



District of Columbia Advisory Commission on Sentencing

441 4th Street, N.W., Suite 830 South, Washington, DC 20001
Telephone (202) 727-8822 Fax (202) 727-7929

FULL COMMISSION MEETING MINUTES

Wednesday, September 17, 2003

500 Indiana Ave., N.W.

Washington, DC

Attending	F. Weisberg	P. Riley	A. Flaum
	T. Edelman	M. Roberts	E. Silbert
	R. Johnson	A. Seymour	C. Mitchell
	T. Kane	R. McPhatter	B. Weinsheimer
	R. Buske	J. Cronin	K. Hunt
	C. Chanhatsilpa		

- I. Call to order at 5:15 p.m.
- II. F. Weisberg called the meeting to order.
- III. F. Weisberg introduced B. Weinsheimer from the USAO who will be filling in for A. Chaturvedi.
- IV. F. Weisberg reported on the progress of the Research Subcommittee. The USAO has raised some important concerns, namely that it feels that the data is flawed. One example of this is in regard to the more serious crimes, where there are not enough new law cases to evaluate. Also, it is impossible, for old law cases, to determine the actual time served. Although it would be possible to estimate time served, any estimate would simply be an imperfect guess.

F. Weisberg stated that the subcommittee has made progress in several areas. First, the subcommittee has articulated principles that have guided the Commission in its objectives. Any comments and edits to the principles should be sent to K. Hunt.

Second, after reviewing new law cases, the subcommittee realized that several offenses did not fit well in their original ranking group. As a result, they moved Aggravated Assault while armed and Manslaughter from Group 4 to a new group between 3 and 4. This new group 4 has a range of 48-120 months. Due to this change, the old group 4 is now group 5. Turning to group 6, ADW and 2nd degree child sex abuse appeared to be outside of the existing range; they were moved into the old group 5, which is now the new group 6. The new group 6 has a range of 18-60 months. New grids have been provided for the Commission members.

T. Edelman explained that defense attorneys did not object to these changes because they were made using a combination of old and new law cases. Defense attorneys had objected to the proposal to use just new law cases because there are only a small number of cases.

One exception to this is ADW, where there are 80 new law cases. F. Weisberg explained that in the case of ADW, judges ran up against the maximum sentence in old law cases but under the new law, the 40-month cap was lifted and judges increased sentence length.

F. Weisberg noted that the proposed grid still has nine groups. Upon more careful review, groups 8 and 9 have been combined. UUV has been moved to group 8 (tentatively) and escape remains in 9 (this may need some work).

F. Weisberg then moved the discussion to the Nov. 30th report. He explained that the USAO would like more time, since there are still not enough new law cases. Additionally, P. Riley is concerned that there is not enough time to write and edit a report that will need to be very well written to articulate all of the goals and issues of structured sentencing. F. Weisberg said he also wanted a very carefully written report.

F. Weisberg suggested that the Commission submit a proposed “draft recommendation” since they have not even had a chance to discuss their proposal with judges or the public. They would tell the Council that it was not a good idea to create legislation based on this proposal until it could be tested in practice. Once the system has been tested in practice, it will be clear how well it works. Also, the Council may not have to legislate if judges use the system voluntarily.

M. Roberts stated that she supports giving the proposal a year to see how it works in practice. T. Edelman added that he not in favor of waiting for new data but is in favor of waiting so that the Commission can outreach to the public and monitor its progress. A. Seymour mentioned that after the proposal is released, the role of the Commission will change to focus on monitoring and analyzing the system.

R. McPhatter acknowledged that the Council may not continue to fund the Commission at its current level once a proposal is submitted. F. Weisberg argued that it is good policy to keep the Commission around. A. Seymour added that the report should contain a section that discusses the role of an on-going Commission, including the budgetary and staffing needs for FY 2005.

F. Weisberg explained that the Commission does not need more time but simply needs to be able to evaluate the system before permanent implementation. Although judges could attempt to evaluate the system in the abstract, it will be much easier for them to consider the new guidelines in light of the specific circumstances of a case. T. Edelman and P. Riley agreed that the next ten months should be sufficient to get community and judicial feedback.

R. Johnson reiterated that this is an ongoing process. The Commission should show the Council what it has developed and then phase it in voluntarily. After judges provide feedback, the Commission can evaluate the feedback and make changes if necessary.

B. Weinsheimer raised the concern that prosecutors and defense attorneys may agree on a sentence but there is no guarantee that a judge will follow it.

C. Mitchell noted that it was important to include methodology in the report so that the Council can see how the system was designed. T. Edelman added that the report should explain that the goal was to move sentences toward the middle, not to increase or decrease sentences. The mission statement and the goals should be in the introduction of the report.

B. Weinsheimer argued that prosecutors are restrained by the guidelines but defense attorneys can argue anything. The result would be a self-fulfilling prophecy in the sentences. A. Flaum argued that that would only be true if the caps are different under guidelines than they currently are. F. Weisberg argued that no one can predict what will happen with the guidelines until they are in place.

E. Silbert explained that it is crucial that the Commission present a united front to the Council or else a minority report will sink the entire proposal. P. Riley reiterated that the Commission needs more time. F. Weisberg argued that they should not ask for an extension.

T. Edelman reminded members that there are a number of criminal history issues that need to be resolved.

F. Weisberg also reminded members that any meeting in which they vote on proposals must be public. They will have to organize the meeting and then announce it in the DC Register.

P. Riley and T. Edelman will discuss writing a section about the process of developing the guidelines, complete with the hard discussions and compromises that were necessary.

Adjourn at 7:30 p.m.

NEXT FULL COMMISSION MEETING:

Tentatively Wednesday October 1, 2003 (need to discuss with Judge Cushenberry)

NEXT FULL COMMISSION MEETING:

Wednesday, October 15, 2003 at 5:00 p.m. at 500 Indiana Avenue, N.W.