



# District of Columbia Sentencing Commission

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## FULL COMMISSION MEETING MINUTES

Tuesday, January 17, 2006  
441 4<sup>th</sup> Street, Room 1117  
Washington, DC

Attending	F. Weisberg	P. Riley	B. Forst
	R. Johnson	JD King	P. Mendelson
	D. Rosenthal	T. Kane	H. Tseu
	S. Vance	C. Chanhatailpa	K. Hunt

- I. Call to order at 5:10 p.m.
- II. Strategic Planning Retreat Follow-up

K. Hunt gave a presentation that summarized key points that were discussed at the November retreat. These slides showed the number of sentencing forms that have been received, the dispositions for these sentences, and compliance rates by box.

K. Hunt then discussed three general issues that came out of the retreat in November:

The first issue, or question, is whether or not the Commission has enough data to make data driven decisions, such as whether the boxes and/or offenses within those boxes are in the right places. K. Hunt stressed that staff will continue to collect data but for the more serious crimes, the numbers are still very small. F. Weisberg asked whether staff would do a before-after study to examine the impacts of the guidelines. K. Hunt replied that this would be problematic due to the unreliable criminal history information for the “before” period, although a study by offense category is possible.

The second issue involves the question of whether unwarranted disparity has been reduced by the guidelines. K. Hunt mentioned that analysis by judge (judge name will be hidden) is probably the easiest method of testing this currently. But again, there probably will not be enough data to do any kind of analysis in 2006. D. Rosenthal asked why some judges had only single counts attributed to them. F. Weisberg answered that some senior judges will take one or a few felony cases.

D. Rosenthal then asked what percentage of the “true” number of cases, or counts, does the 2,802 cases the staff has collected so far represents. P. Riley brought up

the use of the daily felony reports as a source of this true number. K. Hunt stated that the daily reports have proven to be not a reliable count. B. Forst stated that there would not be a need for staff to collect 100% of the cases if there was a way to show that cases that are currently missing are similar to the cases that are already included in the data. In other words, the staff should demonstrate that the missing data is not missing due to some bias. F. Weisberg agreed with this research task and asked B. Forst if he could help frame the research questions for the staff. B. Forst asked if Superior Court data can provide staff with additional data to assist in this task. [**ACTION NEEDED:** Staff will develop a plan to investigate guideline reporting process and exceptional circumstances that may skew results.]

F. Weisberg stressed the importance to measuring unwarranted disparity at both sentencing decision points – the in/out decision and the prison sentence length decision. P. Riley also asked if there were sufficient number of white offenders in the data to look at racial disparity. K. Hunt answered that this number would be very small, making reliable conclusions difficult.

Regarding the in/out decision, it was mentioned that more refined criteria for making this decision may be warranted. In response to the issue of further refinement, R. Johnson added that he did not want the sentencing system to be too specific or complex, overanalyzing too many factors in ways that may not improve the decisions.

The third issue involves whether anecdotal evidence can be used to supplement existing data. K. Hunt reviewed a proposed study that would look at the efficiency of case processing through earlier pleas under the guidelines. F. Weisberg, D. Rosenthal, and R. Johnson stated they were interested in this study. One point was the need for controls on other factors that affect processing. Another point was that the period from plea to sentencing cannot be used because sentencing date is often delayed for various reasons. P. Riley added that anecdotal evidence that is collected from focus groups is important. She also stressed that any examination of sentences should be done by offense, not by box.

### III. Criminal Code Reform

F. Weisberg informed the Commission that the Council has proposed a bill that would create a commission that would examine and modernize the D.C. criminal code. Among other things, the Commission would re-examine penalties, correct inconsistencies, eliminate archaic offenses, and codify certain common law offenses. Rather than create a new Commission, the Council is also considering adding these functions to the D.C. Sentencing Commission since the membership of each commission identical.

Councilmember Mendelson explained that the name of the bill is the “Advisory Commission on Sentencing Amendment Act of 2006,” which was originally

introduced by Councilmember Patterson in March 2005. The Committee on the Judiciary subsequently heard testimony from the United States Attorney's Office, the Office of the Attorney General, and others in May and June 2005. The bill would expand the purposes and scope of work of the Sentencing Commission (proposed name changed to *Sentencing and Criminal Code Reform Commission*) to include the following:

- (1) Revise the language of criminal statutes to be clear and consistent;
- (2) Organize existing criminal statutes in a logical order;
- (3) Establish a system of criminal penalties that are proportionate to the seriousness of the offense;
- (4) Codify common law crimes,
- (5) Identify criminal statutes that have been held to be unconstitutional; and
- (6) Propose such other amendments as the Commission believes are necessary.

The new Commission would begin this work in January 2007, and would complete its report and recommendations by late 2009. Councilmember Mendelson mentioned the possibility of extending this deadline at a later point, and that he would consult with his legal counsel about the best mechanism for doing this. Mr. Mendelson stated that the next "markup" is scheduled for February 14, 2006.

R. Johnson mentioned that he believed such a commission was formed many years ago. P. Riley responded this commission was disbanded and did not complete its work.

D. Rosenthal asked whether a smaller group could do the code reform work. Councilmember Mendelson responded that there is lots of overlap between this work and that of the Sentencing Commission and the insights of other members could prove useful.

F. Weisberg suggested that the next meeting be scheduled soon in order to specify activities for the Commission staff in the upcoming year.

Adjourn: 6:45 pm

NEXT FULL COMMISSION MEETING:

Wednesday February 15, 2006