



# District of Columbia Advisory Commission on Sentencing

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## **FULL COMMISSION MEETING MINUTES**

Tuesday, May 17, 2005  
500 Indiana Ave., N.W., Room 1500  
Washington, DC

Attending	F. Weisberg	K. Hunt	P. Riley
	H. Cushenberry	L. Hankins	B. Weinsheimer
	R. Johnson	A. Flaum	C. Chanhatasilpa
	B. Forst	J. Stewart (via phone)	D. Rosenthal
	N. Joyce	S. Vance	R. Buske
	T. Kane	P. Quander	

- I. Call to order at 5:05 p.m.
- II. Minutes from April 19 2005 meeting were approved pending changes sent to K. Hunt.
- III. K. Hunt gave a presentation that summarized recent activities to Monitor Guidelines Sentences Manually. The presentation contain three discussion points: 1) the current process; 2) why the Sentencing Commission (SC) is not getting forms and revised process for obtaining forms; 3) compliance rates.

In discussing the first point, he stated that CSOSA starts the process after a request for a PSI is made. CSOSA enters offender and offense information and calculates the criminal history. If CSOSA does not start the process, the Sentencing Commission does not receive a sentencing guideline form. K. Hunt noted that, when the Sentencing Guidelines Web goes into effect, the Court will enter information beyond criminal history information. K. Hunt stated that the estimated number of Guideline Sentence Forms received from CSOSA are 1,930. After a form is prepared and received, the Sentencing Commission knows to expect a sentence. Out of the 1, 930, K. Hunt stated that the Commission has matched the forms with 1,496 sentences. He explained that continuances make up most of the sentences that the SC staff has not been able to match up yet.

K. Hunt then turned to an audit of cases during six business days in January 2005 in an effort to determine why the Commission has not been able to match each form with a sentence. Out of 112 Counts in the audit period, 46 could not be matched to CSOSA forms and 72 could not be matched to a sentence from QA. He explained that CSOSA was able to account for all of the 46 missing forms but 3 cases involving 11 counts. In some cases, the PSI was waived. In other cases, the pleas took place prior to the Guidelines' effective date of June 14, 2004. In the remaining

cases (32), forms were misplaced or there were typographical errors. CSOSA was able to send SC these guideline forms. For the three individuals with cases that were not fully accounted for, one clue is that all three people have other cases (with guideline forms) in the system at the same time. This may indicate that a PSI was waived, or that a criminal history score may have been used from the other case.

K. Hunt concluded that the daily reports from the court systematically overstate the number of guideline forms to expect. K. Hunt also noted that, once the new information system goes into effect at the Court, we will have a more accurate count of guideline cases that should have been started.

Several members of the Commission (B. Weinsheimer, L. Hankins, P. Riley, F. Weisberg) expressed concern that we are not and will not capture all missing sentences in the future. Specifically, they asked how these cases discussed above were missed in the first place and how we knew to go back and look for them. K. Hunt clarified that the Commission intends to track down all missing sentences in the future to match up as many as possible to CSOSA Guideline Sentence Forms. There may be a very small number of unmatched cases (such as the three “mystery cases” from the audit discussed above), but the Commission intends to account for the large majority of cases in the future. It will request sentencing data from the Court in intervals and use this data to assess what sentences are missed. Commission staff will then attempt to obtain the forms for these sentences. D. Rosenthal suggested requesting such information from the Court right before its conversion to the new information system in August 2005. B. Weinsheimer noted that the Court data will also have flaws such as probation revocations and sentences before June 14<sup>th</sup>.

K. Hunt then discussed cases for which PSIs are not ordered. In these cases, the standard operating procedure of the Quality Assurance branch is to complete and email a blank form to the Sentencing Commission. However, it is not possible for the Commission to glean compliance information without the criminal history information from a PSI. P. Riley asked whether it would be feasible for the sentencing Judge to calculate their own criminal history score. H. Cushenberry noted he thinks these types of cases are a very small minority. F. Weisberg suggested creating a new form where the judge would at minimum check a box saying they calculated their own score. K. Hunt noted that the possibility of errors increases whenever a judge is asked to provide more information, given that the court clerk, Quality Assurance staff, and others will subsequently be expected to accurately record the Judge’s remarks. K. Hunt noted that the automated system, which he hopes will be effective in June 2005, would help reduce human errors.

K. Hunt then discussed sentencing guideline compliance based on the 1,496 valid counts. The initial compliance analysis revealed high compliance (roughly 91% for imposed sentences, 90% for the effective sentences, and 88.5% compliance with both imposed and effective sentences) with the sentencing guideline range. K. Hunt suggested that the Commission consider several issues, the first of which is whether future education and training of the Judges is necessary to explain how short split

sentences operate. This may be necessary because of the large number of technical departures, where the sentence is split sentence eligible, but the judge technically departs by requiring a prison sentence of more than 6 months. These types of cases make up the majority of “non-compliant” forms. Second, K. Hunt suggested that the Commission consider whether the current short split rule should be amended, if found to be unsupportable. F. Weisberg asked what the compliance rate would be if the Commission staff excluded these short split cases in the calculation of compliance rates. P. Riley suggested that technical short split departures be categorized differently than referring to them as “departure below” or “departure above.” B. Forst also suggested comparing the analysis of compliance by counts with an analysis of compliance by defendant (based on the numbers and proportions of defendants who had at least one count involving a departure from the guidelines). Also, do so by seriousness of the case (based on top count) and criminal history.

K. Hunt explained the percentage of cases in each severity group and criminal history category. The majority of offenders have fallen in Master Groups 5, 6, 8, 9, and Drug Groups 2 and 3. Also, the distribution of offenders across criminal history categories is now different than the historical data with more distribution across categories in the new data. B. Weinsheimer asked what number of judges have decided not to use the guidelines at all. K. Hunt, did not have the exact figure with him, though he believed the number was very small.

***NOTE: Commission members questioned the Offense severity group numbers displayed at the meeting. Below is the full list – as you can see the numbers add up – the total (1,504) is different from 1,496 because this analysis was conducted one day later, and eight more cases entered the database on that day.***

**severity group**

	Frequency	
Drug 1	4	
Drug 2	253	
Drug 3	413	
Master 1	18	
Master 2	9	
Master 3	44	
Master 4	20	
Master 5	117	
Master 6	87	
Master 7	34	
Master 8	305	
Master 9	200	
Total	1504	

#### IV. November Report

F. Weisberg suggested that the Commission begin thinking about what issues and analyses it would like to present for the 2005 Annual Report. Though F. Weisberg agreed with P. Riley's concern that we do not yet have enough cases to draw firm conclusions, he believed we can create a comprehensive interim annual report regarding what we know. B. Forst asked if it is possible to analyze non-compliance information by Judge. F. Weisberg thought this was possible, but that it should be done anonymously. P. Quander noted that he would like to analyze whether the sentencing guidelines have led to quicker dispositions of cases. F. Weisberg was not sure if we had the necessary historical data for this question, but agreed it would be worthwhile to investigate it. K. Hunt asked whether the Commission believed focus groups involving criminal judges and others would be helpful that would identify other information to collect from the guidelines forms. H. Cushenberry agreed this would be a helpful exercise.

The next meeting was set for June 21, 2005. F. Weisberg suggested that at the next meeting the Commission discuss issues related to the 2005 Annual Report.

Adjourn: 6:45 pm

#### NEXT FULL COMMISSION MEETING:

Tuesday June 21, 2005

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

Washington, DC