



# District of Columbia Sentencing Commission

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

## FULL COMMISSION MEETING MINUTES

Wednesday, April 19, 2005  
500 Indiana Ave., N.W., Room 4018  
Washington, DC

Attending	F. Weisberg	P. Riley	H. Cushenberry
	L. Hankins	B. Weinsheimer	R. Johnson
	A. Flaum	B. Forst	J. Stewart
	D. Rosenthal	N. Joyce	K. Hunt
	C. Chanhatisilpa	S. Vance	R. Buske

- I. Call to order at 5:05 p.m.
- II. Minutes from February 15 2005 meeting were approved pending changes sent to K. Hunt.
- III. Ranking of Fleeing Law Enforcement.<sup>1</sup>

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<sup>1</sup> BE IT ENACTED BY THE COUNCIL OF THE DISTRICT OF COLUMBIA, That this act may be cited as the "Fleeing Law Enforcement Prohibition Second Congressional Review Emergency Amendment Act of 2004".

Sec. 2. The District of Columbia Traffic Act, 1925, approved March 3, 1925 (43 Stat. 1119; D.C. Official Code § 50-2201.01 *et seq.*), is amended by adding a new section 10b to read as follows:

"Sec. 10b. Fleeing from a law enforcement officer in a motor vehicle.

"(a) For the purposes of this section, the term:

"(1) "Law enforcement officer" means a sworn member of the Metropolitan Police Department or a sworn member of any other police force operating in the District of Columbia.

"(2) "Signal" means a communication made by hand, voice, or the use of emergency lights, sirens, or other visual or aural devices.

"(b)(1) An operator of a motor vehicle who knowingly fails or refuses to bring the motor vehicle to an immediate stop, or who flees or attempts to elude a law enforcement officer, following a law enforcement officer's signal to bring the motor vehicle to a stop, shall be fined not more than \$ 1,000, or imprisoned for not more than 180 days, or both.

**"(2) An operator of a motor vehicle who violates paragraph (1) of this subsection and while doing so drives the motor vehicle in a manner that would constitute reckless driving under section 9(b), or causes property damage or bodily injury, shall be fined not more than \$ 5,000, or imprisoned for not more than 5 years, or both.**

The Commission discussed whether the new offense of fleeing law enforcement should be ranked as a Master Group 8 or Master Group 9.

B. Weinsheimer noted there are three versions: 1) Reckless driving, fail to obey officer's signal/order; 2) Flee while failing to obey officer's signal/order – personal injury; and, 3) Flee while failing to obey officer's signal/order – destruction of property. It was noted that the second and third were more serious circumstances than the first, and may eventually necessitate subdividing the offense.

The USAO argued it is more similar to an APO situation than a UUV situation and, therefore, should be a Group 8 offense. PDS argued it is more akin to escape or prison breach, in which case it should be Group 9. PDS was concerned because this offense can be committed in three different ways (reckless driving, causing bodily injury, causing destruction of property) and thought that a Group 9 would overstate the severity of the less severe conduct.

R. Johnson commented that the three scenarios for committing the offense were vastly different. He agreed with PDS that reckless driving did not seem as serious as causing bodily injury or destruction of property.

A. Flaum noted that if the offense conduct included bodily harm or destruction of property, other more serious charges would be filed alongside fleeing law enforcement. She noted that Possession of a Firearm During a Crime of Violence is in Group 5, even though the Commission understands that it is usually charged alongside more serious offenses. For the purposes of ranking, however, the Commission should consider the offense on its own.

D. Rosenthal explained that police are not allowed to chase offenders in cars, which leads criminals to “gas it” if they are being pursued. He noted that Council created this offense due to the uproar of the community.

N. Joyce also voiced the opinion that the offense was created to assuage public concern/Council concern. She argued that the Commission should consider that this conduct is seen as very dangerous and serious in the community.

R. Johnson argued that the underlying conduct poses a serious risk to the community, even if it doesn't result in injury or property damage. D. Rosenthal again added that this offense was created because police cannot chase offenders. J. Stewart questioned whether or not this offense would change an offender's behavior and prevent “gunning it.” D. Rosenthal argued that you could ask that about any offense.

H. Cushenberry stated that the offense should be in Group 8, although he did recognize that without the reckless driving part of it, it would be much easier. Still, because it is very dangerous, it belongs in Group 8.

B. Forst asked how other Guidelines systems have dealt with this offense. K. Hunt responded that staff could research this. F. Weisberg said he wasn't sure that this would

be helpful information, since other Commissions probably ranked a lot of offenses differently than this one.

F. Weisberg affirmed that he agreed with every comment made so far on both sides. He stated that since this is a new offense, there is no historical data to guide the debate. He suggested perhaps splitting the offense into two different groups based on underlying conduct was a possible solution. It was decided that this would not work, but L. Hankins suggested that the Commission create a Heartland offense description for Fleeing Law Enforcement, similar to the one created for Escape that appears in the 2003 Annual Report.

The Commission decided that it would be ranked as a Group 8 offense. However, it also agreed that in the next Practice Manual revision, it would include the rationale for this grouping, and it would explain that it views this offense as having different levels of severity. [**Action:** Create a “What’s New” chapter in the manual that discusses, among other changes, the rationale described above.]

#### IV. Proposed Amendments to the Sentencing Guidelines

##### Accessory After the Fact

L. Hankins and B. Weinsheimer explained the history of the accessory after the fact issue. Essentially, they explained that, when it is the instant offense, they have agreed that both the top and the bottom of the box of the underlying offense should be cut in half. The Commission agreed with this resolution, though F. Weisberg suggested that the parenthetical, which begins “not just” be moved to the end of the sentence. L. Hankins and B. Weinsheimer also explained the rationale behind the amendment concerning scoring of criminal history of accessory after the fact convictions. The Commission agreed with the suggested amendments. (STEVE – I SUGGEST WE ADD A ONE PARAGRAPH FOOTNOTE WITH BACKGROUND.)

##### Criminal History Scoring of Out-of-State Convictions

The Commission next discussed the revisions made to criminal history scoring rules of out-of-state convictions. The discussion focused on the need to consistently apply the rules and reduce the need of individual judgment calls by CSO’s. The Commission will add an aggravating departure principle that only applies in certain limited circumstances to out-of-state convictions, and allows the Court to conclude that the underlying conduct matches a more severe DC offense. The Commission agreed with the rules and made only minor changes. For instance, F. Weisberg suggested moving footnote 1 to Rule #3 and changing footnote 1 to only indicate that the same lapse rules apply (deleting reference to ½ point, etc). The Commission also agreed that the new rules should be dispersed as soon as possible. B. Weinsheimer also suggested that the table matching certain common state crimes (MD, VA) should be distributed to simplify the application of these rules.

## Attempted Crimes while Armed

The Commission turned its attention to the ranking of armed attempts. These offenses will rarely be charged, but the Sentencing Guideline Web should include them just in case. F. Weisberg stated that because there is no historical data on these crimes, the subcommittee decided to use the consistent rule of placing them in the groups of the respective completed unarmed offenses.

D. Rosenthal agreed with the subcommittee's recommendation, but pointed out that Assault with Intent to Murder should be added to the list.

N. Joyce argued that she did not agree with a few of the more serious offenses dropping down two boxes from the armed completed to the unarmed completed.

L. Hankins explained that this was more of a computer issue, in that the Commission wanted to be as thorough as possible in creating the Sentencing Guideline Web, and that these offenses will rarely if ever be charged. She also pointed out another rationale for this approach: she argued that based on conduct, if you take one of the offenses, attempt kidnapping while armed for example, you could argue that while it is very bad to have a gun waived in your face in a failed attempt, it is arguably worse and more frightening to be actually kidnapped with no weapon. Commission members agreed with the subcommittee's recommendation and all armed attempts will be placed in the groups of the respective completed unarmed offenses.

## V. Strategic Planning

K. Hunt indicated briefly that he would like to eventually have the Commission discuss the short and long term goals of the Commission (located on the last page of the agenda) and how the Commission staff should spend its time. He also indicated that the Commission staff is in the early stages of gathering and listing amendments to the June 2005 practice manual. He stated the goal is to approve these amendments by the June 21, 2005 meeting. Lastly, he emphasized that the various subcommittees should meet instead of the monthly full Commission meetings, which should be held every other month instead.

## VI. Update on Monitoring Guidelines and Departure Reasons

K. Hunt began the discussion of compliance by providing an overview of staff activities with respect to the strategic objectives prioritized in the October 2004 retreat. He noted that in supplemental testimony to the Council, Objective 1 (Short Term guidelines data collection) has absorbed about 90% of staff time and still leaves many felonies unaccounted for. He also noted that the same testimony indicates that several other objectives must be worked into the staff's activities if

the Commission is to produce the 2006 Report that it expects and needs to justify the continuation of guidelines.

K. Hunt updated the commission on guideline monitoring and summarized that the compliance rate is around 90% for the nearly 800 sentences the staff has received at this date and that the majority of the departures are due to judges inadvertently not using the guidelines. K. Hunt also noted that the Commission is still not receiving a large portion of the cases from the Superior Court.

P. Riley noted that there should be approximately 2,000 cases that have been sentenced so far. She suggested that staff go to the Superior Court on a daily basis for a two-week period to copy court jackets and judgment orders from sentenced cases in an effort to detect how and why the Commission is not receiving all cases. K. Hunt explained that the Court will not allow Commission staff to copy the Court jackets. F. Weisberg stated that they should change this policy, and since most of this information is public record, there should be a way around this issue.

*[4/20/05 NOTE: One of the broader issues to be discussed in May is that while the entry of the J&C's will allow Commission staff to record the actual sentence and the crime, most of these cases are also missing guideline forms with criminal histories. Therefore, without the form, the guideline recommendation will be missing. Without the complete paper trail, there is no evidence that the judge saw a guideline recommendation for those cases in the first place, making the J&C information of limited value, unless a guideline form can be found and matched to the case and it can be ascertained that the judge used the guidelines for sentencing.]* R. Buske mentioned that once the Sentencing Guideline Web is up and running, the analysts will have more time to track down missing cases since currently most of their time is spent on data entry and data tracking.

K. Hunt cautioned that Commission staff has other responsibilities and a solution needs to be carefully developed. The Commission agreed that this item is extremely important and should be the sole focus for the May Commission meeting.

Adjourn: 6:55 pm

NEXT FULL COMMISSION MEETING:

Tuesday May 17, 2005

500 Indiana Ave., N.W., Room 1500

Washington, DC