



# 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

October 19, 2006  
441 4<sup>th</sup> Street, NW, Room 1114  
Washington, DC

Attending	F. Weisberg	B. Weinsheimer	L. Hankins
	R. Johnson	V. Johnson	
	B. Forst	D. Rosenthal	K. Hunt
	S. John	S. Vance	

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

### II. Minutes from September 19, 2006 meeting were approved

B. Forst asked if Commissioners who were not at the September 19 meeting could see copies of the data and graphs presented at that meeting. K. Hunt responded that this information would be available in the draft of the December 1, 2006 report.

### III. Report of the Implementation Subcommittee: Review of recent amendments for November 1, 2006 Manual.

F. Weisberg explained that, since the September 19, 2006 full Commission meeting, where a longer list of manual amendments were discussed and approved, the implementation subcommittee has proposed three new manual amendments.

S. Vance introduced the first proposed amendment to the manual, which was the ranking of the new enhanced assault offense. The Omnibus Public Safety Emergency Amendment Act of 2006 created a new enhanced assault offense:

Whoever intentionally, knowingly, or recklessly causes significant bodily injury to another shall be fined not more than \$3,000 or be imprisoned not more than 3 years, or both. For the purposes of this paragraph, the term “significant bodily injury” means an injury that requires hospitalization or immediate medical attention.

As L. Hankins explained, Members of the implementation subcommittee recommend this offense be ranked as Master Group 8. The Commissioners agreed with this recommendation.

S. Vance introduced the second proposed amendment, which related to the procedure for determining the number of events in prior convictions when scoring criminal history. In particular, the subcommittee recommended that the following be added to the Frequently Asked Questions (Chapter 8) section of the Practice Manual:

What should a presentence report writer do if he or she cannot determine whether multiple prior convictions arose out of a single event or multiple events (See § 2.2.5).

It is sometimes difficult to ascertain whether offenses that were sentenced on the same day arose out of a single or multiple events. The pre-sentence report writer will make this determination based on the criminal history supporting documentation. The report writer should indicate in the report the source of the information upon which s/he relied to make this determination. If the pre-sentence report writer cannot make this determination, either because no supporting documentation was available or because the available documentation was unclear on the question of single or multiple events, the report writer should apply the rules as if the multiple prior convictions arose out of a single event, score only the most serious offense, *and* note in the presentence report that s/he has done so because s/he did not have sufficient information to determine whether there was more than one event. Upon request by the prosecution, the defense, or the court, the presentence report writer should either provide a copy of, or make available for copying, the supporting documentation s/he consulted on this question.

L. Hankins and V. Johnson provided further background on the rationale for this proposal. They explained that they were concerned that defense attorneys and others would not know what material presentence report writers rely on when scoring criminal history. They stated that this proposed amendment to the practice manual addresses her concerns.

F. Weisberg, L. Hankins, B. Weinsheimer, D. Rosenthal, and V. Johnson discussed whether this proposed amendment should reference only out-of-state convictions. Though they agreed that the proposed amendment would apply less frequently to prior D.C. offenses, they concluded the language of the amendment should apply to all prior offenses.

S. Vance introduced the third proposed amendment to the practice manual, which specifically addresses how to score prior offenses classified as felonies when committed but subsequently reclassified as misdemeanors. The current Practice Manual discusses how to score prior offenses that were classified as misdemeanors when the prior offense occurred but were subsequently reclassified as felonies. However, it does not address how to score prior offenses that were classified as felonies when the prior offense occurred but were subsequently

reclassified as misdemeanors. The implementation subcommittee recommends the following language be added to the end of section 2.2.8:

Convictions and adjudications for offenses that were classified as a felony when the prior offense was committed but subsequently was reclassified as a misdemeanor should also be scored as a misdemeanor. For example, assault on a police officer was a felony in the District until July 19th, 2006, when part of it was reclassified as a misdemeanor. If an out-of-state conviction matches up to what is now the District's misdemeanor APO statute (for example, the out-of-state conviction is for the offense of simple resisting arrest where the out-of-state statutory elements do not require any weapon nor any injury to the officer), then the out-of-state conviction should be scored as a misdemeanor, regardless of when it was committed. On the other hand, if the out-of-state conviction matches up to what is now the District's felony APO statute, then the conviction should be scored as a felony.

L. Hankins and B. Weinsheimer expanded on the background and rationale of this rule. The Commission agreed with the subcommittee's recommendation.

#### **IV. Policy on distribution of hard copies of manual**

F. Weisberg explained that the Commission should have an official policy on whether it distributes hard copies of the Practice Manual to the community (attorneys, inmates, family members of inmates, interested citizens, et cetera). F. Weisberg suggested that those who request manuals be directed first to the website of the Commission, or that they receive copies of the manual via email. Those who do not have access to the internet or email should receive copies of the manual, but F. Weisberg asked what the format should be. D. Rosenthal suggested that, rather than binding copies of the manual, the Commission should print unbound copies of the manual as they are requested. The Commission agreed with this approach.

#### **V. Update on Proposed Legislation to Council**

F. Weisberg explained that members of the implementation subcommittee has developed drafts of proposed legislation to implement the sentencing guidelines on a permanent basis, to implement the new criminal code revision duties, and to repeal and obsolete legislation regarding former tasks of the Commission. P. Riley, L. Hankins, and D. Rosenthal will meet during the week of October 23, 2006 to finalize proposed drafts of the legislation. B. Forst and R. Johnson recommended that the legislation or annual report discuss the role that the Commission can serve as an advisor to the Council and the community on criminal justice issues.

## VI. Update of December 1, 2006 Report

K. Hunt distributed an outline of the report and requested suggestions and feedback from the Commission.

B. Forst asked whether the report would have a discussion of the effect of the sentencing guidelines on plea or disposition rate. B. Weinsheimer responded that the evidence has been anecdotal, and that this evidence will be discussed in the “practitioner feedback” section of the report.

R. Johnson asked whether it is possible to discuss whether a larger percentage of cases have resulted in pleas. B. Forst noted such a question would be especially interesting for cases on the in-out margin. K. Hunt noted that there is not sufficient data for serious violent crimes. F. Weisberg suggested that such an analysis may be possible for drug offenses. [Action Item: Staff will review the pre and post guidelines data]

B. Weinsheimer and R. Johnson suggested that attention be paid to the executive summary, and that each section of the report begin with the conclusion.

D. Rosenthal and F. Weisberg stressed that it is important to review a draft of the report as soon as possible. The Commission should expect the key chapters the week of Oct. 23.

Adjourn: 6:20 p.m.

NEXT FULL COMMISSION MEETING:

November 16, 2006