D.C. Sentencing and Criminal Code Revision Commission Meeting
January 20, 2015
5:00 to 6:30 PM
Room 430S
441 Fourth Street, N.W. (One Judiciary Square)
Washington, DC 20001

Agenda

1. Review and Approval of the Meeting Minutes from November 18, 2014 - Action Item, Judge Weisberg.


4. Adjourn
I. The meeting was called to order by Chairman Weisberg at 5:00 p.m.

II. The minutes from the November 18, 2014, meeting were reviewed and approved.

III. Update and Discussion of Criminal Code Revision Project- Action Item, Richard Schmechel and Judge Weisberg.

Update and Discussion of Criminal Code Revision Project: Chairman Weisberg gave a brief historical overview of the Criminal Code Revision Project (the Project). Project Director Richard Schmechel discussed the current status of the Project and three proposed options that could allow the Project to move forward. Mr. Schmechel also gave an update of the Criminal Code Project’s accomplishments to date and discussed the agency review process. The agency review process allowed USAO, OAG, and PDS to review and give feedback on a preliminary draft of some proposed modifications to the code. The Commission received feedback from agency review in December 2014. Each agency’s response was set forth in a memorandum sent to Commission members. Mr. Schmechel informed the Commission that the agencies and Committee lacked consensus on how to proceed with the Project, and that Commission action is required. Mr. Schmechel gave an overview of the following three proposed options that could enable the Project to move forward at this time:

Option #1: Determine the Appropriate Scope of Code Revision by a Majority Vote

The Commission could decide what it believes to be the proper approach to code revision by majority vote and direct the Committee to implement that approach. To
date, the Committee has chosen to work on a consensus basis to help ensure the long term viability of recommendations for legislative change. Proceeding without consensus may jeopardize agency participation and may impact the Council’s final action on Commission recommendations.

Option #2: Prepare a Bill to Enact Title 22 of the D.C. Code

The Commission could focus the work of the Committee and staff on preparation of a bill that would enact Title 22 as positive law. This bill would be submitted to the Commission and, upon its approval, to the Council. Such a bill would address one of the Project’s mandates from the Council. Preparation of such a bill is expected to take limited Committee or Commission review time given the highly technical, staff-intensive nature of an enactment bill. It is anticipated that the bill could be completed by the statutory deadline of September 30, 2016.

Option #3: Enactment Plus

The Commission could direct the Committee and staff to prepare a bill that not only would enact Title 22, as per Option #2, but would also address other Project mandates from the Council regarding organization of criminal statutes in a logical order and identification of criminal statutes that have been held to be unconstitutional. In addition, outdated provisions would be addressed in the bill where there is unanimous agreement, such as updating references to the former “Corporation Counsel” and repealing clearly archaic offenses. Preparation of such an “enactment-plus” bill would require additional time, but completion by the statutory deadline of September 30, 2016 appears feasible.

Agency Representatives from USAO, OAG and PDS each presented their agency’s concerns, and identified the option that might enable their agencies to support moving forward with the Project. Commission members raised several questions and concerns regarding the three options presented; the focus of the Project; the role of the three institutional agencies in the success of the project; and proposed modification of the Project’s Management Plan.

After considerable discussion, Chairman Weisberg suggested that the Commission continue the conversation and approval action at the next scheduled meeting.

The meeting scheduled for Tuesday, February 17, 2015 was rescheduled to February 10, 2015 to accommodate Commission members’ schedules.

Meeting Adjourned: 6:45 pm.

NEXT MEETING:

Tuesday, February 10, 2015, One Judiciary Square (441 4th St., NW), Room 430S.
D.C. Sentencing and Criminal Code Revision Commission Meeting

February 10, 2015
5:00 to 6:30 PM
Room 430S
441 Fourth Street, N.W. (One Judiciary Square)
Washington, DC 20001

Agenda

1. Review and Approval of the Meeting Minutes from January 20, 2015 - Action Item, Judge Weisberg.


   - Update on Guideline Scoring System (GSS)
   - Performance and Budget Hearing Schedule
   - Annual Report


6. Adjourn
MINUTES OF FULL COMMISSION MEETING
February 10, 2015
One Judiciary Square, Suite 430S, Washington, DC 20001

Members in Attendance:
Frederick Weisberg
Paul Butler
Julie Samuels
Renata Cooper
Dave Rosenthal
Donald Braman
Robert E. Morin
Laura Hankins
Ronald Gainer
Thomas Kane
Harold Cushenberry
William Martin
Marvin Turner

Staff in Attendance:
Barbara Tombs-Souvey
Linden Fry
Richard Schmechel
Mia Hebb
Michael Serota
Jinwoo Park
Thurman Sanders
Rachel Redfern
Bryson Nitta
LaToya Wesley

I. The meeting was called to order by Chairman Weisberg at 5:05 p.m.

II. The minutes from the January 20, 2015, meeting were reviewed and approved.

III. Chairman Weisberg introduced and welcomed the Commission’s newest member, Mr. William Martin.

IV. The Director’s Report

The GRID Scoring System (GSS) is in preproduction. This system will allow CSOSA to enter criminal history score data directly into the GRID system. In turn, the Commission will send sentencing information and revised criminal history scores to CSOSA. The Commission will demonstrate GSS to CSOSA management on February 25, 2015. GSS marks the first direct electronic interface between the Commission and a Federal agency.

The Commission attended a meeting with the Mayor’s Budget Review Team (BRT) on January 30, 2015. The agency’s budget had initially been reduced by 2.5%, and the Director was tasked by the BRT to develop proposed budgets that include additional 6%, 7%, and 8% reductions. Chairman Weisberg and Ms. Tombs-Souvey also have a performance hearing and a budget hearing before the D.C. Council to discuss the agency’s performance, and the expected agency budget approved by the Mayor’s office. The performance hearing is scheduled for March 10, 2015; and the budget hearing is scheduled for April 15, 2015.

The $33,322 in Capital funds that had previously been removed from the Commission’s budget has been reinstated.
The Annual Report schedule has been finalized. A draft copy of the Annual Report will be sent to Commission members on March 17th for review. Commission members will have from March 17th through March 27th to provide comments and edits. The final draft will go to Judge Weisberg for final comments and edits. The final version of the Annual Report is due to the Council by April 30, 2015.

V. Mr. Turner is very close to being reappointed. He should be officially reappointed by the March Commission meeting.

VI. Mr. Kane announced that he has retired from the Bureau of Prison (BOP), and returned to BOP as a reemployed annuitant. However, he will transition off of the Commission over the next several months, and will assist in finding a well suited replacement representative from BOP.

VII. Update and Discussion of Criminal Code Revision Project- Action Item, Richard Schmechel and Chairman Weisberg.

Project Director Richard Schmechel gave a brief historical overview of the Criminal Code Revision Project (the Project). He then discussed the current status of the Project, and the three proposed options for moving the Project forward that were presented at the January Commission meeting.

Option #1: Determine the Appropriate Scope of Code Revision by a Majority Vote
Option #2: Prepare a Bill to Enact Title 22 of the D.C. Code
Option #3: Enactment Plus

Mr. Schmechel informed the Commission that USAO, OAG, and PDS had reached consensus on how to proceed with the Project in the short term, and that Commission action is required. The Project is expected to move forward under an expanded version of the third option: Enactment Plus. Mr. Schmechel provided an outline of the Committee’s agreed upon package for proceeding with the Project. This would include the development of a new Project Management Plan that prioritizes the Enactment Plus work. Upon completion of that work, the project would return to developing recommendations for individual offenses, specifically person offenses. A few concerns were raised by Commission members regarding the development of a new Project Management Plan. However, the USAO, OAG, and PDS representatives noted that this option would allow for the project to make some progress and produce deliverables, while allowing for continued conversations that could lead to consensus in areas where there is disagreement. Chairman Weisberg noted that the classification of misdemeanors could be another issue addressed by the Project.

The new management plan will be circulated to the Commission. Judge Morin moved to vote for the development of a new Project Management Plan with an addendum of the classification of misdemeanors. The vote received unanimous support from the Commission.

Meeting Adjourned: 6:15 pm.

NEXT MEETING:

Tuesday, March 17, 2015,
One Judiciary Square (441 4th St., NW), Room 430S.
D.C. Sentencing and Criminal Code Revision Commission Meeting
March 17, 2015
5:00 to 6:30 PM
Room 430S
441 Fourth Street, N.W. (One Judiciary Square)
Washington, DC 20001

Agenda

1. Review and Approval of the Meeting Minutes from February 10, 2015 - Action Item, Judge Weisberg.

2. Update on Agency Performance Hearing - Informational Item, Judge Weisberg and Barb Tombs-Souvey.

3. Review and Approval of Draft Data Sharing Policy - Action Item, Barb Tombs-Souvey.


6. Next Meeting – April 21, 2015

7. Adjourn
District of Columbia  
Sentencing and Criminal Code Revision Commission  
441 4th St, NW, Suite 430 South, Washington, DC  20001  
Telephone (202) 727-8822 Fax (202) 727-7929  

MINUTES OF FULL COMMISSION MEETING  
March 17, 2015  
One Judiciary Square, Suite 430S, Washington, DC 20001  

Members in Attendance:  
Frederick Weisberg  
Paul Butler  
Julie Samuels  
Ronald Gainer  
Dave Rosenthal  
Cedric Hendricks  
Robert E. Morin  
Laura Hankins  
Michael Anzallo  
Thomas Kane  
William Martin  
Molly Gill  

Staff in Attendance:  
Barbara Tombs-Souvey  
Linden Fry  
Richard Schmechel  
Mia Hebb  
Michael Serota  
Jinwoo Park  
Bryson Nitta  
Rachel Redfern  
LaToya Wesley  

Guest:  Judi Garrett  

I. The meeting was called to order by Chairman Weisberg at 5:10 p.m.  

II. The minutes from the February 10, 2015, meeting were reviewed, amended and approved.  

III. Chairman’s Report – Chairman Weisberg  

Performance Hearing Update: Chairman Weisberg informed the Commission that the Agency Performance Hearing went well and there were no significant questions or issues raised by Chairman McDuffie. Chairman Weisberg also commended Ms. Tombs-Souvey on the hearing testimony.  

Commission Welcomes Judie Garrett: Thomas Kane introduced Judi Garrett from the Bureau of Prisons and gave a brief overview of Ms. Garrett’s professional background. Mr. Kane communicated to the Commission that Ms. Garrett will replace Mr. Kane upon his transition off of the Commission. The Commission welcomed Ms. Garrett.  

IV. Director’s Report - Barbara Tombs-Souvey  

CSOSA Data System Update: Barbara Tombs-Souvey was pleased to inform the Commission that the GSS data system with CSOSA went live on March 1, 2015.
Annual Report Draft: Ms. Tombs-Souvey informed the Commission that a copy of the draft Annual Report was emailed to each of member for review. The Commission members were asked to provide their comments or edits by March 27, 2015.

V. Review and Approval of Draft Data Sharing Policy – Action Item, Barbara Tombs-Souvey.

Draft Data Sharing Policy: Barbara Tombs-Souvey introduced a draft of the Commission’s proposed Data Sharing Policy. As discussed at previous Commission meetings, she reiterated that the Agency’s need for a data sharing policy as a result of the increased data requests the Commission has experienced following the implementation of the GRID system. The Data Sharing Policy will control what and how data is shared with other agencies, institutions, and individuals.

The Data Sharing Policy covers:

- The Commission’s Data Sources
- Types of Data Shared
- How to Request Data
- The Commission’s Response To Data Requests
- The Timeline for Data Requests

The Commission discussed whether it was appropriate to ask requesters why they are requesting the data and/or how the data will be used. The Commission also debated whether there should be a different policy for government data requests verses external data requests. The Commission agreed to amend the Data Sharing Policy to include a statement that the policy asks the requester for information on why the data is being requested and how it will be used to allow the agency to appropriately tailor its response. The Commission also decided to have a single policy that applies to all data requests.

Commission Action#1: The Commission voted to approve the Data Sharing Policy as amended by a 9-0 vote.


Approval of Revised Criminal Code Revision Project Management Plan: The Commission continued its discussion of proposed changes to the Criminal Code Revision Project Management Plan from the February meeting. Richard Schmechel gave a brief overview of the Revised Criminal Code Revision Project Management Plan submitted to the Commission for approval. Mr. Schmechel stated that the Revised Management Plan reflected the Commission’s comments at the February meeting and subsequent discussion of details by the Committee on Criminal Code Revision.

The main differences between the Revised Management Plan and the prior Management Plan were described as follows:

- As a priority, the Criminal Code Revision Committee will develop draft recommendations for enactment of Title 22 and will identify unconstitutional offenses, common law offenses, and obsolete offenses.
- Two additional agency reviews will be conducted by criminal justice agencies on the Committee that will allow for cumulative reviews of work to date.
- To offset time spent on these additional activities, the Project will no longer include revision of certain weapon offenses, inchoate offenses, and crimes involving government operations as described in the prior Project Management Plan.

The Revised Management Plan is otherwise consistent with the original Management Plan and requires analysis, review, and development of recommendations for revision to many of the District’s most serious felonies.

Mr. Schmechel asked if there were any questions concerning the Revised Management Plan. The Commission discussed the effects of the new changes, the September 2016 statutory deadline for the Project’s completion, and the Project’s timeline for deliverables nearing the completion date.

Commission Action#2: The Commission voted to approve the Revised Criminal Code Project Management Plan and submission to the Council by 10-0 vote.

Meeting Adjourned: 6:15 pm.

NEXT MEETING:

Tuesday, April 21, 2015,
One Judiciary Square (441 4th St., NW), Room 430S.
D.C. Sentencing and Criminal Code Revision Commission Meeting  
April 21, 2015  
5:00 to 6:30 PM  
Room 430S  
441 Fourth Street, N.W. (One Judiciary Square)  
Washington, DC 20001  

Agenda

1. Review and Approval of the Meeting Minutes from March 17, 2015 - Action Item, Judge Weisberg.

2. Update on Agency Budget Hearing - Informational Item, Judge Weisberg and Barb Tombs-Souvey.


6. Adjourn
MINUTES OF FULL COMMISSION MEETING
April 21, 2015
One Judiciary Square, Suite 430S, Washington, DC 20001

Voting Members in Attendance:
Frederick Weisberg          Harold Cushenberry          Donald Braman
Paul Butler                Robert E. Morin             Molly Gill
Julie Samuels              Laura Hankins               Renata K. Cooper
Dave Rosenthal (via phone)

Non-Voting Members in Attendance:
Michael Anzallo            Thomas Kane                Chanell Autrey
Stephen Husk

Staff in Attendance:
Barbara Tombs-Souvey        Michael Serota             LaToya Wesley
Linden Fry                 Jinwoo Park                Thurman Sanders
Richard Schmechel          Bryson Nitta                Mia Hebb
Mia Hebb                   Rachel Redfern

Guest:
Marvin Turner              Saray Leon                 L. Butler-Walton

I. The meeting was called to order by Chairman Weisberg at 5:12 p.m.

II. The minutes from the March 17, 2015, meeting were reviewed and approved.

III. Director’s Report – Barbara Tombs-Souvey

**Budget Hearing Update:** Ms. Tombs-Souvey gave an overview of the agency’s FY 2016 Budget Hearing before the Council. Ms. Tombs-Souvey stated that the Mayor’s proposed agency budget for FY 2016 is 1.5 million dollars which represents an 8.9% increase over the agency’s FY 2015 budget. The increase of $87,723.00 is for operations and maintenance contracts required for the GRID and GSS systems. Ms. Tombs-Souvey noted that during the hearing she also requested an additional Research Analyst FTE position to assist with the Guideline Evaluation Study and the increased number of data requests. Chairman Weisberg commended Ms. Tombs-Souvey for her efforts to ensure the agency had adequate funding for FY 2016.
IV. Review and Approval of Draft Guideline Evaluation Study Design – Action Item, Barbara Tombs-Souvey and LaToya Wesley.

*Guideline Evaluation Study Design:* Ms. Tombs-Souvey gave an overview of the major goals identified for the project:

- **Goal # 1 – Examine Statutory Goals of the Commission:** Examine the certainty, consistency, and adequacy of punishment for sentences imposed under the Guidelines.
- **Goal # 2 – Provide Comparative Analysis:** Undertake a comparative evaluation between sentences imposed in the 1999 study data and current sentences imposed under the Guidelines to identify any shifts in sentencing patterns.
- **Goal # 3 – Provide Recommendations:** Develop data driven recommendations for potential modification to the Guidelines and/or future areas of research.

Ms. Tombs-Souvey stated that Commission will use the data downloaded from the GRID system from January 1, 2010, through December 31, 2014, for the project. The study will include descriptive and inferential statistical analysis of both offender and offense related data. The study dataset will be validated in May 2015 and the quantitative and comparison data analysis will be conducted between May 2015 and September 2015. The report will be drafted by March 2016 for review and feedback by the Research Committee. A final draft will be distributed to the Commission in June 2016 for review and feedback. Ms. Tombs-Souvey stated that the report will be finalized and published in September 2016.

*Commission Action#1:* The Commission voted to approve the research study design by a 9-0 vote.

V. Scoring of Prior Marijuana Possession and PWID/Distribution Convictions – Action Item, Linden Fry.

*Scoring of Prior Marijuana Possession, distribution, and PWID Convictions:* Mr. Fry gave a brief overview of recent changes to the District’s marijuana laws. He then explained that presentence report writers, practitioners, and judges expressed confusion regarding how score prior marijuana convictions under the Guidelines following decriminalization and/or legalization. Mr. Fry noted that Guidelines rule 2.2.9 states that “a prior conviction/adjudication under statute that was repealed so that the conduct was decriminalized is not counted” as part of a defendant’s criminal history score. However, in the case of marijuana decriminalization and/or legalization, report writers cannot determine if the offense conviction was the result of conduct that had been decriminalized or legalized or was based on conduct that remains criminalized. Mr. Fry stated the Guidelines Implementation Committee had met and agreed that:

- That a prior marijuana conviction/adjudication which has been sealed or expunged, pursuant to D.C. Code § 16-803.02, on grounds that the offense was decriminalized or legalized, should not be counted.

- Prior District and out of District convictions for possession of marijuana that have not already been sealed under D.C. Code § 16-803.02 should not be initially counted. If the government can prove to the court by a preponderance of the evidence that a prior
unsealed conviction for possession of marijuana was the result of conduct that was not
decriminalized or legalized, the conviction should be counted.

Mr. Fry explained that the Committee was unable to reach agreement on Guidelines treatment of prior unsealed PWID and distribution of marijuana convictions. The Committee developed three possible options for how prior District and out-of-District PWID and distribution of marijuana convictions could be counted towards a defendant’s criminal history score.

- Option #1: Prior Sealed Convictions and Possession of Marijuana Convictions are Not Initially Counted. Prior PWID and Distribution of Marijuana Convictions are Not Initially Counted.
- Option #2: Prior Sealed Convictions and Possession of Marijuana Convictions are Not Initially Counted. Prior PWID and Distribution of Marijuana Conviction are Initially Counted.
- Option #3: Prior Sealed Convictions and Possession of Marijuana Convictions are Not Initially Counted. Prior PWID Marijuana Convictions are Not Initially Counted, Prior Distribution of Marijuana Convictions are Initially Counted.

Mr. Fry turned the discussion over to PDS, USAO, and OAG to give their positions on the possible options. The Commission then reviewed the implications of each option. USAO supported Option Two and opposed Options One and Three. PDS supported Option One, opposed Option Two, and would agree with Option Three as a Compromise. The Commission agreed to defer further discussion for the next Commission meeting.

Meeting Adjourned: 6:30 p.m.
NEXT MEETING:

Wednesday, May 20, 2015,
One Judiciary Square (441 4th St., NW), Room 430S.
D.C. Sentencing and Criminal Code Revision Commission Meeting
May 20, 2015
5:00 to 6:30 PM
Room 430S
441 Fourth Street, N.W. (One Judiciary Square)
Washington, DC 20001

Agenda

1. Review and Approval of the Meeting Minutes from April 21, 2015 - Action Item, Judge Weisberg.

2. Update on Agency Budget - Informational Item, Barb Tombs-Souvey.


6. Adjourn
MINUTES OF FULL COMMISSION MEETING
May 20, 2015
One Judiciary Square, Suite 430S, Washington, DC 20001

Voting Members in Attendance:
Frederick Weisberg
Paul Butler
Julie Samuels (via phone)
Renata K. Cooper

Harold Cushenberry
Robert E. Morin
Laura Hankins
Dave Rosenthal

Donald Braman
Molly Gill
Cedric Hendricks

Non-Voting Members in Attendance:
Maria Amato
Thomas Kane
Chanell Autrey

Staff in Attendance:
Barbara Tombs-Souvey
Linden Fry
Bryson Nitta

Michael Serota
Jinwoo Park
Rachel Redfern

LaToya Wesley
Thurman Sanders
Mia Hebb

Guest:
Marvin Turner

I. The meeting was called to order by Chairman Weisberg at 5:10 p.m.

II. The minutes from the April 22, 2015, meeting were reviewed and approved.

III. Director’s Report – Barbara Tombs-Souvey

Agency Budget Update: Ms. Tombs-Souvey was pleased to report that there was no reduction agency’s proposed FY 2016 budget and that the agency had received an enhancement of $87,723.00 to help fund operations and maintenance of the GRID and GSS systems. In addition, a new Research Analyst FTE position was approved by the Council to assist with the Guideline Evaluation Study and the increased number of data requests received by the Commission.

IV. Guideline Criminal History Scoring of Prior Marijuana Possession and PWID/Distribution Convictions – Discussion Continue From April 21, 2015, Meeting – Action Item, Linden Fry

Scoring of Prior Marijuana Possession, distribution, and PWID Convictions:

Chairman Weisberg gave an overview of the proposed options for how the Guidelines could treat prior Marijuana Possession, Distribution, and PWID/Distribution
convictions for the purpose of calculating a defendant’s criminal history score. Chairman Weisberg also reviewed the prior meeting’s discussion on this topic.

Mr. Fry stated that all of the options presented at the prior meeting have been updated to include attempt and conspiracy offenses, as well as, omitting references to prior juvenile adjudications. Option One and Two remain the same, Option Three has been split into two separate proposals that build off of the prior proposal, wherein prior possession and PWID marijuana convictions are not initially counted by the presentence report writer, however, prior distribution of marijuana convictions are initially counted. The two new options are referred as Option Three A and Option Three B. All of the options include not counting prior Marijuana convictions sealed pursuant to D.C. Code § 16-803.02. The current options before the Commission for consideration include:

- Option# One: Prior Possession, PWID, and Distribution of Marijuana Convictions are Not Initially Counted. Preponderance of the Evidence Standard for Challenging Initial Counting.

- Option# Two: Prior Possession Convictions are Not Initially Counted. Prior PWID and Distribution of Marijuana Convictions are Initially Counted. Preponderance of the Evidence Standard for Challenging Initial Counting.

- Option# Three A: Prior Possession and PWID Marijuana Convictions are Not Initially Counted. Prior Distribution of Marijuana Convictions are Initially Counted. Preponderance of the Evidence Standard for Challenging Initial Counting.

- Option# Three B: Prior Possession and PWID Marijuana Convictions Are Not Initially Counted, Prior Distribution of Marijuana Convictions are Initially Counted. Credible Evidence Standard for Challenging Initial Counting.

The Public Defenders Service, United States Attorney’s Office, and Office of the Attorney General stated their individual agencies positions regarding the various options presented. Following this, the Commission reviewed and discussed all the possible options.

Commission Action#1: The Commission unanimously voted to approve Option Three A with the addition of language to cover prior juvenile adjudications (in addition to convictions) by an 11-0 vote.

V. Review and Discussion of Proposed Changes to the 2015 Sentencing Guidelines Manual - Action Item, Linden Fry

Proposed Changes to the 2015 Sentencing Guidelines Manual: Mr. Fry gave an overview of the proposed changes to the 2015 Sentencing Guidelines Manual. The proposed revisions are discretionary amendments that are intended to explain, clarify, and/or streamline the information presented in the Manual. Mr. Fry stated that the proposed changes were not intended to change the substance of the Guidelines Rules. Mr. Fry also noted that the new marijuana policy along with technical and formatting changes, modifications to the table of contents, section numbering, Appendix C-1, and Appendix J, will be added after the final language is approved by the Commission.
The Commission reviewed and discussed the proposed changes as set forth in the memorandum in addition to recommended changes.

**Commission Action#2:** The Commission voted to approve the proposed changes as set forth below, including modifications to Section 2.2.1, by a 11-0 vote.

**Chapter One:**
- Section 1.2.9 - The subsection now provides that “Rule 11(e)(1)(C) pleas control the sentence or sentencing range regardless of the otherwise applicable grid options, prison range, or Guidelines rules.”
- Section 1.3 - The title of the subsection was changed from “Effective Date” to “Applicability” because the rule specifies that the “Sentencing Guidelines apply to all felony convictions” in addition to the applicability date.

**Chapter Two:**
- Section 2.2.1 - A new Paragraph was added which states that “A sentence based solely on the revocation of a defendant’s supervision (e.g. revocation of probation, parole, or supervised release) in a prior case is not scored as a new conviction. The treatment of the original underlying conviction is governed by the rules set forth in Section 2.2.2.”
- Section 2.2.6(a) - The Section now specifies that the subsection (a) out-of-District scoring rules control how an offense is “initially” scored by CSOSA. The first sentence of rule 2.2.6(a)(6) was also modified for consistency. It now states that “After the presentence report writer has calculated the initial score for an out-of-District offense, if a party contends that the criminal history score for the out-of-District conviction misrepresents the severity of the offense, then the party may seek a criminal history correction.”
- Section 2.2.8 - This Section was reorganized for clarity.
- Section 2.2.9 –Section 2.2.9 was relabeled as 2.2.9(a). Section 2.2.9(b) was added to address the scoring of prior marijuana related as approved by the Commission.

**Chapter Three:**
- Section 3.8 - A sentence was added to the first Paragraph to explicitly state that “At resentencing, the court should utilize the defendant’s original in-the-box sentencing range and options.”

**Chapter Four:**
- A new Paragraph was added to Chapter Four stating that “Sentencing enhancements, such as those listed in Appendix H, do not modify how a prior conviction is scored. For example, a prior conviction for assault with significantly bodily injury is scored as a M8 conviction regardless of whether a sentencing enhancement applied to that conviction.”

**Chapter Five:**
- Section 5.1 - Similar to the modification made to Section 1.2.9, this Section was amended to clarify that all sentences following a Rule 11(e)(1)(C) plea agreement are compliant with the Guidelines.
Chapter Six:
- Section 6.2 - For consistency, the term “nonviolent crimes” was replaced with “offenses that are not crimes of violence.”

Chapter Eight:
- Section 8.5 was added to specify that “The Sentencing Guidelines apply to felony convictions under the Youth Rehabilitation Act, D.C. Code § 24-901, et seq., just as they would any other felony conviction. Similar to other factors, at sentencing the court may consider the Youth Rehabilitation Act when determining an appropriate sentence within the applicable box.”

Appendix A and B:
- Appendix A and B were modified to state that a long split sentence is available in any box.

The Commission deferred action on the proposed changes to Chapter Two, Section 2.2.7, discussing how to score convictions/adjudications from a single statute that was repealed and replaced with several new statutes, until such a situation arises.

Meeting Adjourned: 6:10 p.m.

NEXT MEETING:
June 16, 2015
One Judiciary Square (441 4th St., NW), Room 430S.
**District of Columbia**

**Sentencing and Criminal Code Revision Commission**

441 Fourth Street, NW, Suite 430 South, Washington, D.C. 20001
(202) 727-8822 – Fax (202) 727-7929

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**D.C. Sentencing and Criminal Code Revision Commission Meeting**

**September 15, 2015**

5:00 to 6:30 PM

Room 430S

441 Fourth Street, N.W. (One Judiciary Square)

Washington, DC 20001

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**Agenda**

1. Review and Approval of the Meeting Minutes from May 20, 2015 - Action Item, Judge Weisberg.


   - Overview of Proposed Revisions
   - Commission Discussion
   - Action by Commission

5. Next Meeting – To be discussed.

6. Adjourn
District of Columbia
Sentencing and Criminal Code Revision Commission
441 4th St, NW, Suite 430 South, Washington, DC 20001
Telephone (202) 727-8822 Fax (202) 727-7929

MINUTES OF FULL COMMISSION MEETING
September 15, 2015
One Judiciary Square, Suite 430S, Washington, DC 20001

Voting Members in Attendance:
Frederick Weisberg Harold Cushingberry Donald Braman
Paul Butler Robert Morin Molly Gill
Julie Samuels (via phone) Laura Hankins Marvin Turner
Renata Cooper William Martin Ron Gainer

Non-Voting Members in Attendance:
Maria Amato Judi Garrett Michael Anzallo
Stephen Husk Channell Autrey

Staff in Attendance:
Barbara Tombs-Souvey Michael Serota LaToya Wesley
Linden Fry Jinwoo Park Richard Schmechel
Bryson Nitta Mia Hebb

I. The meeting was called to order by Chairman Weisberg at 5:10 p.m.

II. The minutes from May 20, 2015, meeting were reviewed and approved.

III. Appointment/Reappointment of two members: Marvin Turner and Judi Garrett- Informational Item, Chairman Weisberg.

Appointment/Reappointment: Chairman Weisberg announced the reappointment of Marvin Turner and appointment Judi Garrett as the U.S. Bureau of Prisons representative. The Commission welcomed them both.

IV. Overview of Ethics Training for Boards and Commissions – Informational Item, Marvin Turner.

Ethics Training for Boards and Commissions: Marvin Turner gave a brief overview of the recent ethics training for boards and commissions members. Mr. Turner discussed several key roles of the Board of Ethics and Government (BEGA) Accountability:

- General Ethics Training
- Advice
- BEGA Investigations

Proposed Revision to the D.C. Criminal Code: Chairman Weisberg briefly discussed the Criminal Code Revision Project (CCRP) and stated that the project is slated to end on September 30, 2016, unless the Council extends its term. Chairman Weisberg reviewed the Enactment Plus deliverables. He stated that future deliverables, beyond “Enactment Plus” would be provided as they become available and that the CCRP Committee will work on a consensus basis to provide proposed recommendations for approval. The government agencies (Public Defender Service, Office of the Attorney General, and US Attorney’s Office) will each examine and state their agency’s position regarding the recommendations presented. Following the intra-agency review, materials will be forwarded to the Commission for review and approval before submission to the Council. Chairman Weisberg briefly discussed the timeline and order of upcoming deliverable: Property offenses, Drug offenses, Sex abuse offenses and other major offenses. Chairman Weisberg turned the discussion over to Mr. Schmechel to discuss the Proposed “Enactment Plus” revisions to the Criminal Code.

Mr. Schmechel gave an overview of the “Enactment Plus” materials that were submitted by the CCRP Committee to the Commission. Mr. Schmechel discussed the proposed revisions and materials in light of the Commission’s Code Revision mandates, including the Enactment of DC Title 22. He stated that CCRP members unanimously approved all of the “Enactment Plus” recommendations subject to the following changes: certain erroneous references to the “Commission” instead of the CCRP “Committee” will be corrected; the materials will clarify that in addition to identifying the 16 penalty-only offenses, the Committee also plans on codifying them; revisions to cure statutes that have been held unconstitutional will not be described as “technical.”

Mr. Schmechel discussed the recommendations and corresponding draft legislation that were presented in six parts set forth in the memorandum:

- Obsolete offenses and provisions (To Repeal)
  (a) 19 offenses, 1 Procedural provision, 1 penalty provision for repeal
- Outdated language (Technical Amendment)
  (a) 78 statutes for technical amendment
- Unconstitutional Statutes
- Common Law Offenses to repeal and further codify
- Relocating non-criminal provisions out of Title 22 Provisions Enactment of Title 22
The Commission reviewed and discussed the proposed Enactment Plus revisions to the D.C. Criminal Code. The Commission raised several questions and recommended the following changes and clarification:

(1) Include the statement noting that the Commission intends to codify the Penalty Only Offenses;
(2) Note that revisions relating to D.C. Code § 7-2506.01, Unlawful Possession of Ammunition and D.C. Code § 22-4512, Alteration of Identifying Marks of Weapons will be labeled as “substantive changes” rather than “technical amendments;”
(3) Omit footnotes stating that members or institutions had not responded; and
(4) Correct certain references to “Commission” and “Committee.”

Laura Hankins commended the Criminal Code Revision Staff for all their hard work preparing a well-written draft report in such detail.

**Commission Action#1:** The Commission voted to approve sending the “Enactment Plus” report and recommendations to the Council with the proposed modifications by a 12-0 vote.

The Commission meeting previously scheduled for October 20, 2015, was rescheduled for October 27, 2015.

Meeting Adjourned: 6:10 p.m.

**NEXT MEETING:**
October 27, 2015
One Judiciary Square (441 4th St., NW), Room 430S.
D.C. Sentencing and Criminal Code Revision Commission Meeting
October 27, 2015
5:00 to 6:30 PM
Room 430S
441 Fourth Street, N.W. (One Judiciary Square)
Washington, DC 20001

Agenda

1. Review and Approval of the Meeting Minutes from September 15, 2015 - Action Item, Judge Weisberg.

2. Summary of Criminal History Enhancement Conference—Informational Item, Judge Weisberg and Barb Tombs-Souvey.


6. Adjourn
MINUTES OF FULL COMMISSION MEETING
October 27, 2015
One Judiciary Square, Suite 430S, Washington, DC 20001

Voting Members in Attendance:
Frederick Weisberg    Harold Cushenberry    Donald Braman
Paul Butler          Ron Gainer             Julie Samuels
Laura Hankins        Marvin Turner          Cedric Hendricks
Renata Cooper

Non-Voting Members in Attendance:
Michael Anzallo

Staff in Attendance:
Barbara Tombs-Souvey  Michael Serota     LaToya Wesley
Linden Fry            Jinwoo Park         Richard Schmechel
Bryson Nitta          Mia Hebb            Rachel Redfern

Guest:
Tamar Meekes

I. The meeting was called to order by Chairman Weisberg at 5:10 p.m.

II. The minutes from September 15, 2015, meeting were reviewed and approved.

III. Summary of Criminal History Enhancement Conference - Informational Item, Chairman Weisberg.

Criminal History Enhancement Conference: Chairman Weisberg gave a brief overview of the Criminal History Enhancement Conference that he and Barbara Tombs-Souvey attended at the University of Minnesota Law School. Chairman Weisberg stated that 18 states, including D.C. participated in the research project, which focused on the use and purpose of Criminal History Enhancements within various Guideline Systems. The purpose of the research is to prompt Sentencing Commissions to think about why Criminal History is used, and how it relates to sentencing under the guidelines and/or sentencing policy decisions. Chairman Weisberg challenged the Commission to read the Criminal Enhancement History report, which will be provided to each member in an electronic format, and provide feedback as to whether the Commission could or should consider using criminal history differently within the District’s current sentencing guidelines.
IV. Update on the Sentencing Guidelines Evaluation Project – Informational Item, LaToya Wesley and Barbara Tombs-Souvey.

Sentencing Guidelines Evaluation Project: Barbara Tombs-Souvey informed the Commission that the five year Sentencing Guideline Evaluation Study previous delivery date of October 2016 has been extended to January 2017 to avoid a conflict with Criminal Code Revision Project which has a September 2016 deadline. Ms. Souvey stated that the entire five year data set has been downloaded, cleaned and the initial data analysis has begun.

Ms. Souvey then turned the discussion over to LaToya Wesley to share the preliminary findings related to felony sentences imposed between 2010 and 2014. Ms. Wesley stated that extreme statistical outliers were identified and reviewed. Those which were the results of court data entry errors were corrected, however, those determined to be true statistical outliers were removed from the study to avoid skewing the study findings. Ms. Wesley discussed the preliminary data findings and charts associated for each as set forth in the memorandum distributed.

Ms. Wesley asked the Commission if there were any questions or suggestions that may be included in doing the analysis. Several suggestions and comments were raised regarding the preliminary findings. Ms. Souvey reiterated that the research committee will continue to provide updates and additional findings throughout the course of the multi-year study.

V. Discussion Regarding Format and Content of Criminal Code Revision Recommendations Forwarded to the Council – Information Item, Chairman Weisberg.

Criminal Code Recommendations to the Council: Chairman Weisberg gave a brief overview of the Criminal Code Revision Project (CCRP). Chairman Weisberg expressed concerns related to the project timeline and how the Commission should forward the CCRP deliverables to the Council in order to comply with deadline of September 30, 2016. Chairman Weisberg opened the floor up for feedback from the Commission members.

Commission members raised several concerns and questions regarding the project plan and the deliverables to the Council. Ms. Souvey suggested that the report should mirror the project plan submitted to the Council as closely as possible. After discussion, the Commission recommendation was that the CCRP staff draft a report summarizing the Commission’s approach to the various code revision recommendations. The report should state that proposed approach for revisions are in draft form at this time and may change prior to the Commission’s final submission. This approach will demonstrate that the work of the CCRP Committee has been discussed at the Commission level.

Meeting Adjourned: 6:20 p.m.

NEXT MEETING:
November 17, 2015
One Judiciary Square (441 4th St., NW), Room 430S.
D.C. Sentencing and Criminal Code Revision Commission Meeting
November 17, 2015
5:00 to 6:30 PM
Room 430S
441 Fourth Street, N.W. (One Judiciary Square)
Washington, DC 20001

Agenda

1. Review and Approval of the Meeting Minutes from October 27, 2015 - Action Item, Judge Weisberg.

2. Discussion and Approval of the Criminal Code Revision Project’s Approach to Drafting General Provisions - Action Item, Richard Schmechel.


4. Adjourn
I. The meeting was called to order by Chairman Weisberg at 5:10 p.m.

II. The minutes from October 27, 2015, meeting were amended and approved. A question was raised as to whether the minutes should reflect that the Commission should notify the Council of the unlikelihood the Criminal Code Revision project will be completed by the statutory deadline. Chairman Weisberg indicated that the agency’s Performance Hearing would be the appropriate place to address that issue with the Council.

III. Discussion and Approval of the Criminal Code Revision Project’s Approach to Drafting General Provisions – Action Item, Richard Schmechel.

**Discussion and Approval of the Criminal Code Project’s Approach to Drafting General Provisions:** Richard Schmechel stated that the General Provisions were preliminarily approved by the CCR Committee and that an agency review was conducted approximately a year ago. Mr. Schmechel provided an overview of CCR Committee’s draft General Provisions as set forth in the memorandum. Mr. Schmechel then discussed several key points of the General Provisions:
• The Definition of General Provisions
• Three Functions of the General Provisions
• Why General Provisions are Necessary
• Explanation of Element Analysis
  (a) Breaking an Offense into circumstance and result elements
  (b) Specifying the Corresponding Culpable Mental States
• The definition of the Four Culpable Mental States
  1. Purposely;
  2. Knowingly (or Intentionally);
  3. Recklessly; and
  4. Negligently

Richard Schmechel provided several hypotheticals where both element analysis and a corresponding mental state were applied to an offense. He then opened the floor to address any concerns or questions regarding the draft general provisions. Several questions and recommendations were raised by Commission members.

Commission Action #1: The Commission voted to approve the Committee’s continued approach to drafting general provisions to include the element analysis approach. The Criminal Code Revision staff will redraft the prior transmittal memorandum and forward this information to the Council and Mayor by 10-0 vote.

Meeting Adjourned: 6:45 p.m.

NEXT MEETING:
December 15, 2015
One Judiciary Square (441 4th St., NW), Room 430S.