

COMMISSION CHRONICLE

DC Sentencing Commission Seasonal Newsletter



DC Sentencing Commission



DcCommission



COMMISSION MEETING RECAP

During the summer and fall months, the Commission held five meetings. Throughout these sessions the Commission discussed an array of topics, including the Fast Facts for Carjacking and Unlawful Possession of a Firearm, the recent Issue Paper on Mandatory Minimums, and reviewed the Guidelines' Lapse and Revival Provisions. The Commission also welcomed our new Attorney Advisor, Maeghan Buckley, and our new Interim Executive Director, Linden Fry, to the team.

One of the main discussion topics of the Commission was finalizing the new Mitigating Departure factor language to address the impact of Covid-19 on court operations. The Commission unanimously voted in favor of modifying the definition of a Short- Split sentence when the courts invokes an emergency under DC Code § 11-947.

In the coming months, the Commission will continue to discuss the Guideline's Revival and Lapse Provision.

To view the meeting details and topics, visit www.scdc.dc.gov/page/commission-meetings

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NEW "MITIGATING DEPARTURE FACTOR"

The first case of Covid-19 was reported on December 1, 2019; since then the virus has had a dramatic effect on how the world operates. The pandemic placed significant obstacles on the criminal justice agencies in the District, especially the Courts. As a result, in 2020, Court operations in the District declined by 66%. Due to restrictions in the Court's ability to hold hearings and trials, cases were delayed and some individuals were detained longer than normal while they waited for a trial date or the resolution of their case. Non-detained defendants also suffered from other issues directly related to COVID-19. DC Sentencing Commission members recognized that during a Court emergency, such as the pandemic, judges may need additional options to appropriately sentence defendants.

To address this need, the Commission created a new option for judges to sentence individuals below the otherwise applicable Guidelines sentencing range during Court emergencies. Under the new rule, during an emergency, judges may impose a sentence below the Guidelines if there is a "substantial and compelling basis" to do so that is caused by the Court invoking its emergency procedures or due to the underlying circumstances that lead the Court to declare an emergency. For example, the mitigating factor allows individuals with cases pending during the pandemic to qualify for sentence types that might otherwise not be available.

A hypothetical example of this involves an individual by the name of Shawn. Due to the Covid-19 pandemic, Shawn's trial was delayed eight months, and he spent this time in jail. Based on Shawn's criminal history score, the severity of the illegal act, and other factors of the case, under the Guidelines, he is eligible for a portion, but not all, of his sentence to be suspended. This is called a short-split sentence. However, under the Guidelines rules for short-split sentences, a defendant cannot initially serve more than six months incarcerated. As a result of the pandemic caused delays, Shawn would not qualify to receive a short-split sentence because he served more than six months in jail while waiting for his trial. The new mitigating factor allows Shawn to receive a short-split sentence even though he initially spent more than six months in jail.

To learn more about this new mitigating departure view page 33-34 of the new 2021 DC Voluntary Sentencing Guideline Manual.

Link to manual <https://scdc.dc.gov/node/1556366>

Fact: The Voluntary Guidelines have a 99% judicial compliance rate.

New DC Voluntary Guideline Manual

(effective for all pleas and verdicts on or after September 4, 2021)

Have you reviewed the updated Voluntary Guideline Manual?

Visit
<https://scdc.dc.gov/node/1556366>



ISSUE PAPER SUMMARY

Mandatory Minimums

Felony sentences imposed between 2015 and 2020, mandatory minimum sentences appeared to:

- Constitute in **one in five** sentences imposed.
- Result more often from jury trials in comparison to other sentences.
- Often receive a prison sentence (**94%**).

To learn more visit <https://scdc.dc.gov/node/1559626>

SCDC Welcomes Our New Interim Executive Director Linden Fry

Linden Fry rejoined the DC Sentencing Commission staff in November. We are excited to welcome him back as he has a wealth of experience and knowledge on sentencing in the District. As a the former General Counsel for the DC Sentencing Commission and a DC Attorney he has vast experience working with Sentencing Guidelines. Linden will use his knowledge to maintain the work of the Commission.

Welcome back Linden!

FAST FACTS SUMMARY

Unlawful Possession of a Firearm (aka Felon in Possession)

*The offense of **Unlawful Possession of a Firearm** occurs when an individual owns, or keeps a firearm, or has a firearm in his or her possession or under his or her control, within the District of Columbia and the individual has been convicted in any court of a crime punishable by imprisonment for a term exceeding one year.*

Between October 2018 and June 2021 there were a total of:

- 351 FIP counts sentenced
- 348 FIP cases sentenced
- 343 individuals sentenced for FIP

To learn more visit <https://scdc.dc.gov/node/1559626>

Commission Member Highlight

Molly Gill

How many years have you served on the Commission?

- I have been on the Commission since 2012, which would make this my ninth year. I was appointed by the DC Council after my former boss at FAMM, Julie Stewart, stepped down from serving on the Commission. As someone who considers themselves a "sentencing nerd" it is a dream come true to be a part of the DC Sentencing Commission. I am extremely passionate about the philosophy of sentencing and the impact it has on the defendant and victim.

What is one of the most difficult criminal justice issues you have faced in your career?

- As someone working in criminal justice on the policy side, it is hard to see policies being made for the wrong reasons. Reactive sentencing penalties are a reason why I am a strong advocate for Sentencing Commissions across the country. I believe that Commissions such as this allow a group of experts to evaluate sentencing by using data in order to back policy changes.

What led to your decision to pursue a career with the FAMM Foundation?

- Growing up, I wanted to be either a professional violist, a missionary, or a journalist. I never wanted to be a lawyer. While at college on a partial viola scholarship, I found myself signing up for a mock Supreme Court trial competition. I even got a prize! This experience led me to choose the path of law. During law school, I clerked with the local prosecutor's office, working mostly on homicide and gun possession cases. While working as a prosecutor I was disturbed by the flaws I saw in the justice system. After this experience, I decided to go into private practice for one year, then I moved to Washington, DC. Once here, I found FAMM, and it was the perfect fit because it is a nonpartisan advocate for sentencing reform—I love getting to work with people of all parties.

What is your favorite memory from your time with the Commission?

- I would say that my favorite time is actually now, since we are discussing a potential modification to the Lapse and Revival rules used to decide how much someone's criminal record will increase their sentence. I believe what we do and don't know as far as data regarding recidivism after release is intriguing. I am excited to continue the discussion in upcoming meetings.

**Want to learn about
the DC Voluntary
Sentencing
Guidelines?**

**Sign up to schedule a
Guideline 101 training
by emailing
scdc@dc.gov.**

Commission Member Highlight **Continued**

If you could wave a magic wand, what change (if any) would you like to see in the criminal justice community?

- There are a lot of things I would change about the criminal justice system. For one, I would end mandatory minimums. I would also ensure that every state has a Sentencing Commission. I would remove the provision that an individual has to serve 85% of their sentence. I would expand medical and geriatric release for incarcerated individuals. I would abolish life without parole sentences and the death penalty. Is that enough for starters? [laughs]

What do you like to do in your free time?

- In my free time I enjoy playing the viola. I have been playing that instrument for the past 32 years and am currently part of an orchestra. I am also a Peloton enthusiast and should probably sign up to become an ambassador. My mother is a painter, so I have a real love for art and often go to National Gallery of Art. I love to read, and one of my favorite books is Lord of the Rings. In my leisure time I love to travel overseas and try new experiences.

Did you know?

2016 - 2020 Felony Theft Sentencing Facts

- Felony theft, also known as Theft in the First Degree, is the unlawful taking or use of an item valued at \$1,000 or more. Felony theft has a ten-year statutory maximum term of imprisonment.
- Since 2016 there have been 98 individuals sentenced for felony theft in D.C. Superior Court. Combined, these 98 individuals were sentenced in 98 separate cases consisting of 110 total felony theft counts.
- An individual convicted of either first or second degree theft is subject to a one-year mandatory prison sentence if that individual has two or more prior theft convictions.
- 50% of theft convictions resulted in a prison sentence, where the average amount of time to serve was 20 months; the other 50% received probation or short split sentences. The average probation sentence was 24 months.
- The average age at offense of individuals convicted of felony theft was 34, the median age was 29.5.

SCDC Welcomes Our New Attorney Advisor ***Maeghan Buckley***

Maeghan Buckley joined the DC Sentencing Commission staff in October. We are excited about the experience and skill set she brings to the Attorney Advisor position. As a prior litigator and prosecutor she has working experience with sentencing guidelines. Maeghan will use her knowledge to work with stakeholders and the community to advise and educate on sentencing policy and best practices.

Welcome Maeghan!