



# District of Columbia Sentencing and Criminal Code Revision Commission

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## **FULL COMMISSION MEETING MINUTES**

Tuesday, February 23, 2010  
Judiciary Square, Room 1117  
Washington, DC

### Attendance:

Frederick. Weisberg	Vida Johnson	Mia Hebb
Ramsey Johnson	Cedric Hendricks	Barbara Tombs
Adele Harrell	Pat Riley	Courtnei Burleson
Megan Orsagh (DOC)	Thomas Kane	Ken Cowgill
Jennifer Seltzer-Stitt	Adelle LaRue (CSOSA)	Chan Chanhataasilpa

- I. Call to order at 5:10 p.m.
- II. New Staff Assistant Mia Hebb gave a brief introduction of herself.
- III. Minutes from the March 30, 2010 meeting were approved.
- IV. Proposed Ranking of Offenses by Ken Cowgill

Ken Cowgill gave a summary and handout of Omnibus Act offenses that still need to be ranked. Additionally, although agreement had been reached as to the ranking of Stalking in general, there was an indication from Pat Riley that its ranking should be revisited. Ken Cowgill also acknowledged that resolution of these issues may have to wait for input from Laura Hankins who is presently out of town.

### *Introducing Contraband into Prison and Possession by Inmate of Class A Material:*

Vida Johnson (representing PDS in place of Laura Hankins), suggested Master Group 8. Pat Riley suggested Master Group 7, stating that the Class A materials, particularly drugs and firearms, were especially troublesome if found in a penal institution.

*Unauthorized Use of a Motor Vehicle During or to Facilitate a COV with serious bodily injury:* At the January meeting, UUV During or to Facilitate a COV was ranked in Master Group 7. The proposal was to also place UUV During or to Facilitate a COV with serious bodily injury in Master Group 7 since the maximum

penalty is not different and the sentence must run consecutive to the related crime of violence. However, Judge Weisberg expressed concern that in creating these categories for UUV, the legislature had two different crimes in mind, and that it might therefore be appropriate to rank them differently. More consideration was deemed necessary.

*Stalking*: It was agreed that Stalking with two or more prior felonies is an enhancement and, therefore, does not need to be ranked. Pat Riley represented that Stalking in general should be in Master Group 8 rather than Master Group 9.

*Conspiracy to Commit a COV*: Vida Johnson suggested Master Group 8 for this offense. Pat Riley suggested that if the maximum penalty for the underlying offense is less than fifteen years, then the offense should be placed in the same group as the underlying offense. Otherwise, the offense should be placed in Master Group 5 to reflect the higher penalty

Ken Cowgill circulated a handout with the text of all of the statutes under consideration. It was agreed that further discussion between Laura Hankins and Pat Riley would be appropriate.

#### V. Revision to the D.C. Criminal Code: Fine Proportionality by Ken Cowgill

Ken Cowgill provided a summary of the fine proportionality memorandum that was distributed to the Commission prior to the meeting. The most common ratio used in fine provisions is a \$1,000 to one year. For the offenses that do not follow this ratio, the primary recommendation is to conform them to the \$1,000 to one year ratio as indicated in the memorandum. However, there is a large group of offenses, namely crimes of violence, dangerous crimes and other offenses, some of which have very large fines and others of which have no fines. These require further discussion by the Commission on the best approach to pursue. The goal is to agree on the less complex category of offenses first and address the more complex category of offenses at the end.

Adele Harrell questioned on the notion that all offenses should have the same ratio of fine to imprisonment, and suggested that the ratio might be proportional to each offense's Master Group number

Ken Cowgill reported that his quick research disclosed that in Virginia every offense has a fine while in Maryland serious offenses with large imprisonment terms have no fines. In the federal context, a fine is required in almost all cases. Barbara Tombs suggested that the Commission consider the purpose of imposing fines and gave the example of fines being used as a viable revenue source.

Pat Riley suggested an across the board \$5,000 to one year ratio. Barbara Tombs suggested having one ratio for crimes against persons and another ratio for other types of offenses. Vida Johnson presented PDS's position: that the original proposal was agreeable as long as no fines are assigned for offenses that do not currently have fines. There was discussion about misdemeanor fines and how a ratio would be applied in that

context. It was noted that these issues came up before in when the guidelines were being created and these conversations are a necessary part of the overall criminal code revision process.

Judge Weisberg concluded that a thoughtful consensus is needed on any proposed changes to the fines and that a broader survey is necessary. Information on how several other states treat fine proportionality would be useful.

#### VI. Revision to the Sentencing Guidelines Manual by Courtni Burleson

Courtni Burleson gave an overview of the proposed changes to the manual and presented a handout that highlighted all of these changes. There was a global revision of the manual but only a small number of the changes are substantive. Most of the proposed revisions to the manual have been discussed and agreed upon by the subcommittee and will soon be ready for dissemination to the full Commission. A suggestion is made to provide a clean version of the manual along with the marked-up version. The goal is to get these documents to the Commission in order to conduct a vote by email to accept or reject the revisions.

#### VII. Annual Report by Barbara Tombs

Barbara Tombs informed the Commission that drafts of the annual report had been emailed to them earlier in the day and she disseminated several copies of the report to the group. She gave an overview of the report and highlighted changes and additions from the previous reports. She explained that even though data has been coming in from the SGS Web Application, this data still needs to be validated and was not available in time to be used in the report. The Commission's data was used instead. The data analysis for the report should lead to topics that would be appropriate for the planned issues papers.

Barbara Tombs also gave an update on progress with the SGS Web Application. Discussion with CSOSA and the Pretrial Services Agency yielded a timeline and talk of streamlining the input of criminal history so that it is not done three times by the different agencies as it is now. Integrating a component to input criminal history into the application can be done but it will require resources to implement. But once this is completed, the Commission will have all of the data that it needs to monitor and analyze the guidelines.

There was also a discussion of ways to increase the frequency of departure information from judges. However, this issue may resolve itself with the use of the SGS web application since it enables real time transfer of data.

#### VIII. Adjourn: 6:30 pm

#### NEXT MEETING:

Tuesday, March 27, 2010, One Judiciary Square (441 4th St., NW), 11th Floor.