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, November 19, 2003
500 Indiana Ave., N.W., Room 3300
Washington, DC

Attending	F. Weisberg	P. Riley	T. Edelman
	A. Flaum	B. Baldwin-White	B. Weinsheimer
	H. Cushenberry	J. Stewart (by phone)	
	N. Joyce	M. Roberts	R. McPhatter
	R. Johnson	E. Silbert	P. Quander
	A. Seymour	D. Rosenthal	J.Cronin
	K. Hunt	R. Buske	C. Chanhatasilpa

I. Call to order at 5:10 p.m.

II. T. Edelman stated that PDS supports the report and guidelines recommendations. Only one issue remains unresolved – whether or not to score juvenile adjudications and how to score them. T. Edelman offered a counter proposal to USAO on scoring juvenile record: cap cumulative juvenile adjudications points at 1.5 (similar to cap for misdemeanors). He argued that the cap avoids bean counting, and that the juvenile system is sufficiently different to result in different scores than the adult system would produce for a similar record. B. Weinsheimer noted that USAO does not have issues with caps except for serious/violent crimes. D. Rosenthal clarified the proposed cap: A defendant, who at 15 years old committed a crime of violence and at 18 sold drugs, now before the court at age 21 for a new felony would not have the violent crime scored. Members agreed that this is the way the rule would work as the rule states that juvenile crimes will not be revived.

R. Johnson added that he agrees that the compromise is acceptable, to count juvenile adjudications but not too extensively because the cell ranges are wide enough to allow the defense and prosecution to argue the relative merits of considering a higher sentence based on specific details. N. Joyce and A. Seymour added that victims/community groups would want a less lenient juvenile justice system.

F. Weisberg agreed that the matter has political importance for the Commission, to count juvenile adjudications in some form and to not allow for "free passes." T. Edelman countered that the fact that PDS would support the mandatory scoring of juvenile adjudications for the first time demonstrates their commitment to the

system. P. Riley that scoring prior violent juvenile adjudications insure that a judge cannot ignore them. F. Weisberg offered the suggestion of adding an aggravator and/or mitigator that would allow for the judge to depart if he/she feels the criminal history score is unjust. There was not strong support for this.

P. Riley offered a counter proposal that would involve capping only less serious offenses (groups 6 through 9) and not the more serious offenses (groups 1 through 5). T. Edelman noted that under this proposal, if an offender had a series of prior non-violent offenses and 1 prior violent offense, he/she could be pushed past a score of 1.5 and move over more than one cell to the right. To address this concern, B. Weinsheimer amended the USAO proposal to say the juvenile portion of the criminal history score can only exceed the cap "upon the second crime of violence. In other words, if there were prior multiple adjudications and only one was a violent offense, the score would still be capped at 1.5.

F. Weisberg noted that this issue of violent juvenile adjudications involves only a small number of offenders because most juvenile offenders who commit violent crimes are charged as adults. D. Rosenthal noted that this is true for all violent offenses except for AWIK.

USAO and PDS will discuss this issue further and propose the language.

III. F. Weisberg noted that there were a few remaining issues. The first involved the language in Chapter 4 for consecutive/concurrent principles. He suggested that "pre-trial release" be deleted from "Offense committed while on pre-trial release, probation, parole, and supervised release, or while incarcerated." There was agreement on this.

F. Weisberg also suggested that in cases where a judge is sentencing an offender who has other sentences in other jurisdictions, the judge should use his/her discretion as to whether to sentence concurrently or consecutively.

Another issue is that "conviction" has not been defined yet. F. Weisberg offered that the definition should be that a conviction is an adjudication of guilt by plea or trial and entry of judgment that is counted before the sentencing of the current offense, regardless of the date of the offense. He noted that the danger of this definition is that it could be manipulated to bring the more serious crime first, as it counts more on the criminal history score. Everyone agreed to this definition but R. Johnson added that sentences on the same day should not be scored as criminal history.

IV. T. Edelman brought up some issues on language. The first was PDS suggested that Aggravator #6 could be used to apply to every low-level drug deal because it could be argued that they are part of a drug enterprise. He suggested that is should be reworded to apply to only high-level drug kingpins.

Secondly, T. Edelman noted that he thought the language in Aggravator #7 had already been changed and that the current draft does not reflect this. USAO and PDS will work on these two language issues.

Lastly, T. Edelman noted that USAO had added to Mitigator #1 that sex offenses should be excluded from this. He argued that no attorney would mitigate for sex offenses and no judge would. He also attempted to give examples where this mitigator could apply to sex offenses (ignorance of age, consent disputes). M. Roberts agreed that sex offenses should not be excluded. T. Edelman noted that this mitigator would most likely be used in self-defense scenarios. F. Weisberg suggested that if USAO can find examples in other jurisdictions where specific offenses are excluded from similar mitigators, this issue can be re-opened.

V. Drafting and Other Issues

F. Weisberg stated that edits to the reports should be sent to Commission staff by Friday, November 21. The staff will implement the edits and send to the Commission members the version on which they will vote. After the Monday, November 24 vote, only stylistic changes will be done to the drafts.

Seymour asked if there will be a table of contents section and a glossary of terms. K. Hunt answered that a table of contents is normally included in previous reports done. F. Weisberg noted that he prefers the term "short splits" to "low splits."

P. Riley proposed a start date for the pilot test of May 1st. R. McPhatter added that she will ask Ms. Patterson how the Council will react to this start date. P. Quander noted that May 1 should give CSOSA enough time to train its staff.

P. Riley also noted that a hotline might not be a useful investment. K. Hunt countered that his experience at the Virginia sentencing commission suggested that people will call the number almost daily with questions. A. Seymour suggested changing the language from "rapid response system" to something the states that the Commission will provide technical assistance.

Lastly, P. Riley stated that there is a need to examine the most common offenses in MD, VA, and NY and match them with DC offenses so practitioners in the District can know how to score them.

Adjourn at 7:00 p.m.

PUBLIC MEETING:

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