District of Columbia
Advisory Commission on Sentencing
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RETREAT

Wednesday, March 8, 2000
Kellogg Conference Center at Gallaudet University
800 Florida Avenue, N.E., Washington, DC

Attending:

Frederick Weisberg
Kim Hunt
Patrick Hyde
John Sassaman
Karen Severy
Chan Chanhatasilpa
Pat Riley
Ramsey Johnson
Nola Joyce
Bill Erhardt
Robert Rigsby (depart 12:15 p.m.)
Kelley Thomas (depart 10:30 a.m.)
Mary Gooden Terrell
Sharon Gervasoni
Marie Ragghanti
Robert Wilkins
Laura Hankins
Linda Harllee
Michelle Sedgewick
Tom Kane
Judi Garrett
Earl Silbert (depart 4:30 p.m.)
Harold Brazil (depart 9:50a.m.)
Audrey Rowe (depart 3:15 p.m.)
Peter Hoffman (p.m. only)

Eric Lotke (present only to distribute 1-page statement in opposition to "DOJ proposal" to increase criminal sentences)

I. Call to Order and Introductions (8:30 a.m.)

F. Weisberg called meeting to order. Urban Institute staff, Pat Riley, and Laura Hankins were introduced.

II. Time served (8:35 a.m.)

Bill Sabol, accompanied by Jim Lynch, Avi Bhati and Mary Shelley, of the Urban Institute made a presentation on time served data and distributed handouts of the presentation. B. Sabol explained the efforts of the Urban Institute staff, B. Erhardt, ACS, CSOSA and BOP staff have made in "cleaning up" data obtained from the Superior Court, D.C. Board of Parole, Pretrial Services Agency, and others. B. Sabol pointed out that the District's data has received more scrutiny than other jurisdictions' data. Efforts to date will be useful in developing an integrated database. He stated that he is fairly confident that data can provide useful information on time served.

During B. Sabol's presentation, he pointed out that "pure cases" are not representative of cases sentenced in DC and presented a biased view: short sentences tend to underestimate time served and long sentences tend to overestimate time served. For this reason, he cautioned against drawing general conclusions based on pure case data. The minimum sentence imposed is the best predictor of time served. Modeling better captures reality, because models can incorporate variables, such as criminal history and sentence imposed. With modeling, it is also possible to measure split sentences, pretrial detention credit, back-up time, etc.

The members opted to include only general statements in the April 5th report, and use the Commission's annual report to discuss sentencing practices and data in greater depth. For now, the April 5th report will describe efforts to obtain, "clean up" and analyze data, and to explain purposes for which data might be used, given its reliability. Because the Council apparently wants some assurance that the Commission is addressing potential disparity or increasing sentences or prison time, the April 5th report should also mention that data on historical practices will be shared with judges.

III. Unitary sentencing system (10:55 a.m.)

K. Hunt directed members' attention to handout attached to agenda (Action Items, March 8, 2000).

Recommendation 1: **The Commission recommends that the Council abolish parole for all felonies and misdemeanors, and for all offenders who would have been eligible for Youth Act sentences.**

R. Wilkins argued against this recommendation because of the strong sentiment in community to keep parole because it incorporates rehabilitation into the system and the Council's resolution on early Revitalization Act indicated it did not want to be forced to abolish parole. Also, there will be another comprehensive proposal to explain what happens or what kinds of sentences can be imposed on other offenses for which parole is abolished. R. Wilkins stated that he has other ideas on how to accommodate the concerns expressed. He said that without any clarity or compromise on the other side, the PDS cannot agree to abolish parole and that his proposal is attempt at compromise. He stated that it is not necessarily his position on the issue, so it would be inaccurate to incorporate it into the report unless it is clearly articulated (R. Wilkins will draft this) what its purpose was. However, he could change his position if there was some intermediate way to guide discretion (e.g., using parole board criteria for set-off, or initial R. Wilkins' proposal) in approaching top numbers

K. Severy speaking for H. Brazil was against including R. Wilkins' proposal in the report. She stated that it is an entire structured sentencing proposal and since ACS hasn't reached consensus on such a proposal, it would be dangerous to include it as an option for the Council.

R. Wilkins argue that his proposal was not structured sentencing and not guidelines. It was attempt to answer all questions presented to ACS in one document or scheme.

F. Weisberg suggested that discussion on the YRA be set aside for now and discussed separately later.

H. Cushenberry stated that he strongly supports a unitary system. He argued that the benefits of parole for short sentences are minimal and something other than a unitary system offers needless complexity that serves no useful purpose [see TIS Commission report re: H. Cushenberry's rationale for unitary system].

The members tentatively agreed to recommend to abolish parole for all adult felons and misdemeanants. The question of the abolition of parole for young adult subsection (h) offenders who would have been eligible for Youth Act sentencing was postponed.

Recommendation 2: Necessary changes to the Code of District of Columbia include: The members acknowledged the need for amendments to the D.C. Code and directed the staff to draft legislative amendments with assistance from others if available.

Recommendation 3: The Commission proposes to rely on training and systemic factors, such as the judicial desire to follow historical practice, to restructure prison sentences. Since offenders must serve 85% of the new sentences, aggressive training and information on time served on historical sentences, to be provided by Commission staff, would allow individual judges to adjust their sentences downward to accommodate the new rules. FY 2001 budget justification includes sufficient funding for training efforts.

K. Severy for H. Brazil objected to the use of the word "downward" as did R. Johnson, F. Weisberg, and H. Cushenberry and directed the staff to strike out "downward."

A. Rowe asked why there was a second sentence in Recommendation #3? She was not sure of what it added? K. Hunt said that the reason the sentence was included was to give the Council some sense as to how following historical practice might happen. F. Weisberg suggested deleting the first phrase of second sentence. K. Hunt stated that this recommendation would be rewritten to be more complete and to recap the old system (min-max indeterminate, parole, etc.) and to describe the new system. The members also recommended inserting "initially" before "proposes."

Recommendation 4: The Commission also proposes to continue study of sentencing practice for old law and new law sentences to track new law sentences. The Commission proposes to work with the Criminal Division of the Superior Court and the Office of the United States Attorney to collect data necessary to track sentencing changes. Additional data collection is necessary to study relevant factors at sentencing such as victim injury, weapon use and type, and amount of drugs sold. FY 2001 budget justification includes sufficient funding for data collection and analysis on sentencing practice.

E. Silbert asked why was USAO singled out for particular mention. K. Hunt said the reference would be deleted. R. Johnson pointed out that "sentencing changes" should be changed to "sentencing practices."

Recommendation 5: In the absence of strong evidence of unwarranted disparity in sentencing under the old law, or likely unwarranted disparity under the new law, imposition of a structured sentencing scheme such as sentencing guidelines is premature. Should the Commission identify unwarranted disparity in sentences, at a future date the Commission may wish to recommend that the Council create a system of structured sentencing designed to reduce or eliminate disparity.
The members agreed to revisit #5 at a later date. If it is decided that it should be included, the staff will figure out where it goes.

Recommendation 6: Steps can be taken now to help prevent unwarranted disparity, especially education of judges regarding the new system and the time to be served under both old and new sentences (Recommendation 3). To help prevent disparity, the Commission proposes to provide a sentencing translation table in June 2000 to crosswalk old law and new law sentences in terms of effective time served in prison, in as much detail as current time served data will allow.
A. Rowe suggested that Recommendation #6 can go under Recommendation #3.

Recommendation 7: The Advisory Commission on Sentencing should be charged with conducting a before and after study of sentencing changes under old and new laws (Recommendation 4). The need for structured sentencing will be reassessed as soon as possible in 2001.
The members agreed that Recommendations #5, 6, 7 can be dropped. Also, sentencing guidelines should not be mentioned in the report since ACS has no recommendations.
R. Wilkins argued that #6 and 7 are relevant to issues on which Council asked for ACS recommendations, while #5 is about guidelines specifically.

IV. Life sentences

K Hunt began the discussion of life sentences, and presented the following questions:

1. Decision 1: First-degree murder should be handled differently than other offenses with life maximum sentences.
2. Decision 2: For all offenses except first-degree murder, life means a maximum term of years.
3. Decision 3: Second-degree murder should be handled differently.
4. Decision 4: The maximum term of years for Second-degree murder should be ((a) 40, (b) 60) years.
5. Decision 5: The maximum term of years for other life offenses should be ((a) 30, (b) 45) years.

6. Decision 6: For first-degree murder without aggravating factors, the maximum term of years for most offenses should be ((a) *same as second degree,* (b) 60 or, (c) 90) years.

The group declined to address the questions in the order initial presented.

R. Johnson mentioned that the proposals under discussion did not include the option that life means natural life. He supports no Council action, which will mean that life means natural life.

When asked whether life without release should remain as the maximum authorized sentence for first degree murder and all other offenses for which life without parole is currently an option, the group expressed no disagreement.

F. Weisberg asked the group whether "life" should mean a term of years. R. Johnson responded that life should not mean a term of years. There are a large number of offenses for which life without parole would be an option. He is concerned that judges might impose lengthy sentences (e.g., 121 years) without limit. Upon reflection, this presents more a theoretical concern than an actual concern. He found that any number he could come up with would be arbitrary. The answer to this problem is to have structured sentencing or sentencing guidelines. A Rule 35 motion could be invoked to reduce sentence. He is very concerned that ACS in the wake of determinate sentencing appears to recommend reductions in the maximum sentences for a range of crimes about which community most concerned. It could be said that the ACS is reducing life sentences to a lower term of years. He is not convinced that this is a wise recommendation to the Council. On balance, the better approach is to recommend no changes to maximum penalties, to place confidence in training judges, and ultimately to adopt structured sentencing.

H. Cushenberry said that much depends on the number judge chooses. Conviction on multiple charges and the imposition of consecutive sentences often adds up to a long sentence. The uncertainty that a defendant may be exposed to a 121 year sentence for armed robbery conviction is too great. It is responsible and reasonable to set term of years.

S. Gervasoni mentioned the psychological effect on the community in setting one number. In the egregious case, judge might impose the highest possible term

B. Erhardt agreed with H. Cushenberry's position. He agreed that life without release should remain an option. If the judge does not impose life without release, the maximum authorized terms should be 90 years for first degree murder, 50 years for second degree murder, and 45 years for all other offenses carrying a life sentence

R. Wilkins stated that the numbers B. Erhardt suggested were insane. R. Wilkins agreed with the principle of setting a term of years, and agreed with H. Cushenberry that unlimited discretion is not a good idea. Even for the youngest defendant, serving 85% of 90 years means the defendant would be a senior citizen by the time he is released. In

practice, in every case a judge has the ability to sentence to a person to life without release without finding aggravating factors. He understood the desire to have a system that looks tough, particularly with homicide cases, and so the system should reflect this. ACS should set numbers that are appropriately large, but the judge should approach these high numbers only in the most serious cases.

M. Gooden Terrell suggested again that ACS recommend a provision for revisiting a life sentence after a period of years, as in North Carolina.

F. Weisberg asked if there was sentiment to make no recommendation on life sentences. K. Severy said H. Brazil wants to establish sentencing guidelines, and that a finding of aggravating factors should be made in order to impose a sentence of life without release. E. Silbert was concerned about NOT imposing some maximum number. He feared the potential for 99 year sentences, given huge number of offenses punishable by life and that ACS has the responsibility to come up with meaningful figure. He was uneasy with R. Johnson and H. Brazil's preference to rely on sentencing guidelines. E. Silbert argued that guidelines were a different issue. He is a proponent of judicial discretion, and guidelines transfer sentencing power to prosecutors. ACS and Council must act now on basis of what is on the table now. He concurs with the suggested numbers of 30, 40, and 60 years. R. Rigsby agreed with these numbers.

N. Joyce suggested that a finding of aggravating factors would allow the judge to impose a sentence up to twice the maximum. For example, if 30 years is the maximum sentence, with a finding of aggravating factors, the sentence could be up to 60 years.

E. Silbert thought that a 60 year sentence for 2nd degree murder is a long time. He argued that these are huge periods of time in prison and that a 60 year old inmate poses little or no risk to community.

F. Weisberg thought that the ACS should find numbers to quantify life, and select different numbers in a rational hierarchy. Eventually, sentencing guidelines should deal with the pressure to go up to the maximum sentence in notorious cases. He did not oppose the North Carolina model of allowing review of sentences after some years, and this provision could be added to the medical and geriatric release section of the Code. To the extent that numbers are not high enough, virtually all cases require imposing sentence on multiple charges. The years add up, particularly with consecutive sentences. He opted for 30, 40, 60 years, and retained life without release as an option for 1st degree murder and other crimes for which life without release is available.

QUANTIFY LIFE? NO — H. Brazil, R. Johnson; YES – all others

IF QUANTIFY LIFE, WHAT SHOULD THE TERM(S) BE? (a) 60-40-30 recognized as maximum term of years for murder I, II, and all others. Other issues (e.g., whether to allow imposition of higher time with/without aggravating factors, guidelines, appeal rights, review mechanism like resentencing procedure after 25 years) left to Council.

F. Weisberg asked whether anyone was troubled that voluntary manslaughter while armed is not broken out of this scheme. R. Johnson and F. Weisberg were troubled by this. In this scheme, 30 years would be the maximum sentence, which may not be enough in the event of a person's death.

V. Lunch (12:15 p.m.)

VI. Supervised Release (1:45 p.m.)

P. Hoffman and M. Sedgewick distribute a memorandum dated 7 March 2000 regarding the remaining outstanding issues on supervised release.

QUESTION #1: relationship between statutory maximum, supervised release, revocation?

R. Johnson presented a proposal developed by various U.S. Dept. of Justice-affiliated officials. Supervised release represents a golden opportunity to rehabilitate D.C. offenders who need a lot of help (e.g., counseling, mental health treatment, drug treatment, education). He has a much greater understanding of resources given to CSOSA, more resources than have ever been available in DC, and maybe greater than resources available in other jurisdictions, to helping offenders. Supervised release should be designed in such a way as to get offenders on their feet after their release from prison (same services are also available for probationers). D.C. offenders in prison would get much better services through BOP than ever available in DOC. We know that the majority of inmates are released from prison, and when released they will need help to prevent recidivism.

Supervised release should not take a "gotcha" approach, but should be a "work with us, turn your life around" approach. Longer rather than shorter terms of supervision are necessary. Taking the drug court example, it is better to hold participants accountable, through behavior contracts, drug testing, etc. The DOJ proposal selected 5 years, automatically, with idea of creating a dynamic: CSOSA and offender work together, and early termination of supervised release is an option for the successful offender. CSOSA will have the time, 5 years, and the dynamic (quick sanctions, early termination incentive) to urge compliance. Mr. Johnson would hate to see ACS create a system that does not take full advantage of CSOSA resources. ACS could design a system with a presumptive supervised release period of 2 years or 1 year, with CSOSA and USPC authority to request extension for time to deal with relapses. This sets up adversarial, hostile relationship that is not conducive to rehabilitative efforts. He would rather have a longer supervised release period, with assumption that good behavior results in early termination.

Certain very serious offenses should have even longer periods of supervised release, where public safety considerations are more prominent. If starting point is DOJ's proposed dynamic, if a prison term plus the supervised release term could not exceed statutory maximum sentence, such a system causes problems with the lower end of offenses because time period for supervised release is too restrictive. A more reasonable standard is to have the prison term plus revocation term not exceed the statutory maximum sentence, although there may be a narrow range of offenses that should be handled differently.

M.G. Terrell noted that individual differences are critical, and sentences and rehabilitation efforts must be determined case by case. It makes no sense to assume that a 5 year supervised release term is appropriate for all offenders. She would be reluctant to impose 5 year supervised release term when in this system the judge has no authority to impose conditions of supervised release.

B. Erhardt agreed that all offenders may not need 5 years of supervised release. It is better, though, to have a mechanism within CSOSA and USPC to handle early termination as an incentive.

R. Johnson commented that part of the difficulty in imposing supervised release terms is that no one knows what an offender will be like coming out of prison. So, it is better to impose a 5-year term, and have CSOSA seek termination as early as possible.

S. Gervasoni commented that the U.S. Parole Commission's regulations have early parole termination guidelines after 2 or 3 years. There is no reason to believe that pattern would not continue with District inmates.

H. Cushenberry's thinking is more fluid than before. He was uncomfortable with imposing a flat 5-year supervised release term for all offenders, because all offenders will not need such a long time. He is prepared, if there is some concession on revocation rules, to concede 5 years for supervised release. Supervised release is like parole, no matter what you call it. It extends period of time defendant is subject to government control. The longer the period of supervised release are, the more it becomes a "gotcha" scheme. If judge wants defendant to serve more jail time, judge would impose longer sentence.

R. Johnson said that revocation terms under 18 U.S.C. § 3583 probably apply to DC, though U.S. Attorney's Office has no authoritative opinion on this issue.

N. Joyce noted that incapacitation and punishment purposes are served by sentencing. Sentencing could fulfill a rehabilitative function, but programs in prison work toward this goal. If R. Johnson is saying that that focus of supervised release should be on rehabilitation, then, shorter sentences mean longer supervised release. Shorter sentences are associated with less serious offenses (property, disorder crimes, etc.) often committed by offenders plagued by issues like unemployment and drug abuse. Less time in prison means less time for programming. She finds the longer supervised release terms in DOJ's proposal appealing.

M. Ragghanti commented that the real test for the offender is his return to community. It is after release that offender could really benefit from CSOSA services.

T. Kane stated that BOP does not assume that DC offenders receive services from CSOSA, and that BOP will do its share to provide needed programs and services. He agreed with N. Joyce that a paradox exists: offenders with short sentences may be most in need of services. It is important to leave flexibility in a supervised release system.

F. Weisberg commented that supervised release under the first option (prison term plus supervised release term cannot exceed statutory maximum sentence) essentially retains parole for non-subsection (h) felons on low end, and thus may reinforce the argument for abolishing parole for non-subsection (h) offenders.

F. Weisberg: take questions in order presented.

1. Option #1: prison + supervised release = statutory maximum sentence?
   R. Wilkins, A. Rowe, M. G. Terrell

R. Wilkins: He supports #1. People who mess up on supervised release cannot be identified up front. They both need more services, and may need the "stick". For those who do well on supervised release, they may benefit from early termination, but under Option #2 the benefit is offset. On balance, Option #1 is fairer than #2. If minor adjustments are needed to change statutory maximums of short sentences, then that is a better approach.

2. Option #2: prison + Revocation = statutory maximum sentence?
   Sassaman, Severy, B. Erhardt, H. Cushenberry, Earl Silbert, P. Hyde

3. Option #3: no relationship?
   R. Johnson, N. Joyce

NOTE: REVISITED QUESTION #1 AFTER RESOLVING ISSUES OF SUPERVISED RELEASE TERMS.
On reconsideration at 4:20 p.m.,

F. Weisberg: Members preliminarily decided that supervised release terms are for 3 or 5 years, with exceptions limited special cases.

Option #1: R. Wilkins, L. Harllee, A. Rowe

Option #2: F. Weisberg, H. Cushenberry, M. G. Terrell, Sassaman, Severy, B. Erhardt, R. Johnson (changed vote to #2 on second round), N. Joyce, M. G. Terrell, Earl Silbert

Option #3: R. Johnson (if court made special finding; NOTE: changed vote to #2), T. Kane

QUESTION #2: what is "adequate" term of supervised release?
Part I: authorized term in "typical" case?

Options presented were:

1. 5 years in each case (DOJ proposal): R. Johnson, N. Joyce, B. Erhardt, M. Ragghanti/S. Gervasoni, T. Kane
2. federal model (5, 3, or 1years): no supporters
3. federal model for revocation (5, 3, 2, 1 year): R. Wilkins
4. adapted federal model (5 and 3 years): F. Weisberg, P. Hyde, Sassaman, H. Cushenberry, M. G. Terrell, L. Harllee, E. Silbert

Ms. Severy said Mr. Brazil supports 3 years for all offenders.

Part II: max term for "special" case? Can we go beyond 5 years?

Ms. Severy said H. Brazil supports longer supervised release terms for "special cases." for sex offenses, terms to track sex offender registration requirement.

Mr. Sassaman said Mr. Rigsby supports exceptions for sex offenses, but Mr. Sassaman was not sure of Mr. Rigsby's position with regard to other offenses.

R. Johnson, B. Erhardt, N. Joyce support DOJ proposal (lifetime supervision for lifetime registration sex offenders).

H. Brazil could be persuaded to support lifetime supervision for sex offenders.

M. G. Terrell support higher supervised release for sex offenders

M. Ragghanti/S. Gervasoni: She supports higher supervised release terms for sex offenders, murders, armed crimes of violence.

R. Wilkins: He supports no special cases.

L. Harllee: She would support option #3 because minimizes exposure in prison. Opted for option #4 because thought group would reach consensus on Option #1 in Question #1; would support higher supervised release for sex offenders.

T. Kane: Yes on higher supervised release; would not rule out higher terms for others.

Earl Silbert: He supports higher supervised release for sex offenders.

F. Weisberg: He supports no special cases.

QUESTION #3: Judicial discretion in imposing initial term of supervised release?

F. Weisberg: Given vote for #4 in Question #2, he is willing to give up discretion, and follow scheme of #4.

M. G. Terrell: She supports ranges. Every offender is different. If maximum is 5 years, judge should be able to choose 1, 2, 3, or 4 years.

Hoffman: Given maximums at 3 or 5 years, 3-5 for 5 year maximum, and 2-3 for 3-year maximum is the federal model.

B. Erhardt: If allowing ranges, leave open the door for CSOSA to request extensions. He would rather have longer term with option for early termination.

M. G. Terrell: Judges want discretion and flexibility. Judges hear lots of cases for probation revocation, for example. This is not new.

> Option 1 (FIXED TERMS): F. Weisberg, H. Cushenberry, Severy, Sassaman, B. Erhardt, R. Johnson, S. Gervasoni, T. Kane, N. Joyce
> Option 1 (RANGE FOR TERMS): M. G. Terrell, R. Wilkins, P. Hyde

QUESTION #4: Toll supervised release term while detained but ultimately acquitted?

Option #1 continues supervised release unless convicted and sentenced 30 days+
Support: R. Wilkins, P. Hyde, B. Erhardt, M. G. Terrell, F. Weisberg, H. Cushenberry, N. Joyce, T. Kane

Option #2: support: Rigsby, R. Johnson

Brazil unknown; S. Gervasoni/M. Ragghanti And L. Harllee pass

QUESTION #5: Cap revocation terms per 18 U.S.C. 3583(e)(3)?

Hoffman: The classes of felonies refer to federal law (for example, Class A offenses are punishable by life in prison). It assumes that a DC defendant with a 5-year supervised release term, revoked, USPC wants to keep him for 5 years. Is there a loophole allowing the defendant to claim "any other case" and be locked for a maximum of 1 year? He recommends at minimum the Council pass legislation which either copies 3559, or passes legislation that states revocation penalty per statutory maximum sentences in DC Code

(e.g., if penalty is 25 years then revocation penalty 5 years). Additional wrinkle: while one cannot change revocation penalties, it is theoretically possible to define any felony punishable by 1 day or more as Class A felony, rendering revocation penalty for all offenses at 5 years. Converse also theoretically possible. Recommend disregard this additional wrinkle.

F. Weisberg: Congress didn't recognize that DC doesn't have classes of felonies. Prefers option that ties revocation penalty to statutory max without mentioning classes.

On a voice vote, there was general agreement to mirror federal statute, without classes.

VII. Intermediate sanctions (4:40 p.m.)

K. Hunt presented three possible recommendations for discussion:

1. Recommendation 10A: The Council may wish to amend the conditions of probation in the Code of the District of Columbia to allow judges to sentence offender to short periods of confinement as a condition of probation (Detailed legislative recommendation needed here).
2. Recommendation 10B: Further, the Council may wish to amend § 24-461 of the Code of the District of Columbia to state that felony offenders are also eligible to serve up to two-thirds of his or her sentence on work release (More detail needed here).
3. With these amendments, short periods of confinement can be used as part of a broader intermediate sanction strategy and controlled at the point of sentencing by the local judge and coordinated with CSOSA.

F. Weisberg summarized the status of 2 potential legislative recommendations, both of which require amendments to probation statute. Currently, the judge cannot order work release as sentence in felony case and can only recommend work release, which DOC/parole board could accept or reject. One could accomplish this goal by authorizing work release sentence as a probationary term (not a prison sentence to begin with). B. Erhardt will draft. For example, an offender may have 6 months to be served in work release setting, presumably at halfway house.

For split sentences, the confined portion could include as a condition of probation that the offender reside in a halfway house (prevent them from going to BOP). The District could make split portion a probationary sentence such as sec. 16-710. This addresses the Revitalization Act/BOP conundrum, and keeps them in DC.

T. Kane: Under Revitalization Act, aren't all sentenced felons BOP's responsibility? There is no reason why the federal government would not reimburse DOC. If the sentence is probation, it presumes CSOSA covers the cost. If sentenced to BOP custody, BOP cannot keep them in DC because BOP has no facility locally.

R. Johnson: This allows use of the D.C. Jail. DOC is concerned that, when Lorton goes, DOC loses flexibility to move bodies around.

See 18 USC 3663 (10), (11) as conditions of probation preferable as a model for DC.

R. Johnson: Could include intermediate sanctions discussion in supervised release chapter as conditions of probation and/or conditions of supervised release.

R. Wilkins: What plan, if any, is proposed for determining how to encourage intermediate sanctions, or what offenses or offenders should participate. How can we ensure risk or needs assessments, as CSOSA has begun. At least we need a plan for how to investigate.

F. Weisberg: One method is to incorporate on sentencing guidelines grid.

R. Wilkins: However, we do not make intermediate sanctions contingent upon development of sentencing guidelines.

B. Erhardt: The language suggests risk or needs assessments be included in pre-sentence report, and includes a recommendation for intermediate sanctions.

M. G. Terrell: Suggests that Council legislate as little as possible in this area.

F. Weisberg: I recommend implementation of Revitalization Act requirement that the court considers rehabilitation and education needs by urging CSOSA to incorporate.

VIII. Youth Rehabilitation Act (5:00 p.m.)

Decision 1: Technical amendments are recommended to bring the Youth Rehabilitation Act into conformity with the Revitalization Act.

Decision 2: The Council should retain the language of the Youth Rehabilitation Act dealing with expungement or set aside of convictions to the maximum extent possible.

F. Weisberg: Should we, since we recommended abolition of parole for all other offenders, make exception to keep parole for non-(h) YRA-sentenced offenders? If we apply determinate sentencing to all, then youth offenders still serve 85% of sentence, regardless of whether they are rehabilitated.

R. Johnson: Retaining YRA for non-(h) makes sense for a limited class of offenders. It allows BOP to work with them, and holds out the carrot of early release.

F. Weisberg: Council only excluded murderers, while Revitalization Act excludes much larger number.

H. Cushenberry: He is more comfortable with BOP handling youth than DOC.

B. Erhardt: He is comfortable with BOP too. It makes no sense to retain YRA just because it remains on the books. If features should remain, such as set aside provision, then revisit set aside for a class of offenders, not necessarily just youth.

F. Weisberg: There is a different classification system in BOP, with no segregation for youth.

T. Kane: To have some youth YRA-sentenced and others not is not an issue for BOP management. The big issues are segregation, and seriousness of offenders receiving YRA sentences. Whether or not one receives a YRA sentence, BOP will provide the same services to all. They won't get special programs, but may move to the top of the list to get into BOP programs.

B. Erhardt: Keeping any portion of YRA goes against truth in sentencing.

F. Weisberg: He would favor abolishing parole for everybody, including felony, misdemeanor and YRA, and use supervised release creatively for YRA offenders. No parole and serve 85%. With 5 or 3 years supervised release, tie expungement to successful completion and early termination of supervised release.

H. Cushenberry: Why not still allow expungement; seems Council felt strongly about it

B. Erhardt: Can YRA sentence be less than mandatory minimum sentence, under Revitalization Act? The answer is probably no.

Can court impose sentence less than mandatory minimum (e.g., 5 years for 7 year minimum?)

Hoffman: recommends rewrite of expungement provision. It is not good to use term "set aside" because it is unclear what offender can say in response to question, "Have you been convicted of a crime?"

Pat Riley: There is DC case law on set aside.

Hoffman: But you may want to revise, in case a DC offender ends up in federal system or in another jurisdiction.

R. Wilkins: Is #1 same as the Wilkins proposal? It eliminates segregation, no early release, and keeps set aside provisions?

MS: Yes and include other technical amendments to include the new Revitalization Act players.

F. Weisberg: How many recommend parole retained for non(h) youth offenders, and youth act abolished for (h) offenders? F. Weisberg, Brazil, B. Erhardt

Hankins: What about expungement? Why should ACS be the entity to get rid of YRA?

Severy: Mr. Brazil wants to limit offenses for which expungement is possibility, and wants to limit number of times expungement is available.

M. G. Terrell: Does YRA have to be in report? She supports keeping as much of YRA as possible.

R. Wilkins: Concern that, absent recommendation or change in law, YRA might not be implementable, given new Revitalization Act players.

YRA options:

1. retain parole for non (h) and misdemeanants, retain expungement and other benefits; eliminate parole for (h); delete segregation
2. same as #1 for (h) keep expungement for (h) tied to completion successful or early termination of supervised release.
3. no parole for anybody, not even YRA.; retain expungement for everybody
4. no parole; retain expungement only for non (h)
5. abolish YRA and say nothing about expungement
6. abolish YRA and revise set aside based not on age but on other criteria

IX. Adjourn approx. 5:50 p.m.