February 23, 2012

The Honorable Phil Mendelson
Chairman, Committee on Public Safety and the Judiciary
Council of the District of Columbia
1350 Pennsylvania Avenue, N.W.
Washington, D.C. 20004

Dear Chairman Mendelson:
Presented below please find the D.C. Sentencing and Criminal Code Revision Commission’s responses to your additional Performance Oversight Hearing questions requested on February 15, 2012.

1. Please provide, in table format, a current list of Commission members, the authority for their appointment, and the expiration date for their term. In addition, include a list of any vacancies and the appointment authority for that vacancy.

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<thead>
<tr>
<th>Member</th>
<th>Term Expiration Date</th>
<th>Authority for Appointment</th>
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<td>Hon. Frederick H. Weisberg</td>
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<td>Donald Braman, Esq.</td>
<td>7/2/2011</td>
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<td>Julie Samuels</td>
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<td>Jennifer Seltzer Stitt</td>
<td>7/2/2011</td>
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<td>Anne Seymour</td>
<td>4/13/ 2011</td>
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<td>Earl J. Silbert, Esq.</td>
<td>12/31/2013</td>
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<td>Maria Amato, Esq.*</td>
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<td>Michael Anzallo*</td>
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<td>Stephen P. Husk*</td>
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<tr>
<td>Hon. Phil Mendelson *</td>
<td>No Term Limit</td>
<td>DC Code §3-102 (a)(2)(E)</td>
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*Non-voting Members
There are currently no vacancies on the Commission; however, there are five members whose terms expired in 2011. These members have continued to serve awaiting the renewal of their terms or the appointment of a replacement.

2. Please list any staff vacancies and provide the date on which each position became vacant. Also explain what impact any vacancy has on the ability of the Commission to fulfill its core mission.

The Commission currently has two staff vacancies:

Criminal Code Revision Project Director Position Vacant as of December 18, 2011
Criminal Code Revision Paralegal Specialist Position Vacant as of January 30, 2012

The current vacancies are both positions that are directly responsible for work associated with the Criminal Code Revision Project. The agency’s staff attorney resigned in January, 2012 for family reasons. At that time the paralegal specialist assigned to the code revision project was promoted to staff attorney, which resulted in the paralegal specialist position becoming vacant. With the project director and the paralegal specialist position currently unfilled, the Criminal Code Revision Project has come to a standstill. It is imperative that these positions be filled for the project to move forward, since these positions represent the only staff positions assigned to the project. The agency is actively recruiting for both positions and is hopeful to have them filled within a reasonable time frame.

3. In addition to the information previously requested by the Committee with regard to grants (see question number 13 of the January 19, 2012 letter), please list any grant the agency is considering applying for this fiscal year.

The Commission reviews all Federal and Private Grant solicitations on an ongoing basis to identify potential grants that focus on sentencing practices and policies or statistical analysis of sentencing data. Over the past two years, Department of Justice grant solicitations have primarily targeted national security issues, child pornography, gang related activities and forensic science, which are all outside the scope of the agency’s legislative responsibilities and tasks. The Commission will continue to review all available grant solicitations and will apply for any grant that focuses on the work of the agency.

4. With regard to required small business enterprise (SBE) reports:

a. D.C. Official Code § 2-218.53(b) requires each District agency to submit supplemental information with their annual SBE expenditure report, including: a description of the activities the agency engaged in to achieve their fiscal year SBE expenditure goal; and a description of any changes the agency intends to make during the next fiscal year to achieve their SBE expenditure goal. According to the D.C. Auditor, your agency was not compliant with these requirements. Why? Have you now submitted the required information for fiscal year 2010? Fiscal year 2011?”
b. Please attach copies of the required small business enterprise (SBE) expenditure report for fiscal years 2010 or 2011.

The agency contacted the D.C. Auditor to inquire about the non-compliance with the Small Business Enterprise (SBE) reporting requirement. The D.C. Auditor referred the agency to the D.C. Department of Small and Local Business Development. Mr. Ted Archer, Business and Policy Analyst, for the agency stated that the Commission was not monitored in 2010, 2011 or 2012 due to the nature of the agencies operations and was not required to submit a SBE report. He confirmed the agency was compliant.

Although the agency has not been required to submit an annual SBE expenditure report, it has utilized SBE’s in agency purchases. In FY 2010, the agency SBE expenditures totaled $4,346.49 and in FY 2011 the amount totaled $4,033.23.

5. Please list all Issues Papers prepared by the Commission for fiscal years 2010, 2011, and 2012 (to date).

**FY 2010**
#1 An Examination of the Sentencing of Adults for Unauthorized Use of a Motor Vehicle in the District of Columbia
#2 A Comparison of Felony Sentences for Drug Offenses in the District of Columbia in 1999 and 2009

**FY 2011**
#1 An Examination of Fine Proportionality in the District of Columbia
#2 An Examination of Felony Assaults Sentenced in the District of Columbia in 2010
#3 An Examination of Criminal History Decay Factors under the D.C. Voluntary Sentencing Guidelines

**FY 2012**
#1 Why Departures from the Sentencing Guidelines are Important (Distribution 4/12)

6. Please identify any specific areas of the sentencing guidelines that the Commission has identified as in need of attention since the previous performance oversight hearing.

The Commission has identified two areas of the Voluntary Sentencing Guideline that may benefit from revision in 2012. The Commission also anticipates making minor technical modifications to the Guideline Manual and adjustments to the rankings of a few select crimes.

A. Sentences Imposed Following Probation Revocation

Over the past year, questions have repeatedly arisen regarding the application of the sentencing guidelines to probation revocation sentences and imposition of sentence
suspended (ISS) revocation sentences. Although the Guidelines do not apply to a judge’s decision whether to revoke a defendant’s probation, the Guidelines do apply to any sentence imposed following revocation. For a revocation sentence to be considered compliant the sentence must fall within the original Guideline range or a departure principle must be selected. The current Guideline Manual does not clearly address this issue. The Commission will amend the Guideline Manual to provide the necessary clarification.

B. Offenses Committed While on Release

The Commission previously ranked a felony Offense Committed while on Release (OCWR) in Master Group 9. After review of the statute and applicable Court of Appeals decisions, the Commission decided that it is inappropriate to rank OCWR as a separate offense. The Commission removed OCWR from the list of ranked offenses and designated it as an enhancement. However, feedback has indicated that judges and practitioners are having difficulty applying the offense as an enhancement. The Commission may modify the Guideline Manual to make application of this enhancement clearer and more concise.

7. Please provide, as an attachment, the most current Criminal Code Revision Project Work plan. If this document is in the process of being revised, please provide a timeline. Further, please provide a description of the work plan proposals currently under review and describe in detail what additional resources (i.e., staffing, additional time, etc.) are necessary to complete the project under the different proposals being considered.

The current Criminal Code Revision Work plan approved by the Commission on January 17, 2012 can be found in Attachment A. The work plan outlined was developed based on current staff allocated to the project, which includes a project director and a paralegal specialist. It is projected that completion of the Code Revision Project with this staffing level would be eight to ten years at a cost of approximately $200,000 to $215,000 per year.

If the project was staffed with a full time project director, two attorneys, and two paralegal specialists, the project could be completed in three to four years. Staffing costs are anticipated to be $500,000 to $550,000 per year.

An alternative project staffing would include a full time project director, one senior attorney, and two paralegal specialists. With this staffing, the project could be completed in five to six years with an annual personnel cost of $375,000 to $425,000.

8. The Committee understands that the Director of the Criminal Code Revision Project, Mr. Kenneth Cowgill, left the Commission at the close of calendar year 2011. What is the status of the Commission’s efforts to replace Mr. Cowgill?

The agency has been actively seeking a new Criminal Code Revision Project Director since August, 2011, four months prior to Mr. Cowgill’s departure from the agency. Mr. Cowgill’s
position was classified as a Part-time Term Position with no benefits. The classification of this position and the funds available in the agency’s budget presented significant challenges in hiring a replacement. Although there have been numerous applicants for this position, only two possessed the qualifications necessary and both individuals withdrew their applications for different reasons.

In December, the Commission discussed the recruitment process for the Project Director and decided that if the position could be classified as a full time position with benefits the pool of potential applicants would increase. However, the agency faced two obstacles reclassifying a position midway through a fiscal year.

First, securing funding for a full time salary of $116,000 plus benefits would require reprogramming NPS fund to PS to cover the difference between the current approved salary of $78,000 and the proposed salary of $116,000, plus benefits. Given the limited NPS funds the agency has in its FY 2012 budget, the reprogramming would create a significant impact in the agency’s operating budget. The second issue and more difficult one to address was attempting to increase the number of agency FTE positions in the middle of the fiscal year. This would involve approval from the Deputy Mayor of Public Safety.

Despite these obstacles, the Commission has decided to reclassify the position and move ahead with the recruitment process. The position is being advertised on the D.C. Human Resource site, D.C. Women’s Bar Association, CJA Trial and Appellate Division, D.C. Court Trial Lawyers Association, U.S. Attorney’s Office, Public Defenders Service, Attorney General’s Office, Public Service Legal Career Service and all local law schools.

The Project Director is a very unique position requiring a specific skill set that is not prevalent among many attorneys. The level of experience and understanding of the D.C. Criminal Code combined with knowledge of statutory construction required for this position is rare. In addition, the current proposed salary may not be adequate for the type of applicant desired. The Commission will continue to recruit for this position and is considering utilizing pay recruitment sites to attract qualified candidates. The agency has requested that the Project Director position be classified as a FTE with benefits in the FY 2013 budget.

9. In advance of last year’s performance oversight hearing, the Commission stated in pre-hearing questions (by letter dated February 15, 2011) that one of its top five priorities was completion of a comprehensive, five-year evaluation of the District’s voluntary sentencing guidelines. Please provide a detailed description of the status of this project, whether additional resources (i.e., staffing, etc.) are necessary to complete this comprehensive review, and a proposed timeline for completion

During FY 2011, the Commission established a Research Committee comprised of four commission members with significant research expertise and experience to design and structure the Five-Year Evaluation of the voluntary sentencing guide. The committee met several times over the course of year and identified specific data elements that would be necessary to undertake the evaluation. Although the Commission maintained several of the
data elements in its database; it was determined that additional data elements would be required to do a rigorous evaluation. The committee began the process of identifying external data sources from which to obtain the additional data elements when the agency learned of the additional data elements that would be available through the IJIS Outbound 12.1 system. Currently the Commission receives 28 conviction and sentencing related data elements, with only 15 data attributes from the court. With the implementation of IJIS Outbound 21.1, the number of data elements available will increase to 40 data elements with over 400 data attributes, including information on arrest and indictment charges, offender demographics, probation revocations and other sentencing related data.

It is projected that IJIS Outbound 12.1 will be operational during FY 2013. The committee determined that it would be beneficial for the evaluation study to wait until the additional data elements were available to be included in the research and analysis. The committee will continue to work on designing the study, which will incorporate the additional data elements. Given the amount of data that will now be available to the Commission and the types of statistical analysis that will be necessary, an additional research analyst will be required to analyze the data. Currently the agency has only one research analyst who is responsible for all the statistical analysis required for the annual report, issue papers and data requests. The agency will request an additional research analyst in its FY 2014 budget, since it is projected that the given implementation timeline for IJIS Outbound 21.1, the evaluation study will begin in FY 2014 and be completed in FY 2015. The agency looks forward to undertaking this important evaluation, especially given both the types and depth of analysis that will now be available.

10. During the previous year performance and budget oversight period, the Commission testified regarding a need to update system software in order to ensure continued access to the Criminal Justice Coordinating Council’s JUSTIS system. Has this system been updated and, if so, is the Commission currently connected to the system such that all information is being adequately accessed? Please also describe any costs associated with accessing the new system, if any, and whether the Commission has been able to absorb these costs.

Currently sentencing related data used by the Commission is transferred by DCSC via the RAM Server and filtered through JUSTIS. The agency’s interface with JUSTIS is designed to accept only a limited number of data variables from the court, which are then transferred into the agency’s database and web application. This data transfer system was designed in 2005, and provides for a daily transfer of individual case disposition and sentencing related data. The Commission receives offender and offense related data for approximately 4,300 felony counts sentenced annually. Data is initially transferred when a disposition or plea occurs and then updated when the sentence is imposed. Thus, there are approximately 15,000 data transmissions and updates from the court to the Commission annually. This data has enabled the Commission to measure judicial compliance, analyze sentencing trends and monitor the sentencing guidelines. It is this data the agency uses in its Annual Report, Issues Papers and responses to various data requests from criminal justice professionals, both in the district and nationwide. Data analysis is the core function of the agency and the
source of information from which modifications to the guidelines are developed and implemented as required in D.C. Code §3-101(b)(2)-(6).

DCSC will be implementing a new Integrated Justice Information System (IJIS) Outbound 12.1. The new system will replace the RAM Server—the technology by which data from the court is now transferred—with the new IJIS Broker. With implementation of IJIS Outbound 12.1, agencies will pull data directly from JUSTIS rather than the court’s current Agency Database. JUSTIS will use an XML schema to provide full data transfer (all data variables and attributes) from the court without any filtering. The RAM Server and Agency Database are scheduled to be discontinued six months after the IJIS Outbound 12.1 is fully implemented, which is projected to occur in late FY 2013. At that time, if agencies have not made the necessary changes to their respective data systems, they will no longer be able to receive data from the court.

The Commission will be required to change its interface with JUSTIS to accept unfiltered data elements and transfer the data to a Staging Database from which the necessary and required data elements can be transferred to the agency’s database and web application. Currently, the agency does not utilize a staging database and will need to construct one. In addition, the amount of data available through IJIS Outbound 12.1 will increase significantly and the current agency web application was not constructed to process this amount of unfiltered data. The necessary changes will need to be made to the agency’s web application to consume the additional sentencing data variables, which will enhance the agency’s data analysis capabilities.

During FY 2012, the Commission will complete a Needs Assessment through the vendor, Enlighten, to determine whether it will be more cost effective to modify the agency’s current data transfer process and web application given the age of the technology and requirements of IJIS Outbound 12.1 or whether to design and implement a new system. The Needs Assessment is scheduled to be completed by the end of April 2012. At that time, the agency will make an informed decision as to which option is more cost effective and will meet the data needs of the agency moving forward.

The Commission will utilize OCP’s solicitation process to secure an experienced vendor to design and implement the appropriate option as identified by the Commission. The agency has been provided rough cost estimates of between $400,000 and $800,000 to make the changes required depending on whether the current system is modified or a new system is constructed. A Capital Budget request for FY 2013 has been submitted in the amount of $800,000 dollars. The actual modifications/construction of the new data system will occur during FY 2013.

The agency has been involved in discussions with Pre-Trial Services, who is also undergoing modifications to their data transfer system, to determine if the XML they are developing to extract data from JUSTIS to the Staging Database could be shared. Since Pre-Trial Services is developing the XML and will own the Source Code, they have indicated their willingness to share the Source Code with the Commission at no cost if it will meet the data needs of the Commission. The agency will continue discussions with Pre-Trial Services to
determine if this is a feasible option, since it could reduce the overall expense associated with developing a data system compatible with IJIS Outbound 12.1.

The SCCRC is a small agency with only six employees who are primarily skilled in legal and data analysis. The agency does not have an Information Technology (IT) department. IT services and support for the Commission are provided through the District’s Office of the Chief Technology Officer. Given that the modification or construction of a new data transfer system will require a level of IT expertise that is not available within the agency, the Commission intends to contract for the services of a Part-time IT Project Director to oversee the required design, implementation and testing of the agency’s new data transfer system and to ensure the vendor delivers a product that meets both the technical and business needs of the agency and the District.

It is anticipated that this part time contract position that would be created in June of 2012. The contract employee is estimated to work on average 25 hours per week. The agency believes it has enough in FY 2012 contractual funds to pay for the cost of the Project Director during the current year. The IT Project Director would assist the agency in developing the technical requirements for a Request for Proposal (RFP) to implement the option the chosen by the Commission, as well as reviewing proposals submitted to ensure the most appropriate vendor is chosen. During FY 2013, the IT Project Director would be retained for the design, implementation and testing stages of the project to ensure that the vendor develops a system in that meets all the criteria, of both the technical architecture and business processes outlined in the contract, ensuring compatibility with both JUSTIS and the IJIS Outbound 12.1. The agency intends to use contractual funds in the agency’s FY 2013 budget to cover the $75,000 to $100,000 cost of the Project Director.

Finally, as modifications and changes are made to ensure compatibility with IJIS Outbound 12.1, it will be necessary to maintain and continue operating the Commission’s current data transfer system through the design, testing and implementation stages of the new system. During FY 2013, the agency will need to continue to fund maintenance and support for the current data system until the new system is tested and implemented. It is anticipated that both systems will need to run simultaneously for six months to ensure all problems and issues have been identified and resolved before switching over to the new system. This approach will allow for an uninterrupted flow of sentencing data from the DCSC to the Commission.

11. At the March 14, 2011 performance oversight hearing on the Commission the Committee asked whether it would be possible to access the arrest charge as part of the data being reviewed by the Commission. The Commission suggested it would work with CJCC to see about including this information in the data received by the Commission. What is the status of this?

As described in the previous question, the new IJIS Outbound 12.1 system which will transfer data from DCSC to the Commission will include additional offense and sentencing related data variables. Among those data variables will be arrest and indictment data variables. It is anticipated that once IJIS Outbound 12.1 is implemented and operational, the Commission will receive arrest data as part of the daily data transfer from the DCSC.
12. What is the capability of the Commission to access criminal history data from CSOSA in performing its function of reviewing sentencing guidelines? If the Commission currently does not have this capability, what is the potential for arranging this?

The agency has been in ongoing discussion with CSOSA on the importance and need for the electronic transfer of Criminal History information to the Commission to ensure that judicial compliance is calculated and reported to both the Office of the Mayor and the D.C. Council. To automate the transfer of criminal history information to the Commission would require a significant IT resource commitment on the part of CSOSA, as well as a policy change on how information is shared with an external agency. CSOSA was without an Executive Director for several years making it difficult for this request to be viewed as a priority issue for the agency. Since Director Ware has been appointed, the agency has engaged in discussions with CSOSA concerning developing a long-term approach to facilitating the electronic transfer of criminal history information to the Commission’s database.

As a short-term solution for transferring criminal history information, the Commission and CSOSA collaboratively developed an automated sentencing guideline form using Info Path technology. The automated form enables CSOSA officers to input criminal history information and the form automatically populates specific portions of the form and calculates the offender’s criminal history score using rules defined by the sentencing guidelines. This reduces the number of incorrect mathematical calculations and data entry errors completing the form. The form is electronically submitted to the Commission and the criminal history data contained on the form automatically transferred into the agency database, thus eliminating the need for data entry on the part of Commission staff. The automated sentencing guideline form improves the quality of the data and reduces required staff resources.

The majority of FY 2011 was spent designing the automated form, ensuring that security requirements were addressed and undergoing pilot testing with CSOSA officers. The automated form was put into full production in January 2012. The Commission views the automated guideline form as a short-term solution to obtaining electronic criminal history information from CSOSA and will continue to pursue the direct electronic data transfer option.

Kind Regards,

Barbara Tombs-Souvey
Executive Director

Encl.
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Executive Director

Criminal Code Revision Project Scope and Procedure

The Commission, through the Criminal Code Revision Committee, intends to fulfill its mandate to revise the language of criminal statutes to be clear and consistent, to organize existing statutes in a logical order, to ensure that criminal penalties are proportionate to the seriousness of the offense, to propose a rational system for classifying misdemeanor criminal statutes, to identify common law crimes that should be codified, to identify criminal statutes that have been held to be unconstitutional, to propose such other amendments as the Commission believes are necessary, and to enable the adoption of Title 22 as an enacted title. This process, depending on staffing levels and the resources made available to the Commission, may take several years to complete.

Basic Code Revision Procedures

• Commission staff, under the direction of the Project Director, will research and draft proposed revisions to the code as directed by the Committee and/or Commission.

• The Committee shall settle upon standardized language and organization schemes. The Committee will incorporate the standard language and organization schemes into proposed revisions except where adherence to the standardized language would unnecessarily change the substance of the statute.

• The Committee shall review or revise each chapter, sub-chapter and section of the code so that it conforms to the agreed upon standard language and organizational schemes. The Committee shall also propose modifications to ensure that each code section is clear, consistent, and free of ambiguity and anachronisms.

• Every six months, the Committee, in consultation with the Project Director, will create a production schedule outlining which chapters or sub-chapters will be addressed over the upcoming six months. The Committee will settle any disagreements over the schedule by majority vote. This schedule will be forwarded on to the Commission.
Before the staff begins reviewing, researching, and redrafting any code sections, Committee members will have the opportunity to advise the staff of any specific suggestions they may have in regard to the sections under review.

The staff will take detailed notes of the decisions reached at each meeting. The notes will include specific references to judicial decisions the Committee’s proposal intends to overturn as well as decisions the Committee’s proposal intends not to disturb. The notes will be used as the basis for a proposed legislative history. The Committee will settle any disagreement regarding the substance of the notes by placing alternative language in brackets. The Committee will vote on the notes in the same way that the Commission adopts its minutes. Separately the staff will take general notes of what transpired at each meeting and will list likely topics to be discussed at the next meeting or at future meetings.

**Drafting Proposed Revisions**

Proposed revisions drafted by Commission staff will:

- Take into account the language of each section under review, its legislative history, judicial interpretations, its relationship with other sections of the code, the comments of Committee members and any other relevant factors.
- Except as noted above, make each section conform to the agreed upon standard language and organization schemes and further the Commission’s statutory goal to “[r]evise the language of criminal statutes to be clear and consistent.” Proposed revisions may also include substantive changes when necessary and appropriate to promote consistency and clarity, remove ambiguity, eliminate historical anachronisms or otherwise improve the code. Where appropriate, present multiple approaches to allow the Committee to choose between alternative versions.
- Include memoranda that will accompany draft proposals. These memoranda will contain:
  1. The current language of the sections under review
  2. One or more proposals for new language
  3. An explanation (reasoning and justification) of the proposed changes as well as the anticipated effect of the changes. The explanation should contain (1) the relevant legislative history of the language at issue, (2) all relevant case law, and (3) any relevant comparison to other sections of D.C. Code, other states and/or the MPC.
  4. An explanation of the proposed changes suitable for transmission to the Council after review, editing, and approval by the Committee and Commission.

The staff will provide draft proposals and supporting materials to the Committee at least two weeks in advance of Committee meetings on the subject. The Committee members may request additional information and/or research or make additional suggestions regarding proposed changes or alternative language before or during the meeting.
Committee and Commission Action

- The Committee will meet regularly to consider the drafts and memoranda in a timely manner. The Committee will determine whether it can reach consensus on a particular chapter, sub-chapter or section. If Committee members cannot reach consensus on proposed changes to statutory text or notes, the Committee will identify the specific areas of disagreement. The disputed language, along with any alternative language proposed by Committee members, will be placed in brackets for consideration by the Commission.

- Once the Committee determines that it has finished its work on a chapter, sub-chapter or section, staff will forward the proposed revisions to the Commission, along with a corresponding and updated revision memoranda reflecting the Committee’s decisions on proposed textual changes and accompanying notes as well as any alternative language proposed by Committee members. The communication to the Commission should include the Committee’s recommendation (or its members’ recommendations) as to what action(s), if any, the Commission should take.

- After receiving proposed revisions from the Committee, the Commission will decide what action(s) to take and when, with respect to its obligation under D.C. Code § 3-101.01 (c): “The Commission shall submit its recommendations for criminal code revisions in the form of reports. Each report shall be accompanied by draft legislation or other specific steps for implementing the recommendations for criminal code revisions.” In its periodic reports to the Council, the Commission will make clear that the periodic recommendations are to be viewed as tentative drafts. Future work on related provisions will inevitably result in the Commission making occasional modifications to its earlier work; therefore, the Commission will urge the Council not to undertake to legislate piecemeal but to await the Commission’s final recommendations covering the entire Criminal Code.