

**Maryland State Commission on Criminal Sentencing Policy**  
**February 6-7, 2000**  
**Wye River Conference Center**

**Commission Members in Attendance:**

Honorable Andrew L. Sonner, Chair  
Russell P. Butler, Esquire  
Honorable Howard S. Chasanow  
Honorable J. Joseph Curran, Jr.  
Honorable Timothy J. Doory  
Robert Gibson for Secretary Stuart O. Simms  
Stephen E. Harris, Esquire  
Honorable Delores G. Kelley  
Gail M. Lankford  
Honorable Marna McLendon  
Honorable Clarence M. Mitchell, IV  
Colonel David B. Mitchell  
Barry L. Stanton  
Honorable Joseph F. Vallario, Jr.  
Dr. Charles F. Wellford

**Staff Members in Attendance:**

Michael Connelly  
Claire Souryal-Shriver

**Visitors:**

Mark Bergstrom, Executive Director, Pennsylvania Commission on Sentencing  
Dr. Faye Taxman, University of Maryland, Department of Criminology and Criminal Justice  
Susan Howe Baron, Attorney General's Office  
Don Hogan, Legislative Services, Maryland House of Delegates  
Dennis J. Hoyle, Office of the Lieutenant Governor  
Sally M. Marker, Governor's Office of Crime Control and Prevention

**February 6, 2000**

**1. Call to order**

The Chairman, the Honorable Andrew L. Sonner called the meeting to order at approximately 2:00 PM, February 6, 2000 and welcomed the members to the retreat.

**2. Sentencing Reform Case Studies**

The first item on the agenda was a discussion of sentencing reform in Oklahoma and Pennsylvania. Dr. Connelly, the Executive Director of the Maryland State Commission on Criminal Sentencing Policy, discussed sentencing reform in Oklahoma and the factors that led to its demise. Mr. Bergstrom, the Executive Director of the Pennsylvania Commission on Sentencing, reviewed the

evolution of sentencing guidelines in Pennsylvania and provided a description of the sentencing guidelines system currently in place in Pennsylvania.

### **3. Break-the-Cycle Initiative Process Evaluation**

Dr. Faye Taxman of the University of Maryland presented the results of a Break the Cycle (BTC) process evaluation. The process evaluation was based on the first nine months of implementation. Dr. Taxman described the theoretical background of BTC and reviewed the major findings of the process evaluation.

Examples of BTC accomplishments include: (1) the expansion of drug testing and a reduction in drug test positive rates during the first 60 days of testing; (2) modest advances in the use of sanctions protocols by Division of Parole and Probation agents; (3) cooperation between law enforcement agencies in Baltimore City and Prince George's county and the Division of Parole and Probation; and (4) treatment issues are being addressed through Division of Parole and Probation. Dr. Taxman also identified the "next steps" in BTC development. Examples include: (1) reducing supervision caseloads; (2) improving training; (3) administering sanction protocol; and (4) addressing gaps in treatment services and expanding treatment services.

Following Dr. Taxman's presentation the Commission adjourned for a social reception and dinner. Following dinner, the Commission members divided into three subcommittees: (1) sentencing guidelines; (2) correctional options; and (3) compliance. The purpose of the subcommittee meetings was to discuss agendas and prepare presentations to the full Commission.

## **February 7, 2000**

### **1. Call to Order**

The Chairman, the Honorable Andrew L. Sonner called the meeting to order at approximately 9:00 AM, February 7, 2000.

### **2. Minutes**

The Commission approved the minutes of the December, 1999 Commission meeting with no dissents.

### **3. Report of the Executive Director**

Dr. Connelly presented the Report from the Executive Director. Topics included: (1) notice of Commission meetings in the appropriate media; (2) the possibility that members may need to file disclosure forms to the State Ethics Commission; (3) completion of fiscal estimate worksheets on proposed bills; (4) update and enhancement of the Commission web site; (5) completion of BJA grant solicitation; (6) request for Assistant Attorney General; (7) survey of state sentencing commissions regarding sentencing practices in other states and request for additional survey questions from Commission members; (8) legislative hearing on Commission's FY 2001 budget; (9) Judge Sonner's legislative briefing; and (10) the Annual Report of the Commission.

Judge Sonner responded to Dr. Connelly's request for survey questions. He suggested that the Commission question other states about whether geographical disparity violated state Constitutional provisions. In addition, Judge Sonner proposed that the survey include a questions related to judicial reconsideration. Are reconsidered sentenced considered in compliance with the sentencing guidelines? Is judicial reconsideration tracked in sentencing guidelines databases?

#### **4. Schedule of Meetings**

Discussion then turned to the schedule of Commission meetings. The Commission voted to meet on the first Monday of every other month (rather than every month). The next Commission meeting is scheduled for April 3, 2000.

#### **5. Commission Priorities**

Members voiced opinions as to Commission priorities and short and long-term Commission accomplishments. Judge Sonner stated that he would like to see sentencing policy enacted that reflects research sentencing policy that is fair, color-blind, and serves the needs of the public. Judge Doory raised the issue of geographical disparity and the distinction between legitimate effects of geographical location and improper effects. Dr. Wellford expressed concern over the transfer of the sentencing guidelines database and possibility that judges may not complete the guidelines forms since the Commission is not part of the judiciary. Dr. Wellford's priorities included raising judicial compliance and expanding correctional options. Delegate Vallario suggested that the Commission adopt the existing guidelines and discuss changes the Commission would like to make (e.g., changes to the seriousness category assigned to Assault). He suggested that some changes could be made prior to adopting the existing guidelines. Delegate Vallario also proposed that judges should state whether the sentence resulted from an ABA plea and suggested that such sentences should not be considered outside of the guidelines. Ms. Lankford noted that she did not see consistency in the sentencing of drug offenders. Mr. Gibson expressed concern about the impact on correctional resources if judicial compliance to the guidelines is increased (given that an expansion of correctional options would very likely not offset the increase in bedspace needs).

#### **6. Automated Data Systems**

The Commission discussed the coordination of automated data systems and the need to advance uniformity and facilitate communication. It was noted that Colonel Mitchell is the chair of a task force on automation (The Public Safety Information Technology Plan?).

#### **7. Sentencing Guidelines Subcommittee Report**

Dr. Wellford, chair of the sentencing guidelines subcommittee, presented the work of the sentencing guidelines subcommittee. The first issue of discussion was the development of criteria to guide the assignment of a seriousness category to guidelines offenses. The Code of Maryland Regulations (COMAR) subcommittee of the sentencing guidelines subcommittee developed preliminary lists of criteria for consideration. The sentencing guidelines committee recommended that the Commission continue work on developing such criteria, but that those criteria not be included in COMAR. The Commission approved the recommendation.

The transfer of the Maryland Sentencing Guidelines to COMAR was the next topic of discussion. The Commission reviewed a draft of the proposed regulations. Dr. Wellford explained that the proposed draft simply transformed the existing sentencing guidelines into COMAR format with one exception. The proposed draft included changes in the offense and offender score proposed by the Maryland Commission on Criminal Sentencing Policy. In addition, the proposed draft identified issues in bold face type for the Commission to consider. The sentencing guidelines subcommittee will continue work on the proposed draft and present its work to the Commission at the next Commission meeting.

The Commission then reviewed a table of sentencing guidelines offenses (a component of the proposed regulations). The table of sentencing guidelines offenses contains the offense, statutory

reference, minimum and maximum penalty, and seriousness category. The COMAR subcommittee of the sentencing guidelines committee made curative changes to this table since it had not been updated since October, 1996. In addition, CJIS codes were added to the table.

The COMAR subcommittee additionally identified roughly one hundred offenses that have not yet been assigned a seriousness category. The Commission decided that the sentencing guidelines subcommittee should suggest a seriousness category for these offenses and then forward the proposed seriousness categories to all circuit court judges, prosecutors, and defense attorneys for comment.

## **8. Corrections Options Subcommittee Report**

Mr. Stanton, chair of the corrections options subcommittee, presented the recommendations of the corrections options subcommittee. The corrections options subcommittee recommends the creation of a Corrections Options Authority as a new judicial sentencing option. Mr. Stanton expressed the subcommittee's concern over the due process issues that may arise due to the ability of the Corrections Options Authority to impose sanctions involving incarceration. Judge Chasanow responded that empowering Parole and Probation or any other non-incarceration supervisor to incarcerate would likely be problematic. He advised that if a judicial sentence to the Corrections Options Authority was considered "a sentence of incarceration" than due process concerns should not be a problem.

The Commission also discussed the appropriate placement of correctional options on the sentencing matrices. Mr. Stanton expressed concern over the issue of funding generally and how local programs would be reimbursed if state offenders receive county-level services. The Commission approved the subcommittee's recommendation to develop a Corrections Options Authority as an additional sentencing option for judges (likely under the umbrella of the Department of Public Safety and Correctional Services).

## **9. Commission Member Alternates**

Prior to breaking for lunch, Judge Sonner raised the issue of "alternates" to represent governor-appointed Commissioners if they were unable to attend Commission meetings. The consensus of the Commission was that alternates should be allowed in the interests of continuity, but should only be used in extraordinary circumstances. Alternates would have "voice," but not vote. Judge Sonner also requested permission from the Commission to invite Mark Mauer to serve as a consultant to the Commission. Commission members did not object.

## **10. Compliance Subcommittee Report**

Judge Chasanow, chair of the compliance subcommittee, presented the recommendations of the compliance subcommittee. Judge Chasanow began by noting the compliance rate for drug distribution is 17% due largely to the very low compliance rate in Baltimore City. Judge Chasanow proposed a solution to the low compliance rate for drug distribution cases. He suggested that persons who fall within a particular group of cells on the drug matrix could be sentenced to the Department of Public Safety and Correctional Services with a judicial directive to place them in a drug rehabilitation program. Such a sentence would be considered a sentence of incarceration and would be deemed in compliance with the sentencing guidelines. Since the sentence would be equivalent to a sentence of incarceration, persons who violate the conditions of the drug rehabilitation program would be incarcerated.

Commission members raised concerns about the proposal including the possibility that treatment slots

may not be available at the time of sentencing; appropriate offender placement while waiting for a treatment slot to open up; and the possibility that the offenders may be deemed ineligible for program participation by the drug rehabilitation program. Another concern was that persons who formerly would have received a sentence of probation would now be subjected to a sentence of incarceration without sufficient due process protections.

Following discussion, consensus developed over the need to create an additional sentencing option for judges generally, as proposed by the corrections options subcommittee. Cells on the sentencing guidelines matrices would be designated as Correctional Options cells. A sentence to the Correctional Options Authority for defendants who fall within these cells would be considered in compliance with the guidelines. The Commission identified issues that would need further attention: (1) legislative authorization, and to that end, the possible modification of a proposed bill before the General Assembly to authorize judges to sentence to corrections options programs as a condition of probation; (2) the creation of state and local partnerships to address funding and efficiency issues; and (3) the need for risk assessment instruments.

Judge Chasanow also raised the issue of plea agreements. He noted that many cases fall below the recommended guidelines range because defendants have admitted responsibility. Judge Chasanow pointed out that defendants under the federal sentencing guidelines receive mitigating points for pleading guilty. Commission members voiced concern over granting mitigating points to those who plead guilty since it would penalize those who opt to go to trial. Following discussion, it was agreed that judicial compliance should be examined as a function of disposition type (i.e., non-ABA pleas, ABA pleas, judge or jury trial). In addition, the sentencing guidelines forms should be modified to record whether a guilty pleas was a plea with ABA agreement.

Following the presentation of the compliance subcommittee, the Commission meeting was adjourned.