



District of Columbia Sentencing and Criminal Code Revision Commission

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FULL COMMISSION MEETING MINUTES

Tuesday, June 21, 2011
Judiciary Square, Room 1117
Washington, DC

Attendance:

Frederick Weisberg	Dave Rosenthal	Nancy Ware
Ramsey Johnson	Jennifer Seltzer Stitt	Courtnei Burluson
Adele Harrell	Donald Braman	Megan Collins
Steve Husk	Harold Cushenberry	Thurman Sanders
Thomas Kane	Cedric Hendricks	Mia Hebb
Laura Hankins	Patricia Riley	Ken Cowgill
Barbara Tombs-Souvey	Meghan Murphy	Jessica Letro

- I. Call to order by Chairman Weisberg at 5:00 p.m.
- II. The Minutes from May 24, 2011 meeting were reviewed and approved as revised.
- III. Director's Report-Informational Item, Barbara Tombs-Souvey

FY 2012 Budget Update: Barbara Tombs-Souvey discussed the agency's FY 2012 budget and indicated that Ken Cowgill's and the new Paralegal position were both funded by the Council. In addition, the agency received an additional \$20,000 in operating funds for FY 2012.

New Paralegal Staff Position: Barbara Tombs-Souvey informed the Commission that several interviews had been conducted and the pool has been narrowed down to two applicants. Ms. Tombs-Souvey stated that an offer should be made within the next couple of weeks. Barbara Tombs-Souvey also introduced Jessica Letro, a third year law school intern from American University, who will be assisting Ken Cowgill with the criminal code revision project this summer.

IV. Creation of Research Committee–Informational Item, Judge Weisberg

Judge Weisberg shared with the members that Barbara Tombs-Souvey had discussed with him the opportunity to undertake several complex sentencing related research projects given that the Commission now has sufficient historical data. Judge Weisberg was pleased to inform the Commission that a new Research Committee will be formed to help identify and assist staff as they undertake future research projects for the Commission. Judge Weisberg appointed the following commission members to serve on the research committee: Adele Harrell, Jennifer Seltzer Stitt, Thomas Kane and Julie Samuels

V. Ranking of Sex Abuse of a Secondary Student, - Action Item –Courtnei Burleson

Courtnei Burleson discussed two groups of offenses for the Commission to consider ranking: Group I - First and Second Degree Sexual Abuse of a Secondary Education Student. Group II - Sexual Abuse in the Third Degree while Armed. Ms. Burleson submits proposed rankings for Commission’s consideration and discussion.

Group I

First Degree Sexual Abuse of a Secondary Education Student (§ 22-3009.03)

Proposed Ranking: Master Group 7

Attempted First Degree Sexual Abuse of a Secondary Education Student
(§§ 22-3009.03, 22-3018)

Proposed Ranking: Master Group 8

Second Degree Sexual Abuse of a Secondary Education Student (§ 22-3009.04)

Proposed Ranking: Master Group 8

Attempted Second Degree Sexual Abuse of a Secondary Education Student
(§§ 22-3009.04, 22-3018)

Proposed Ranking: Master Group 9

Group II

Sex Abuse in the Third Degree While Armed (§§ 22-3004, 22-4502)

Proposed Ranking: Master Group 5

Attempt Sex Abuse in the Third Degree While Armed (§§ 22-3004, 22-3018,
22-4502)

Proposed Ranking: Master Group 6

Commission Action: The Commission approved the proposed rankings set forth in Group I. The vote was 10-0 in favor of the first four rankings (H. Cushenberry, L. Hankins, F. Weisberg, P. Riley, D. Rosenthal, D. Braman, J. Seltzer Stitt, C. Hendricks, A. Harrell, and R. Johnson).

The proposed ranking focusing on Sex Abuse in the Third Degree While Armed set forth in Group II was referred back to the Ranking Committee for further examination.

VI. Criminal History Scoring Issue for Prior out of State convictions for offenders less than 18 years of age classified as juvenile adjudications in DC. – Action Item, Courtni Burleson

Prior Out of State Convictions for Offenders under 18 Years of Age Classified as Juvenile Adjudications in D.C.: Courtni Burleson discussed the Guidelines policy issue on scoring a prior adult, out of District conviction, for offenders who were under the age of 18 at the time the offense was committed. The Committee considered several options for structuring a policy on whether those specific convictions should be counted in criminal history.

The Committee recommended that if the defendant's out-of-District conviction was for an offense committed when he or she was less than 18 years of age, the following procedures govern whether the conviction should be scored as an adult conviction or a juvenile adjudication in the criminal history score.

- A prior conviction where the defendant was less than 15 years of age at the time the offense was committed is scored as juvenile adjudication.
- A prior conviction where the defendant was 15 years of age at the time offense was committed is scored as juvenile adjudication unless the court finds by a preponderance of the evidence that a judicial hearing was conducted in the out of the District jurisdiction determining that the case would be transferred to or retained in adult court.
- However, any prior conviction comparable to murder, first degree sexual abuse, robbery while armed (Firearm), or assault with intent to commit any of these offenses where the defendant was 16 years of age or older at the time the offense was committed is scored as an adult conviction.

Under the last provision, a prior out-of-District conviction for armed robbery or robbery with a weapon is scored as an adult conviction unless the defendant can show by a preponderance of the evidence that the weapon associated with the conviction was not a firearm, in which case the armed robbery should be scored as a juvenile adjudication. In other words, there is a rebuttable presumption that the weapon involved was a firearm unless proven otherwise.

The Commission discussed placing the burden of proof on the defendant to prove that the dangerous weapon was not a firearm and concluded with a proviso as noted: If the pre-sentence report writer cannot confirm the weapon used in the armed robbery, s/he should post an asterisk or otherwise highlight the scoring for this offense and indicate "presumed firearm otherwise unknown" (or similar language) in the pre-sentence report to alert the parties of this rebuttable presumption.

Commission Action: The Commission voted on all three aspects of scoring for offenders who were under 18 as proposed set forth in the memo with the proviso. The vote was 10-0 in favor of this scoring rule (H. Cushenberry, L. Hankins, F. Weisberg, P. Riley, D. Rosenthal, D. Braman, J. Seltzer Stitt, C. Hendricks, A. Harrell, R. Johnson).

VII. Criminal Code Revision Project Discussion – Informational Item, Barbara Tombs-Souvey and Ken Cowgill

Project Extension to 2014: Barbara Tombs-Souvey informed the Commission that the Criminal Code Revision Project was scheduled to conclude in September 2012 but has been extended by the Council until September 2014. During her budget testimony before Councilmember Mendelson, she discussed the staffing challenges the Code Revision project has faced since its creation. It should be noted that although the project deadline has been extended no additional staff or funds were approved for the project.

Staffing Issues: Ken Cowgill reported that two additional interns are scheduled to join the agency over the next couple of weeks and will assist with the Criminal Code Revision Project. He also informed the Commission that the new paralegal position would be an additional resource for the project.

Project Update: Barbara Tombs-Souvey announced that Ken Cowgill will be leaving the agency in December of 2011. Barbara Tombs-Souvey asks Commission members for assistance in seeking potential applicants to fill Mr. Cowgill's position. The position requires someone with skills in project management, extensive knowledge of the D.C. Criminal Code and significant legal experience. Identifying such an applicant will be very challenging for the Commission but the search should start as soon as possible. The Commission will address this issue further at the meeting.

Adjourn: 6:30 pm

NEXT MEETING:

Tuesday, September 20, 2011, One Judiciary Square (441 4th St., NW), 11th Floor.