



District of Columbia Advisory Commission on Sentencing

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FULL COMMISSION MEETING MINUTES

Wednesday, November 5, 2003
500 Indiana Ave., N.W., Room 3300
Washington, DC

Attending	F. Weisberg	P. Riley	C. Wellford
	A. Flaum	D. Rosenthal	A. Seymour
	T. Kane	B. Weinsheimer	K. Hunt
	H. Cushenberry	J. Stewart	R. Buske
	M. Roberts	R. McPhatter	C. Chanhatsilpa

- I. Call to order at 5:17 p.m.
- II. F. Weisberg asked the commission members to review the minutes from September 17 meeting. The minutes were approved.
- III. Criminal History Subcommittee Update

H. Cushenberry reviewed the Criminal History issues and stated that there has been much agreement between USAO and PDS except with regard to whether to score juvenile adjudications. A. Flaum noted that PDS was not currently ready to agree to the scoring of juvenile adjudications but indicated that more consideration is expected. She noted that it is a principled bright line based on the traditional focus of the juvenile system. H. Cushenberry then noted that judges already consider a person's juvenile record when sentencing. A. Flaum countered that juvenile record could be considered within the range, but should not be used to drive up the criminal history score.

D. Rosenthal introduced himself at the new Corporation Counsel representative and noted that 38 states now have automatic transfer to adult court for the most serious crimes. He added that he thinks juvenile records should be counted when calculating criminal history scores, at least at some level and for serious felonies involving 15-18 year olds. He noted that with the exception of the lack of jury trials, the District's practice is to afford all the constitutional protections that adults receive.

P. Riley noted that the issue of a "clean slate" for juveniles as they become adults changes if someone commits a new crime as an adult; in which case, they already negated their 2nd chance. B. Weinsheimer noted that, unless the young adult

committed a very serious offense, they would likely be in a probation eligible box due to the lack of a substantial criminal record.

F. Weisberg stated that he thinks that this issue mainly matters in selected cells (e.g., in rows 6 and 7) that are probation or split eligible. Counting juvenile adjudications could have the result of moving someone over to a cell that is not probation or split eligible.

P. Riley added that USAO is willing to agree to scoring juvenile adjudications half of what they originally proposed – 3 point offense is 1.5 points, 1 point is now .5 points, and .5 points is now .25 points. Regarding juvenile record decay, they propose a decay period of 5 years from the time that an offender is released from a secure facility up to a maximum age of 22 years. H. Cushenberry noted that the Commission must be aware of how not counting juvenile adjudications may look bad to the public. D. Rosenthal noted that there might be practical problems finding the date of release.

M. Roberts stated that she feels that most “dangerous” juveniles are already identified by USAO and charged as adults. She supports the PDS position of not counting juvenile adjudications, and is worried about catching up the less-serious kids. D. Rosenthal countered that not all of them are identified and taken by USAO.

F. Weisberg offered up a suggestion that only adjudications for violent offenses can be used based on a certain criteria such as using Title 16 offenses. A. Flaum responded by saying that PDS might be more receptive to only scoring the serious juvenile adjudications.

USAO and PDS will discuss this issue further and try to work on a compromise.

IV. Research Subcommittee Update

The USAO proposed changes to certain cells in both the drug and non-drug grids:

1. Upper number for Cell 8A in Non-Drug Grid would be increased to 24 months to reflect historical data. The top numbers in the others cells in the row 8 would then increase by increments of 4 months while the bottom number stays the same.
2. Increase range for Cell 1A of Drug Grid to 30 to 72 months to bring it in line with historical data (33 to 87 months). The top and bottom numbers would then go up by 6 month increments to the right.
3. Move four sex offenses up one row. New law sentences reveal that judges are now sentencing above those old law maximums. 1st Degree Sex Abuse and 1st Degree Child Sex Abuse would move from Group 3 to Group 2. Attempt 1st Degree Sex Abuse and Attempt 1st Degree Child Sex Abuse would move from Group 6 to Group 5. P. Riley noted that

having the unarmed versions of these crimes in with the armed versions (which the proposal would do) should not be an issue because historical data shows that the sentences for these offenses were similar. This might be due to the more severe victim injury in unarmed offenses.

A. Flaum stated PDS proposes shifting Cells 2C and 2D in the Drug Grids over. That is, making Cell 2C, which is currently split eligible, probation eligible, and making Cell 2D, which is currently not probation or split eligible, split eligible. PDS proposes this because historical data shows that both cells are very close to having 25 percent of cases being sentenced to probation.

M. Roberts stated that she feels uncomfortable moving the sex offenses up without looking at more cases. J. Stewart agrees and feels that changes can be made down the road if new sentences reveal that changes need to be made. **Action Item: Staff will circulate the minutes and these proposals for all Commission members to review.**

V. Drafting/Meeting Schedule

A. Seymour recommended that the Commission summarize the recommendation and the process involved, with details in footnotes or an appendix. P. Riley feels that the Commission's final product should be reported, not details of starting positions or compromises along the way. F. Weisberg and A. Seymour further suggested that a summary of the process can still be included, containing language that emphasizes negotiations and compromises. F. Weisberg thinks the report should emphasize that the recommendation is a complex and balanced product and tinkering around the edges may damage the product. R. McPhatter suggests that the report need not contain a detailed account of compromises but that Commission members should not dodge questions when asked.

F. Weisberg raised the issue of whether or not to include a discussion of unwarranted disparity. T. Kane stated that he feels that this analysis should be included because it shows why guidelines are needed, and the Commission should not assume this is self-evident. B. Weinsheimer argued that some people will note that if the Commission is reduce sentence variability, then why are the proposed ranges so wide. Also, he noted that drug crimes might be a bad example to use because they have been separated out from the main grid. F. Weisberg countered that drug offenses are on a separate grid because they are sentenced differently relative to other crimes, but are a good example of variability.

P. Riley stated that the "treatment" language proposal to the mitigating factors list is not acceptable to USAO in any form. A Saturday meeting on November 15 was set.

Action Item: Staff to circulate drafts of report chapters to all Commission members.

Adjourn at 7:00 p.m.

NEXT FULL COMMISSION MEETING:

Saturday, November 15, 2003 at 5:00 p.m. at 500 Indiana Avenue, N.W.

PUBLIC MEETING

November 24, 2003 at 7 p.m.