



# District of Columbia Sentencing and Criminal Code Revision Commission

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## MINUTES OF FULL COMMISSION MEETING

May 20, 2015

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

### Voting Members in Attendance:

Frederick Weisberg	Harold Cushenberry	Donald Braman
Paul Butler	Robert E. Morin	Molly Gill
Julie Samuels (via phone)	Laura Hankins	Cedric Hendricks
Renata K. Cooper	Dave Rosenthal	

### Non-Voting Members in Attendance:

Maria Amato	Thomas Kane	Chanell Autrey
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### Staff in Attendance:

Barbara Tombs-Souvey	Michael Serota	LaToya Wesley
Linden Fry	Jinwoo Park	Thurman Sanders
Bryson Nitta	Rachel Redfern	Mia Hebb

### Guest:

Marvin Turner

- I. The meeting was called to order by Chairman Weisberg at 5:10 p.m.
- II. The minutes from the April 22, 2015, meeting were reviewed and approved.
- III. Director's Report – Barbara Tombs-Souvey

**Agency Budget Update:** Ms. Tombs-Souvey was pleased to report that there was no reduction agency's proposed FY 2016 budget and that the agency had received an enhancement of \$87,723.00 to help fund operations and maintenance of the GRID and GSS systems. In addition, a new Research Analyst FTE position was approved by the Council to assist with the Guideline Evaluation Study and the increased number of data requests received by the Commission.

- IV. Guideline Criminal History Scoring of Prior Marijuana Possession and PWID/Distribution Convictions – Discussion Continue From April 21, 2015, Meeting – Action Item, Linden Fry

### **Scoring of Prior Marijuana Possession, distribution, and PWID Convictions:**

Chairman Weisberg gave an overview of the proposed options for how the Guidelines could treat prior Marijuana Possession, Distribution, and PWID/Distribution

convictions for the purpose of calculating a defendant's criminal history score. Chairman Weisberg also reviewed the prior meeting's discussion on this topic.

Mr. Fry stated that all of the options presented at the prior meeting have been updated to include attempt and conspiracy offenses, as well as, omitting references to prior juvenile adjudications. Option One and Two remain the same, Option Three has been split into two separate proposals that build off of the prior proposal, wherein prior possession and PWID marijuana convictions are not initially counted by the presentence report writer, however, prior distribution of marijuana convictions are initially counted. The two new options are referred as Option Three A and Option Three B. All of the options include not counting prior Marijuana convictions sealed pursuant to D.C. Code § 16-803.02. The current options before the Commission for consideration include:

- Option# One: Prior Possession, PWID, and Distribution of Marijuana Convictions are Not Initially Counted. Preponderance of the Evidence Standard for Challenging Initial Counting.
- Option# Two: Prior Possession Convictions are Not Initially Counted. Prior PWID and Distribution of Marijuana Convictions are Initially Counted. Preponderance of the Evidence Standard for Challenging Initial Counting.
- Option# Three A: Prior Possession and PWID Marijuana Convictions are Not Initially Counted. Prior Distribution of Marijuana Convictions are Initially Counted. Preponderance of the Evidence Standard for Challenging Initial Counting.
- Option# Three B: Prior Possession and PWID Marijuana Convictions Are Not Initially Counted, Prior Distribution of Marijuana Convictions are Initially Counted. Credible Evidence Standard for Challenging Initial Counting.

The Public Defenders Service, United States Attorney's Office, and Office of the Attorney General stated their individual agencies positions regarding the various options presented. Following this, the Commission reviewed and discussed all the possible options.

**Commission Action#1:** The Commission unanimously voted to approve Option Three A with the addition of language to cover prior juvenile adjudications (in addition to convictions) by an 11-0 vote.

V. Review and Discussion of Proposed Changes to the 2015 Sentencing Guidelines Manual - Action Item, Linden Fry

**Proposed Changes to the 2015 Sentencing Guidelines Manual:** Mr. Fry gave an overview of the proposed changes to the 2015 Sentencing Guidelines Manual. The proposed revisions are discretionary amendments that are intended to explain, clarify, and/or streamline the information presented in the Manual. Mr. Fry stated that the proposed changes were not intended to change the substance of the Guidelines Rules. Mr. Fry also noted that the new marijuana policy along with technical and formatting changes, modifications to the table of contents, section numbering, Appendix C-1, and Appendix J, will be added after the final language is approved by the Commission.

The Commission reviewed and discussed the proposed changes as set forth in the memorandum in addition to recommended changes.

**Commission Action#2:** The Commission voted to approve the proposed changes as set forth below, including modifications to Section 2.2.1, by a 11-0 vote.

Chapter One:

- Section 1.2.9 - The subsection now provides that “Rule 11(e)(1)(C) pleas control the sentence or sentencing range regardless of the otherwise applicable grid options, prison range, or Guidelines rules.”
- Section 1.3 - The title of the subsection was changed from “Effective Date” to “Applicability” because the rule specifies that the “Sentencing Guidelines apply to all felony convictions” in addition to the applicability date.

Chapter Two:

- Section 2.2.1 - A new Paragraph was added which states that “A sentence based solely on the revocation of a defendant’s supervision (e.g. revocation of probation, parole, or supervised release) in a prior case is not scored as a new conviction. The treatment of the original underlying conviction is governed by the rules set forth in Section 2.2.2.”
- Section 2.2.6(a) - The Section now specifies that the subsection (a) out-of-District scoring rules control how an offense is “initially” scored by CSOSA. The first sentence of rule 2.2.6(a)(6) was also modified for consistency. It now states that “After the presentence report writer has calculated the initial score for an out-of-District offense, if a party contends that the criminal history score for the out-of-District conviction misrepresents the severity of the offense, then the party may seek a criminal history correction.”
- Section 2.2.8 - This Section was reorganized for clarity.
- Section 2.2.9 –Section 2.2.9 was relabeled as 2.2.9(a). Section 2.2.9(b) was added to address the scoring of prior marijuana related as approved by the Commission.

Chapter Three:

- Section 3.8 - A sentence was added to the first Paragraph to explicitly state that “At resentencing, the court should utilize the defendant’s original in-the-box sentencing range and options.”

Chapter Four:

- A new Paragraph was added to Chapter Four stating that “Sentencing enhancements, such as those listed in Appendix H, do not modify how a prior conviction is scored. For example, a prior conviction for assault with significantly bodily injury is scored as a M8 conviction regardless of whether a sentencing enhancement applied to that conviction.”

Chapter Five:

- Section 5.1 - Similar to the modification made to Section 1.2.9, this Section was amended to clarify that all sentences following a Rule 11(e)(1)(C) plea agreement are compliant with the Guidelines.

Chapter Six:

- Section 6.2 - For consistency, the term “nonviolent crimes” was replaced with “offenses that are not crimes of violence.”

Chapter Eight:

- Section 8.5 was added to specify that “The Sentencing Guidelines apply to felony convictions under the Youth Rehabilitation Act, D.C. Code § 24-901, et seq., just as they would any other felony conviction. Similar to other factors, at sentencing the court may consider the Youth Rehabilitation Act when determining an appropriate sentence within the applicable box.”

Appendix A and B:

- Appendix A and B were modified to state that a long split sentence is available in any box.

The Commission deferred action on the proposed changes to Chapter Two, Section 2.2.7, discussing how to score convictions/adjudications from a single statute that was repealed and replaced with several new statutes, until such a situation arises.

Meeting Adjourned: 6:10 p.m.

NEXT MEETING:

June 16, 2015

One Judiciary Square (441 4<sup>th</sup> St., NW), Room 430S.