



District of Columbia Advisory Commission on Sentencing

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FULL COMMISSION MEETING MINUTES

Wednesday, October 15, 2003
441 4th Street., N.W., Room 1060N
Washington, DC

Attending	F. Weisberg	P. Riley	T. Edelman
	A. Flaum	B. Baldwin-White	T. Kane
	B. Weinsheimer	H. Cushenberry	J. Stewart
	N. Joyce	M. Roberts	R. McPhatter
	R. Johnson	K. Hunt	C. Chanhataasilpa
	J. Cronin		

- I. Call to order at 5:10 p.m.
- II. F. Weisberg asked the commission members to review the minutes. The minutes were approved.
- III. H. Cushenberry reviewed the Criminal History issues and asked T. Edelman and P. Riley to discuss the issues that still needed to be resolved. T. Edelman said of the three major issues, there was progress on two:

1) an agreement could not be reached concerning how to count an offenders juvenile record with regard to their criminal record,

2) Category A/status/decay: T. Edelman asserted that there should be very conservative policies for moving offenders to the right on the grid and Category A should be expanded to at least "0 to .5" and maybe even "0 to 1" because the data used to create the grid is flawed (not everyone in Group A is a first time offender), and

3) The rules for counting misdemeanors in prior history need revisiting.

T. Edelman stated that a tentative agreement has been reached with regard to issues 2 and 3.

P. Riley proposed the following for the USAO in the nature of a compromise: 1) the decay rule would return to what was stated in the 1987 D.C. Proposed Guidelines- crimes do not count in an offenders criminal record if the offenders has not had contact with the criminal justice system within the past 10 years (this includes prison, probation or parole supervision), 2) no points added to a persons

criminal history score for legal status at the time of the offense, and no point added to the criminal history score for crimes committed within 2 years of release from prison. For purposes of scoring priors, prior drug crimes would count 2 points if while armed, otherwise 1 point. Regarding misdemeanors, all misdemeanors would count ¼ point up to a maximum misdemeanor score of 1.5 points. Category A would change from 0 points to 0-.5 points. B through E scores need further discussion.

T. Edelman provided some background. He noted that, despite very limited evidence that criminal history plays a large role in sentence lengths, PDS agreed to principles of proportion and symmetry that increase sentence recommendations systematically from Category A through E. As a result and given another Commission principle, not increases sentences beyond historical averages, he asserts we must be expand Category A and be conservative about moving people to higher criminal history categories. Further, legal status is already factored into the data and would be double-counted. With regard to misdemeanors, he concluded that the USAO proposal goes far toward covering PDS concerns.

T. Edelman asked the principle behind a 10-year decay. The recollection was the prior rules for impeachment by prior conviction.

R. Johnson stated that a person who commits a new crime while on probation, parole or supervised release would have to face the consequences of committing a crime while in that status regardless of the sentence given in the new offense.

N. Joyce asked what is the most extreme case of repeat misdemeanors. H. Cushenberry replied he had seen some cases with 20-30 prior misdemeanor convictions. N. Joyce wondered if this case should count 1.5 points, given the public concern about neighborhood nuisance crime. T. Edelman said it should not and likely would not, as a judge would probably sentence to the top of the range. He argued that it should not, however, force the judge to place the offender in the highest criminal history category. F. Weisberg noted that a judge with a current burglary and 20 prior misdemeanor property crimes would likely bump up the sentence, perhaps as much as twice the typical case (a “just desert” for that offender which could be accommodated within the current guidelines framework), but would be very unlikely to seek a very long incapacitating sentence.

R. Johnson added that the USAO could handle some extreme nuisance cases by charging a felony when possible and refusing to offer a plea to a misdemeanor, and would probably do so. He also noted that a 10 year decay standard has some authority based on its legislative foundation in the D.C. Code.

Turning to juvenile adjudication, F. Weisberg summarized that the charge structure in these cases is perhaps less reliable than in adult court, given the wide discretion the juvenile court has regardless of charge. T. Edelman stated that a juvenile record should be counted less than an adult record due to: 1) the charge decisions are very different in juvenile court, and inflated (e.g., ADW by wet floor

sign), 2) the focus is on the disposition rather than the charge, and on other arrangements for the child, and 3) the point of the juvenile system is not punishment but on providing services. He concluded that all juvenile factors are therefore problematic. P. Riley stated that the charges in juvenile court may be inflated relative to adult court but they have some basis in fact and are not invented. Additionally, she stated that a juvenile is given protection for crimes committed as a child, but if they commit an adult felony, that protection is forfeit, especially for serious crimes committed as juveniles.

F. Weisberg raised the issue of whether or not the juvenile court will change if juvenile adjudications are counted. He noted that prosecutor and defense can use juvenile record as a plea bargaining tool if it will have an impact on future guidelines recommendations. He noted that future dispositions may look much more like adult court. T. Edelman countered that the system would still be unfair for the next five years to people who experienced the old system.

R. Johnson, who noted that he had been handling juvenile cases for about three years, summarized the policies and procedures of juvenile court. He further noted that there are a few differences from adult criminal court. First, the elements of the offense are often charged in a very literal fashion (e.g., a juvenile charge of Assault with a Dangerous Weapon for throwing a rock would likely be reduced to a misdemeanor or not charged at all in adult court if the injury was minor). The juvenile charge is also used as a tool to obtain services and support for a child in need. This is not to say the defense does not offer a vigorous defense, but the plea-bargaining in juvenile court tends to focus on rehabilitation and protection and not on increased sentence lengths. Second, there are no juries in the juvenile system and the interaction between the judge and the adjudicated child is substantial. The pleas process is often more thorough than one would find in the adult system.

T. Edelman added that juvenile record should not be counted but judges will be aware of them and sentence accordingly within the range. The wide ranges would allow judges to account for juvenile record. However, juvenile record should not move someone over to the right in terms of prior history categories. A. Flaum noted that for serious offenses, juveniles are being sentenced as adults already, and that point should be emphasized to non-practitioners. Responding to the issue of why treat juvenile crime differently if it continues into adulthood, she argued that conduct by a 14 year old is inherently different and should be seen in a different light. R. Johnson noted that a judge would sentence differently knowing that an 18 year old committing an armed robbery had done it before as a 14 year old. The defense attorneys present agreed, and noted that the “girth” of the ranges allows for differential treatment. M. Roberts stated that counting all prior juvenile adjudications the same as adult convictions would undermine the idea of having two criminal justice systems.

- IV. A public meeting will be scheduled. The date is set for November 24, 2003 at 7 p.m. All commission members need to be available if at all possible.

Regarding the timetable, F. Weisberg commended the participants for their efforts to reach compromises that all members could live with. He noted that the pressure to produce a report should not reduce careful writing or reading, and there is a need for precision in what is said so everyone knows clearly what is being decided.

Finally, he told the members that Congressional oversight has become an issue for a case involving the wounding of a police officer. The hearing was postponed until after the Commission's November 30 report. Members expressed concern that local deliberations and decisions not be sacrificed to federal decisions.

Adjourn at 6:50 p.m.

NEXT FULL COMMISSION MEETING:

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

(After this meeting a decision will be made if the Commissions has to meet again before the public meeting. The idea of a Saturday meeting was floated, if needed, probably on Nov. 15, in lieu of the regular Nov 19th meeting.)

PUBLIC MEETING TO VOTE ON THE REPORT

Monday, November 24, 2003 at 7:00 p.m. at 441 4th Street, N.W., 1st floor

NEXT CRIMINAL HISTORY SUBCOMMITTEE MEETING:

Wednesday, October 22, 2003 at 5:00 p.m. at 500 Indiana Avenue, N.W