered to serve terms of “shock incarceration” or periods of work release as a condition of probation. Since all costs relating to sentenced felons were federalized, however, it seems consistent with the intent of the Act that the cost of “custody” as a condition of probation be borne by the federal agencies. Therefore, if the Council opts to amend D.C. Code § 16-710 as recommended by the Commission, the federal government would provide the financial resources for short periods of shock incarceration, probably to include per diem payments to the D.C. Department of Corrections for use of District facilities, or payments to local private contractors as appropriate.

CHAPTER 7

UNFINISHED BUSINESS

While the Commission has worked diligently over the past 15 months, several tasks remain ahead. Three major areas requiring further study are: 1) the need for, or the advisability of, sentencing guidelines or some other form of structured sentencing; 2) the development of a wider array of intermediate sanctions and alternatives to incarceration for use by judges in the context of non-incarcerative sentences and by the Parole Commission and CSOSA in the context of supervised release; and 3) assessing the impact on correctional populations of the change from indeterminate sentencing to determinate sentencing. This chapter describes what the Commission sees as the next steps in these three areas.

Structured Sentencing

During its deliberations, the Commission considered at great length several versions of a proposal that retained the current statutory maximum sentences, but would have required judges to not exceed certain maximum periods of imprisonment, which were in all cases lower than the statutory maximum sentences for the offense. Ultimately, the Commission rejected this approach at this time. While there is strong sentiment on the Commission for the development of some form of structured sentencing, the majority believed that adoption of any particular approach at the present time is premature for the following reasons:

- the available data on time served in the present system provide an inadequate platform on which to design a system that purports to be based on current practice;¹
- there has been insufficient time for the Commission to consider and debate normative principles of sentencing on which any such system should be based;
- additional time is needed to consider the proper weight to give an offender’s criminal history in any system of structured sentencing;
- the evidence of the need for such a system (for example, evidence of existing unwarranted disparity in sentencing) is inconclusive, at best;
- the particular proposal was flawed because, unlike other models, it contained caps on maximum sentences without any presumptive minimum sentences.

The Commission concluded that the better approach for the short term is to educate the judges on the conversion from indeterminate sentencing to determinate sentencing and to collect and analyze “before and after” data, watching for any evidence of unwarranted disparity in sentencing or unintended consequences. If such evidence is found, the Commission and the Council would have a much firmer foundation on which to build whatever model of structured sentencing the Council might choose to enact.

¹ The Commission continues its work on length of stay data, and will report to the Council when the analysis is complete. See Chapter 1, footnote 12.

Among states that have abolished parole for some or all offenses, many have taken further steps to structure sentencing decisions under the new determinate sentencing laws.² These structures have taken two forms: new statutory limits on sentences³ or sentencing guidelines.⁴ Both forms of structured sentencing are thought to reduce or eliminate the problem of unwarranted sentencing disparity, where offenders with similar crimes and similar criminal histories receive disparate treatment.⁵ Other states appear to have abolished parole without altering the structure of judicial decisions.⁶

Of those states that abolished parole with new statutory limits to sentences, states have 1) set a new maximum sentence imposable,⁷ 2) set a new sentencing range including both a minimum sentence and a maximum sentence,⁸ and 3) set a specific presumptive sentence with departure principles.⁹

Among states that abolished parole and instituted sentencing guidelines, some states have set presumptive guidelines that limit the judicial discretion to impose a sentence outside of the guidelines.¹⁰

² The Commission gratefully acknowledges the assistance of Mr. Reggie Fluellen of the Vera Institute, who provided background research on structured sentencing.

³ Examples include California, Arizona, New Mexico, Maine, and Illinois.

⁴ Examples include Minnesota, Washington state, North Carolina, Delaware, Virginia, and Kansas.

⁵ National Assessment of Structured Sentencing, 1996, p. 5

⁶ Mississippi is one example.

⁷ Maine

⁸ Illinois

⁹ California

¹⁰ North Carolina provides a presumptive range, and aggravated and mitigated ranges. Judges must select a sentence within the presumptive range, unless they find specific aggravating or mitigating circumstances as detailed in the criminal code. If the judge finds that an aggravating circumstance exists, the judge may sentence the offender within

Other states have set voluntary guidelines that guide the judicial selection of a sentence, but do not require the judge to remain within the recommended range. Any lawful sentence is authorized in a system of voluntary guidelines.¹¹ The Commission met in a special two-day session in November 1999 with representatives of three states with sentencing guidelines. The meeting took place under the auspices of the National Associates Program on State Sentencing and Corrections, a program run by the Vera Institute through cooperative agreement with the U.S. Department of Justice Corrections Program Office. Representatives from North Carolina, Delaware, and Missouri provided a range of ideas regarding sentencing guidelines approaches. After careful consideration, the Commission decided not to recommend a sentencing guidelines system at this time for several reasons. Development of a system of sentencing guidelines is a major undertaking, impossible to design well in the short period of time available. A second and related reason is that no informed decision on sentencing guidelines can be made in the abstract. Instead, a specific sentencing guideline framework must be constructed, and then examined in great detail.

Proponents of some form of structured sentencing cite the substantial changes underway and the uncertainty these changes bring. When the District of Columbia moves from indeterminate to determinate sentencing, judges must impose a single sentence in cases involving a term of incarceration, and the offender must serve at least 85% of that sentence. Offender exposure to prison time in the old

the aggravated sentencing range, but must place the sentence within that range. All sentences must fall within one or the other of the approved ranges.

¹¹ Virginia provides an example of voluntary guidelines. Judges may give any lawful sentence, but must provide a rationale for any departure on the sentencing guideline form. The legislature, which elects judges to eight-year terms, may review departures during the judicial re-election process. Maryland's guidelines are also voluntary.

system was lessened by good time credits and parole for most offenders. An offender's exposure in the new system may be greater unless the judge gives a sentence that equates to the previous indeterminate sentence, adjusted for parole and other credits. The expanded judicial discretion in the determinate sentencing system, if current statutory maximum sentences remain the same, can be reined in either through some form of structured sentencing, as described above, or through voluntary judicial action that generally attempts to replicate past practice.¹²

Whether sentencing guidelines are appropriate for the District of Columbia will require thoughtful study, because the implementation of guidelines raises a number of important policy issues. First, sentencing guidelines by design limit the discretion and power of judges, and many believe that in doing so, guidelines transfer some of that discretion and power to prosecutors – giving them too much power. Second, most believe that sentencing guidelines must be carefully drafted to allow judges some flexibility, but doing so too broadly can defeat the whole purpose of controlling discretion, and doing so too narrowly can turn the guidelines into a complicated or mechanistic process. Third, because guidelines can be voluntary or mandatory, with or without judicial review of sentences imposed, issues of jurisdiction and judicial workload have to be considered. Fourth, all of the state and federal guidelines contain an inherent fiscal “check and balance” which inhibits undue tinkering with the guidelines once they are adopted, particularly upward adjustments made to satisfy those favoring increased punishments: the legislature has to find a way to pay for any changes it makes to the

¹² The Superior Court Criminal Rules Advisory Committee has under consideration a Rule comparable to Rule 11(e)(1) of the Federal Rules of Criminal Procedure, which would enable judges to accept plea agreements in which the parties had bargained for a particular sentence, a sentence cap, or a sentence range with an agreed minimum and maximum

guidelines. In the District of Columbia, this inhibition arguably will be lessened by the fact that the District will not have to bear the cost of incarceration and supervision of felony offenders.

The Commission recognizes that, after further study, some form of structured sentencing may be advisable. However, the Commission recommends that the Council take no action at this time. Rather, we suggest that careful monitoring of the new sentencing system is in order over the next several months and that the Commission continues its consideration of some form of structured sentencing. We recommend that the Council charge the Commission to organize and conduct extensive training of judges and other interested parties regarding the switch to determinate sentencing. Based on interviews with judges, it is anticipated that judges, through voluntary action, will minimize the potential impact of determinate sentences by seeking generally to replicate past practice. *There will be no conclusive evidence regarding the net effect of the transition from indeterminate to determinate sentences until determinate sentences are actually imposed.* If evidence of unwarranted disparity or other unintended consequences begin to develop, the Commission and the Council will then have the empirical foundation on which to erect a carefully crafted form of structured sentencing.

Recommendation 19: *That the Council authorize the Commission to provide training for judges and other parties regarding the switch from indeterminate to determinate sentencing, including information on historical practice. No additional legislative action is required.*

Recommendation 20: *That the Council authorize the Commission to monitor sentencing practices in the current indeterminate and the new determinate sentencing systems. The Commission proposes to work with the Criminal Division of the Superior Court of the District of Columbia, and all other*

determinate term of imprisonment. Both the Office of the United States Attorney and the Public Defender Service support this amendment. If adopted, such a Rule would narrow the exercise of judicial discretion in some cases.

repositories of relevant information, to collect data necessary to track sentencing practices. No additional legislative action is required.

Recommendation 21: *That the Council authorize the Commission to continue consideration of structured sentencing and report its conclusions to the Council.*

Structured Sentencing And Intermediate Sanctions

The Advisory Commission on Sentencing Establishment Act of 1998 directs the Commission to report on “*recommendations for rules or principles to guide a judge’s imposition of intermediate sanctions as part of a criminal sentence.*” The Commission has not developed specific program rules governing judicial application of intermediate sanctions. However, as the Commission continues its consideration of structured sentencing – including sentencing guidelines – a framework for rules to guide imposition of intermediate sanctions should emerge.

Several jurisdictions have used sentencing guidelines to encourage use of intermediate sanctions in a responsible fashion.¹³ In the previous Chapter we described the various types of intermediate sanctions programs currently in use nationally and in the District of Columbia. Some front-end intermediate sanctions programs that divert offenders to intermediate sanctions immediately after sentencing have been evaluated nationally.¹⁴ The evaluations find substantial evidence of “net widening” and high rates of offender violations.¹⁵ “Net widening” occurs when offenders not originally

¹³ Sentencing guidelines systems in North Carolina, Pennsylvania, Washington state, Kansas, and Virginia include intermediate sanctions.

¹⁴ Tonry, Michael, Intermediate Sanctions in Sentencing Guidelines. NIJ:Washington, D.C. (1997).

¹⁵ The high rates of offender violation are typically attributed to the close surveillance of offenders, creating more opportunities to observe violations.

intended for the programs are admitted nevertheless, creating a crisis in program availability and a poor match of offender needs to program characteristics (for example, failure to match drug addicts to drug treatment). Judges may see great potential in these programs, thereby diverting offenders far beyond the original expectations of program administrators and funding sources.

Integrating intermediate sanctions into a sentencing guidelines framework is believed to reduce net widening by managing entry into programs, while encouraging program growth.¹⁶ North Carolina and several other states incorporate intermediate sanctions as a zone of discretion within sentencing guidelines.¹⁷ For offenders with certain offenses and criminal records – the intermediate sanctions zone of the guidelines – a sentence to an intermediate sanction is the presumptive sentence. Within this zone of discretion – for example, a zone composed of non-violent offenders with moderate criminal records – the judge is encouraged to use the intermediate sanction. Outside of the zone, a judge is effectively discouraged from using an intermediate sanction, reserving program space for its intended purpose.

Providing judges with a zone of discretion clearly identifies intermediate sanctions as a punishment less severe than prison but more severe than standard probation, maintaining proportionality in judges' decisions. That is, the zone insures that moderately serious offenders receive more serious sanctions (intermediate sanctions) than less serious offenders (standard probation). Further, the combination of intermediate sanctions and a sentencing guidelines framework may reduce the risk of

¹⁶ Tonry, Michael (1997)

¹⁷In another approach, intermediate sanctions may be based on categorical exceptions, permitting exceptions to otherwise applicable guideline recommendations of incarceration. As an exception, the sentence to an intermediate sanction may count as a departure from the applicable guideline range.

unwarranted disparity in availability of intermediate sanctions to eligible offenders. For example, guidelines can help insure that deserving offenders receive due consideration for inclusion in programs, providing a measure of equity.

As the Commission continues to consider structured sentencing options, one of the primary arguments for a sentencing guidelines approach is the encouragement it gives to expansion of intermediate sanctions to eligible offenders.

Computer Simulation For Correctional Population Projection

The Advisory Commission on Sentencing Establishment Act directs the Commission to “project the impact, if any, on the size of the District’s populations of incarcerated offenders and offenders on supervised release if any Commission recommendation is implemented.” This section describes the role of the Commission in using current sentencing information to forecast the effect of sentencing policy changes on correctional population, the current method of forecasting used in the District of Columbia, the potential impact of sentencing changes under the Revitalization Act and the proposed model to be used for prison impact simulation. The Commission concludes that no sizeable changes in population are currently foreseen due to the new sentencing system. *However, as previously noted, there will be no conclusive evidence regarding the net effect of the shift from indeterminate to determinate sentences until determinate sentences are given.*

Intermediate Function

The American Bar Association, in its Standards for Criminal Justice Sentencing, describes the role of a sentencing commission as that of serving an “intermediate function” between the legislative

branch and the court system. Specifically, the commission's function is to provide structure to the decision-making process of sentencing by the collection, analysis, and dissemination of information on the nature and effects of sentences imposed by judges and served by offenders. One important aspect of informing policymakers involves the use of historical sentencing information to make credible projections about the impact(s) of proposed changes and adjustments in sentencing provisions. The quality and reliability of these projections depends on credibility of the data available on past sentencing decisions and historical trends, which explains the time and attention the Commission has devoted to an understanding of time served on terms of incarceration. The projections typically use simulation models in an effort to provide defensible answers to critical "what-if" policy questions. Creating a computer simulation of sentencing policy clarifies how decisions made at one stage of the process - sentencing decisions - affect later stages, such as prison capacity. Such techniques have enabled other jurisdictions to assess the impact of desired sentence increases at one end of the offense spectrum (violent crimes, for example) and to offset that impact by making corresponding sentence decreases at the other end of the offense spectrum, while holding prison capacity constant.

District of Columbia’s Current Method of Forecasting Corrections Population

Currently, the D.C. Department of Corrections does not utilize a particular statistical projection method. The Office of the Corrections Trustee and the DOC are jointly estimating cross-sectional “snapshots” of the correctional population every quarter using the data resources available. However, they are not attempting to use the data to make any projections at the present time.

Structured Sentencing Simulation (SSS) Model

The Commission proposes to utilize the Structured Sentencing Simulation (SSS) model to assess the impact of sentencing changes on correctional populations. In addition to prison population forecasts, the SSS model provides the capability to forecast jail, probation, and intermediate sanction populations. The model has successfully forecast prison populations in Minnesota and North Carolina for many years.

Specifically, the SSS model is a deterministic model that tracks the progress of sentenced offenders as they enter and exit (and re-enter) components of the correctional system over time. The model simulates the flow of sentenced offenders through the system and captures the accumulation of the sentenced offenders in the stock prison population. It has the capacity to project correctional populations monthly and annually several years into the future. The user feeds information into the model concerning sentenced offenders, disaggregated by offense, and offender characteristics (criminal history, age, gender).

The model requires three forms of data. First, individual-level data on a sample of sentenced offenders is needed. This input would consist of characteristics of the offense and sentence imposed

along with the attributes of the offender. Secondly, the model requires aggregate-level probabilities such as the probability of incarceration, the probability of parole revocation, and/or the probability of placement in a particular intermediate sanction program. Lastly, the model also requires data related to the existing stock prison population. The model functions similarly to a type of calculator that combines cell-based probabilities of movement through the corrections system with the length of stay within each component.

The development of the computer simulation model will begin after the length of stay data is received in final form from the Urban Institute.

Recommendation 22: *That the Council authorize the Commission continue to develop a computer simulation model to assess the impact of determinate sentencing after August 5, 2000 on the District's offender population. The Commission expects to work closely with the Federal Bureau of Prisons and the D.C. Department of Corrections regarding technical specifications of the simulation model. No legislative action is required.*

Recommendation 23: *That the Council make further efforts to integrate sources of data across criminal justice agencies, with an eye towards developing a single, convenient computerized source of sentencing-related information.*