



District of Columbia Sentencing and Criminal Code Revision Commission

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FULL COMMISSION MEETING MINUTES

Tuesday, January 18, 2011
Judiciary Square, Room 1114
Washington, DC

Attendance:

Frederick Weisberg
Ramsey Johnson
Adele Harrell
Harold Cushenberry
Pat Riley
Jennifer Seltzer-Stitt

Dave Rosenthal
Michelle Roberts (by phone)
Michael Anzallo
Julie E. Samuels
Barbara Tombs-Souvey
Ken Cowgill

Courtnei Burleson
Megan Collins
Thurman Sanders
Mia Hebb

- I. Call to order at 5:00 p.m.
- II. Judge Weisberg introduced Julie E. Samuels as a new Commission member, replacing Brian Forst, and Thurman Sanders who recently joined the Commission staff as Data Manager.
- III. Minutes from the October 19, 2011 meeting were approved.
- IV. H.R. 6412, Access to Criminal Records – Informational Item, Barbara Tombs-Souvey

Barbara Tombs-Souvey discussed H.R. 6412 that allows state sentencing Commissions to have access to Department of Justice data currently accessed only by the U.S. Sentencing Commission. This legislation will now allow the Commission to access DOJ criminal history and sentencing information. Although the legislation makes reference to the “states,” Ms. Tombs-Souvey has been assured that the District of Columbia is included with agencies eligible to receive this access.

Ms. Tombs-Souvey informed the Commission that all DCSC sentencing data is now being electronically transferred into the SGS web application, including all felonies and misdemeanor offenses. The data transfer includes historical sentencing information from January 16, 2006 through the present. Once the historic data transfer is completed, dispositions and sentencing information will be sent on a daily basis to the SGS web application. Although currently the sentencing guidelines are only applicable to felony

offenses, the inclusion of misdemeanor data is important in the event the Commission would consider developing guidelines for misdemeanors and also because misdemeanor sentencing information may provide insight into how felony sentences are imposed. Currently, misdemeanor cases are being flagged and stored in a database separate from felony cases.

Pat Riley asked if the data received could be manipulated so that the Commission can make independent assessments and Ms. Tombs-Souvey replied that it could. Judge Weisberg provided some history on the development of the web application and opined that with the data that has been transferred, the Commission can examine historical sentencing patterns and trends, which previously it did not have the ability to undertake. Judge Weisberg also commended Ms. Tombs-Souvey's diligence in dealing with the Commission's data issues. Ms. Tombs-Souvey acknowledged the efforts of Megan Collins and Thurman Sanders who have been working tirelessly to clean up the data and address incorrect coding and missing information.

V. Public Outreach Committee Update – Informational Item, Courtni Burleson

Courtni Burleson distributed a complete history and timeline of the Commission and requested that any revisions be forwarded to the Committee. She also listed the various completed changes to the website. One of the changes on which the Committee required input is how Commission members wish to be identified. Currently, there is a slight inconsistency in how members are listed with some members identified by the agency they represent while others are identified by appointing authority. To create consistency, the Committee offered several options for the Commission's consideration: (1) listing by agency or the statutory constituency represented; (2) listing by appointing authority; (3) listing by statutory description; (4) inclusion of a short biography; or (5) any combination of the above. Judge Weisberg suggested mentioning the key roles for each Commission member instead of using a personal biography. Several Commission members indicated that resources were readily available if anyone wanted more information on a member. Adele Harrell suggested that the Committee provide the Commission with examples of the different options for review.

VI. Guideline Compliance – Informational Item, Megan Collins

Megan Collins summarized the Commission's new protocol for handling cases with sentences that appear to fall outside the recommended guidelines. Ms. Collins explained that the protocol incorporates an initial review of the potential non-compliant case in Courtview, including the Judgment and Commitment Order. If a case still appears non-compliant, a survey is sent to the judge requesting a potential source for the non-compliance, such as the application of an aggravating or mitigating factor, a mistake in the criminal history or the election not to follow the Guidelines.

This new protocol has been in effect since October 2010, and due to the excellent response rate of the Superior Court judges, the Commission has more complete data on non-compliant sentences than ever before. As a result of this diligence, compliance rates for the felony sentences in 2010 will show a significant increase. Ms. Collins

explained that of 59 cases recently reviewed as non-compliant, all but four cases were actually compliant once additional information was provided by the judge.

VII. New Offense Ranking Committee Report – Action Item, Courtni Burleson

Courtnei Burleson summarized the recommendations of the Ranking Committee with regards to annual changes to the Guidelines.

Change in Misdemeanor Rule: The first recommendation concerned a new scoring of misdemeanor offenses. Due to some inconsistency in how misdemeanor offenses are scored in criminal history, the Committee proposed scoring misdemeanors based on the maximum penalty for the offense of conviction. Where the maximum penalty is 180 days or more, it will be scored $\frac{1}{4}$ point, as is now the case for any misdemeanor. Where the maximum penalty is 30 days or more but less than 180 days, it will be scored $\frac{1}{8}$ point. Where the maximum penalty is less than 30 days, the misdemeanor will not be scored. Only a total of six misdemeanors are scored, beginning with $\frac{1}{4}$ point misdemeanors. If there are less than six $\frac{1}{4}$ point misdemeanors, the $\frac{1}{8}$ point misdemeanors are then scored until a total of six is reached.

Commission members expressed some concern that the new rule may be too complicated, especially for the personnel at CSOSA calculating the criminal history. Adele Harrell stated that there could be data errors and confusion in applying the rule. Judge Weisberg and Adele Harrell clarified that the maximum number of criminal history points from misdemeanors would change from $1\frac{1}{2}$ to a range of $\frac{3}{4}$ and $1\frac{1}{2}$. Jennifer Seltzer-Stitt also expressed concern over the explanation of the maximum number of misdemeanors that can be scored.

The Commission also discussed delaying the effective date of the change to ensure that parties have notice of the change. Ms. Tombs-Souvey stated that Cedric Hendricks and other staff at CSOSA had been notified of the potential scoring change. Dave Rosenthal added that the change was largely to include offenses prosecuted by his office, most notably DUI offenses that are not currently calculated in the criminal history. Courtnei Burleson mentioned the rule in § 2.2.11 concerning traffic offenses and there was concern that it would need to be deleted as conflicting with the new rule. Pat Riley suggested that perhaps the Committee should reexamine the proposal.

Other issues that were discussed included whether there were any unintended consequences contemplated with the new rule and how the new rule may complicate the task of the coders who input the criminal history information. Adele Harrell suggested running a simulation to study the effects any change would have on the Guidelines, however, others noted that this may prove difficult to accomplish. The Commission also asked about certain motor vehicle offenses that would be counted under the new rule but are not counted now and also offenses that are counted a full $\frac{1}{4}$ point now but could see their point value decrease under the new scheme.

The Commission agreed that this issue would be sent back the Ranking Committee for further consideration based on the Commission's feedback.

Miscellaneous Guidelines Changes: Courtni Burleson summarized the following proposed recommendations from the ranking committee:

- A clarification to the rules set forth in § 2.2.9
- A clarification added to the definition of Crime of Violence in § 7.4
- A correction to the definition of Revived Conviction in § 7.25
- A clarification to the footnote in § 9.1 (Examples): This footnote discusses the statutory requirements for supervised release. Judge Weisberg will work with Courtni Burleson to confirm the exact language of this footnote.
- A minor correction to Appendix A
- Modifications to the legend in Appendix C/C-I including the addition of a definition for Crimes of Violence and Dangerous Crimes and a deletion of the first footnote.
- Two corrections in Appendix C entries regarding Cruelty to Children and Credit Card Fraud
- The addition of five offenses that had been inadvertently omitted from previous manual versions: Detaining an individual in disorderly house for debt there contracted (§ 22-2709), Procuring for house of prostitution (§ 22-2710), Procuring for 3rd persons (§ 22-2711), Operating house of prostitution (§ 22-2712) and Keeping bawdy or disorderly houses (§ 22-2722). All offenses are in Master Group 9
- An updated version of Appendix D
- A clarification on Repeat Offender Provisions in Appendix H

New Offense Rankings: The Commission ranked the following offenses:

- **Engaging in Animal Fighting** (§ 22-1001(d))
Master Group 9
- **Telephone Solicitation Fraud** (§ 22-3226.06 (a); § 22-3226.10)
Master Group 9
- **Obstructing Service of a Drug Search Warrant** (§48.921.02 (n))
Master Group 9
- **Selling, Transferring, Distributing Firearm, Destructive Device or Ammunition to Persons Under 18** (§ 7-2507.06 (1))

Master Group 7

The Commission addressed the unresolved concern of how Appendix C/C-I lists entries for offenses “while armed.” The Commission agreed to send the issue back to the Ranking Committee but, at minimum, Appendix C/C-I should reference Hager v. United States, 791 A.2d 911, 914-915 (D.C. 2002).

Pat Riley informed the Commission that there is new emergency legislation that will increase the felony/misdemeanor threshold for many offenses to \$1,000. She will circulate the legislation and updated summary as this may require a mid-year modification to the manual. Jennifer Seltzer-Stitt inquired about the Council requesting consultation with the Commission for studies on new legislation. Adele Harrell and Pat Riley offered input about how this could operate.

Commission Vote: The Commission voted on the changes to the manual set forth in the memo with the following provisos: (1) the misdemeanor scoring rule and related provisions are excepted and will go back to the Ranking Committee; (2) the issue of how “while armed” entries are identified in Appendix C/C-I will be sent back to the Ranking Committee but, at minimum, these appendices will cite Hager in the legend.

The vote was 8-0 in favor of approving the changes to the Guidelines Manual with the above stated provisos. (H. Cushenberry, L. Hankins (by J. Weisberg proxy), A. Harrell, P. Riley, D. Rosenthal, J. Samuels, J. Seltzer-Stitt, F. Weisberg).

Adjourn: 6:45 pm

NEXT MEETING:

Tuesday, February 15, 2010, One Judiciary Square (441 4th St., NW), 11th Floor.