

United States Sentencing Commission
Minutes of April 3, 2000, Commission Meeting

Chair Murphy opened the meeting at 8:30 a.m. The commissioners discussed how they wished to proceed during the afternoon public meeting.

Chair Murphy then turned the discussion to those amendment matters that were not settled. The commissioners discussed the NET Act and agreed they were satisfied with the SOC changes regarding serious injury and organized crime and the deletion of the definition of infringement amount. The Department of Justice reported its preference for option 4 without a downward departure. After much discussion, the consensus was to proceed with option 3.

The commissioners then addressed the circuit split on postsentencing rehabilitation. Staff reported that the Bureau of Prisons did not favor a downward departure at this time. Vice Chair Sessions proposed that if the Commission were to prohibit a downward departure, it should prohibit an upward departure as well. Acting General Counsel Purdy recommended that the Commission consider the upward departure next cycle because that option had not been noticed or published this cycle.

With regard to firearms, the Commission decided to defer until next year whether there is a need for a new guideline for 924c offenses. Chair Murphy and Andy Purdy raised the need to address the retroactivity issue at the public meeting with regard to firearms.

The discussion turned to the Tomasino case. Vice Chair Castillo did not think the Commission should resolve the problem by passing a technical amendment. The principle – courts should not remand issues to the Commission – is what is at stake here. Commissioner Kirkpatrick said it would be helpful, and the commissioners agreed, if Andy Purdy were to write a letter to DOJ expressing the Commission's concerns. If a technical amendment becomes necessary, it can be taken care of in the summer.

The commissioners had a discussion of sexual predators issues and whether consideration of the statutory rape guideline should be deferred.

United States Sentencing Commission
Minutes of April 4, 2000, Commission Meeting

Chair Murphy called the meeting to order at 8:30 a.m. The Commission first addressed the aberrant behavior circuit conflict and discussion focused on a compromise amendment proposal worked out by commissioners. Commissioner Kirkpatrick represented that the Department of Justice could support the Commission proposal because it was more limited than the totality of circumstances approach.

The Commission reached consensus on the sexual predator amendments.

Commissioner Kirkpatrick raised a concern about the dismissed/uncharged conduct vote. He thought that the guideline language was so broad it would help prosecutors to circumvent the grouping rules by introducing criminal conduct during the sentencing phase using the standard of preponderance of the evidence. Vice Chair Castillo expressed his view that he was satisfied that discretion would be with the judge. There was no motion to reconsider the prior day's vote.

There was a discussion of the retroactivity of the firearms amendment. Vice Chair Steer recommended that the issue be put out for public comment for 60 days.