



District of Columbia Sentencing Commission

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FULL COMMISSION MEETING MINUTES

Wednesday, May 12, 2004
500 Indiana Ave., N.W., Room 3300
Washington, DC

Attending	F. Weisberg	P. Riley	A. Flaum
	R. Johnson	T. Kane	R. McPhatter
	B. Weinsheimer	J. Stewart	L. Hankins
	P. Quander	H. Cushenberry	D. Rosenthal
	R. Buske	J. Cronin	K. Hunt
	C. Chanhatasilpa		

- I. Call to order at 5:10 p.m.
- II. F. Weisberg called the meeting to order. The minutes were then approved barring last minute revisions sent to K. Hunt.
- III. Status of Legislation

F. Weisberg announced that the Council has passed an emergency act that included authorization for the pilot program. The act also changes the name from the Advisory Commission on Sentencing to the District of Columbia Sentencing Commission. The mayor has not yet signed the act but he is expected to do so soon.

IV. Training Update

F. Weisberg reported on the 2 ½ days of judicial training held earlier last month. The first session demonstrated substantial variation in sentencing. The second focused on the guidelines in a session that included Laura Hankins and Pat Riley responding to questions. He stated that the training went well, and that the new Sentencing Guidelines were well received. Most of the judges seem to be looking forward to having some guidance with which to exercise their sentencing discretion. The Board of Judges recently took a vote and unanimously agreed to do the pilot program. Some judges did raise the concern about whether or not CSOSA will be ready to score the guidelines.

P. Quander noted that some training for CSOSA has already occurred, but that he also thought it was a good idea that the Sentencing hearing is being pushed back to nine weeks (previously it was seven weeks) after conviction, in order to maintain the seven

week window for preparing criminal history and to give the prosecution and defense time to prepare arguments involving criminal history.

H. Cushenberry noted that the current time frame of seven weeks is often stretched, and judges will resist unnecessary delays. The Commission agreed that the preparation period of a full seven weeks, followed by two weeks for the parties to review the scoring, will help ensure that no court postponements will occur.

V. Manual Update and Distribution Plan

F. Weisberg turned the discussion to the Implementation Manual. He praised the draft submitted by P. Riley and L. Hankins saying it was terrific. P. Riley noted that the Implementation Subcommittee is making final edits and should have a draft ready to show the Commission early next week. Responding to a question from D. Rosenthal, P. Riley affirmed that the Manual will be dated, and that the Appendix will have a separate date, in case there are future additions down the road.

F. Weisberg noted that they will need fifty copies by May 21 for judge training. P. Riley stated that the Manual will be available in WordPerfect, Word, and Adobe Acrobat (on the Commission website). K. Hunt noted that the Commission will probably have the funds to print out a good number of copies, using the MPD copy center. The CJA Bar may need 250 copies. Other copies will be available on the website.

F. Weisberg and H. Cushenberry conducted a training session for CJA Bar attorneys that was well attended by about 100 lawyers and seemed to have been well received.

VI. Secure placement definition

D. Rosenthal reported on his findings after researching what constitutes “Secure Placement” for the purposes of juvenile offenders. He distributed a hand out that contained Youth Services Act definitions and statutes. Unfortunately, he found that there is no agreed upon definition among experts in the field. With regard to movement of juveniles into and out of secure placement, he noted that YSA tracking system may provide automated notation of secure placement, but first one must designate which facilities are “secure.” P. Riley raised the concern that many sex offenders might go to what seems like a less secure facility because they cannot be handled at Oak Hill. R. Johnson suggested using the standard of “Oak Hill or its equivalent,” which would include facilities with high fences and locked gates and doors. There was vocal support for this definition. D. Rosenthal raised the concern that there are secure facilities that do not have fences because they are literally in the middle of nowhere and also there are facilities that do not lock their doors but have tremendous amounts of security.

F. Weisberg argued that the Commission should err on the side of simplicity, since juvenile adjudications do not result in a lot of points when scoring and only the older adjudications are a concern here. P. Riley noted that the most serious juvenile offenses are not subject to the cap on scoring. L. Hankins is concerned that the burden of proof will fall on defense attorneys with fewer resources, when it should fall to agencies with

higher resources such as USAO or the Court. P. Quander cautioned that it will be very difficult for CSOSA to go into this level of detail within the time allotted. P. Riley asked that the minutes show that the Commission agrees to work toward a definition that secure placement means Oak Hill or its functional equivalent.

R. Johnson asked D. Rosenthal if he can ask YSA to provide a list of description of their facilities. F. Weisberg noted that this list would contain only current facilities and might not have older ones listed.

More discussion and research is needed.

VII. Guidelines Monitoring System

K. Hunt then discussed the plans for the Guideline form which will capture all relevant sentencing data. Since the Sentencing Guidelines Software Web will not be up and running until October 15th, the actors in the system will have to use a hard copy paper form when the guidelines begin on June 14th. F. Weisberg asked if this form would be public, and Commission members agreed there is no reason it could not be. B. Weinsheimer noted that the reports might not need to be distributed because the PSI contains the information that is needed.

K. Hunt then told members that staff was working on a Byrne subgrant application to attempt to find additional funding for the software web. D. Rosenthal noted that the Byrne grants might have some money put aside for technology, but that they had been moving in a different direction. F. Weisberg asked if CSOSA would be contributing money but P. Quander said that they needed to make sure that money was available and it was a compatible system with their own system.

VIII. Consecutive/Concurrent rule

F. Weisberg turned the Commission's attention to the Consecutive/Concurrent rules that are very complicated in light of some cases that are not that easy to resolve. One issue is how to define "events?" by time and place? A "fork in the road?" B. Weinsheimer and P. Riley used the example of a kidnapping that occurs on one day and a robbery of the same victim on the following day.

Also, what is a violent crime? F. Weisberg pointed out that USAO considers Possession of a Firearm during a Crime of Violence a violent crime as well as Burglary II in certain situations. The subcommittee will take up a definition of "crimes of violence" for purposes of scoring prior record.

IX. Other business

Another issue that F. Weisberg raised was that some defense attorneys have asked why marijuana felony offenses are ranked with other drug offenses, since the marijuana offenses are five year felonies while the others are 30 year felonies. Some members noted that the data seemed to suggest that the historical penalties were similar regardless of substance. A. Flaum noted that there were not a lot of historical cases in the database.

F. Weisberg offered the suggestion of multiplying all criminal history points by 4 so that quarter and half points would not have to be dealt with. P. Quander pointed out that CSOSA will make the calculations so it would not be too difficult to deal with this issue. Also, J. Stewart noted that this could make them appear more severe. F. Weisberg and P. Quander noted that it might have the reverse effect of looking too lenient. P. Riley and L. Hankins agreed to discuss this issue further.

K. Hunt announced that attorney Steve Vance has accepted an offer of employment with the Commission staff. He is set to begin work on June 14th, but has promised to do a lot of background research before then. P. Riley stated that Steve should begin by spending time in Superior Court so that he can see how sentencing works in DC. F. Weisberg also stated that one of Vance's first projects is to match up DC offenses with MD and VA crimes.

P. Riley raised the issue of revocation. It is her understanding that when probation is revoked, the new sentence given must be within the guidelines or else it is a departure that must be noted on the record. R. Johnson asked if a revocation for an offense before the guidelines were in place would also have to be guidelines compliant. F. Weisberg said no, since P. Riley pointed out that doing this would allow judges to lower their sentence but not to raise it. Regarding collecting reports on revocations, the Commission agreed that any time the sentence changes, the Commission will collect it.

F. Weisberg asked the implementation subcommittee to revise the ISS discussion in the manual and on the forms. ISS is a Youth Act sentence only.

Pat Riley asked if the judges can be trained not to impose a sentence of "time served," as opposed to a sentence to that amount of time stated in days or months. F. Weisberg also asked whether the actual sentence recorded for guideline compliance would include the offender's time served pre-sentence. P. Riley stated that she preferred that judges should give the sentences that they really intend, not a sentence that takes into account time served. She and L. Hankins agreed to discuss further.

Adjourn at 6:30 p.m.

NEXT FULL COMMISSION MEETING:

Wednesday, June 16, 2004 at 5:00 p.m.