

Statement of Theodore Whitehouse
and
Steven D. Gordon
of the Sentencing Subcommittee
of the Council for Court Excellence
before the
Committee on the Judiciary,
Council of the District of Columbia

May 11, 2000

Executive Summary

In the testimony which follows, the Council for Court Excellence recommends:

- 1) The District of Columbia should adopt a determinate sentencing scheme for all felonies.
- 2) The determinate sentencing scheme should retain a true “life” sentence (life without parole) for the most serious offenses and create new statutory maximums for those serious, but lesser offenses for which “life with parole” is the current maximum sentence.
- 3) The Youth Act should not apply to any subsection (h) felony, and it should have a more limited application than under current law for non-subsection (h) offenses.
- 4) The District of Columbia should continue, and possibly expand, its existing system of intermediate sanctions. Such sanctions can play an important role with respect to non-subsection (h) felony offenses and misdemeanors, and may play a useful role with respect to certain subsection (h) offenses as well.
- 5) Resolution of the issue of sentencing guidelines should be deferred for a period of one year, and the term of the Commission should be extended so that it can complete an empirical study of sentencing disparities in the Superior Court and make recommendations as to whether a guidelines system should be instituted and, if so, how the guidelines should be structured.

Introduction

Good afternoon, Chairman Brazil, other distinguished members of the Committee on the Judiciary, ladies and gentlemen, my name is Theodore Whitehouse. With me today are Steven D. Gordon and Leslie McAdoo. We testify today on behalf of the Council for Court Excellence. Founded in 1982, the Council for Court Excellence is a nonpartisan, civic organization based in the District of Columbia. Our organizational purposes include promoting public education about the judicial system, promoting improvement in the federal and D.C. courts, and supporting the courts. We worked closely with the D.C. Council and its Judiciary Committee on the 1994 Probate Reform Act. While the membership of the Council for Court Excellence includes members of the bar, business, civic, and judicial communities, no judicial member participated in the formulation of these comments.

We thank you for the opportunity to provide these comments at the May 11 Public Hearing of the District of Columbia Judiciary Committee regarding Sentencing Reform Amendment Legislation.

Since the January, 1997, public announcement of President Clinton's National Capital Revitalization and Self-Government Improvement Act, the Council for Court Excellence has formally offered its views about the Revitalization Act's impact on the District of Columbia's criminal justice system on a number of separate occasions. We have testified before the District of Columbia Council, the D.C. Truth-In-Sentencing Commission, the District of Columbia Advisory Commission on Sentencing, and including today, twice before this Committee.

It is our intent today to comment not only on the issues raised by the "Sentencing Reform Amendment Act of 2000" (hereinafter referred to as the "Sentencing Reform Act"), but also on issues which this Committee and the District of Columbia Council should address in the coming months before the Congressionally mandated, August 5, 2000, start date of the new D.C. determinate sentencing regime. We respectfully submit with this testimony detailed position papers furnished previously to the D.C. Advisory Commission on Sentencing. Among the topics covered are Life Sentences, the Youth Act, Sentencing Guidelines, Intermediate Sanctions, and Extending Determinate Sentencing to All Felonies.

Sentencing Reform Amendment Act of 2000

The revision of the criminal sentencing system in the District of Columbia mandated by the National Capital Revitalization and Self-Government Improvement Act of 1997 (the "Revitalization Act"), and the District of Columbia Truth In Sentencing Amendment Act of 1998 (the "TIS Act"), raises a variety of important policy and implementation issues, some of which this Committee has sought to address through the "Sentencing Reform Amendment Act of 2000."

The Council for Court Excellence supports the District of Columbia adopting a determinate sentencing scheme for all felonies, thereby creating a "unitary" system of determinate sentencing. A common approach to sentencing for all felonies offers multiple advantages. It is simple, consistent, and easy to understand and administer. A unitary system of determinate sentencing will best serve the District's residents and the underlying rationale of the Truth in Sentencing Act by providing certainty in sentencing for all offenders in the District.

On the matter of life sentences, the Council for Court Excellence supports a position that the new determinate sentencing scheme should retain a true "life" sentence (life without parole) for the most serious offenses and create new statutory maximums for those serious, but lesser offenses for which "life with parole" is the current maximum sentence. The new ceilings enumerated for these "life with parole" offenses on page 5, Section 5(a)(2) of the Sentencing Reform Act are higher than we have recommended in the cases of first and second degree murder. We believe that a maximum term in excess of 40 years (except for an explicit life sentence without parole) is difficult to justify because it would effectively amount to imposing a life sentence through the "back door." In our view, there is no evident need for a sentencing option of more than 40 years but less than life imprisonment.

Our most serious disagreement with the Sentencing Reform Act, as currently proposed, relate to its provisions concerning the Youth Act. Currently, the Youth Act applies to all offenders between the ages of 16 and 22 who commit any offense other than murder. One of its provisions allows a conviction to be set aside or expunged if the youth offender successfully completes the sentence. Thus, the conviction disappears and cannot be used even if the offender commits another offense. The proposed legislation retains this broad expungement provision for all youth offenders. In our view, this is ill-advised.

We believe that the Youth Act's expungement provision should be inapplicable to the most serious felony offenses. The special, lenient provisions of the Youth Act should be reserved for those youth offenders who are first-time felons; offenders whose criminal conduct is aberrational. Thus, the Act should not be available to offenders with a prior felony convictions as an adult, or with a serious felony adjudication as a juvenile. In addition, convictions that are set aside under the Act should be counted for purposes of sentencing enhancement in the event that the offender is subsequently convicted of another offense. Finally, it may be appropriate to delay the setting aside of a Youth Act conviction for some period of years after the completion of the sentence in order to ensure that the offender has reformed.

The Sentencing Reform Act also creates a system of supervised release consisting of a period of mandated community supervision beyond the probation or prison term imposed by the court. This important policy issue was taken up by the D.C. Advisory Commission on Sentencing after the Council for Court Excellence had completed our review of the prospective issues and so we offer no position on this issue today.

Other Issues

Beyond the purview of the Sentencing Reform Act, a number of other issues exist for the Committee on the Judiciary's consideration. First, the Council for Court Excellence strongly believes in the continued use, and possible expansion of the existing system of intermediate sanctions. Such sanctions can play an important role with respect to non-subsection (h) felony offenses and misdemeanors, and may play a useful role with respect to certain subsection (h) offenses as well.

Second, resolution of the issue of sentencing guidelines should be deferred for a period of one year. During that time, the funding of the D.C. Advisory Commission on Sentencing should be extended so that it can complete an empirical study of any sentencing disparities in the D.C. Superior Court and make recommendations as to whether a guidelines system should be instituted and, if so, how the guidelines should be structured. Many other states employ sentencing commissions to monitor sentencing practices and to propose appropriate modifications. Thus, the D.C. Council will need to revisit the longer term role of this group.

The question of sentencing guidelines is perhaps the most difficult of all the policy issues considered. It does not lend itself to easy solutions. We agree with the D.C. Advisory Commission on Sentencing that resolution of this issue at the present time is premature. Reasoned judgment calls for additional evaluation and study, within carefully appointed deadlines. The Council for Court Excellence has not yet adopted a position on whether sentencing guidelines should be instituted in the District of Columbia. We offer some comments for consideration in the our sentencing guidelines position paper.

Conclusion

In conclusion, the Council for Court Excellence appreciates the opportunity to appear before this Committee today. The impact of your actions today and in the near future will be of great import to the D.C. criminal justice system. Given the time limitations within which your Committee and the D.C. Council has to act, permit us to extend to you the services of the Council for Court Excellence should you require additional assistance. Thank you.