



# District of Columbia Advisory Commission on Sentencing

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## FULL COMMISSION MEETING MINUTES

Wednesday, March 19, 2003  
500 Indiana Ave., N.W.  
Washington, DC

Attending:	P. Quander	J. Stewart	P. Riley
	L. Hankins	F. Weisberg	N. Joyce
	C. Wellford	A. Teal	R. Johnson
	T. Kane	R. Scotkin	A. Chaturvedi
	K. Hunt	R. Buske	J. Cronin
	C. Chanhataasilpa		

- I. Call to order at 5:10 p.m.
- II. F. Weisberg called the meeting to order. Minutes were approved pending any last minute revisions sent to K. Hunt by the end of this week.
- III. F. Weisberg began a presentation of the report of the Research Subcommittee. He gave a brief review of 2002 recommendation (See handout) to develop a plan for voluntary sentencing guidelines as follows:

Recommendation: The Commission will develop by November 2003 a system of voluntary sentencing guidelines based primarily on the severity of the offense of conviction and the criminal history of the offender. The guidelines will include recommended sentencing dispositions and, where prison is the disposition, recommended ranges for terms of imprisonment. The ranges would be relatively wide to preserve judicial discretion, but not so wide as to defeat the goals of uniformity and proportionality. Judges would be encouraged to follow the recommended sentences and to sentence within the recommended ranges. Since the guidelines would be voluntary, judges would be free to depart in both directions in “extraordinary” cases, but would be expected to state reasons in writing or on the record.

F. Weisberg next displayed the blank grid (See handout). He noted that the vertical axis of the grid was based on the recommendations of the Ranking Subcommittee and that the groupings remained largely consistent with historical sentencing practices. However, he noted that a small number of offenses have been moved and more would likely be moved before the next presentation to the Commission. He also noted that Group 9 represented an amalgamation of heterogeneous offenses and one proposal would split this into at least two separate groups.

He noted that the horizontal axis of the grid was based on the recommendations of the Criminal History Subcommittee and contained five categories with Category E being the most serious prior record category. Again he noted the desire to track historical practice, but noted there were at least two obstacles: 1) Category E cases are relatively rare in our data, and shaping recommendations wholly on these few cases may be unwise and 2) Criminal history scoring is flawed using automated data due to our inability to capture misdemeanor offenses and many out-of-jurisdiction priors. K. Hunt added that the Commission has requested a sample of Pre-Sentence Reports from CSOSA in order to examine the extent of the undercounting.

F. Weisberg briefly noted that the grid format, while not the only format considered, provides a convenient way to capture two major ingredients of the sentence, the offense and the offender's prior record. Not all of the traditional purposes of sentences are captured on such a grid, for example an offender who may be a good candidate for rehabilitation through an alternative to incarceration, despite a moderately severe crime and prior record. He next reviewed the advantages of a voluntary system in this regard. He noted that other purposes, such as incapacitation and deterrence, may be well served through the grid format.

F. Weisberg turned to the In-Out decision, whether or not to recommend a sentence to incarceration. He noted that the Subcommittee proposes to show a recommendation for a period of incarceration in all boxes, but in the lightly shaded boxes (See Subcommittee's draft grid in handout) a sentence to probation would represent a sentence in compliance with the guidelines. He noted that the Subcommittee explored the principle of using the middle 75% of sentences to set the In-Out line, but eventually settled on middle 50% of sentences. This means that the lowest 25% and the highest 25% of sentences are dropped. If probation (the lowest sentence) is given in at least 25% of cases, then probation is part of the middle 50% of sentences and that cell is probation eligible, under the Subcommittee's working principle. In practice, the lightly shaded areas fit very well into the principle, although the historical data is a guide and not absolute.

A. Teal asked about the case of an offender in Group 9, column D, a person that has a less serious offense but a serious prior record who may have been in a much higher box previously. F. Weisberg replied that the shaded box only suggests that the judge *could* give probation, not that they should in every case. He noted that the question was an important one and the Commission must answer public concerns in this regard. He also noted that a publicly available sentencing grid provides for greater transparency in sentencing practice, but also draws attention to some problematic cases.

F. Weisberg then discussed the darker-shaded boxes adjacent to the lighter-shaded ones. These represent boxes in which a split sentence of 180 days or less, followed by probation, would be in compliance with the guidelines – although a straight probation sentence would be out of compliance. R. Johnson asked if he understood correctly that in the lighter-shaded box probation was part of the middle 50% of sentences. F. Weisberg said yes, and in the darker-shaded boxes probation *plus* a split sentence of 180 days or less was part of the middle 50% of sentences. That is, while probation sentences

in these boxes did not typically achieve the 25% threshold, they did when the percentage with short split sentences were added to the probation percentage.

F. Weisberg noted that the Subcommittee has not yet addressed alternative sanctions in depth.

R. Johnson noted that the Commission does not intend to publish a grid with the words “probation” in several cells, as it may give the mistaken impression that the Commission recommends probation in all such cases. Others agreed, and the grid will simply indicate that probation is one of the available options in these cells.

F. Weisberg reiterated that these are largely data-driven decisions, except where data appear to be anomalous or based on an insignificant number of historical cases. L. Hankins noted that there are few anomalies in the In-Out line, but one will see more when turning to the sentence length. He also mentioned that the Research Subcommittee has discussed having enhancements for offenders with more serious criminal histories (especially in Column E). This would also be an area in which the Commission strays from the historical data.

L. Hankins discussed the give-and-take of the many discussions within the subcommittee. The subcommittee began with sentencing history and then balanced other considerations.

F. Weisberg turned to the Sentence length decision and noted that consensus was reached on the following:

No box can have a lower range than the box before it both vertically and horizontally. Same rules apply to probation eligible boxes.

The lower number must increase as well the higher number as the boxes progress vertically and horizontally.

He displayed the subcommittee’s proposed midpoints for Category A, groups 1-9 (See handout). He noted that the subcommittee has gone somewhat further but wishes to present this much at this time. He noted that the historical data also almost fully supports these midpoints with two exceptions or special cases:

1. Mandatory minimums. Possession of a firearm during a crime of violence requires a 60 month or five year sentence. The rankings originally place it in Group 5, where it increase the average midpoint from 36 months to 48 months. The Subcommittee wrestled with its choices, either to leave the mandatory minimum crimes where they had been ranked, which in some cases skews the historical data upward, or to move the crime to a higher group more in keeping with its penalty structure.
2. Group 7. The 16 month proposed midpoint for group 7 is high by historical standards. Historically, group 7 and group 8 both have midpoints of about 12 months. The principle of proportional punishment suggests that group 7 have a

higher sentence than group 8. One resolution is to move Group 8 (drug distribution crimes) to a separate grid and adjust group 7 down to 12 months. There are other possibilities (reduce group 7 to 14 months, combine 7 and 8, etc.).

R. Johnson noted that this caused him to rethink ranking group 8 on a separate grid. The Ranking Subcommittee had recommended a single grid for purposes of the 2002 Annual Report, but that may no longer be appropriate.

Regarding criminal history scoring, N. Joyce noted that opponents may say that following history is one choice, but may be the wrong choice at least in some circumstances. The group briefly discussed some of the anomalies in historical practice, in which some more serious priors appear to have received less serious sentences.

R. Johnson pointed out that in the more serious prior records, many of these offenders may be on parole (or supervised release) for previous offenses, and may be receiving substantial amounts of parole back-up time on the unserved portions of the earlier offense. The judge considers this fact when crafting a shorter sentence on the new charges. The cumulative effect of the old and new charges may be a substantially longer sentence than either one taken separately. Our data only capture the time on the new sentence, and may be a somewhat misleading picture of the entire time to be served.

F. Weisberg noted that the Subcommittee is still working on defining principles for ranges, and the Commission has not yet developed rules for many circumstances such as consecutive v. concurrent sentences, aggravating and mitigating reasons, departure rules, etc. Staff will continue its efforts to collect and review the practices and rules used by other systems. C. Wellford noted that many of these decisions will be straightforward once the practices of other jurisdictions are considered as guides.

Members of the Subcommittee thanked F. Weisberg for a succinct and accurate rendition of the Subcommittee's lengthy and rather complex deliberations.

Adjourn at 6:45 p.m.

**NEXT FULL COMMISSION MEETING:**

Wednesday, April 23, 2003 at 5:00 p.m. at 500 Indiana Avenue, N.W.

**NEXT CRIMINAL HISTORY SUBCOMMITTEE MEETING:**

Saturday, April 12, 2003 at time and place to be announced.