Hi Anne,

I forgot to mention after the meeting yesterday that research on other guidelines systems, and on purposes of punishment, lends support to the true-prior distinction that some commission members were questioning.

The true-prior distinction and related issues are addressed in chapters 4 and 10 of the Robina Criminal History Enhancements Sourcebook. As noted in chapter 4 (p.39) retributive rationales for prior record enhancements often assume that a conviction for the "prior" crime had already been entered before commission of the current offense. On the other hand, most guidelines prior record formulas (unlike many "repeat" and habitual offender laws) count convictions entered after the date of the current offense, at least if the conviction was entered before the start of the current sentencing proceeding. As shown in chapters 4 and 10, only Minnesota and Washington include current offenses in criminal history when sentencing some (or in WA, all) other current offenses. Chapter 10 also shows that, in five other guidelines systems, multiple current offenses increase recommended current offense severity by other means, such as by adding points to a worksheet total or increasing the overall offense severity level. As further noted in chapter 10 (table 10.2), these rules are related to the question of whether and to what extent the guidelines limit or structure judges' discretion to impose consecutive sentences for multiple current offenses. Five of the seven systems (including MN) that let multiple current offenses increase recommended current sentence severity (by adding current offenses to criminal history, or by other means) place limits on the use or total severity of consecutive sentences. In other words, these five systems use criminal history increases or other means to encourage "concurrent-plus" sentences, in between fully-concurrent and fully-consecutive sentencing. This allows all of the multiple current offenses to "count" in the current sentencing, while limiting very severe consecutive sentencing and making these decisions more consistent in cases handled by different judges.

Of course, the specific issue being discussed yesterday related to the scope of the proposed repeat-severe-violent-offender enhancement. In that context, there's no issue of whether to count all convictions; it's just a question of whether to count some of them more than they are under present rules. Nevertheless, I hope the information above is of use to you and the Commission at some point.

On a related issue -- when I got back to my office I took a look at the main data file Dr. Laskorunsky used in the Minnesota recidivism study, to see if it includes the truprior variable (I was hoping it did, so that we could see if there is any difference in recidivism rates between...
offenders with and without true priors). Unfortunately, the truprior variable isn't in the 2003 dataset, at least the ones we have access to; that and similar variables appear for the first time in our 2004 data set.

Best,

Richard