



# District of Columbia Sentencing and Criminal Code Revision Commission

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## FULL COMMISSION MEETING MINUTES

Tuesday, February 15, 2011  
Judiciary Square, Room 1114  
Washington, DC

### Attendance:

Frederick Weisberg  
Ramsey Johnson  
Adele Harrell  
Harold Cushenberry  
Meghan Murphy  
Laura Hankins  
Barbara Tombs-Souvey

Dave Rosenthal  
Anne Seymour  
Michael Anzallo  
Julie E. Samuels  
Stephen Husk  
Patricia Riley

Courtnei Burleson  
Megan Collins  
Thurman Sanders  
Ken Cowgill  
Mia Hebb  
Thomas Kane

- I. Call to order at 5:00 p.m.
- II. Minutes from the January 18, 2011 meeting were approved.
- III. Director's Report – Informational Item, Barbara Tombs-Souvey

**Budget Issues:** Barbara Tombs-Souvey discussed the significant cuts to the DCSC budget. Approximately \$77,000 was removed from the budget leaving \$691,000 for the agency in FY2012. Overall, the current budget has been reduced by \$125,000 since FY2010. Ken Cowgill's position was eliminated and the paralegal position designated for the Criminal Code Revision Project is in jeopardy of being cut. She stated that this makes it challenging to fulfill the two statutory mandates that the Commission is required to address (criminal code revision and data analysis) as well as to make necessary modifications to the data systems to accommodate the Commission's work.

**Database Modification:** Ms. Tombs-Souvey informed the Commission that the transfer of all historical sentencing information from January 16, 2006 through the present has been completed with over 15,000 cases transferred. For 2010, there were approximately 3,700 cases transferred (including probation revocations) which is consistent with the number of cases in 2009.

Also, the court is modifying its internal data system, IJIS, with an anticipated completion date of September 2011. In accordance with this change, the Commission's schema needs to be modified to enable the continuous flow of data from the court to the SGS application. However, Ms. Tombs-Souvey confirmed that we are matching criminal sentencing data with the court's and are currently in the possession of good sentencing data.

**Annual Report:** Barbara Tombs-Souvey announced that the Annual Report is due to the Council on April 30<sup>th</sup>. She stated that a draft will be completed by mid-March and will be emailed to the commission members for comments or edits. She would like to have all changes submitted no later than April 4<sup>th</sup> to allow for final editing and submission to the printer prior to the April 30<sup>th</sup> deadline. Megan Collins is still in the process of cleaning the data but the report will include sentencing data analysis, compliance reporting and updates on the Criminal Code Revision Project. Staff is also looking into incorporating sentencing information by grid cell to include the mean, mode, and median sentence for each box. This will provide a more comprehensive analysis than was presented in prior reports.

Judge Weisberg asked Ms. Tombs-Souvey to explain where we are getting criminal history data. She explained criminal history is provided by CSOSA and sent to an agency mailbox. Megan Collins has sole access to the mailbox and is responsible for entering criminal history information into our database. Ms. Tombs-Souvey said this streamlined process had improved the quality of the data significantly. Judge Weisberg commended Ms. Tombs-Souvey on the changes in the data collection process and the improved quality of the Commission's data.

#### IV. Public Outreach Committee Update- Informational Item, Courtni Burleson

Courtni Burleson briefly updated the Commission on the development of a "Needs Survey" to identify the areas to focus outreach efforts. The survey will be distributed to target populations to help design the nature and extent of our outreach strategy.

She also distributed a guide presenting options on how members wish to be identified in official documentation. Anne Seymour provided an example of a short biography, especially for those that would prefer to be identified by their role on the Commission rather than by their organizational affiliation. Judge Weisberg supported Anne Seymour's suggestion, highlighting that the key role each member serves is a way to illustrate the diversity of the Commission membership. Courtni Burleson will follow up with an email requesting each member submit a short one or two line biography.

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

**Change in Misdemeanor Rule:** Judge Weisberg touched on the background of scoring misdemeanor convictions in the criminal history, particularly those prosecuted by the Office of the Attorney General versus those prosecuted by the U.S. Attorney's Office. Courtni Burleson presented the results of the Committee's re-evaluation of a proposed

new rule, an issue that was sent back to Ranking Committee at the previous meeting for further consideration.

Over the course of the Committee's discussions, four possible options were developed for feedback from the Commission. The Committee proposed scoring misdemeanors based on the maximum penalty for the offense of conviction.

- Option A: An offense with a maximum penalty of 180 days or more is scored  $\frac{1}{4}$  point. A maximum penalty of 30 days or more but less than 179 days is scored  $\frac{1}{8}$  point. A maximum penalty of less than 30 days is not scored.
- Option B: An offense with a maximum penalty of 90 days or more is scored as  $\frac{1}{4}$  point. A maximum penalty of less than 90 days is not scored.
- Option C: An offense with a maximum penalty of 180 days or more is scored  $\frac{1}{4}$  point. A maximum penalty of less than 180 days is not scored.
- Option D: An offense with a maximum penalty of 180 days or more is scored  $\frac{1}{4}$  point with the exception of certain listed offenses under 180 days compiled by Pat Riley and Dave Rosenthal.

Dave Rosenthal offered further historical background on the scoring of misdemeanor offenses prosecuted by his office as well as the Committee's process of developing the four options. He explained that historically, his office is associated with prosecuting traffic offenses. However, issues with the misdemeanor scoring are possibly the result of unintended consequences of the Council's codification efforts in classifying certain crimes. Option D is a compromise between Option B and C and he noted that the list of excepted 90 day offenses reflects crimes that the community cares about but the actual frequency of convictions for these offenses varies.

Laura Hankins explained that Option B consolidates and weighs all misdemeanor offenses together as equal in a way that is counter to what is done for felonies under the Guidelines. Option A would link the penalty with a ranking of its seriousness. She is not opposed to Option D but believes that a policy or guiding principles should be a part of selecting which offenses less than 180 days end up on the list of exceptions. Judge Weisberg added that scoring is not always strictly by penalty but also by the weight of its seriousness. Scoring offenses by penalty would mean accepting the legislative perspective of the offense's weight.

Pat Riley pointed out that the manual only mentions traffic offenses as an exception to the scoring rules and she does not recall a conscious decision by the Commission on distinguishing certain misdemeanors. The list in Option D largely represents offenses where the misdemeanor is often a precursor to a more serious offense; for example, Peeping Tom and Indecent Exposure convictions often lead to convictions for more serious sex offenses. Anne Seymour agreed with a strategy of including person crimes and crimes that often lead to more serious offending.

Judge Weisberg recognized that any new rule would result in the addition of many more crimes that are not currently included in criminal history scores and would primarily affect defendants with long criminal histories.

The Commission discussed the offenses listed in Option D and their relationship to guiding principles used in developing the Guidelines. Thomas Kane added that criminal history points may be important to identifying recidivism, propensity or repetitive behavior and not necessarily just the severity of the offense. Judge Weisberg agreed that criminal history reflects a kind of proxy for assessing recidivist behaviors. Judge Ramsey affirmed the importance of sending a message about recidivism. Judge Cushenberry stated that Option B looked advantageous because it provided a clear floor for which offenses count and which do not and is also easy to apply.

The Ranking Committee agreed to re-examine the issue based on the Commission's feedback. Dave Rosenthal noted that if the Committee was unable to reach consensus, the issue might require a full Commission vote on the various options presented.

***Modification to the Drug Grid:*** Courtnei Burleson distributed a memorandum from the Ranking Committee illustrating a proposal to modify the Drug Grid.

To address concerns of proportionality and structure, the revised Drug Grid proposal leaves 30 year offenses in Drug Group 2 but would move 3 and 5 year offenses from Drug Group 2 to Drug Group 3. The attempts to do those latter offenses and Attempted Possession of Liquid PCP would then move into a newly created Drug Group 4. The proposal also includes two changes to the "in/out" options for Boxes 2C and 2D. In sum, these changes include:

- Distribution and PWID of non-narcotic and non-abusive drugs (the 3 and 5 year penalty offenses, including marijuana) are moved from Drug Group 2 to Group 3. Attempts and conspiracies to do these offenses are moved from Drug Group 3 to the new Drug Group 4.
- Attempted Possession of Liquid PCP moves to Drugs Group 4.
- Attempts and conspiracies to do PWID and Distribution while armed are moved from Drug Group 3 to Drug Group 2.
- Box 2C changes from a light shaded probation permissible box to a dark shaded short split permissible box and Box 2D changes from a dark-shaded short split permissible box to a white prison only box.

Ms. Burleson stated that recent data shows this change affecting only a small percentage of sentences imposed for drug felonies. Judge Weisberg noted that the courts may see more of the 5 year offenses, especially felony marijuana offenses, in the future.

***Commission Vote:*** The vote was 8-0 in favor of approving the changes to the Guidelines. (H. Cushenberry, L. Hankins, J. Weisberg, A. Seymour, P. Riley, D. Rosenthal, J. Samuels, and R. Gainer).

The Commission discussed when changes should be published and become effective. Laura Hankins posed the question of how these changes to the Drug Grid could affect current sentencing as a delay might be created with defendants waiting for the effective date of the change. Ms. Tombs-Souvey stated that changes to the Guidelines would also mean a modification to the SGS Application and agency database which would require some time. Solutions discussed included using a departure principle, a 90 day effective date that allows for agreement by the parties or an 11(e)(1)(c) plea. The Commission also discussed changing the effective date from plea/verdict to the date of the offense. The effective date issue was referred back to the Committee for further discussion and a recommendation at the next Commission meeting.

VI. Demonstration of Electronic Sentencing Guideline Form, Informational Item, Thurman Sanders and Ken Cowgill

Barbara Tombs-Souvey discussed briefly how we currently receive criminal history from CSOSA and how it is matched up with sentencing information in the agency database. Thurman Sanders and Ken Cowgill developed an electronic form that would prevent many of the common errors found on forms forwarded by CSOSA. The new form standardizes how information is inputted and automatically calculates the criminal history score, eliminating math errors. The data contained on the new form can be inputted into an Excel or Access format and merged into the Commission's database and web application. This feature eliminates manual data entry of criminal history information. She is currently working with CSOSA to identify ways to integrate this form into CSOSA's SMART System.

Thurman Sanders demonstrated how certain information populates onto the form, including multiple counts for a single case. The form also standardizes date and case number information for easy searching and sorting. The criminal history is calculated automatically and it will prompt the user when errors are present and allow for corrections before the form is submitted to the supervisor for approval. Judge Weisberg announced that this was an exciting development for the Commission and was pleased with the features of new form.

VII. Review and Discussion of Criminal Code Revision Project – Ron Gainer

Ron Gainer and Ken Cowgill presented an update on the Code Revision project and discussed the timeline for completion and the need for additional staffing to meet the project completion deadline of September 30, 2012. One idea is to prepare a draft on code revisions for offenses against individuals and property offenses, considering how these offenses are dealt with in other states and models. These revisions would be discussed amongst the Committee and then recommendations presented to the Commission for full review and action. Judge Weisberg requested a clarification of the timeline for this project and Mr. Gainer approximated that it would be three months. However, there is still the uncertainty of Mr. Cowgill's position or getting part-time assistance from the Attorney General's Office. Future project plans should keep in mind the deliverables to be presented to the Council.

Adjourn: 7:00 pm

NEXT MEETING:

Tuesday, March 15, 2011, One Judiciary Square (441 4<sup>th</sup> St., NW), 11<sup>th</sup> Floor.