



DISTRICT OF COLUMBIA
COURT SERVICES AND OFFENDER SUPERVISION AGENCY &
PRETRIAL SERVICES AGENCY
RESEARCH REVIEW COMMITTEE

MEMORANDUM

DATE: April 14, 2003

TO: Paul A. Quander, Jr. *PAQ*

CC: Susan W. Shaffer

FROM: Claire Johnson *CJ*

RE: Preliminary Validation of Structured Sentencing Grid Using PSIs

The Research Review Committee (RRC) has reviewed the research request submitted by Kim Hunt, Director of the DC Advisory Commission on Sentencing, to conduct a qualitative analysis of pre-sentence investigations to validate the District's structured sentencing grid. Our recommendation is for CSOSA to support the study, with conditions, as discussed in the recommendation statement, which is attached.

Please indicate your acceptance or non-acceptance of this recommendation as soon as possible, so that we may inform the researcher of the outcome of our review.

If you have any questions or would like a copy of the complete review file, please feel free to contact me at 202-220-5553 or claire.johnson@csosa.gov.

Thank you.

Enclosure: Researcher request
RRC recommendation statement

Research Review Committee

Janice C. Bergin, Director of Operations, PSA • Calvin C. Johnson, Director of Research and Evaluation, CSOSA •
Claire M. Johnson, Director of Community Justice Programs, PSA • Carolyn Peake, Senior Program Analyst,
Planning, Analysis and Evaluation, PSA • George E. Pruden, II, General Counsel • Thomas H. Williams, Director of
Community Supervision Services, CSOSA



**DISTRICT OF COLUMBIA
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EXPEDITED REVIEW RECOMMENDATION STATEMENT

I. RESEARCH PROPOSAL SUMMARY

Principal Researcher(s): Kim Hunt, Director, DC Advisory Commission on Sentencing

Title: Preliminary Validation of Structured Sentencing Grid Using Pre-Sentence Investigations

Institutions: DC Advisory Commission on Sentencing (DCACS)

Type of Data: Qualitative analysis of Pre-Sentence Investigations

Subjects: 200 Pre-Sentence Investigations from January 2001 through June 2002

Description: The DCACS proposes to conduct a qualitative analysis of pre-sentence investigations (PSI) to supplement information already collected from the Superior Court's Court Information System (CIS). For a sample of felony offenders, DCACS will focus on PSI items including offense behavior at the time of the offense, offender prior criminal record as reported in the PSI, and various other potential aggravating and mitigating factors that may be included in the PSI and are discussed below.

II. QUALIFICATION FOR EXPEDITED REVIEW

The DCACS is a District Government agency required under the Advisory Sentencing Commission Act of 1998, as amended by the Sentencing Reform Act of 2000, to analyze certain data for which findings must be presented to the District Council in the DCACS's 2003 Annual Report. Though as a federal agency, CSOSA has no statutory obligation, as District agencies do,¹ to provide such information, the Agency will cooperate as a member of the District's justice system to assist the DCACS in the furtherance of its statutory mission.

¹ D.C. Official Code § 3-108 (2001) provides that: "Agencies of the District of Columbia government shall cooperate in providing such information as may be necessary to fulfill its statutory mission."

III. RECOMMENDATION

The RRC recommendation for this study:

- Support **Support with Conditions** Do Not Support

The RRC recommends support of this request provided the following conditions:

- The quality of the pre-sentence reports shall not be a topic of review for this study.
- To account for staff availability to prepare the request, the PSIs will be delivered in groups on a weekly basis until the request is fulfilled.

III. SUPPORTING INFORMATION

Regulatory:

The proposed study is exempt from Agency Research and Evaluation Policy Statement 1201 regarding the protection of human subjects. The request for information is for the administrative purposes of a District Government agency whose primary purpose is to analyze the requested data in the furtherance of its statutory mission.

Benefits to Agency:

The proposed research is consistent with Agency priorities and/or interests as follows:

- It is in the Agency's interest to cooperate to an extent that is reasonable and possible with requests from District justice agencies for information and/or assistance that enable the accomplishment of their respective missions.

Related Issues or Concerns:

Issues associated with this request include:

- Offenders' identifying information will have to be stripped manually from the PSIs before being released to DCACS. To account for staff availability to prepare the request, the PSIs will be delivered in groups on a weekly basis until the request is fulfilled.
- It might be necessary to draw supplementary records to account for PSIs that might have insufficient information to be useful for the study.
- It must be understood and agreed upon that the quality of the PSIs shall not be a point of focus for the study.



District of Columbia Advisory Commission on Sentencing

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

Research Plan for Preliminary Validation of Structured Sentencing Grid Using Pre-Sentence Reports

Staff: Advisory Commission on Sentencing staff include Chan Chanhatasilpa, Jim Cronin, and Rachel Buske.

Purpose: Review Pre-Sentence Reports to supplement data currently available on the CIS system.

Location: District of Columbia Advisory Commission on Sentencing
441 4th St, NW, Suite 830 South
Washington, D.C. 20001
Phone (202) 727-8822 Fax (202) 727-7929

Study

Duration: Two months

Methods: Qualitative analysis of Pre-Sentence Reports

Sample size required: ~~4~~ 400 Pre-Sentence Reports from 2001-2002

Support: The Commission requests that CSOSA remove all identifying information from the PSR and use a code number the Commission supplies to allow the Commission to match back each PSR to the Commission's automated data for each felony docket requested.

Subject Risk: There should be no risk to subjects. The Advisory Commission on Sentencing staff already have access to the subject's criminal files. Additionally, the file prepared by the CSOSA staff will have no identifiers. All PSR's will be retained for the period of the study only, in one locked office.

Anticipated

Results: 1) Heartland descriptions of key offenses 2) Estimated margin of error for Commission's criminal history score

Deliverables: Grid and Heartland descriptions of key offenses

Abstract

The Commission proposes to conduct a qualitative analysis of Pre-Sentence reports (PSR) to supplement information the Commission has already collected from the Superior Court's Court Information System (CIS). For a sample of felony offenders, the Commission will focus on PSR items including offense behavior at the time of the offense, offender prior criminal record as reported in the PSR, and various other potential aggravating and mitigating

factors that may be included in the PSR and are discussed below. The Commission proposes to provide identifying information on a sample of 400 offenders sentenced during the period January 2001 through June 2002.

Authority

D.C. Official Code § 3-108 (2001) provides that:

“Agencies of the District of Columbia government shall cooperate in providing such information as may be necessary to fulfill its statutory mission.”

Background

Section 6 of the Advisory Commission on Sentencing Establishment Act of 1998, as amended by the Sentencing Reform Act of 2000, provides:

“(d) The Commission shall submit to the Council in its 2003 annual report a recommendation for a comprehensive structured sentencing system in the District of Columbia or, in the alternative, a detailed explanation as to why the District of Columbia does not need a structured sentencing system. The Commission shall continue to analyze the data specified in subsections (b) and (c) of this section and submit a final report of its findings in its 2003 annual report to the Council.”

D.C. Official Code § 3-105 (2001).

In Chapter I of the 2002 Annual Report, the Commission reports on “various types of structured sentencing systems in use in the United States and the Commission's recommendations as to which system would best serve the District of Columbia.” *D.C. Official Code § 3-105(a)(2001)*. To determine which system may make the most sense for the District of Columbia, the Commission began with its own mission statement, developed to highlight the various goals for sentencing. After much analysis and deliberation focused on these goals, a consensus emerged that the District may be best served by a flexible system of voluntary sentencing guidelines. In the proposed system, judges would be free to depart from the recommendations, and would be expected to state reasons on the record for departure. After much deliberation and debate, the Commission arrived at the following recommendation.

Recommendation 1: The Commission will develop by November 2003 a system of voluntary sentencing guidelines based primarily on the severity of the offense of conviction and the criminal history of the offender. The guidelines will include recommended sentencing dispositions and, where prison is the disposition, recommended ranges for terms of imprisonment. The ranges would be relatively wide to preserve judicial discretion, but not so wide as to defeat the goals of uniformity and proportionality. The guidelines would be based on two principles of proportionality: the more serious the offense of conviction, the more severe the recommended sentence; and the more serious the offender's criminal record, the

more severe the recommended sentence. Judges would be encouraged to follow the recommended sentences and to sentence within the recommended ranges. The Commission will consider aggravated and mitigated ranges for prison sentences, which would still be considered "within the guidelines" as long as the judge relied on one of the listed aggravating or mitigating factors. Since the guidelines would be voluntary, judges would be free to depart in both directions in "extraordinary" cases, but would be expected to state reasons in writing or on the record using the aggravating or mitigating factors provided, including "other, please specify." Consistent with current law, there will be no appellate review of sentences.

Rationale

The Commission expects to deliver a detailed plan for a comprehensive structured sentencing system in the District of Columbia by November 2003 (or, alternatively, explain to the Council why this is not possible or not advisable). As discussed in the above recommendation, the centerpiece of this policy recommendation is a grid that recommends a sentencing range primarily based on the severity of the offense of conviction and the criminal history of the offender.

With regard to the severity of offense of conviction, the Commission has grouped 150 offenses into nine preliminary groups, based on both professional judgment and empirical analysis of felony convictions during the period 1996 through 2002. The Commission requests and receives automated data on all felony sentencing dockets from the Superior Court's CIS, and updates it every 6 months.

The principle guiding these rankings is to create groupings of roughly similar crimes, with the intended use that sentencing recommendations would be based on these groupings in order to achieve a greater level of uniformity and fairness in the sentencing of like **offenses**, all other things being equal. These groups are currently being refined in an attempt to verify that the groupings do contain roughly equal offenses. The refinement includes a plan for heartland case definitions that provide a verbal description of what the typical crime is, acknowledging that an armed robbery can range, for example, from a homeless person chasing a pedestrian down the street with a stick demanding money, to a violent confrontation involving a firearm and a viable threat of severe bodily harm.

With regard to the criminal history of the offender, the Commission is considering from three to five criminal history categories ranging from first time offenders to those with serious and habitual patterns of offending. Again, the anticipated use of these categories is to develop sentencing recommendations that promote uniformity and fairness in the sentencing of like **offenders** – based on the principle that offenders with similar prior records should receive similar treatment, all other things being equal.

In summary, the Sentencing Commission is creating preliminary draft sentencing grids based on expert judgment and automated Superior Court data. However, in the areas of both offense ranking and criminal history categorization, the Commission would benefit from a qualitative analysis of Pre-Sentence Reports.

Analysis Plan

With regard to the ranking of felony offenses into roughly comparable groups, the Pre Sentence reports should prove useful, especially in developing what the Commission is calling "Heartland case descriptions." The heartland case is the typical case for that sort of crime – as distinguished from the extreme case that is often the focus of news stories. The Commission wants to review offense behavior as described in police reports, etc. in an attempt to verify the "typical" case for a number of felony offenses. Some offenses, such as obstruction of justice and threat to injure person, are likely to contain a wider than normal range of criminal behaviors. Collecting information on the conduct exhibited in each offense, as well as the mitigating and aggravating factors, for a small sample of these cases can help the Commission validate its expert opinion (judges, prosecutors, defense attorneys) on the "typical" felonies appearing in Superior Court. We will randomly select 10 cases from each offense that we feel need heartland case description in the procedure described below, as well as a number of randomly selected cases.

Qualitative analysis will focus on information not available in the CIS data but likely to be found in many PSR's. PSRs will be reviewed for the following factors:

- 1) Victim information such as relationship to offender, characteristics, injury
- 2) Drug use/drug dependence from drug test results
- 3) Weapon information such as what type of weapon was used and how it was used
- 4) Value of property loss or damage
- 5) Quantity of drugs
- 6) Criminal justice status at time of offense

Other factors that could influence sentencing are:

- 1) Ethnicity of offender (Hispanic vs. Non-Hispanic)
- 2) Employment status
- 3) Level of education
- 4) Marital status
- 5) Number of children
- 6) Type of counsel
- 7) Citizenship

Pre Sentence Reports will also be used by the Commission to validate our criminal history categories. The Commission believes that there are at least two areas in which our criminal history scoring is limited:

1. Undercount of priors. The Criminal history for offenders was established using D.C. Superior Court's data. We would like to compare that criminal history to those contained in the Pre-Sentencing Investigation (PSI) reports. This would allow us to gauge the accuracy of the criminal history created from Superior Court records.
2. Out of state records from Pretrial Services. Related to the issue above, there appears to be an undercounting of the out-of-state criminal history for offenders. Gaining access to Pre-Sentence Investigation reports would allow us to determine the extent of the underreporting.

The comparison of PSR's to our own counts of prior convictions will allow the Commission to develop a rough estimate of the degree to which our database understates offender's prior records. Of course, we recognize that all records may understate the true degree of offending, and we are simply trying to replicate the prior record a judge would likely see from the PSR.

Sampling

The Advisory Commission on Sentencing proposes to prepare a stratified sample of approximately 400 cases drawn from felony cases sentenced in 2000 and 2001.¹ We will provide all identifying information, including docket numbers and PDID numbers. We request that CSOSA provide the PSR's, retaining a simple case numbering scheme we will provide, allowing us to match each PSR to our own CIS data (We need to match the automated data to the PSR). We prefer the PSR in electronic format if possible.

¹ Commission staff will randomly select 20 cases from each of Groups 3 through 9 ranking categories in the lowest prior criminal history category (column A) and 20 cases from Groups 3 through 9 in the third criminal history category (Column C). As mentioned previously, there has been some discussion among Commission members regarding the collapsing of the two lowest prior criminal history categories (Column A and B) and collapsing the next two categories (Column C and D). Selecting samples from columns A and C would allow us to collect cases that are representative of the potential collapsed prior history columns. We exclude the first two ranking groups because the serious, violent offenses contained in these groups are straightforward and do not need to be investigated further.

In addition, the Commission staff plans to randomly select 10 cases from each offense that need heartland case descriptions. In order to identify these offenses, we ran descriptive statistics - specifically the quartiles of the sentences imposed by D.C. Superior Court - on each offense during 1996 through June 2002. We selected offenses that had wide ranges - where the 75th percentiles for the minimum sentences imposed were 4 or more times longer than the 25th percentiles. These offenses are obstruction of justice, threat to injure person, receiving stolen goods, carrying a dangerous weapon, possession of prohibited weapon, uttering, violating drug free zone, receiving stolen goods, carrying a pistol without a license, 1st degree cruelty to children, 2nd degree child sex abuse, and destruction of property over \$200.

140 cases from column A (20 from groups 3 through 9) and 140 from Column C (20 each from groups 3 through 9) for a total of 280 cases. In additions, 120 cases would be selected from offenses that need heartland definitions.

March 7, 2003

There should be no risk to subjects. The Advisory Commission on Sentencing staff already have access to the subject's criminal files. Additionally, the file prepared by the CSOSA staff will have no identifiers. All PSR will be retained for the period of the study only, in one locked office.

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