

## 2017 CJCC Fall Public Meeting

### *Understanding the District's Sentencing Guidelines for Violent Crimes*

#### Introduction

On Thursday, November 2, 2017, the CJCC convened its annual Fall Public Meeting focused on Sentencing Guidelines (SGs), specifically as they relate to violent crimes. Sentencing guidelines are utilized by judges once a person is convicted of a criminal offense to determine and render an appropriate sentence. The Guidelines take into consideration the severity of the crime and the criminal history of the person charged with the crime. Judges adhere to the guidelines 97% of the time. However, across the District, questions have been raised with respect to how the guidelines are applied and, in turn, how offenders return to their communities so quickly after being processed through the criminal justice system.

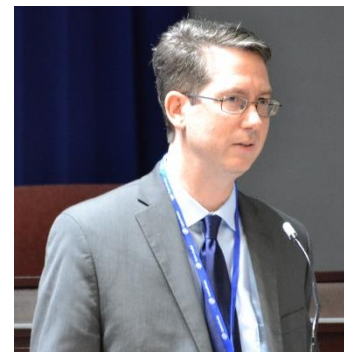
The Public Meeting served as an informational means to familiarize attendees and participants with context and perspective regarding how the Sentencing Guidelines affect the work of CJCC Partner agencies, and in turn the lives of District residents, including violent offenders.

CJCC convened the meeting at One Judiciary Square, in the Old City Council Chambers. The meeting included criminal justice officials, the Executive Director of the D.C. Sentencing Commission, and the general public.

CJCC Executive Director Mannone Butler welcomed attendees, including CJCC members Patricia Smoot, U.S. Parole Commission, and Jessie Liu, U.S Attorney, DC, to the meeting. She also introduced CJCC Co-Chairs Leslie Cooper, Director, Pretrial Services Agency (PSA), and Kevin Donahue, Deputy Mayor, Public Safety and Justice, each of whom delivered welcoming remarks.



Co-Chair Cooper emphasized that the meeting topic is important to everyone by virtue of firsthand experience with the issue, or as a part of the criminal justice and public safety community. Co-Chair Donahue emphasized the importance of being thoughtful when considering Sentencing Guidelines involving violent crimes and stressed the need for transparency.



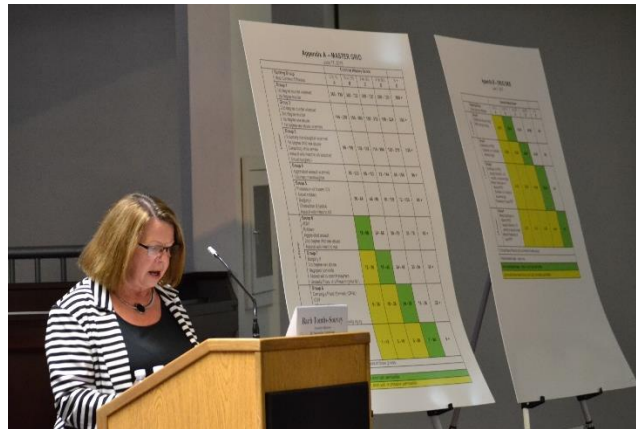
Ms. Butler introduced Kristy Love, Deputy Executive Director as the Mistress of Ceremony for the evening’s activities. Ms. Love introduced Khalil Munir, CJCC Policy Analyst to administer the audience survey.

### Audience Survey

Meeting attendees participated in an interactive survey designed to obtain demographic information and “real time” responses regarding audience familiarity with Sentencing Guidelines. According to audience feedback, 59% of the respondents indicated they were somewhat familiar with the District’s Sentencing Guidelines. 69% of the audience indicated correctly that Sentencing Guidelines are applied after a determination of guilt. Additionally, 94% of the respondents indicated that judges are responsible for applying guidelines, and 84% of the respondents answered that judges can exercise discretion in applying Sentencing Guidelines. When queried about the percentage of time judges adhere to Sentencing Guidelines, 41% of the respondents provided the correct answer that judges apply the guidelines 97% of the time. Respondents overwhelmingly, 94%, answered “all of the above” when asked which of the following statements were true: criminal history is factored into sentencing decisions; plea bargaining can affect the type and length of a sentence, even when the Guidelines apply; and, judges can depart from or disregard the Guidelines. Lastly, 24% of the respondents answered correctly that the crime most frequently committed in 2016 was assault with a deadly weapon.

### District Sentencing Guidelines Presentation

Barb Tombs-Souvey, Executive Director, District Sentencing Guidelines Commission, presented on Sentencing Guidelines.



Ms. Tombs emphasized that guidelines vary across the United States and federal guidelines, although similar, also differ from the District’s Guidelines. She explained that the Commission is mandated to develop Sentencing Guidelines in order to promote certainty, consistency, and adequacy. The goal is to ensure that individuals, committing similar crimes, receive similar punishments. As a practical matter, the Commission calculates judicial compliance with the Sentencing Guidelines, and every February, the organization conducts training to help educate the public about the Guidelines and how they work.

The Sentencing Commission is comprised of people who discuss what types of sentences are appropriate and when modifications might need to be made. The Commission staff helps to analyze sentencing data.

Sentencing Guidelines apply to pleas or verdicts on/after June 14, 2004. They also only apply to adult felony convictions; they do not apply to juvenile delinquency adjudications or misdemeanors. Also, the Court is not required to comply with the guidelines; compliance is entirely voluntary.

Ms. Tombs explained that the Guidelines are based on a master grid, with the criminal history score on one axis and types of crime, organized by level of severity, on the other axis. The grid, which may be found on the following page, is a table that can be cross-referenced to determine an appropriate sentence from an array of options. The cells within the grid provide the range for the sentence length, in months. The cells are also shaded to indicate the various types of sentences that could be imposed, which could include prison, long split, short split, or probation. A split sentence is where the offender is sentenced to a term of incarceration, which is followed by a term of probation.

There is a separate grid for drug convictions, which also considers criminal history and the severity of the offense. However, a greater proportion of cells on the drug grid offer probation and short split sentences as sentencing options compared to the master grid. In summary, the guidelines allow for more lenient sentences for persons with low criminal history scores who committed low-level offenses and are amenable to rehabilitation, and stricter sentences for persons with a significant criminal history who committed more egregious offenses and are viewed as a threat to public safety.

There are also factors that enable judges to impose sentences that are outside of the range, but are still determined to be in compliance with the Guidelines:

- Aggravating factors allow for an upward departure from the Guidelines, where judges can impose more severe sentences if certain factors are involved, such as cruelty, vulnerability (e.g., age), and premeditation.
- Mitigating factors allow for a downward departure from the Guidelines, where judges can impose less severe sentences when one takes into account factors such as whether the offender was coerced or threatened, or lacked the capacity to understand the seriousness of the action.

Ms. Tombs stated that the Sentencing Commission conducts analysis by count (i.e., a particular offense for which the defendant was convicted), by case, and by offender. She identified several points to keep in mind with respect to sentencing.

- Sentences that are imposed in a particular year are not necessarily associated with the arrests that occur in that same year because sentencing can occur years after an arrest.
- There are generally multiple counts in a single case.
- There are offenders who have more than one case in a year.
- Defendants are sentenced for the crime of conviction, which is not necessarily the same as the crime they were arrested, or indicted for.
- Sentencing can take place 6-24 months after conviction depending on the seriousness of the violation
- A decline in case numbers is primarily due to decreases in drug offenses. Drug offenses declined from 538 in 2010 to 312 in 2015, representing a 79.5% decrease. Opioids and synthetic marijuana convictions caused an uptick in drug cases in 2016.
- Bench trials, where the judge determines the verdict as opposed to a jury, are not very prevalent.

Ms. Tombs also described several sentencing scenarios to demonstrate how two individuals who commit the same crime and can receive a different sentence due to differences in criminal history and aggravating and mitigating factors.

## MASTER GRID

		Criminal History Score				
		0 to 1/4 A	1/4 to 1/2 B	2 to 3/4 C	4 to 5/4 D	6 + E
<b>3 Points*</b>	Ranking Group Most Common Offenses					
	Group 1 1st degree murder w/armed 1st degree murder	360 - 720	360 - 720	360 - 720	360 - 720	360 +
	Group 2 2nd degree murder w/armed 2nd degree murder 1st degree sex abuse 1st degree sex abuse w/armed	144 - 288	156 - 300	168 - 312	180 - 324	192 +
	Group 3 Voluntary manslaughter w/armed 1st degree child sex abuse Carjacking while armed Assault with intent to kill w/armed Armed burglary I	90 - 180	102 - 192	114 - 204	126 - 216	138 +
	Group 4 Aggravated assault w/armed Voluntary manslaughter	48 - 120	60 - 132	72 - 144	84 - 156	96 +
	Group 5 Possession of firearm /CV Armed robbery Burglary I Obstruction of justice Assault with intent to kill	36 - 84	48 - 96	60 - 108	72 - 120	84 +
<b>2 Points*</b>	Group 6 ADW Robbery Aggravated assault 2nd degree child sex abuse Assault with intent to rob	18 - 60	24 - 66	30 - 72	36 - 78	42 +
	Group 7 Burglary II 3rd degree sex abuse Negligent homicide Assault w/ to commit mayhem Unlawful Poss. of a Firearm (prior fel.)	12 - 36	18 - 42	24 - 48	30 - 54	36 +
<b>1 Point*</b>	Group 8 Carrying a Pistol (formerly CPWL) UUV Attempt robbery Attempt burglary 1st degree theft Assault w/Significant Bodily Injury	6 - 24	10 - 28	14 - 32	18 - 36	22 +
	Group 9 Escape/prison breach BRA Receiving stolen property Forgery/Uttering Fraud	1 - 12	3 - 16	5 - 20	7 - 24	9 +
*Criminal History Points for prior convictions in these groups.						
White/unshaded boxes – prison only.						
Dark shaded/green boxes – prison or short split permissible.						
Light shaded/yellow boxes – prison, short split, or probation permissible.						



## Panel Discussion



D.C. Councilmember Charles Allen moderated a panel of criminal justice officials including:

- Robert Morin, Chief Judge, District of Columbia Superior Court
- Lorenzo Harris, Branch Chief, Diagnostics, Court Services and Offender Supervision Agency (CSOSA)
- Kimberly Missouri, Assistant Chief, Metropolitan Police Department (MPD)
- Katya Semyonova, Special Counsel for Policy, Public Defender Service (PDS)
- Renata Cooper, Special Counsel, Assistant U.S. Attorney, U.S. Attorney's Office (DC)
- Mina Q. Malik, Deputy Attorney General, Office of the Attorney General (OAG)
- Barb Tombs-Souvey, D.C. Sentencing Commission

Councilmember Allen posed a series of questions to the panelist including:

**Given your agency's scope, how is the nature of what you do affected by Sentencing Guidelines?**

Ms. Semyonova, PDS emphasized that the role of her agency is to provide clients the best possible representation. She stated that the Guidelines help provide some measure of predictability regarding potential sanctions individuals can expect when they commit certain crimes. She also said the Guidelines inform defendants about the potential sanctions they are facing. Mr. Harris, CSOSA explained investigators are responsible for conducting presentencing investigations and preparing reports. Those reports include social and criminal histories, the latter of which are used to develop a criminal history score, a key component in the sentencing grid.

Deputy Attorney General Malik explained that the OAG does not prosecute felony offenses. USAO has this exclusive jurisdiction. Ms. Malik explained further that for any misdemeanor with a penalty of less than 90 days, the individual does not receive a mark on the history score. However, convictions for

juveniles that are more than 5 years old (that would be felonies if they were adults) are scored for juveniles.

Ms. Cooper, USAO, emphasized that the overarching role/mission of her office is to ensure fair and impartial administration of justice. The Guidelines are part of how they achieve that mission. She said the Guidelines help to promote consistency and fairness that helps achieve the agency's mission. She also said that they consider the guidelines even when extending pleas to defendants.

Assistant Chief Missouri advised that MPD's decision-making process for arrests aren't based on the Guidelines. They focus on the evidence and probable cause. Assistant Chief Missouri acknowledged, however, that the Guidelines affect how quickly individuals MPD arrests return to the community, which can sometimes lead to frustration among community members.

Chief Judge Morin explained that sentencing is the most difficult thing a judge does. He emphasized that sentences weigh heavily on judges, and the sentences rendered affect both victims and defendants. The Chief Judge explained that when judges begin a sentence, it's important for them to understand the Guidelines, which are based on average sentences imposed for similar offenses and offenders in the past.

**97% of all sentencing decisions are rendered within Sentencing Guidelines. However, within the guidelines there is variability. Please explain how that variability is considered?**

Chief Judge Morin offered an example involving robbery, where the elements of the crime could involve pickpocketing or involve the offender punching the victim while also taking the victim's possessions. These factors are taken into account to determine where on the range of sentences a judge will fall. Judges also consider arguments put forth by the victim, prosecutor, and defense attorneys regarding what they consider to be an appropriate sentence.

**How do your offices approach the guidelines and variability?**

Ms. Cooper, USAO, responded that the sentencing process is the culmination of a jury verdict or plea deal. She explained the Guidelines aren't going to impact USAO charging decisions when presented to her office, or after evidence is presented to grand jury. However, the USAO considers the Guidelines when plea negotiations start. The USAO will negotiate consistent with the guidelines – and can make sentencing recommendations to the bottom/top of the range at USAO discretion.

Ms. Malik, OAG, commented that if the guidelines were not meeting their goals, we would see the judiciary diverging from these voluntary guidelines. She stressed that it is important to remember that Guidelines are to balance fairness in sentencing and safety to the community.

Mr. Harris, CSOSA, advised that CSOSA adheres to the Guidelines very strictly when recommending a sentence in the presentencing report. They rely on social history to inform judges re: mitigating/aggravating circumstances. Ms. Semyonova offered that most cases result in pleas and this is

what drives compliance with the guidelines. Further, what advocates ask for and what prosecutors will ask for will almost never be outside the range of the guidelines.

**Question for Chief Judge Morin – Is there a formalized way that judges can compare cases with each other?**

Judge Morin mentioned that there are 26 judges in the Criminal Division of the D.C. Superior Court. He stated that it is important for judges to talk to one another because there are ranges within the Guidelines, and also different sentencing philosophies among judges. According to Chief Judge Morin, the Guidelines help keep judges within an expected range for all parties. Most judges, if they think they might depart from the Guidelines, will consult with other judges to self-regulate themselves. Additionally, approximately three (3) times a year, the judges participate in a training exercise where they explore hypothetical sentencing scenarios. The judges compare their decision-making in these hypothetical cases, and the reasons behind them. Chief Judge Morin also emphasized that judges are prohibited from participating in plea bargaining negotiations.

**In what ways are public safety or recidivism/re-offense measured? How would measuring this impact the Guidelines?**

Ms. Tombs explained that criminal history plays a major role in sentencing decisions. A second offense will be sentenced more severely than the first. She also explained there are fewer sentencing options for violent offenses.

**What about the 5% that are outside the Guidelines? Are there any trends among those cases?**

According to Ms. Semyonova (PDS), they rarely experience Sentencing Guidelines outliers. Consequently, there aren't any true trends that she could identify in those types of cases. Mr. Harris agreed with her assessment as well.

Ms. Malik offered that cases should be evaluated on a case-by-case basis. She stated that it is important to remember that if you have someone who is a repeat offender, you have to figure out a way to deter them from committing more dangerous/violent crimes. If you have a repeat violent offender, you must figure out how to balance the need for community safety and fairness for defendants.

Ms. Cooper (USAO) offered an important note on nomenclature. There are things called departures, and then there is the separate notion of “non-compliance” with the guidelines. Departures (upward or downward) can be made by judges, and can be recommended by defense or prosecutors; these can be accepted by judges, and still be consistent within the guidelines.

Assistant Chief Missouri offered that MPD has seen persons who start off with misdemeanor offenses like breaking into cars, then they begin stealing cars, and ultimately end up using a stolen car to commit other crimes like robberies. In community meetings, MPD is hearing from people who want to know why people are back on the street so quickly after being arrested. This conversation is helpful to MPD so they can share this information with the community.

According to Chief Judge Morin, if a judge imposes a sentence that is not in compliance with the guidelines, that judge will get an email within a week from the Sentencing Commission asking the judge to explain why he or she didn't comply. In limited cases where Morin has not complied, it was in cases where there were significant mitigating circumstances where the Guidelines were not appropriate for the defendant, who had great potential. He stated that while the Guidelines are very important, they cannot capture all hypothetical cases. Thus, judges may choose not to comply.

Ms. Tombs mentioned that in cases where judges have chosen not to comply, it is because the judges felt it would be an injustice to apply the Guidelines. However, more often than not, when a judge has not complied with the Guidelines, it is a result of an error, and the email from the Commission leads a judge to correct the sentence. She stressed that there is a need for balance. According to Ms. Tombs, we do not want a system where judges must comply with the Guidelines. She highlighted the need for judges to have some flexibility that offers balance, and it is critical to distinguish "Who we're mad at vs. who we're afraid of".

**Part of Sentencing Guidelines help create degrees of certainty and rationality. To what degree do you see the Guidelines as part of stemming the tide of mass incarceration? Is it a factor?**

Ms. Tombs commented that the Guidelines are designed to put the right people in prison for the right amount of time.

AUSA Cooper emphasized that the USAO's position is that it is appropriate for the Guidelines to be voluntary and provide latitude for judges. The Guidelines enable judges to do what is appropriate and do those things that can help deal with imprisonment issues.

Deputy AG Malik offered that Sentencing Guidelines might help stem the tide of mass incarceration, but programming is even more important. She said that it is important to note that there is a distinct lack of certain programs that can stem the tide of mass incarceration, while rehabilitating offenders.

Ms. Tombs offered that a future action item for the Commission will involve looking at criminal history trends, and hearing from groups about how cases are being sentenced. Additionally, the Commission plans to explore whether there is a need to add box (es) and severity levels to the existing Guidelines grid. She also commented that the Commission released a study in March 2017 that focused on opportunities for improvement.



## Audience Q & A

1. Are persons sentenced to incarceration getting mental health services/educational services while they are incarcerated?  
Mr. Harris, CSOSA, mentioned that his agency makes recommendations for BOP and persons in the community about what social services they need.
2. Where on the master grid is trauma factored in? Does the Sentencing Commission have data by racial demographics for similar crimes?
  - a. CSOSA doesn't incorporate trauma when recommending a sentence. The factors considered are offense and criminal history.
  - b. The Sentencing Commission does not have data on trauma. Commission data is broken down by race, however.
3. Given that the guidelines are based on historical averages, and the fact that there has been racial bias, how are the prosecution/court/commission taking into account how we reevaluate the guidelines re: racial bias?
  - a. Action item, at the Commission retreat the issue will be taken up to explore the effect of criminal history on sentencing decisions and whether it contributes to disparities.



At the conclusion of the meeting, Ms. Butler encouraged participants to recommend topics for future public meetings and thanked everyone for attending the meeting.