

Sentencing Procedure; DRAFT Mandatory/Advisory Grids; Assault 2.
June 7, 2018

- 1) Determine Criminal History
 - a) Use current scoring rules
 - i) Concurrently charged felonies add a point to criminal history
- 2) Determine Enhancements Available
 - a) Current Rules?
 - i) If so, a suggestion:
 - (1) An Enhancement (being armed with a knife, for example) if charged, moves the presumptive range one square to the right.
- 3) Determine presence of aggravating and mitigating factors
 - a) Use current definitions
- 4) Agreement between parties
 - a) Below the presumptive range,
 - b) some point inside the presumptive range,
 - c) some point above the presumptive range
 - d) The Judge is bound only by the Mandatory Range
 - e) If the Judge departs from the agreement, the party aggrieved party may appeal
 - i) No appeal if the Judge follows the recommendation, no matter where the recommended sentence falls in the statutory range
 - (1) Except, of course, on PRP
 - f) If the Judge wishes to go above the Mandatory Range, the plea must be rejected
 - i) Blakely: No departures upwards, over defense objection, without a jury finding
- 5) No agreement between the parties
 - a) To depart from the Presumptive Range, the Judge must make written findings on mitigation or aggravation
 - b) A departure within the Presumptive Range can be appealed by the aggrieved party
 - i) Can we imagine an accelerated appeal process for this step?
 - c) If the Judge wishes to go above the Mandatory Range, the plea must be rejected
 - i) Blakely: No departures upwards, over defense objection, without a jury finding
- 6) Sentencing
 - a) Pre-Sentence Investigation, if ordered
 - i) Can we develop a short-hand format for this report?
 - (1) Or we could let DOC do their jobs
 - b) If the parties have agreed, the hearing can follow current practice
 - c) Contested hearings, determining the presence of aggravating and mitigating factors, can take time but need not be overburdened with procedure
 - i) Current rules provide for relaxing the Rule of Evidence

- 7) Supervision
 - a) Separate supervision from confinement consideration
 - i) Confinement=Response to Offense
 - ii) Supervision=Response to Offender
 - b) No DOC responsibility for sentences of 12 or fewer months
 - i) The Court may order supervision?
 - (1) Findings necessary?
 - (2) Appeal by DOC?
 - (a) Accelerated process?
 - c) DOC decides who to supervise and for how long
 - i) Utilize current best practices