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2006
Annual Report



District of Columbia Sentencing Commission
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DISTRICT OF COLUMBIA SENTENCING COMMISSION



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November 30, 2006

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The Honorable Linda Cropp,
Chairman, Council of the District of Columbia
1350 Pennsylvania Avenue, NW
Washington, DC 20004

Dear Ms. Cropp:

Pursuant to the Advisory Commission on Sentencing Structured Sentencing System Pilot Program Amendment Act of 2004 (D.C. Code § 3-105(e)), I am pleased to submit the **2006 Annual Report of the District of Columbia Sentencing Commission**, which includes the Commission's recommendation for enabling legislation that would allow the voluntary sentencing guidelines to operate under the aegis of the Commission subject to continuing oversight by the Council. I am also pleased to report that the Commission is again unanimous, as it was in 2003, when the Commission recommended the pilot program for voluntary sentencing guidelines. In my opinion, our ability to achieve unanimity is quite remarkable given the diversity of views represented on the Commission, and it is a tribute to the dedication, hard work, and collegiality of all the members of the Commission and its staff. I look forward to working with the Council in the process of implementing the Commission's recommendations in the coming months.

Respectfully submitted,

Frederick H. Weisberg

Frederick H. Weisberg, Chairman

Mission Statement

The mission of the District of Columbia Sentencing Commission is to implement, monitor, and support the District's voluntary sentencing guidelines, to promote fair and consistent sentencing policies, to increase public understanding of sentencing policies and practices, and to evaluate the effectiveness of the guidelines system in order to recommend changes based on actual sentencing and corrections practice and research.

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Chapter 1

Introduction and Executive Summary

This report marks a significant milestone in the work of the District of Columbia Sentencing Commission. In the past ten years, the system of sentencing in felony cases in the Superior Court has been completely revamped. In the National Capital Revitalization and Self-Government Improvement Act of 1997, Congress abolished parole for all major felonies in the District of Columbia and mandated a shift to determinate sentencing for those enumerated felonies, with a requirement that the defendant serve not less than eighty-five percent of whatever sentence was imposed. Thereafter, the District of Columbia Truth-In-Sentencing Commission, taking a “minimalist approach,” handed the reins to the District of Columbia Council to design a system of sentencing that would best serve the needs of the citizens of the District, and recommended the appointment of a local sentencing commission to assist the Council in this daunting assignment. In the Advisory Commission on Sentencing Establishment Act of 1998, the Council created the Commission and solicited its recommendations on the best way to integrate the changes mandated in the Revitalization Act with the existing felony sentencing regime in the District. The Commission made its recommendations to the Council in its 2000 Annual Report, the most sweeping of which were the abolition of parole and adoption of determinate sentencing for *all*

felonies, along with a recommendation that the District consider the adoption of a structured sentencing system that would guide the judge’s exercise of discretion within the wide statutory ranges that were opened up by the shift to determinate sentencing without a corresponding reduction in the pre-existing statutory maximum sentences. The Council adopted these recommendations in the Sentencing Reform Act of 2000, which, *inter alia*, directed the Commission to survey the structured sentencing systems in use around the country and to make recommendations as to the type of system, if any, that would best serve the needs of the citizens of the District. After three years of research and study, the Commission’s 2003 Annual Report to the Council recommended the adoption of voluntary sentencing guidelines to be introduced in the Superior Court as a pilot program, enabling the Commission to monitor judicial compliance, assess the impact on sentencing practices, and modify the guidelines as experience suggested the need for improvement. In the Advisory Commission on Sentencing Structured Sentencing System Pilot Program Amendment Act of 2004, the Council adopted the Commission’s recommendations, established certain requirements the guidelines must meet in terms of fair and effective sentencing policy, and directed the Commission to submit a report to the Council by December 1, 2006, describing the experience

under the pilot program and recommending a comprehensive structured sentencing system for the District of Columbia based on that experience. This is that report.

In *Chapter II* of this report, we describe sentencing practices in the Superior Court during the period from 1996 through 2005.

This continues our practice of reporting on sentencing patterns and trends, updated each year by the accumulation of additional data from the preceding year. Although these data are not guideline-specific, it seems clear from looking at sentencing patterns throughout the entire period that none of the observable fluctuations in the rate of incarceration or in the average length of prison sentences is attributable to the shift to determinate sentencing in 2000 or to the introduction of voluntary sentencing guidelines in 2004. Rather, they appear to be responses to normal year-to-year changes in the types of felony cases prosecuted and sentenced. In short, as the relative percentage of convictions for violent crimes increases, sentences to prison and longer sentences also increase; and as violent crimes as a percentage of the overall caseload decrease, sentences to prison and prison sentence lengths also decrease.

In *Chapter III* we report on two years of experience with the sentencing guidelines during the pilot program. In this Chapter we look specifically at judicial compliance with the voluntary guidelines and acceptance of the guidelines by the criminal justice community. The news is very good. We

are able to report widespread acceptance of the guidelines generally and an exceptionally high rate of judicial compliance. In approximately ninety percent of all cases, judges either impose a sentence that is authorized by the applicable guideline or depart for reasons that are authorized in the guidelines to achieve individualized justice in extraordinary cases. Prosecutors and defense attorneys alike report that the guidelines have improved plea negotiations and have made the plea bargaining and sentencing process more predictable and more transparent for defendants, victims, and the general public.

In *Chapter IV* we turn to an analysis of the impact of the guidelines on sentencing. Our analysis is necessarily preliminary, as we have less than two years of sentences under guidelines in the Commission's database, and not nearly enough sentences in the more serious and complex felony cases that are likely to present the most difficult sentencing decisions for the judge. With that caution, however, the preliminary evidence is compelling. In virtually every category with enough cases for analysis, we are able to measure dramatic reduction in the degree of unexplained variation in sentences, which was the primary goal of the guidelines system. At the same time the guidelines do not appear to be causing any unintended consequences, and in particular they appear to be neutral with respect to the rate of disposition by guilty plea and by trial, the use of prison and alternatives to prison, and the average length of prison sentences imposed.

Finally, *Chapter V* includes the Commission's specific recommendations for legislation to enable the continued operation of voluntary sentencing guidelines under the aegis of the Commission, now that the pilot program has ended. There are several reasons for our recommendations. First, experience has proven that voluntary guidelines work in the Superior Court. Second, the Commission has succeeded in monitoring the guidelines, responding to inquiries and the need for modification or clarification of the procedural rules, and assisting the Council at every stage of the process from 1998 to the present. Third, any system of structured sentencing requires a commission of this kind to maintain the health of the system, to respond to changes and the need for improvement, and to advise the legislature on an ongoing basis in the complex area of sentencing policy. Fourth, although the law is still somewhat unsettled, the Supreme Court has made it clear in two recent decisions that serious constitutional issues would be presented if the Council were to enact the guidelines or to mandate judicial compliance with them, and it is certain that the Council could not do so consistently

with the Sixth Amendment without also including sentencing jury trials and other procedural rights required by the Supreme Court decisions. These cumbersome and undesirable procedures are the constitutional price a state must pay if it is unable to achieve a high rate of judicial compliance without a legislative mandate, but in a busy urban court such as ours, where we have been able to demonstrate an exceptionally high rate of compliance with voluntary guidelines, enacting mandatory or even presumptive guidelines into law would, in the Commission's collective judgment, be an unwise and unnecessary self-inflicted wound. For all of these reasons, the Commission strongly recommends enabling legislation that allows the guidelines to continue to operate as they have, as advisory guidance to sentencing judges under the watchful eye of the Commission, and that they be subject to constant monitoring and periodic revision, as necessary, based on recommendations of the Commission in its annual reports to the Council. The Commission looks forward to working with the Council on the implementation of these recommendations and in the years ahead.

