



# District of Columbia Sentencing and Criminal Code Revision Commission

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## MINUTES OF FULL COMMISSION MEETING

April 21, 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	Laura Hankins	Renata K. Cooper
Dave Rosenthal (via phone)		

### **Non-Voting Members in Attendance:**

Michael Anzallo	Thomas Kane	Chanell Autrey
Stephen Husk		

### **Staff in Attendance:**

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

### **Guest:**

Marvin Turner	Saray Leon	L. Butler-Walton
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- I.** The meeting was called to order by Chairman Weisberg at 5:12 p.m.
- II.** The minutes from the March 17, 2015, meeting were reviewed and approved.
- III.** Director's Report – Barbara Tombs-Souvey

**Budget Hearing Update:** Ms. Tombs-Souvey gave an overview of the agency's FY 2016 Budget Hearing before the Council. Ms. Tombs-Souvey stated that the Mayor's proposed agency budget for FY 2016 is 1.5 million dollars which represents an 8.9% increase over the agency's FY 2015 budget. The increase of \$87,723.00 is for operations and maintenance contracts required for the GRID and GSS systems. Ms. Tombs-Souvey noted that during the hearing she also requested an additional Research Analyst FTE position to assist with the Guideline Evaluation Study and the increased number of data requests. Chairman Weisberg commended Ms. Tombs-Souvey for her efforts to ensure the agency had adequate funding for FY 2016.

IV. Review and Approval of Draft Guideline Evaluation Study Design – Action Item, Barbara Tombs-Souvey and LaToya Wesley.

***Guideline Evaluation Study Design:*** Ms. Tombs-Souvey gave an overview of the major goals identified for the project:

- Goal # 1 – Examine Statutory Goals of the Commission: Examine the certainty, consistency, and adequacy of punishment for sentences imposed under the Guidelines.
- Goal # 2 – Provide Comparative Analysis: Undertake a comparative evaluation between sentences imposed in the 1999 study data and current sentences imposed under the Guidelines to identify any shifts in sentencing patterns.
- Goal # 3 – Provide Recommendations: Develop data driven recommendations for potential modification to the Guidelines and/or future areas of research.

Ms. Tombs-Souvey stated that Commission will use the data downloaded from the GRID system from January 1, 2010, through December 31, 2014, for the project. The study will include descriptive and inferential statistical analysis of both offender and offense related data. The study dataset will be validated in May 2015 and the quantitative and comparison data analysis will be conducted between May 2015 and September 2015. The report will be drafted by March 2016 for review and feedback by the Research Committee. A final draft will be distributed to the Commission in June 2016 for review and feedback. Ms. Tombs-Souvey stated that the report will be finalized and published in September 2016.

**Commission Action#1:** The Commission voted to approve the research study design by a 9-0 vote.

V. Scoring of Prior Marijuana Possession and PWID/Distribution Convictions – Action Item, Linden Fry.

***Scoring of Prior Marijuana Possession, distribution, and PWID Convictions:*** Mr. Fry gave a brief overview of recent changes to the District’s marijuana laws. He then explained that presentence report writers, practitioners, and judges expressed confusion regarding how score prior marijuana convictions under the Guidelines following decriminalization and/or legalization. Mr. Fry noted that Guidelines rule 2.2.9 states that “a prior conviction/adjudication under statute that was repealed so that the conduct was decriminalized is not counted” as part of a defendant’s criminal history score. However, in the case of marijuana decriminalization and/or legalization, report writers cannot determine if the offense conviction was the result of conduct had been decriminalized or legalized or was based on conduct that remains criminalized. Mr. Fry stated the Guidelines Implementation Committee had met and agreed that:

- That a prior marijuana conviction/adjudication which has been sealed or expunged, pursuant to D.C. Code § 16-803.02, on grounds that the offense was decriminalized or legalized, should not be counted.
- Prior District and out of District convictions for possession of marijuana that have not already been sealed under D.C. Code § 16-803.02 should not be initially counted. If the government can prove to the court by a preponderance of the evidence that a prior

unsealed conviction for possession of marijuana was the result of conduct that was not decriminalized or legalized, the conviction should be counted.

Mr. Fry explained that the Committee was unable to reach agreement on Guidelines treatment of prior unsealed PWID and distribution of marijuana convictions. The Committee developed three possible options for how prior District and out-of-District PWID and distribution of marijuana convictions could be counted towards a defendant's criminal history score.

- Option #1: Prior Sealed Convictions and Possession of Marijuana Convictions are Not Initially Counted. Prior PWID and Distribution of Marijuana Convictions are Not Initially Counted.
- Option #2: Prior Sealed Convictions and Possession of Marijuana Convictions are Not Initially Counted. Prior PWID and Distribution of Marijuana Conviction are Initially Counted.
- Option #3: Prior Sealed Convictions and Possession of Marijuana Convictions are Not Initially Counted. Prior PWID Marijuana Convictions are Not Initially Counted, Prior Distribution of Marijuana Convictions are Initially Counted.

Mr. Fry turned the discussion over to PDS, USAO, and OAG to give their positions on the possible options. The Commission then reviewed the implications of each option. USAO supported Option Two and opposed Options One and Three. PDS supported Option One, opposed Option Two, and would agree with Option Three as a Compromise. The Commission agreed to defer further discussion for the next Commission meeting

Meeting Adjourned: 6:30 p.m.

NEXT MEETING:

Wednesday, May 20, 2015,  
One Judiciary Square (441 4<sup>th</sup> St., NW), Room 430S.