

CHAPTER V.

CLASSIFICATION OR RANKING OF FELONY OFFENSES IN THE DISTRICT OF COLUMBIA

Section 6 of the Advisory Commission on Sentencing Establishment Act of 1998, as amended by the Sentencing Reform Amendment Act of 2000, provides, in pertinent part:

“(a) ...The Commission shall also submit recommendations for the classification or ranking of criminal offenses in the District of Columbia.”

D.C. Official Code § 3-105(a).

This chapter reports on the Commission’s classification of felony crimes in the District of Columbia. It provides insights into the Commission’s deliberations and the rationale behind the rankings it has proposed.

Background

The current scheme of statutory maximum sentences embodied in the District of Columbia Criminal Code represents past legislative judgments about the relative seriousness of criminal offenses, but, as the Council appears to recognize in its mandate to the Commission, statutory maximum sentences are only one criterion by which felony crimes in the District can be classified or ranked. In fulfilling this aspect of its mandate, the Commission has assumed that the Council wants more than a classification or ranking based solely on the current statutory maximum sentence in the D.C. Code.

A current ranking of felony offenses is especially timely because of the Commission’s concurrent mandate to study systems of structured sentencing and to make recommendations for the District. Most structured sentencing systems in the United States take the form of numerical guidelines and are based, to a significant degree, on the relative seriousness of the offense of conviction. Individual factors, including the offender’s prior record, are also common elements

of most sentencing guidelines, but the seriousness of the offense of conviction is, in all systems, a primary element. Thus, the ranking of offenses is an important step in the development of any system of structured sentencing.

What is Ranking or Classification?

When legislatures or sentencing commissions undertake crime severity rankings, their purpose is typically to promote proportionality and fairness when sentencing offenders convicted of more and less serious crimes. One of the principal benefits of ranking offenses is to advance a rational basis for the decision to incarcerate defendants upon conviction. The principle of the “typical offense” is commonly used. The typical example of each crime is used when comparing crime severity, rather than focusing on the most egregious case. Thus, the Commission formulated its rankings on a hypothetical “ordinary” offender who has committed the offense in an “ordinary” way, where “ordinary” refers to factual scenarios that come before courts often and would be recognized by court actors as a typical, rather than extreme, example of the particular crime. By contrast, penalties prescribed in the criminal code are designed to accommodate both the ordinary and the extreme case, and for that reason statutory maximum and minimum penalties must cover a very wide range. For example, the penalty for distribution of illegal drugs ranges from probation up to 30 years in prison.

The Commission has identified more than 150 felony offenses that are sentenced in Superior Court. One might think of a ranking as a hierarchical series, beginning with the most serious crime and ordering every single crime in the series down to the least serious. However, the Commission does not interpret the Council’s mandate in this light, since not all crimes will necessarily allow a precise placement based on some abstract standard of harm and

blameworthiness. Instead, developing groupings of crimes that appear relatively close to each other in severity seemed more reasonable.

Therefore, the Commission has undertaken a classification, similar in some respects to the criminal code, in that each crime does not occupy a unique rank within a hierarchical series but is instead grouped with other crimes of relatively comparable severity (much as there are numerous crimes in the code grouped by statutory maximum penalties of five years, ten years, etc). However, unlike the criminal code, this classification ranks the typical offense behavior for each crime ranked, rather than the extreme case. Moreover, this ranking necessarily relies solely on the severity of the crime, and it factors out the role that the offender's criminal history or other considerations play in a sentencing decision.

Methodology: Criteria developed for rankings

The classification process was conducted in several stages. Members were asked to do a preliminary classification on June 11, 2000 during a full-day Commission session at Georgetown University. Commission members were asked to classify felony crimes based on the "typical" case and each member's normative sense of the degree of harm and blameworthiness of criminal behavior entailed in the crime.

To accomplish this first preliminary ranking, staff distributed a list of the 51 offenses that were the most frequently sentenced offenses during 1993-1998. Members were asked to place each offense in one of ten groups ordered by severity from least serious to most serious. Ten groups were chosen in part because most state structured sentencing systems contain between six

and fourteen severity levels.¹ Members were asked to consider the “typical” case within an offense rather than the “worst” case. For example, for the crime of robbery, members ranked a robbery in which the victim was not physically injured rather than one with serious physical injury, if they believed that the typical case is one without physical injury.

Commission members were asked during the preliminary phase to report their rankings to the group and give a brief explanation of their thinking. While a few crimes were classified unanimously, it was more common for members to rank a single crime in two or three different groups, and members discussed the reasons for these differences. It became clear that part of the difference in rankings stemmed from differences in perception as to the typical criminal behavior for that offense. For example, as discussed later in this chapter, members noted that obstruction of justice -- the crime of using force, intimidation, or corrupt persuasion to threaten or persuade a juror or witness -- ranged from behaviors as different as a very serious threat to kill a person to corruptly trying to influence or bribe a person. The resulting classification for obstruction was quite divergent, spanning four categories with no more than three members agreeing on any one category.

The Commission returned to the classification of felonies in 2001 by forming an Offense Ranking subcommittee. This subcommittee met on average about once each month from January

¹ State systems have elected to follow a “simple, organizationally efficient model that relied on only a few factors to distinguish among offenders” (Kramer, 1999, p.37). In Pennsylvania, the rationale for ranking (typical) offenses was twofold: (1) the degree of blameworthiness of the offender, (2) the degree of injury to the victim. The end result was 14 felony offense “gravity” levels in Pennsylvania, similar to North Carolina (10 offense severity levels), Delaware (7), and Illinois (6 felony classes). By way of contrast, the federal sentencing guidelines are “far more detailed than the state systems” (Kramer, p. 38). The federal guidelines have 43 offense severity levels and numerous adjustments for aggravating and mitigating factors (e.g., use of a weapon, degree of injury and other victim factors, dollar loss, acceptance of responsibility, etc.). One observer notes that in the case of robbery guidelines, there are 4,608 combinations of robbery severity, and 18 million combinations including possible adjustments (Ruback, 1998). Michael Tonry has described the 43-level sentencing tables as a “sentencing machine,” overly large and giving an appearance of arbitrary sentencing by numbers (Tonry, 1996, p. 98).

through July 2002 in an attempt to refine the preliminary rankings. The final result was presented to the full Commission and the rankings were agreed upon after much discussion.

General Procedures of Offense Ranking

Decisions continued to be made incrementally, based on careful consideration of the typical example of each crime. Commission members made a conscious choice to consider statutory maximum sentences in each case, but to rank the offenses without slavish adherence to statutory maximums. For example, subcommittee members agreed that the typical drug distribution crime is a small street-level sale often made to support a drug habit, very unlike the extreme case of a large volume sale by a major drug trafficker, and deserving of a substantially lower penalty than the extreme case. Because the statutory maximum sentence – 30 years – must embrace all felony drug crimes, from least to most serious, it does not serve well as a proxy for ranking the “typical” drug offense.

On the other hand, when recent legislative action provided an especially clear basis for identifying the Council’s judgment as to the relative ranking of crimes, the Commission felt more constrained to use this structure as a guide to offense ranking. Sex crimes are an example: all sex crimes with a 2.5 year maximum fall in group 9; all sex crimes with a 5 year maximum fall in group 7; all sex crimes with a 10 year maximum fall in group 6; all sex crimes with a 15 year maximum fall in group 5; all sex crimes with a 20 or 30 year maximum fall in group 4, except those with the possibility of a life sentence. First degree sex abuse and first degree child sex abuse fall in group 3; first degree sex abuse while armed and first degree child sex abuse while armed fall in group 2.

The underlying offense behavior for a number of crimes is quite broad. For example, robbery can range from stealthy pick-pocketing to “snatch and grab” robberies that startle the victim to violent

confrontations that result not only in the loss of property but also serious or potentially serious injury to the victim. In broadly defined crimes such as robbery and drug distribution, Commission members turned to their own experience and historical practice to determine what constitutes the typical case. If these classifications become the basis for sentencing guidelines, the Commission may propose that some of the crimes with an especially broad range of conduct be subcategorized into separate groups. Also, the Commission has begun to develop heartland case definitions, which describe the typical circumstances the Commission had in mind when it ranked some of the more problematic offenses.

As noted above, the Commission reviewed historical data to test members' experience against historical sentencing practice, and considered adjustments to the rankings in light of these data. Generally, the data reinforced the Commission's initial ranking decisions. For rarely charged offenses, the historical data were of limited value. For other more commonly charged offenses, on the other hand, information on historical practice was abundant and useful.

Rankings²

The Commission has grouped crimes in descending order of seriousness, and the offenses within each group are considered to be similar to each other in seriousness. There are nine groups, with Group I containing the most serious crimes and Group IX containing the least serious crimes. For explanatory purposes, we have discussed each of the groups separately below and have included definitions for the most common crimes as well as the rationale for the inclusion of certain crimes within certain groups. This effort does not necessarily represent the groupings that would be part of any system of guidelines or structured sentencing that the Commission may ultimately propose.

² See Appendix E for the entire offense ranking table with the current statutory penalty structure.

Group I³
First degree murder while armed
First degree murder
First degree murder of a law enforcement officer (armed and unarmed)

Group I: As noted above, Group I is considered the most serious category of offenses.

First degree murder is defined as the killing of another person with the specific intent to kill after premeditation and deliberation. One may also be guilty of first degree murder (so-called felony murder) for causing the death of another while committing or attempting to commit another felony. The designation of “while armed” indicates an offense committed while armed with or having readily available any firearm or other dangerous or deadly weapon.

Group II
First degree child sex abuse while armed
First degree sex abuse while armed
Second degree murder
Second degree murder while armed

Group II: **Second degree murder** is the killing of another with the specific intent to kill or to seriously injure the decedent, or by acting in conscious disregard of an extreme risk of death or serious bodily injury to the decedent. Second degree murder differs from first degree murder in that it does not require premeditation or deliberation. **First degree sexual abuse** is sexual intercourse, sodomy, or other penetration of private parts, which is achieved by using force, threats of death or bodily injury, or incapacitating the victim. **First degree child sexual**

³ We have arranged the offenses in each group in alphabetical order, not necessarily in order of relative seriousness within the group.

abuse is sexual intercourse, sodomy, or other penetration of private parts with a person under the age of 16 years and by a person who is at least four years older.

Group III
Armed kidnapping
Assault with intent to kill while armed
First degree burglary while armed
First degree child sex abuse
First degree sex abuse
Voluntary manslaughter while armed

Group III: **Assault with intent to kill** is an assault with the purpose or conscious intent to cause the death of another. **First degree burglary** is entering any *occupied* dwelling with the intent to commit any other crime. **Voluntary manslaughter** is defined as causing the death of another by acting with the intent to kill or seriously injure or with conscious disregard of an extreme risk of death or serious bodily injury, where there is evidence of mitigating circumstances. It is often a killing committed in the heat of passion caused by legally adequate provocation or a killing with an “imperfect” self defense, such as a killing committed by someone who honestly believes deadly force is necessary to save his life, but whose belief is objectively unreasonable.

Group IV
Aggravated assault while armed
Assault w/i to commit first degree child sex abuse w/armed
Assault w/i to commit first degree sex abuse w/armed
Assault w/i to commit second degree child sex abuse w/armed
Assault w/i to commit second degree sex abuse w/armed
Assault w/i to rob while armed
Assault with intent to commit any offense while armed
Assault with intent to kill (AWIK)
Attempt first degree child sex abuse while armed
Attempt first degree sex abuse while armed
Attempt second degree child sex abuse while armed
Attempt second degree sex abuse while armed
Burglary I
Carjacking while armed
Involuntary manslaughter while armed
Kidnapping
Malicious disfigurement while armed
Mayhem while armed
Obstruction of justice
Robbery of senior citizen while armed
Robbery while armed
Second degree child sex abuse while armed
Second degree sex abuse
Second degree sex abuse while armed
Voluntary manslaughter

Group IV: **Aggravated assault** is knowingly, purposely, or with extreme indifference to human life, causing serious bodily injury to another. **Armed robbery** is the taking and carrying away of anything of value from another person by force or by the threat of force, while armed with or having readily available any firearm or other dangerous or deadly weapon.

Second degree sexual abuse is sexual intercourse, sodomy, or other penetration of private parts, which is achieved by using threats of something other than death or bodily injury or by taking advantage of a person who is incapacitated by mental retardation or illness, physical disability, voluntary intoxication, or otherwise. **Second degree child sexual abuse** is sexual touching of a person under the age of 16 years by a person who is at least four years older.

Assault with intent to commit a sexual offense is an attempt or effort with force or violence to accomplish the sexual offense. An **attempt sexual offense** is doing an act which is reasonably adapted to accomplishing the sexual offense. All of these offenses if committed while armed all carry a maximum sentence of 30 years in prison. An offense committed while armed with a real firearm carries a mandatory minimum of five years. **Involuntary manslaughter** is engaging in reckless conduct that results in death of another, where the conduct is not so extreme as to manifest a wanton disregard for human life, which would be murder.

The placement of **Obstruction of justice** in Group 4 was a difficult choice and not unanimous. Obstruction of justice is defined as knowingly using intimidation or physical force to threaten, or to corruptly persuade, a juror, a witness, or officer in any official proceeding; or endeavoring to obstruct or impede the due administration of justice. In the relatively recent past, obstruction of justice carried a maximum sentence of 3 years. Currently, the crime carries a maximum penalty of 30 years, due largely to violent attacks and credible threats to witnesses in homicide cases in recent years. However, this offense takes a variety of forms, and the current

rank is intended to reflect the more serious cases. For example, 'obstructing justice' ranges from asking a witness to ignore a subpoena to testify in court to threatening to kill a witness. While any interference with the justice system is a serious matter, it is obvious that asking a witness to ignore a subpoena is not as serious as threatening to kill that witness to prevent testimony.

Unlike most criminal offenses, it is difficult to pinpoint the “typical” obstruction of justice case in D.C. Superior Court. Thus, the Commission opted to rank obstruction of justice as a Group 4 offense to reflect the seriousness of the more serious obstruction cases, which involve force or the threat of force. A less serious form of obstruction of justice would not be ranked this high. Should the Commission proceed to develop guidelines, it anticipates the need to distinguish between the different forms of obstruction of justice, perhaps by detailing aggravating and mitigating factors the court should consider when imposing sentence.

Group V
Aggravated assault
Arson
Assault on police officer, firefighter, or correctional officer (APO) with a dangerous weapon
Assault w/i to commit first degree sex abuse
Assault w/i to commit second degree sex abuse
Assault with intent to rob
Attempt first degree child sex abuse
Attempt first degree sex abuse
Attempt robbery while armed
Carjacking
Cruelty to children
Involuntary manslaughter
Malicious disfigurement
Mayhem
Possession of firearm during crime of violence
Robbery
Robbery of senior citizen
Second degree burglary while armed

Group V: **Second degree burglary** is entering any *unoccupied* dwelling or other building with the intent to commit any other crime. It is rarely charged “while armed,” and unarmed second degree burglary is ranked below in Group VI.

The sex crimes listed in Group V carry a maximum sentence of 15 years, except **second degree sexual abuse**, which carries a maximum sentence of 20 years. These Group V sex crimes are most likely to result from a guilty plea, where the defendant is charged with a greater offense.

Possession of firearm during crime of violence has a mandatory sentence of five years.

It is charged if the defendant possesses a firearm or imitation firearm while committing a specified “crime of violence” or “dangerous crime.”

Group VI
Assault w/i to commit mayhem
Assault with a deadly weapon (ADW)
Attempt second degree sex abuse
Distribution while armed
First degree sex abuse /patient
First degree sex abuse /ward
Incest
Negligent homicide
PWID while armed
Second degree burglary
Second degree child sex abuse
Third degree sex abuse

Group VI: Negligent homicide is causing the death of another by operating a vehicle in a careless, reckless or negligent manner, but not willfully or wantonly. **First degree sexual abuse of a ward** and **first degree sexual abuse of a patient or client** involve sexual intercourse, sodomy, or other penetration of private parts, which is achieved by using (or abusing) one’s position of authority or trust. **Third degree sexual abuse** is a sexual touching, which is achieved by using force, threats of death or bodily injury, or incapacitating the victim. These sex offenses carry a maximum penalty of 10 years.

Assault with a dangerous or deadly weapon (ADW) is an attempt or effort to injure or frighten another person with the apparent present ability to cause such injury, committed with any weapon capable of causing death or great bodily injury, but it does not require proof that the perpetrator specifically intended to injure the victim or that the victim sustained an injury.

Group VII
Assault on police officer, firefighter, or correctional officer (APO)
Assault with intent to commit any offense
Attempt aggravated assault
Attempt first degree sex abuse patient
Attempt first degree sex abuse ward
Attempt kidnapping
Attempt robbery
Attempt second degree child sex abuse
Attempt third degree sex abuse
Bribery
Carrying a pistol w/o license outside home or business (CPWOL)
Enticing a child
Extortion
Fourth degree sex abuse
Perjury
Second degree cruelty to children
Second degree sex abuse/patient
Second degree sex abuse/ward
Threat to injure person

Group VII: **Enticing a child** is inviting or taking a person under the age of 16 to a place for the purpose of engaging in sexual activity. **Fourth degree sexual abuse** is a sexual touching

which is achieved by using threats of something other than death or bodily injury or by taking advantage of a person who is incapacitated by mental retardation or illness, physical disability, or voluntary intoxication. **Second degree sexual abuse of a ward, client, or patient** is a sexual touching, which is achieved by using (or abusing) one's position of authority or trust. These sex offenses carry a maximum penalty of 5 years.

The crime of **Threat to injure person** is uttering words that convey to the ordinary hearer a menace or fear of serious bodily harm or injury.

Assault on a police officer, firefighter or correctional officer (APO) can take several forms, including assaulting, opposing, impeding, or interfering with an officer. The Commission has ranked APO at this level to describe an offense which involves actual assaultive behavior and which either causes some injury to the officer -- more than minimal or slight, but less than serious -- or creates a substantial risk of serious injury to the officer. While the Commission recognizes that anytime a person assaults a law enforcement officer or firefighter, even slightly, it is a serious offense, it felt that in the case described, the offense is ranked appropriately relative to other more and less serious offenses. The related offense of **APO with a dangerous weapon** carries a maximum sentence of ten years, but is ranked two levels higher in Group V, along with involuntary manslaughter, arson, carjacking and a number of other serious offenses.

Group VIII
Attempt distribution in drug free zone
Attempt PWID cocaine
Attempt PWID heroin
Attempt PWID PCP
Attempt to distribute cocaine
Attempt to distribute dilaudid
Attempt to distribute heroin
Attempt to distribute PCP
Distribution in drug free zone
Maintaining a crack house
UCSA distribute cocaine
UCSA distribute heroin
UCSA distribute PCP
UCSA PWID cocaine
UCSA PWID heroin

Group VIII: The Commission deliberated at length on the ranking of drug offenses. In sentencing any drug felony offense, there are a number of relevant factors, including the quantity and purity of the drug, the criminal and substance abuse history of the offender, and where the offender fits in the chain of distribution. One way to dealing with these variations is through subcategories. The Commission considered a distinct and more severe subcategory for the rare case of the major and potentially violent drug distributor. Another category could be considered for Drug Court cases, where the goal of drug treatment generally outweighs all other factors. The Commission ultimately grouped most drug offenses together in Group 8, despite the fact that the statutory maximum penalty of 30 years for Schedule I or II drugs is more severe than a

number of offenses that the Commission grouped in higher-level categories. This decision was made after much consideration, as summarized below.

First, the Commission concluded that drug offenses should be ranked low enough to indicate that a prison sentence is often not necessary or appropriate for the typical drug offense. Historical practice is consistent with that view. Currently, a common sentence is probation for first time offenders and a relatively short prison sentence for repeat, low-level offenders.

Second, the Commission considered taking drug crimes out of this ranking scheme entirely. The relatively low punishment levels for most drug cases may seem problematic given the degree to which drug crime disrupts many of our troubled neighborhoods. The Commission, along with others in the District, supports intermediate sanctions for drug offenders (e.g., drug treatment), and some thought a separate listing for drug crimes would emphasize that focus. However, a majority view was that drug offenses should remain ranked with all other offenses, and Group 8 accurately reflects the Commission's general view of the severity of the typical drug case. As with other crimes, the heartland offense definition for drug distribution, when developed, will indicate the relatively low-level street sale that characterizes most drug crimes seen in Superior Court, which is considered less serious than most other felonies.

Third, most drug offenses, regardless of the particular crime charged and convicted, represent similar low-level felony behavior. For example, attempted drug offenses represent the same behavior as the completed drug offenses, and therefore attempts are ranked here with completed acts. Most attempted drug offenses are actually completed crimes with plea-bargains for offenders who were originally charged with distribution charges. The plea to attempt avoids delays in minor cases, and may avoid the need to obtain laboratory analysis of the drugs.

Distribution in a drug free zone is defined as distributing or possessing with the intent to distribute a controlled substance within a drug free zone, including all areas within 1,000 feet of a day care center, school, playground, youth center, public library, or in and around public housing.

A few drug crimes are ranked outside of Group 8. Armed drug offenses (**distribution while armed** and **PWID while armed**) were moved to Group 6 in recognition of the potential for violence. Also, **obtaining drugs by fraud** was moved from Group 8 to Group 9, as the conduct is closer to possession than sale of drugs.

Group IX
Attempt burglary
Attempt enticing a child
Attempt escape/prison breach
Attempt fourth degree sex abuse
Attempt second degree sex abuse patient
Attempt second degree sex abuse ward
Bad check
Bail reform act
Blackmail
Carrying a dangerous weapon outside home or business (CDW)
Credit card fraud
Destruction of property over \$200
Embezzlement
Escape/prison breach
False impersonation of police
First degree fraud
First degree theft
Forgery
Impersonate public official
Introducing contraband into penal institution
Obtain narcotics by fraud
Pandering
Possession of a prohibited weapon (PPW) (felony)
Procuring
Receiving stolen goods
Second degree fraud
Trafficking stolen property
Unauthorized use of a vehicle
Unlawful entry - vending machine
Uttering

Group IX: **Possession of a prohibited weapon (PPW) (felony)** is defined as knowingly possessing certain enumerated weapons, having previously been convicted of PPW or any felony. **Carrying a dangerous weapon (CDW)** proscribes carrying certain dangerous weapons outside of one's home or place of business. **Carrying an operable pistol without a license (CPWL)** violates the same section of the Code as CDW and carries the same maximum sentence, but is ranked two levels higher in Group VII in recognition of the potential for violence and harm associated with the carrying of operable firearms outside of one's home or place of business. **Forgery** is the false making or altering of a legally significant instrument with the intent to defraud. The most common instrument is a check. **Uttering** is ordinarily presenting a forged written instrument with intent to defraud. Again, the most common example is attempting to cash a forged check. **First degree theft** is wrongfully taking or using property with a value of \$250 or more, with intent to permanently deprive the person entitled to possession of that property. **Malicious destruction of property over \$200** is maliciously injuring, breaking, or destroying, by fire or otherwise, any public or private property of another, worth \$200 or more. **Receiving stolen goods** is defined as buying, receiving, or possessing stolen property, knowing or having reason to believe that the property was stolen, with intent to deprive the rightful owner of the benefit of the property. **Unauthorized use of a motor vehicle** is defined as knowingly taking or using a motor vehicle without the consent of the owner.

Escape is another offense with varying degrees of seriousness. It is defined as an escape from any penal institution or facility, in which the person is confined pursuant to an order issued by a judicial officer of the District of Columbia, or absconding from the lawful custody of an officer or employee of the District of Columbia or the United States. The kind of conduct most frequently resulting in an "Escape" conviction in Superior Court is failing to return to a halfway

house or leaving a halfway house when not authorized to do so. Escaping from a more secure detention facility, such as the DC Jail, is rare and would likely merit a higher offense ranking. Again the Commission concluded that Group IX was appropriate for this ranking, but recognized that smaller subcategories might be necessary in a developed guidelines system. A **felony bail reform act violation** occurs when an offender willfully fails to appear for any court proceeding in a felony case or for sentencing in a misdemeanor.

The Commission debated whether or not this last large category could be divided into two or more smaller categories. One consideration is that the larger the grouping, the more flexible the sentencing sanctions (intermediate sanctions, probation, some incarceration) need to be if it were to be used as part of a system of guidelines or structured sentencing. For present purposes, however, the ranking of these offenses together seems appropriate. In a guidelines system, with sentence recommendations attached to the various crimes, there may well be a need to subdivide this category (and perhaps others) to promote goals of uniformity and proportionality.

Conclusion

The Sentencing Reform Amendment Act of 2000 directs the Commission to classify or rank criminal offenses in the District of Columbia. As discussed above, the Commission chose to classify offenses into nine groups, recognizing that finer distinctions are possible but not necessary at this time. It is important to highlight some limitations of this classification before leaving the subject. First, this classification is made solely to provide the Council with the Commission's view of the relative severity of felony crimes in the District, as informed observers interpret the typical forms of these particular crimes. This classification is not intended

as the foundation of a sentencing guidelines system, but if progress continues in the direction of structured sentencing or sentencing guidelines, this classification scheme will likely be a starting point in that exercise.

This classification scheme also does not take into account the many factors relevant at time of sentencing, discussed in Chapters III and IV. That is, judges typically base sentencing decisions on the severity of the crime, but also take into account other considerations such as the rehabilitation potential of the offender, the need to restrain or incapacitate high-risk offenders, and the actual harm done to victims. These considerations include a long list of risk factors, such as a defendant's prior record of violent conduct, and protective factors, such as the defendant's perceived amenability to rehabilitation. Lower risk defendants who demonstrate treatable symptoms, such as drug addiction, and amenability to treatment, could be seen as good candidates for alternatives to incarceration. In other words, the offense classification would be one consideration in sentencing defendants, but not the only consideration or, in all cases, the most important consideration.

However, the current mandate is for the Commission to rank or classify offenses, not to provide a comprehensive structured sentencing system that could incorporate these additional elements. We have satisfied that mandate by the rankings presented here. In response to a separate mandate, we have presented in Chapter I the broad outlines of a system of voluntary sentencing guidelines. The Commission's mandate for 2003 is to put flesh on that proposal and to present to the Council a fully developed system of structured sentencing or an explanation of why such a system is not recommended. The Commission intends to spend the next year fulfilling this complex aspect of its statutory mandate.