

**Maryland State Commission on Criminal Sentencing Policy
House Judiciary Committee Room
Lowe Office Building, Room 121
Annapolis, Maryland
February 5, 2001**

Commission Members in Attendance:

Honorable Andrew L. Sonner;
Honorable Marna McLendon;
Honorable Timothy Doory;
Russell P. Butler, Esquire;
Colonel David B. Mitchell;
Arthur A. Marshall, Jr., Esquire;
Delegate Joseph F. Vallario, Jr.;
Amy Brennan, Esquire for Stephen E. Harris, Esquire;
Robert Gibson for Stuart O. Simms;
Senator Delores Kelley;
Director Barry Stanton;
Attorney General Joseph Curran;
Honorable Arrie Davis

Staff Members in Attendance:

Michael Connelly;
Douglas J. McDonald;
Haisha Thompson;
Kate Wagner;
Kristi Waits

Visitors:

Patricia Cushwa, Chair, Maryland Parole Commission
Delegate Dana Dembrow
Alan Eason, Assistant Attorney General
Daniel LeDuc, Washington Post
Luke McLaren, Montgomery County Intergovernmental Relations
Matthew Mosk, Washington Post
Roberta Roper, Director of The Stephanie Roper Foundation
Michael Sarbanes, Lt. Governor's Office

1. Call to order

Judge Sonner called the meeting to order.

2. Roll call and declaration of quorum

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

3. 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, after adding Judge Doory's name to show his presence at the last meeting.

4. Report from the Executive Director

Dr. Connelly welcomed the Commission and introduced a new full time Commission staff member, Kristi Waits, and an intern from the University of Maryland, Haisha Thompson. Connelly stated that Kristi would be taking responsibility for Data Analysis and Haisha would be assisting the Commission in data entry and other tasks. He also stated that the Commission was assuming the cost of a fellowship through the University of Maryland for graduate student Greg Jones who will start work on Article 27 materials. Connelly stated that Judge Sonner testified in front of a joint meeting of the Senate Judicial Proceedings Committee and the House Judiciary Committee, and Connelly himself spoke at the Circuit Court Administrative Judges Conference. Both presentations were successful. Connelly said that Commission staff was in the process of mailing Annual Reports to every circuit court judge in the state.

Dr. Connelly introduced a packet of material that every Commissioner was given. The material included: an article entitled The Drug Court Experiment that Judge Sonner requested be distributed; a book review of New York Murder Mystery explaining the significant crime drop in New York; several articles; a draft proposal for forming Informed Focus Groups; and a draft proposal for Minority Internship Program.

Doug McDonald stated that the Commission's proposed changes to COMAR would be published in the February 9th edition of the Maryland Register. They were to be published for 30 days in order to facilitate public comment. After that, the Commission would make a transmittal of final action on March 27th that would be published, and the regulations would go into effect 10 days after publication, which in the best case scenario would be in mid-April. Connelly stated that he spoke with Stuart Nathan at the Office of the Attorney General and he advised that if there were changes that needed to be made to the regulations, the regulations would have to be resubmitted and the entire process would be repeated. Connelly stated that changes that have been discussed, such as those involving probation would be put into the new manual for interpretation. He asked if the Commission would want the regulations to go into effect on April 15th, the earliest possible date, or if the date should be pushed back until July 1st, the beginning of the fiscal year. Training would be done in the interim. Senator Kelley stated that she thought there was a great possibility that there would be public comment on the regulations and that a hearing would most likely be requested. She said that under the Administrative Procedures Act, if minor modifications were made, the regulations did not have to be resubmitted for the process to start all over. She added that as an executive branch agency, after the regulations were available for public comment, the Governor could direct the Commission to withdraw or modify them, or the governor could sign them into law. Doug McDonald then presented a summary of all legislative bills as of February 2nd that were relevant to criminal justice or sentencing.

Quorum was met and the minutes for the January 8th Meeting were approved, after Judge Doory's name was added to show his presence at the last meeting.

5. Speakers

Delegate Dana Dembrow

Delegate Dembrow thanked the Commission for inviting him to speak. He stated that he opposed the current trend of becoming "tough on crime" through mandatory minimums and other potentially damaging practices. He added that judges should be guaranteed the authority to make sentencing decisions. He hoped that the State Commission on Criminal Sentencing Policy would help to get the word out to the public to achieve balance in Maryland courtrooms.

The first bill that Delegate Dembrow discussed was House Bill 392, concerning home detention. He stated that in 1999, this bill was a top priority of the Senate President. The bill was the first bill introduced in the session to empower judges to sentence offenders to in-home detention. The bill was the subject of the first debate of the session, as well as the subject of the last debate of the session. He stated that there were two key differences between the House version and the Senate version of the bill. The first concerned a limit on the length of time that judges could sentence an offender to home detention and the second concerned credit given for time served in home detention upon violation. The House bill stated that judges should be limited by the legislature in the length of time that an offender could be sentenced to home detention and that there should be credit for time served.

The second bill that Delegate Dembrow discussed was Senate Bill 85, the Interstate Compact for Adult Offender Supervision. He stated that there was a nationwide frustration with the failure to notify other states of offenders on probation moving across state lines to seek residency or simply to participate in an out-of-state program. Delegate Dembrow said that the current regulations date back to World War II and are contained on one page. He said that the bill proposes a central office that would establish a uniform protocol for reporting so that fewer people would have the potential to fall through the cracks. Delegate Dembrow stated that this was a Senate bill because there was a lack of support for it in the House Judiciary Committee. Those who opposed the bill were hesitant to turn over responsibility to an agency that was not yet in existence. Senator Kelley stated that the Commission needed to formulate a protocol on what bills to comment on. Commissioner Butler stated that the defense bar, prosecutors, victims and the executive all would seemingly support a centralized process.

Judge Doory asked that the Commission turn to the home detention bill again. He asked if the two concerns regarding the limiting of sentence length and the crediting for time served, lines 21-24 of House Bill 392, were written in the Senate version. Delegate Dembrow answered no. Judge Doory stated that under the House Bill it was possible for an offender who violated the conditions of home detention, with credit for time served, to have no jail time left to serve. Senator Kelley thanked Delegate Dembrow for an informative presentation, but stated that the Commission could not endorse legislation. Judge Doory stated that at the Commission's last meeting, it was decided that Delegate Dembrow would be invited to the February 5th meeting to inform the Commission on the two bills. Delegate Dembrow stated that both issues merit attention because the legislative process had not worked and that help was needed. Judge Doory asked if it was possible to instead of limiting time of confinement to the maximum, to make it a percentage of the time of supervision. Delegate Dembrow said it was something to consider. Judge Sonner thanked the Delege for his presentation.

Patricia Cushwa, Chair Maryland Parole Commission

Patricia Cushwa was joined by Assistant Attorney General Alan Eason. She stated that she realized in 1999, when addressing the Judicial Conference at the request of Judge McAuliffe, that lines of communication needed to be opened between the judiciary and the Parole Commission. She stated that she was glad to be back in front of the Sentencing Commission. She appreciated the Commission's probing questions when she started as chair of the Parole Commission four years ago. A risk assessment tool calculating risk for reoffending was a result of the session. She stated that she and Mr. Eason were going to discuss mandatory supervision and diminution credits.

Cushwa distributed information to every Commissioner including a copy of the bench card used for parole calculation. The bench card stated that for violent offenses 50% of the sentence was mandatory. Also on the bench card was a risk assessment tool used to calculate risk for reoffending. Ms. Cushwa stated that the Parole Commission was distributing a semi-annual newsletter, The Back Bench, to keep all stakeholders informed of the Commission's work. She said that communication between the Parole Commission and the judiciary has greatly improved during her tenure. She stated that the Parole Commission does not want to have fewer releases, just better releases. She stated that a Uniform Sex Offender Policy would be released later in February. Ms. Cushwa added that 98% of incarcerated offenders are released at some point, so risk assessment was extremely important. She stated that public safety was the first concern of the Parole Commission and that the Commission should be held to an accountable standard. Ms. Cushwa said that she looked forward to continuing the outreach work of the Commission with the state police, trial judges, and victims to encourage communication. She then introduced Alan Eason.

Mr. Eason stated that Maryland law provides that inmates sentenced to Division of Correction serve a term of confinement, which is the first day of the first sentence to the last day of the last sentence. There are four types of diminution confinement credits: good conduct, education, industrial, and special. An offender incarcerated for a crime of violence was eligible for five days credit per month and a non-violent crime was eligible for 10 days per month for good conduct. Good conduct credits are awarded in advance based on each inmate's term of confinement. An inmate may not receive more than 20 days credit per month. If an inmate receives enough diminution credits such that when they are added to the inmate's time served the total equals the inmate's term of confinement, the inmate is put on Mandatory Supervised Release under the supervision of Parole and Probation. Eason stated that if a releasee violates a condition of release, such as committing another crime, the releasee is brought back into custody with a retake warrant and the Parole Commission votes if good time credits will be given for "street time."

Senator Kelley stated that as part of the Women's Legislative Caucus she had concerns that there are not as many opportunities for women to amass diminution credits in the areas of work, education, or special credits. She stated by virtue of their placement some inmates could reduce their sentence drastically while others would not have the opportunity to do so. Judge Davis stated that he was part of a committee on women and corrections in early 1980 that published a report on corrections options for women that might be examined. Ms. Cushwa stated that there were more women that ever in the criminal justice system and this was a subject that needed to be addressed.

Colonel Mitchell stated that a sex offender was released in Frederick and reoffended. He asked since the offender had been cycled through the criminal justice system if it was possible that there would be diminution credits on the books. Ms. Cushwa stated that in 1989, the application of credits became a matter of law, so it was possible. He stated if this was a possibility, then it seemed like offenders who have been cycled through the criminal justice system over and over again would be rewarded with "bankable" credits, where a first time offender would be punished. Cushwa stated that as a matter of Maryland law, if parole was revoked and the offender was returned to custody, the offender could have the benefit of the credits that led to his release. Ms. Cushwa stated that legislation passed in 1996 is a corrective measure for that problem. Alan Eason stated that it was extremely rare to see a "clean" sentence and that the diminution credit system is complicated because it is dependent upon the nature of the sentence imposed. He went on to explain that when a parolee violates and is taken into custody, their diminution credits are revoked, but when someone on mandatory supervised release violates and is taken into custody, it is at the discretion of the Parole Commission to revoke previously earned diminution credits. Mr. Eason stated that diminution credits must be examined on a case-by-case basis.

Commissioner McLendon thanked Mr. Eason and Ms. Cushwa for their presentation and stated that it was clear why truth in sentencing is a term that the Commission should keep in mind. She added that it is extremely difficult to explain this system to a victim of a crime. Mr. Eason stated that his department was glad to receive phone calls about the impact of diminution credits and sentencing decisions on specific cases. Commission Butler introduced Roberta Roper, a former member of the Study Commission and director of the Stephanie Roper Foundation. She stated that victims have contacted her questioning the credit system because they couldn't understand why offenders were released from custody. She showed her support for a piece of drafted legislation to make parole violations and mandatory supervised release violations held to the same standard. Judge Doory asked how much of a problem it would be to eliminate advanced good conduct credits and make it a decision of the parole commission. Mr. Eason stated that credits were awarded in advance as a matter of bookkeeping. He added that elimination of these credits would create problems for inmates whose crimes pre-dated the ban, but who were released and then returned to custody on a new charge. Also, longer inmate incarceration, increased costs, and a lack of bed space would be possible results. Colonel Mitchell expressed his frustration because the public has a lack of faith in the system. Senator Kelley stated that if advanced good conduct credits were eliminated, the decision to grant the credits would be entirely subjective based on an opinion of good behavior. She added that the system needed to remain objective and quantified. Judge Sonner thanked Ms. Cushwa and Mr. Eason for the informative presentation.

Colonel Mitchell raised the subject of House Bill 62 that would limit the time a judge has to reconsider a sentence to one year. He stated that the practice of sentencing an offender in open court to give a victim a impression of a tough sentence, then going back later to reconsider that sentence without victim notification, needed to be stopped. He stated that the courts must be held accountable. Roberta Roper stated that there was significant confusion on the part of the public concerning diminution credits. She said that trust was eroded because the public and victims don't understand the system. She asked the Commission to please work with the Department of Public Safety and Correctional Services to clarify and simplify the system and to stop the use of advanced credits. She stated that there needed to be truth in sentencing. Mr. Gibson explained that advanced credits were established as a bookkeeping practice. The majority of inmates receive good conduct credits, so it made sense to award the credits in advance in order to calculate a release date. Gibson added that the practice was then formalized into the Code. Commissioner Butler asked that with the grant of \$35 million to update the DPSCS information systems, why couldn't this be changed? Commissioner Stanton stated that new credits were established very frequently so it would be difficult for a computer program to keep up with the changes. Senator Kelley suggested that truth in sentencing be explored by working with DOC, the defense bar, prosecutors, victims, and the judiciary to find out a way to simplify the system.

Judge Sonner then addressed Senator Kelley's question about what role the Commission has on commenting on legislation. He said that the Commission was not in any position to be able to keep pace with legislation on a daily basis. Judge Doory stated that it was possible for committees to refer matter to the Commission before or after the session. Judge Sonner suggested that the Commission have staff monitor legislative bills and the Commission would issue an opinion, if a request were made for one, only on those bills that affected sentencing guidelines. Senator Kelley stated that a better protocol was needed. Until then, no positions should be given, although the Commission should make itself available to give testimony on subjects such as, impact on prison capacity, corrections options, and graduated sanctions. Impact statements should be given using simulations. Senator Kelley concluded that the Commission would be respected more if it stuck to its area. Judge Sonner agreed and thought this was a good position to take.

6. Summary of Meeting on Corrections Options with DPSCS

Judge Sonner stated that it was getting too late to discuss corrections options but that he had met with Secretary Stuart Simms to discuss his department's plans for corrections options. Judge Sonner said that Secretary Simms informed him that the department had other priorities that took precedence over corrections options for the near future. Judge Sonner brought up the subject of appointing a task force to study the issue, and Secretary Simms stated that he was not interested at this time. He stated that Secretary Simms suggested putting together an inventory of best practices throughout the state. Mr. Gibson stated that he wanted to make sure the Commission had the right impression on the DPSCS work on corrections options. He stated that the department was not unwilling to revisit the matter. He said that a major priority of the department was to reduce the caseload in the Division of Parole and Probation. The department had also received many budget requests to make general supervision better. He added that corrections options usually involved some form of incapacitation and that the cost was beyond the scope of DPSCS for front end programming. Judge Sonner stated that there was some disagreement as to whose responsibility front end programs were. Senator Kelley suggested that a one-day conference be held to discuss corrections options from the viewpoint of all the stakeholders.

7. Announcements

Doug McDonald asked if the legislative summaries he prepared were helpful and/or useful to the Commissioners. Ms. Brennan and Commissioner McLendon answered that yes they were, and asked that the practice be continued. As a point of information, Dr. Connelly stated that Senator Van Hollen introduced Senate Bill 633, which would require the Commission to annually report and review compliance by each circuit court judge in each judicial circuit with the sentencing guidelines for each conviction of crimes of violence. The next meeting was set for May 7, 2001.

The meeting was adjourned.