



# District of Columbia Sentencing and Criminal Code Revision Commission

441 4th St, NW, Suite 830 South, Washington, DC 20001  
Telephone (202) 727-8822 Fax (202) 727-7929

## **FULL COMMISSION MEETING MINUTES**

Tuesday, April 27, 2010  
Judiciary Square, Room 1114  
Washington, DC

### Attendance:

|                        |                  |                    |
|------------------------|------------------|--------------------|
| Frederick. Weisberg    | Laura Hankins    | Stephen Husk       |
| Patricia Riley         | Adele Harrell    | Adele LaRue        |
| Don Braman (via phone) | Megan Orsagh     | Chan Chanhatasipla |
| Ron Gainer             | Thomas Kane      | Barbara Tombs      |
| Jennifer Seltzer-Stitt | Ramsey Johnson   | Ken Cowgill        |
| Dave Rosenthal         | Cedric Hendricks | Courtnei Burleson  |
|                        |                  | Mia Hebb           |

- I. Call to order at 5:30 p.m.
- II. Introduction of Stephen Husk, representing the U.S. Parole Commission
- III. Minutes from March 30, 2010 meeting approved pending any changes.
- IV. Annual Report

Barbara Tombs gave an update on the status of the annual report. The Sentencing Guidelines Forms data was incomplete so the Commission chose to use a query from Courtview. This provided approximately 3,400 cases sentenced in 2009. Because of the different data sources, trend analysis cannot be included in this year's report.

Also, there is no criminal history information for the 2009 Courtview data. The Commission is currently working with CSOSA on a process to obtain this data. A separate compliance report will be issued later in the summer with more detailed compliance reporting.

- V. Barbara Tombs reported that the Guidelines Manual, without the Appendices, was successfully approved by email vote. Nine email votes were counted to approve the revisions, effective May 3, 2010. Email votes were submitted by: Ramsey Johnson, Adele Harrell, Dave Rosenthal, Pat Riley, Cedric Hendricks, Harold Cushenberry, Brian Forst, Don Braman and Earl Silbert. Revisions to the Appendices in the Guidelines Manual were completed and needed to be approved. Nine votes were counted to approve these revisions, effective May 3, 2010. (Laura Hankins, Adele Harrell, Ramsey Johnson, Pat Riley, Frederick Weisberg, David Rosenthal, Jennifer Seltzer-Stitt, Donald Braman, Ronald Gainer)

There was a consensus among Commission members that the Annual Report and Guidelines Manual should not be due at the same time of year. The Manual should be issued on January 1st of each year and the Annual Report will be issued in April of each year.

#### VI. Ranking of New Offenses

Ken Cowgill presented a list of new offenses and one long-overlooked offense that needed to be ranked (see handout):

Harboring a juvenile for purposes of prostitution – Before its amendment in 2007, one part of the statute had a 20-year maximum and was in Master Group 5, while the other part of the statute had an 8-year maximum and was in Master group 8. As amended, both parts have a 20-year maximum. The Commission agreed that both parts of the statute should be in Master Group 5. Nine votes were counted to approve this. (Laura Hankins, Adele Harrell, Ramsey Johnson, Pat Riley, Frederick Weisberg, David Rosenthal, Jennifer Seltzer-Stitt, Donald Braman, Ronald Gainer)

Introducing Class A Contraband into Prison – At a previous meeting the Commission decided to rank Class B contraband offenses in Master Group 9, and asked a subcommittee to recommend a ranking as to Class A offenses. The subcommittee has not yet agreed on a recommendation and was asked to try again.

Unauthorized Use of a Motor Vehicle During or to Facilitate a Crime of Violence with Serious Bodily Injury – The Commission previously ranked this offense that does not involve serious bodily injury in Master Group 7 and tasked the subcommittee with reconsidering a tentative proposal that the offense with serious bodily injury also be ranked in Master Group 7. The subcommittee has not yet agreed on a recommendation and was asked to try again.

Conspiracy to Commit Crime of Violence (COV) – Pat Riley stated the U.S. Attorney’s Office position to rank this offense in Master Group 5 unless the underlying crime is ranked less severely, in which case it should be ranked the same as the underlying offense. Laura Hankins stated the Public Defender Service’s position that this crime is not as serious as the underlying crime and should be ranked in Master Group 7. Don Braman added that completed crimes are typically ranked more seriously than attempts, which in turn are considered more serious than conspiracy. Ken Cowgill observed that this new conspiracy statute has a penalty three times higher than the one proscribing attempts to commit a COV (which is ranked in Master Group 8), and 50% higher than the one proscribing solicitation to commit a COV other than murder (which is ranked in Master Group 6). The subcommittee has not yet reached agreement on a recommendation and was asked to try again.

#### VII. Fines

Ken Cowgill reported on researching other state’s fines systems and finding that no patterns emerged (see handout). He reported that in some states and in the federal system, there is a statute providing the maximum penalty for all offenses, typically graduated depending on whether the offense was a felony, one or another kind of misdemeanor, or an infraction. The Commission discussed these findings and how it reflects upon practices in the District.

The question of where the collected fines go (the Treasury or the victim’s compensation fund) was raised. Dave Rosenthal noted that more fines are collected for misdemeanors than for felonies.

VIII. D.C. Register

The question was raised of whether the Voluntary Sentencing Guidelines should be placed in the D.C. Municipal Regulations. The benefit would be that the guidelines could be accessed through Westlaw and Lexis-Nexis and would presumably be more accessible to practitioners and the public. The issue of concern is whether or not including the guidelines in a format reserved for official rules and documents would imply that the guidelines are mandatory. Most Commission members agreed that they should be placed on Lexis-Nexis and Westlaw because the guidelines will be most often accessed by lawyers. There was also concern that efforts could be made to ensure that the guidelines are also accessible to the public and Jennifer Seltzer-Stitt suggested that prioritizing outreach is an option.

The Commission agreed that any steps taken on this should be deliberative. Other suggestions included having the Guidelines on the D.C. Council and the ANC websites, contacting Westlaw or Lexis-Nexis directly, and coordinating with other sentencing commissions to make sentencing guidelines more readily available.

Adjourn: 6:30 pm

SCHEDULED NEXT MEETING FOR JUNE 22, 2010