

January 14, 1987

Commission Meeting Minutes

The following Commissioners were in attendance:

Benjamin Baer  
Michael Block  
Stephen Breyer  
Ronald Gainer  
George MacKinnon  
Ilene Nagel  
Paul Robinson  
William Wilkins, Jr., Chairman

The following staff were in attendance:

Rusty Burress  
Alan Chaset  
Suzanne Conlon, Executive Director  
Matthew Greenberg  
Di Horvath  
Peter Hoffman  
Paul Martin  
Elizabeth Williams

\* Commission Helen G. Corrothers was attending the American Correctional Association's 1987 Winter Conference in Atlanta, Georgia, at this time. Prior to her departure, she indicated to Chairman William W. Wilkins, Jr. her desire to not object to any decisions made at this time pertaining to issues related to Chapter Three because of the future opportunity to propose changes.

The Chairman called the meeting to order at 9:30 a.m., Wednesday, January 14, at the U.S. Sentencing Commission offices, 1331 Pennsylvania Avenue, Washington, D.C..

He asked for discussion on Chapter Three. A general analysis of the substantive issues presented in the Chapter ensued. Some Commissioners believed the draft Guidelines presented lacked the specificity and distinctions required of a complete guidelines drafting effort; other Commissioners, on the other hand, believed that that same element of specificity would make the Guidelines unjustifiable and unadministerable. The consensus was to go ahead and work through voting on Chapter Three section by section, keeping in mind that should an alternative be proposed that would increase the specificity and be administrable and justifiable, that procedure could be presented and reviewed for Commission adoption at a later date in the final Guidelines drafting process.

Commissioner Nagel suggested that as a procedural matter the Commission vote for the publication of Chapter Three in the manner utilized yesterday. All agreed. (Note: as was the procedure in yesterday's meeting, Commissioner Robinson abstained from all votes unless otherwise noted.)

Commissioner Nagel moved to amend §A311(e) applying the language suggested by the Chairman by deleting everything after

"within three years" and adding "within three years after conviction of any countable offense." Judge MacKinnon seconded. The motion passed 5-0. Judge Breyer abstained.

Judge Breyer moved that §A311(c) be amended to read "not included in (a) or (b), up to a total of 6 points for this item." As opposed to "not included in (a) or (b) not to exceed a total of 6 points." Commissioner Nagel seconded. The motion passed 6-0.

Commissioner Block moved to delete "executed" and "not one that has been suspended" from §A312(6)(1) so that the sentence reads, "The term "sentence of imprisonment" means a sentence of incarceration." He further moved that "only" be inserted in §A312(b)(2) as follows "imprisonment refers only to the portion" Commissioner Nagel seconded. The motion passed 6-0.

Incorporating the Chairman's suggestion, Judge Breyer amended §A312(c)(1) to read "offenses are not counted unless" as opposed to "offenses are excluded unless". Commissioner Block seconded. The motion passed 6-0.

Commissioner Nagel moved to take out "or an occupied vehicle" in §A312(c)(2). Judge MacKinnon seconded. The motion passed

6-0.

Commissioner Nagel moved to amend §A312(d)(1) to read, "For each time that within five years of the commencement of the current offense, the defendant was incarcerated for a period of confinement of more than 60 days, add 2 points" and to amend §A312(d)(2) to read, "For each adjudication of delinquency not covered by (d)(1), add 1 point." Commissioner Block seconded. The motion passed 6-0.

A discussion ensued on the definition of a juvenile and the practicalities of dealing with the different definitions that exist state to state.

Judge MacKinnon moved amending §A312(e)(1) to read, "Any conviction for which a sentence of one year or more was imposed..." as opposed to "Any sentence of one year or more imposed..." Commissioner Nagel seconded. The motion passed 6-0.

A discussion ensued on the selection of 15 years as the applicable cut-off date for prior offense convictions.

Commissioner Nagel moved §A312(e)(2) be amended to read, "Prior sentence of less than 1 year imposed" as opposed to "Prior sentence of 1 year or less imposed". Commissioner Block seconded. The motion passed 6-0.

Judge Breyer moved to amend again §A312(e)(1) to read "more than 1 year of imprisonment imposed" as opposed to "more imposed". Commissioner Nagel seconded. The motion passed 6-0.

Commissioner Block moved to amend §A312 (h) and (i) to read, "A sentence resulting from a foreign conviction may be considered only" and " A sentence resulting from tribal court conviction may be considered only" respectively. Commissioner Nagel seconded. The motion passed 6-0.

(Judge MacKinnon left the meeting for the day).

Commissioner Block moved to change the title of §A315, from "Seriousness of Prior Convictions" to "Adequacy of Criminal History Category." Commissioner Nagel seconded. The motion passed 5-0.

Incorporating the Chairman's suggestion, Commissioner Block moved changing "the" in the second and fourth lines of §A315 to "that". Commissioner Nagel seconded. The motion passed 5-0.

Commissioner Nagel moved to amend the Commentary on page 5 by substituting paragraphs two and three with the following.

Prior Conviction.            Prior convictions represent

prosecutions in the federal system, fifty state systems, the District of Columbia, territories, tribal courts, and the military. There are jurisdictional variations in offense definitions, sentencing structures, and manners of sentence pronouncement. To minimize problems resulting from imperfect measures of past crime seriousness, the Commission opted to use criminal history categories based on the maximum term imposed in previous sentences rather than on other measures; e.g., whether the conviction was for a felony or misdemeanor. Imposition of a sentence of more than a year of imprisonment generally reflects a judicial assessment of the seriousness and scope of the underlying criminal conduct, particularly when judges have considered total offense behavior. In recognition of the imperfection of this measure, however, §A313 and §A315 permit information about the significance or similarity of past conduct underlying prior convictions to be used in deciding where to sentence a defendant within the applicable sentencing range or in deciding whether to depart from the applicable guidelines.

Commissioner Block seconded. Judge Breyer expressed concern that an example of such conduct be added to the end of the paragraph; Commissioner Nagel agreed and the Commission decided to develop an example for Commission review at a later date. The motion passed 5-0.

Judge Breyer moved to replace the word "nine" with "ten" in the last line of the first paragraph of the Commentary on page 5. Commissioner Nagel seconded. The motion passed 5-0.

Commissioner Block moved to amend the Commentary on page 7 by deleting "is statutorily mandated by" in the first paragraph and replacing the phrase with "reflects provisions set forth in". Commissioner Block also moved to delete "examination of" in the third paragraph and to replace "indicates" with "provides for" and also to replace "minimum" with "lowest" in the third paragraph. Commissioner Nagel seconded. The motion passed 5-0.

Commissioner Nagel moved to amend the first paragraph of the Commentary on page 8 to read, "of sentence enhancements for a defendant" as opposed to "of sentence enhancement for a defendant". Commissioner Block seconded. The motion passed 5-0.

Commissioner Block moved to make several editorial changes to page 9. (7) should close with an "and" instead of an "or"; in the first paragraph of the commentary the last sentence should read, "offense is particularly important in determining the amount"; and in the second paragraph the fourth sentence should close with "three offense levels". Commissioner Nagel seconded. The motions passed 5-0.

A discussion ensued concerning the amount of credit given a defendant for cooperation. It was decided that Commission Gainer would attempt an effort to present distinctions that could be made to applying ranges of cooperation.

Commissioner Block moved that §C331 be amended so the last sentence reads, "the court may decrease the sentence as deems appropriate" as opposed to "the court may impose the sentence the court deems appropriate." He also moved amending §C331(a) by replacing "of any reduction" with "of the reduction". Commissioner Nagel seconded. The motion passed 5-0.

Commissioner Block moved to amend §D313 by replacing "are expressly taken into account by the guidelines", with "are discussed in General Provisions in Chapter 2"; also amending the second sentence in §D313 to read "may be relevant to determine" as opposed to "may be relevant in the determinations". He also moved to amend §D314 by replacing "for the length" in the last sentences of the second and third paragraphs with "with respect to length". Commissioner Nagel seconded. The motion passed 5-0.

Commissioner Block moved to amend the second and third paragraphs of §314 to delete "for the" in last sentences of both paragraphs and replace it with "with respect to". Commissioner Nagel seconded. The motion passed 5-0.



Commissioner Block also moved to amend §D312 to read "See Chapter Two" as opposed to "See Chapter One." Commissioner Nagel seconded. The motion passed 5-0.

Judge Breyer moved to amend §D314 by adding "alone" after "Drug dependance alone..." in the second paragraph and "Alcohol Abuse Alone..." in the third paragraph. Commissioner Block seconded. The motion passed 5-0.

In §D315 Commissioner Nagel moved that the second sentence read, "Employment record may be relevant..." as opposed to "Neither is employment record relevant..." also included in this amendment, Commissioner Nagel moved that §D317 be amended to read, "See Chapter Two" as opposed to "See Chapter One". Commissioner Block seconded. The motion passed 5-0.

Commissioner Block moved the Commission approve Chapter 3 as amended with the understanding the Commission will be able to revise specific areas as needed. Judge Breyer seconded. The motion passed 5-0.

The meeting was adjourned by the Chairman.