

Maryland State Commission on Criminal Sentencing Policy
House Judiciary Committee Room
Low Office Building, Room 121
Annapolis, Maryland
January 8, 2001

Commission Members in Attendance:

Honorable Andrew L. Sonner;
Honorable Marna McLendon;
Honorable John C. Themelis;
Russell P. Butler, Esquire;
Colonel David B. Mitchell;
Arthur A. Marshall, Jr., Esquire;
Honorable Joseph F. Vallario, Jr.;
Theodore Wieseman for Stephen E. Harris, Esquire;
Robert Gibson for Stuart O. Simms;
Senator Delores Kelley;
Secretary Stuart O. Simms

Staff Members in Attendance:

Michael Connelly;
Douglas J. McDonald;
Kate Wagner

- Call to order

Judge Sonner called the meeting to order.

- Roll call and declaration of quorum

At the beginning of the meeting only 8 Commission members were present. The meeting began as a meeting of the Committee as a whole. No roll was taken, quorum was not declared.

- Approval of minutes, November 2000 meeting

Since quorum was not met, the minutes were not approved. Later when quorum was met, the minutes were approved.

- Report from the Executive Director

Dr. Connelly welcomed the Commissioners and thanked them for their attendance. He stated that a draft copy of the new Commission newsletter was distributed before the meeting. The newsletter will be distributed at least twice a year and possibly more frequently depending on issues that face the Commission. Connelly stated that Doug McDonald was working on a training video, taking into consideration feedback from State's Attorneys in Howard County and a working group of statewide Presentence Investigators. The graduate students from University of Maryland who participated in Dr. Connelly's Criminal Justice Planning class completed their reports. Commission staff will compile the reports into a publication that will be

distributed early in 2001. Connelly stated that the changes to COMAR were received by AELR on December 27th. After 15 days the changes will be sent to the Maryland Register for public comment. If there were no delays the changes would go into effect in mid-March.

Dr. Connelly asked the Commission for its suggestions on how to handle the transition time between gathering data from the old and new guidelines. He stated that offenses sentenced before the date that the new guidelines took effect would be judged for compliance under the old guidelines. But it will take Commission staff a considerable amount of time to provide training in regards to the new worksheets and the changed guidelines. Connelly stated that it would be wise to wait until the beginning of FY 2001, July 1, to require the use of new worksheets. Senator Kelley stated that the Assistant Attorney General assigned to the Commission should be consulted on this matter. Judge Sonner suggested that those offenses affected by the change be noted with an asterisk or other notation. Connelly stated that the Commission reports on aggregate crime categories, so this sort of separation might not be possible. Senator Kelley suggested that the Commission should estimate when the first clean run of the data was expected. Connelly stated assuming the current timeframe stands, July 1, 2001. Senator Kelley stated that non-compliance should be divided into two categories--technical error in calculation and intentional non-compliance--to make allowance for mistakes during the transition. Commissioner McLendon stated that compliance should be judged by the date of the offense. Dr. Connelly stated that staff would put together possible strategies for the transition period and fax the information to Commissioners in the coming weeks.

At 4:35, Delegate Vallario entered the meeting. Quorum was met, and the meeting was no longer a committee as the whole.

Senator Kelley stated that the newsletter should contain information updating stakeholders on the transition and should be distributed to the defense bar, state's attorneys, and judges. Judge Themelis stated that during the transition the new guidelines should be used, but the date of offense should be used to compute compliance rates. Colonel Mitchell announced that the annual bar meeting is in June, and judicial conferences are coming up. He stated that those events would provide good opportunities for training. Judge Sonner stated that during the next few months, the Commission will educate the stakeholders.

As quorum was met, Judge Sonner called for the reading and approval of the minutes. No additions or changes were made, and the minutes were approved.

Dr. Connelly resumed reading the Executive Director's report. He stated the new worksheet had been downsized so that it now fits on an 8 1/2 by 11 inch sheet instead of a legal size sheet. Connelly said that Jennifer Cox was leaving the Commission staff to take a position with the National Security Agency. Kristi Waits would be joining the staff next month to take over a combination of duties previously performed by both Jennifer and Claire. She received her Masters degree in Criminal Justice from University of California, San Bernardino. Also, several interns from University of Maryland's Criminology and Criminal Justice program will be joining Commission staff.

Dr. Connelly stated that he met with Judge Robert Bell to discuss the Annual Report and upcoming issues pertinent to the Commission. He said that as always, Judge Bell was extremely supportive and helpful. Connelly stated that he and Judge Sonner met with Michael Sarbanes and Dennis Hoyle from the Lt. Governor's staff. Mr. Sarbanes summarized the meeting in a memo that was distributed to all commissioners. The subject areas that were discussed included: obtaining information on good time credits in Maryland, treatment of sex offenders, and racial disparity. Dr. Connelly also stated he had contacted the Office of Appointments in the Governor's, and several Commissioners were up for reappointment. He asked anyone not interested in being reappointed, to please let him know.

Connelly continued to describe the materials in each Commissioner's packet. He stated that several articles

were included--an article on criminal justice information systems, an article from the *Baltimore Sun* regarding DWI laws in the state, and an article on the Pennsylvania Sentencing Commission and their struggle to get complete reporting from all judges in the state.

- Legislative updates and issues in 2001

Dr. Connelly stated that there were two areas of interest to the commission--Criminal Justice and Ethics. In the area of criminal justice, proposed bills regarding good time credits, elimination of Parole, DWI laws, Senator McCabe's proposal for corrections options in 4 counties, and the proposals by the Article 27 Committee. In the area of Ethics, a bill that forbids any registered lobbyist to serve on a policy-making committee or commission will come before the legislature. The bill would affect Commissioner Butler, as he is a registered lobbyist. Doug McDonald will be tracking all relevant legislation as the legislative session progresses. Senator Kelley stated that the Commission should suggest that lobbyists for not-for-profit organizations or organizations that are in the public interest should be exempt. Commissioner McLendon stated that it should be suggested that if the lobbyists disclosed the conflict, they could still serve. Judge Sonner asked for a vote to decide if the Commission should testify or submit a recommendation on this bill. Senator Kelley moved that the Commission should send a representative to the Judicial Committee when this matter was to be discussed, Commissioner Butler and Commissioner McLendon abstained from the vote. The vote passed.

Judge Sonner introduced Secretary Stuart O. Simms from the Department of Public Safety and Correctional Services. Secretary Simms stated that he had just come from a meeting with the Secretary of the Department of Health and Mental Hygiene, Georges C. Benjamin, M.D. The Secretary discussed the management and care of sex offenders with Dr. Benjamin. Simms stated that this was a multi-layer issue that needed to be focused on from both the public safety and the health standpoints. Judge Sonner asked if Maryland was likely to follow the growing movement to impose a civil commitment on sex offenders after their release from incarceration. Secretary Simms said that DPSCS was looking at proposed legislation and was trying to look broadly at the issue--cost, management, and management upon release. He said there was a body of information available regarding what other states have done, what they haven't been able to do and the cost of programs.

- Discussion of offender and offense scoring criteria

- A. Concerns from Parole/Probation and State's Attorneys

Doug McDonald stated that he recently joined a working group of Presentence Investigators from across the state. He discussed with them the new guidelines worksheet and the draft of the new manual. He stated that most of their questions were about matters of basic worksheet completion. He said one of the major areas of concern and uncertainty was when an element of a crime was also used as a sentencing factor, such as use of a weapon or vulnerability of a victim. He said for instance, armed robbery has a higher seriousness category than robbery, therefore raising the guidelines range because of the weapon. But the defendant also would receive 2 points in his/her offense score for weapon usage, raising the guidelines range even more. Mr. McDonald also stated that a question arose regarding what constitutes one criminal event. He said that there have been examples of criminal acts stretching out through the course of an entire day.

- B. "Other criminal justice supervision"

Delegate Vallario presented a situation that he experienced with one of his clients in which the definition of "court or other criminal justice supervision" was unclear. At the time of sentencing, Vallario's client was on unsupervised probation for a traffic offense that carried no possibility of

incarceration. Vallario stated that there was a question as to whether unsupervised probation constituted criminal justice supervision, therefore warranting a point on the Offender Score. Judge Doory stated that he uses unsupervised probation frequently and will continue to do so at a higher rate because the probation system is so overburdened right now. Doory stated that unsupervised probation is court supervision. Delegate Vallario disagreed. Judge Sonner stated that in Delegate Vallario's client's case, there was a good reason for departure from the guidelines range, but there was not reason for changing the guidelines. Judge Doory and Judge Themelis made a point that a distinction should be made between incarcerable and non-incarcerable offenses. Probation for non-incarcerable offenses does not qualify as court supervision. Judge Sonner stated that this should be clarified in COMAR by stating that, in order for a defendant to be penalized with a point for being under court or other criminal justice supervision while on unsupervised probation, the underlying offense must carry incarceration as a possible penalty.

Judge Sonner then asked the Commission about the issue of giving a point for weapon use or vulnerable victim, if these are already elements of the crime. Judge Themelis stated that the General Assembly made it clear to judges that if a crime is committed with a handgun, a sentence of no less than five years must be imposed. Commissioner McLendon stated that the discussion of elements of the crime that are also used as sentencing factors must include all stakeholders, including the public. Judge Themelis stated that this was an important matter. Judge Doory added that it required study and input. Judge Sonner suggested that the matter be referred to the Sentencing Guidelines Subcommittee to get Defenders, Judges, and State's Attorneys opinions. Commissioner Butler stated the Commission should issue opinions in response to gray areas such as this.

- Subcommittee Reports

- A. Corrections Options

Judge Sonner asked if the Commission would skip down the agenda to Corrections Options in order for Secretary Simms to participate in the discussion. He stated that although the Commission was in favor of a Corrections Options program and was frustrated at the lack of progress on the issue, the Commission had neither the authority nor the organization to draft legislation. He stated that the Commission's legislative mandate stated that the Commission must work a corrections options program into the guidelines. Judge Sonner asked Secretary Simms to tell the Commission about the upcoming priorities of the Department of Public Safety and Correctional Services. Secretary Simms stated that there was not a great deal of focus on Corrections Options for FY 2002. He stated that the main priorities of DPSCS included systems development to improve case management and major improvements to the Department of Parole and Probation. He stated that it was realistic to expect that the department would focus on corrections options in FY 2003.

He urged the Commission to continue discussion of the topic with local officials and the judiciary. He added that interest in drug treatment was substantial, but there was difficulty in deciding which population should be targeted and why. Simms added that this type of program should not be rushed into because it would possibly be met with hostility from state correctional administrators. State correctional administrators may see the program as another burden on their already strained budgets without proper explanation of the goals of the program. He stated that corrections options were not abandoned, but the subject needed further examination. Secretary Simms stated that there was currently a pilot program in Baltimore City Circuit Court that accelerated the process that Parole and Probation used to put offenders in violation back into custody as quickly as possible. He stated that there should be continued focus and discussion on the topic to widen the discussion, possibly renaming the program to Drug Treatment Delivery. Secretary Simms urged the Commission to keep the discussion alive, but to defer any program proposal.

Judge Sonner asked Secretary Simms his opinion on working corrections options into the existing guidelines at the local level. If a jurisdiction had sentencing options, it could use the guidelines range; if a jurisdiction did not, it would simply ignore the guidelines that included corrections options. Secretary Simms said he thought this action was premature. He stated that for correctional administrators, this was a fiscal issue first. It was possible that the correctional administrators could misconstrue the implications of a corrections options program. They could see it as increasing their populations and length of stay, and immediately take a negative stance against the program. Dr. Connelly called the Commission's attention to Judge Themelis' letter urging the Commission not to give up on Corrections Options.

B. Sentencing Guidelines--Action Agenda for 2001

Dr. Connelly stated that in each Commissioner's information packet was a list of agenda items for the Sentencing Guidelines Subcommittee to focus on in 2001. Connelly stressed that this was a tentative list that was open for discussion. He asked the Commission to review this and asked Commissioners to contact him if they had any suggestions for additional items.

C. Outreach

Dr. Connelly stated Commissioner McLendon supported the Commission's effort to get public input on issues and Judge Sonner suggested that specialized groups be brought together so that the Commission could put together informed opinions on matters. He added that a draft information request form had been formulated based on the design of several other states. Commissioner McLendon suggested that a statement such as "as seen under provision of the Public of Information Act" be added to the form.

Judge Doory revisited the discussion regarding elements of a crime that are also used as sentencing factors. He stated that the brochure entitled, Common Mistakes in Worksheet Completion, states that the offender should be penalized with a point in the offense score for using a weapon. Mr. McDonald stated that the Commission should examine the legality of this matter. Judge Sonner stated that the policy should follow the sample cases in the Manual, which show that a point is given for weapon usage even if using a weapon is an element of the crime. Judge Doory also brought up the pending bill that deals with home detention not being a condition of probation. He said that the Commission should examine the bill and give their opinion on it. Secretary Simms stated that the DPSCS supported the bill.

Judge Themelis stated that the Commission is charged with making recommendations regarding legislation, regardless of the difficulties in formulating a correctional options program. He offered that the Commission should recommend that the General Assembly act without delay on the matter. Judge Themelis stated that in Judge Sonner's report to the General Assembly, he should stress the importance of getting a Corrections Options bill drafted and passed in order to provide judges the opportunity to give the most appropriate sentence to each offender. He stated that in Baltimore City, he sees third and fourth generation offenders that are a product of a cycle of poverty and crime. The root elements become cultural and judges need the ability to direct people to treatment facilities that are in operation. Judge Sonner stated that he was concerned that simply taking a position would not get the legislature or the Governor's office to take any action. He stated that everyone is in favor of alternatives, but the Commission needs specifics to work with. He said that writing a resolution may not do much good. Delegate Vallario stated that the Commission's seal of approval would carry a lot of weight. Commissioner Butler asked Delegate Vallario when a bill would need to be given to him by in order to be introduced in the House. Don Hogan answered that it would be needed by the first few weeks in February. Commissioner McLendon stated that she had concerns with Senator McCabe's bill

that dealt with the subject of Corrections Options. She added that she felt the Commission was derelict in the area of Corrections Options and that a bill needed to be drafted. Dr. Connelly stated that staff had been plagued with many technical questions concerning the specifics of how a program would work. He added that the enabling legislation of the Commission charged that guidelines be set for a program, not that a program should be created.

Judge Sonner said that the Commission could not create a bill giving responsibilities to DPSCS or any other agency without their agreement and support. Commissioner McLendon stated that there were many complicated issues, but none of those issues would change or go away. Judge Sonner voiced his concern that if the Commission did take action that nothing would change. Commissioner McLendon stated that she was extremely frustrated with the situation. Judge Sonner said that the Commission should give its position on pieces of legislation but did not have the resources or the staff to draft legislation. Colonel Mitchell stated that when he participated in the Corrections Options workgroup comprised of correctional administrators they had anxiety and concern mostly over money. He stated that if the Commission wanted to endorse or sell a product, it must be an executive decision. He stated that this might be a function of the Governor's Office on Crime Control and Prevention. He said the GOCCP might attach money for a specific county or counties for a pilot program, but a program should not institute statewide Corrections Options all at once because it would be an uphill battle.

Commissioner Butler suggested that the Commission invite Patricia Cushwa, head of the Parole Commission, to the next meeting to discuss the good time credits system. Judge Sonner agreed. The next meeting was set for February 5th at 4:00. Judge Doory asked if the Commission staff would be updating the Commissioners on any applicable pending legislation. Dr. Connelly answered that yes, the Commissioners would be informed of legislation in a timely manner. Commissioner McLendon suggested that Senator McCabe be invited to the next meeting as well to discuss the Corrections Options legislation. Judge Sonner and Dr. Connelly agreed.

The meeting was adjourned.