

District of Columbia Truth-in-Sentencing Commission

950 Pennsylvania Avenue Northwest, Washington, D.C. 20530

January 31, 1998

The Honorable Linda Cropp
The District of Columbia Council
441 Fourth Street, N.W.
Washington, D.C. 20001

Dear Chairman Cropp:

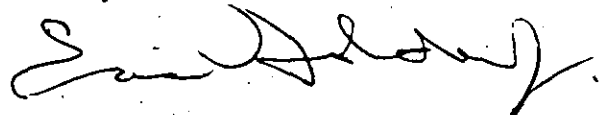
Pursuant to section 11212(a) of the National Capital Revitalization and Self-Government Improvement Act of 1997 ("Act"), enclosed are the formal recommendations of the District of Columbia Truth in Sentencing Commission ("Commission"). Under the provisions of the Act, the Council has until May 2, 1998, to act on these recommendations. The formal recommendations include those amendments to the District of Columbia Code that are necessary to comply with the Act's mandate, and a companion sectional analysis.

In addition to the formal recommendation package, at this time we are also providing for the Council's reference a copy of the transcript or minutes from each Commission meeting; the literature review and documents compiled as part of our research; and a set of the public comments and testimony considered in the course of the Commission's work.

Under separate cover, the Commission plans to submit shortly a "Suggestions and Commentary" document including explanatory materials; conforming amendment suggestions; and a summary of the ideas, alternatives and options developed during the Commission's deliberations but not included in the formal legislative package. This document will address such issues as data collection and analysis; unitary sentencing systems; community corrections; alternative mechanisms for better assuring sentencing consistency; definitions of "life" and "adequate" supervision. Proposals that will be included in the "Suggestions and Commentary" document for the Council's consideration are not part of the formal recommendations transmitted for Council action pursuant to section 11214 of the Act.

Throughout this process, the Commission has attempted to respect home rule. My colleagues and I have benefitted greatly from our meetings with you and the other members of the Council during this important process, and look forward to providing you with whatever input and assistance you deem appropriate over the next few months.

Sincerely,



Eric H. Holder, Jr.
Chairman

Enclosures

Truth Comn

Chairman Linda W. Cropp
At the Request of the
Truth in Sentencing Commission

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A BILL

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IN THE COUNCIL OF THE DISTRICT OF COLUMBIA

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Chairman Linda W. Cropp introduced the following bill, at the request of the Truth in
Sentencing Commission, which was referred to the Committee on

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To amend An Act To Establish a Board of Indeterminate Sentence and Parole for the
District of Columbia and to determine its functions, and for other purposes, to
require judges to impose determinate sentences for certain felonies committed on
or after August 5, 2000, to mandate that persons convicted of such felonies serve
at least 85% of imposed sentences, to abolish parole for these felonies, to require
that felons receive an adequate period of supervised release following
incarceration and to apply the federal good time credits provisions to felonies in
compliance with the National Capital Revitalization and Self-Government
Improvement Act of 1997, P.L. 105-33; to amend section 23-1329 of the District of
Columbia Code and An Act For the establishment of a probation system for the
District of Columbia to allow the temporary placement in custody of conditionally
released persons and persons on probation who violate certain conditions of
release or probation; and to amend the Medical and Geriatric Parole Act of 1992
to provide the Director of the Bureau of Prisons the authority to request medical
and geriatric release for persons convicted of certain felonies.

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BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA,

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That this act may be cited as the "Truth in Sentencing Amendment Act of 1998."

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Sec. 2. An Act To Establish a Board of Indeterminate Sentence and Parole for
the District of Columbia and to determine its functions, and for other purposes, approved
July 15, 1932 (47 Stat. 697; D.C. Code § 24-203 *passim*), is amended as follows:

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(a) A new section 3a is added to read as follows:

"Sec. 3a. Sentencing, supervised release and good time credit for felonies committed on or after August 5, 2000.

"(a) Notwithstanding any other provision of law, for any felony committed on or after August 5, 2000, the court shall impose a sentence that:

"(1) Reflects the seriousness of the offense and the criminal history of the offender;

"(2) Provides for just punishment and affords adequate deterrence to potential criminal conduct of the offender and others; and

"(3) Provides the offender with needed educational or vocational training, medical care, and other correctional treatment.

"(b) If an offender is sentenced to imprisonment, or to commitment pursuant to section 4 of the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Code § 24-803), under this section, the court shall impose an adequate period of supervision to follow release from the imprisonment or commitment.

"(c) In the case of a felony described in section 11212(h) of the National Capital Revitalization and Self-Government Improvement Act of 1997, approved August 5, 1997 (P.L.105-33; to be codified at D.C. Code § 24-1212(h)), a sentence under this section of imprisonment, or of commitment pursuant to section 4 of the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; D.C. Code § 24-803), shall be for a definite term, which shall not exceed the maximum term allowed by law or be less than any minimum term required by law. A person sentenced under this

section to imprisonment, or to commitment pursuant to section 4 of the Youth 1
Rehabilitation Amendment Act of 1985, effective December 7, 1985 (D.C. Law 6-69; 2
D.C. Code § 24-803), for such a felony shall serve the term of imprisonment or 3
commitment specified in the sentence, less any time credited toward service of the 4
sentence under subsection (d) of this section. 5

"(d) A person sentenced to imprisonment, or to commitment pursuant to section 6
4 of the Youth Rehabilitation Amendment Act of 1985, effective December 7, 1985 7
(D.C. Law 6-69; D.C. Code § 24-803), under this section may receive good time credit 8
toward service of the sentence only as provided in 18 U.S.C. § 3624(b). 9

"(e) The sentence imposed under this section on a person convicted of assault 10
with intent to commit first or second degree sexual abuse or child sexual abuse in 11
violation of section 803 of An Act to establish a code of law for the District of Columbia, 12
approved March 3, 1901 (31 Stat. 1321; D.C. Code § 22-501), or of armed robbery in 13
violation of section 2 of An Act To control the possession, sale, transfer, and use of 14
pistols and other dangerous weapons in the District of Columbia, to provide penalties, to 15
prescribe rules of evidence, and for other purposes, approved July 8, 1932 (47 Stat. 650; 16
D.C. Code § 22-3202) ("Dangerous Weapons Act"), shall be not less than 2 years if the 17
violation occurs after the person has been convicted in the District of Columbia or 18
elsewhere of a crime of violence as defined in section 1 of the Dangerous Weapons Act 19
(D.C. Code § 22-3201), providing for the control of dangerous weapons in the District of 20
Columbia. The sentence imposed under this section on a person convicted of first or 21
second degree sexual abuse or child sexual abuse in violation of sections 201, 202, or 207 22

through 209 of the Anti-Sexual Abuse Act of 1994, effective May 23, 1995 (D.C. Law 10- 1
257; D.C. Code §§ 22-4102, 22-4103, or 22-4108 through 22-4110), shall not be less than 2
7 years if the violation occurs after the person has been convicted in the District of 3
Columbia or elsewhere of a crime of violence, as so defined. 4

"(f) For a person convicted of: (1) assault with a dangerous weapon on a police 5
officer in violation of section 205 of the District of Columbia Law Enforcement Act of 6
1953, approved June 29, 1953 (67 Stat. 95; D.C. Code § 22-505), occurring after the 7
person has been convicted of a violation of that section or of a felony, either in the 8
District of Columbia or in another jurisdiction; (2) illegal possession of a pistol in 9
violation of section 3 of the Dangerous Weapons Act (D.C. Code § 22-3203), occurring 10
after the person has been convicted of violating that section; or (3) possession of the 11
implements of a crime in violation of section 209 of the District of Columbia Law 12
Enforcement Act of 1953, approved June 29, 1953 (67 Stat. 97; D.C. Code § 22-3601), 13
occurring after the person has been convicted of a violation of that section or of a felony, 14
either in the District of Columbia or in another jurisdiction, the sentence imposed under 15
this section shall not be less than 1 year." 16

Sec. 3. Section 23-1329 of the District of Columbia Code is amended by adding a 17
new subsection (e) to read as follows: 18

"(e) A person who has been conditionally released and who violates a condition 19
of that release by using a controlled substance or by failing to comply with the prescribed 20
treatment for use of a controlled substance, may be ordered by the court, in addition to 21
or in lieu of the penalties and procedures prescribed in subsections (a) - (d) of this 22

section, to temporary placement in custody, when, in the opinion of the court, such action 1
is necessary for treatment or to assure compliance with conditions of release. A person 2
shall not be subject to an order of temporary detention under this subsection, unless 3
before any such violation and order, the person has agreed in writing to the imposition of 4
such an order as a sanction for the person's violation of a condition of release." 5

Sec. 4. Section 4 of An Act For the establishment of a probation system for the 6
District of Columbia, approved June 25, 1910 (36 Stat. 865; D.C. Code § 24-104), is 7
amended as follows: 8

(a) The existing text is designated as subsection (a). 9

(b) A new subsection (b) is added to read as follows: 10

"(b) If a person violates a condition of probation by using a controlled substance 11
or by failing to comply with prescribed treatment for the use of a controlled substance, 12
the court may order, in addition to or in lieu of the actions and sanctions authorized 13
above, the temporary placement of the person in custody, when in the opinion of the 14
court such action is necessary for treatment or to assure compliance with conditions of 15
probation." 16

Sec. 5. The Medical and Geriatric Parole Act of 1992, effective May 15, 1993 17
(D.C. Law 9-271; D.C. Code § 24-261 *et seq.*), is amended by adding a new section 8a to 18
read as follows: 19

"Sec. 8a. Medical and geriatric reduction of sentence. 20

"Upon a motion by the Director of the Federal Bureau of Prisons, the court may 21
reduce the sentence of any person convicted of a felony under the District of Columbia 22

Code committed on or after August 5, 2000 and sentenced to a determinate term of imprisonment which is not subject to parole, and shall impose an adequate period of supervision to follow release, based upon a finding that:

"(1) The inmate is permanently incapacitated or terminally ill because of a medical condition which was not known to the court at the time of sentencing, and the release of the inmate under supervision is not incompatible with public safety; or

"(2) The inmate is 65 years or older and has a chronic infirmity, illness, or disease related to aging, and the release of the inmate under supervision is not incompatible with public safety.

The court shall act expeditiously on any motion submitted by the Director of the Federal Bureau of Prisons. If the court receives a request directly from an inmate or a representative of an inmate, the court may refer the matter to the Federal Bureau of Prisons for a motion or a statement of reasons as to why a motion will not be filed."

Sec. 6. This act shall take effect following approval by the Mayor (or in the event of veto by the Mayor, action by the Council to override the veto), approval by the Financial Responsibility and Management Assistance Authority as provided in section 203(a) of the District of Columbia Financial Responsibility and Management Assistance Act of 1995, approved April 17, 1995 (109 Stat. 116; D.C. Code § 47-392.3(a)), a 60-day period of Congressional review as provided in section 602(c)(2) of the District of Columbia Home Rule Act, approved December 24, 1973 (87 Stat. 813; D.C. Code § 1-233(c)(2)), and publication in the District of Columbia Register.

SECTIONAL ANALYSIS

Section 11212 of the National Capital Revitalization and Self-Government Improvement Act of 1997 requires the Truth in Sentencing Commission to make recommendations to the Council with respect to felonies committed on or after three years from the effective date of the Act (i.e. August 5, 2000), and sets forth certain mandatory features that those recommendations must contain. These recommendations of the Commission for changes to the District of Columbia Code embody those statutory mandates.

Specifically, subsection (a) of the section added by section 2 of the bill repeats the directive in section 11212(a) and (b)(2)(A) of the Revitalization Act that, for all felonies committed on or after August 5, 2000, the sentence for a felony shall reflect the seriousness of the offense and the offender's criminal history, provide for just punishment and deterrence, and provide for needed educational or vocational training, medical care, and correctional treatment.

Proposed subsection (b) implements the requirement of section 11212(b)(2)(C) of the Act that sentences for such felonies impose an "adequate period of supervision to follow release from the imprisonment." Under the Revitalization Act, the term of postimprisonment supervised release is a separate requirement, distinct from the term of imprisonment. The section does not specify minimum or maximum periods of supervision. Hence, under subsection (b), absent further legislative specification, a judge may impose a term of supervision of any length that meets the explicit requirement of the Revitalization Act that the term imposed be "adequate."

Subsection (c) implements the directive in section 11212(b)(1) of the Revitalization Act that, for the felonies enumerated in subsection (h) of section 11212 of the Revitalization Act, sentences of imprisonment or commitment meet the truth in sentencing standards of the Violent Crime Control and Law Enforcement Act of 1994. That standard effectively abolishes parole and mandates that persons convicted of such felonies serve at least eighty-five percent of the sentence imposed. Subsection (c) thus directs that, for this category of offenders, the sentence must not be indefinite or indeterminate, as currently is the case under section 203 of title 24 of the Code, but instead must be "to a definite term," and that the person must serve the sentence imposed, unless given credit under subsection (d).

Subsection (c) further provides that the sentence shall not exceed the maximum term allowed by law or be less than any minimum term required by law. This preserves existing maxima and minima, subject to any future changes that may be made to the District of Columbia Code. It does not require or result in any extension or application of mandatory minimum sentences to categories of offenders -- including persons sentenced under the Youth Rehabilitation Act -- to which the mandatory minima do not currently apply under District of Columbia law.

Subsection (d) provides that, for all persons sentenced for felonies committed on or after August 5, 2000, the provisions of section 3624(b) of Title 18, United States Code, are applicable. This implements section 11212(b)(2)(B) of the Revitalization Act. Section 3624(b) allows inmates who are serving sentences of more than one year but less than life to earn annually up to 54 days of credit towards their sentence.

GERIATRIC AND MEDICAL RELEASE

Section 24-263 currently directs the D.C. Parole Board to establish a medical and geriatric parole program administered by the D.C. Department of Corrections. The existing provisions and program require amendment in light of the following changes that will take place under the Revitalization Act: (1) The D.C. Parole Board will be abolished. (2) Responsibility for incarceration of D.C. sentenced felons will be transferred to the Federal Bureau of Prisons. (3) Persons convicted of subsection (h) felonies will be sentenced to determinate sentences with no parole.

The new § 24-268 provides for early release of persons sentenced under the new system, under criteria similar to those currently provided for geriatric and medical parole, through resentencing by the Superior Court on motion of the Bureau of Prisons, and imposition by the court of a term of supervision to follow release.

DRUG COURT

Section 11212(d)(2) of the National Capital Revitalization and Self-Government Improvement Act of 1997 requires the Truth in Sentencing Commission to make recommendations to the Council that maximize the effectiveness of the drug court of the Superior Court of the District of Columbia.

Sections 23-1329(e) (relating to pretrial release) and 24-104(b) (relating to probation) will enable the court, when faced with an offender or defendant who has violated his conditions of release either by using drugs or by failing to comply with drug treatment conditions, to place the person in custody for a reasonable period or to impose

other sanctions short of revocation of release or lengthy incarceration. Section 23- 1
1329(e) also provides that participation in a pretrial drug court program is voluntary. 2

Currently, neither the pretrial release statute nor the probation statute explicitly 3
allow for intermediate sanctions. Because of the severity of the sanction of revocation 4
and a lack of clarity regarding other available options, judges are reluctant to sanction 5
violations of drug testing and treatment conditions until they accumulate to the point that 6
they can no longer be ignored. This has at least two deleterious effects. First, the 7
person continues to use drugs, believing that there are no consequences, making his 8
substance abuse worse and ultimately harder to treat. Second, when the person finally 9
does come before the court with multiple violations, full revocation of pretrial release or 10
probation is often the result. In addition, it has now been established empirically that a 11
person on release or probation with an addiction or severe substance abuse problem is 12
much more likely to commit a new offense than a person who is actively in treatment 13
and subject to sanctions. The proposed changes will enable judges to use swift, certain 14
and graduated sanctions of limited duration, which are intended to get the offender or 15
defendant in compliance with release conditions and back on the road to recovery. 16