

**Maryland State Commission on Criminal Sentencing Policy**  
**House Judiciary Committee Room**  
**Low Office Building, Room 121**  
**Annapolis, Maryland**  
**May 7, 2001**

**Commission Members in Attendance:**

Honorable Andrew L. Sonner;  
Honorable Marna McLendon;  
Honorable Timothy Doory;  
Russell P. Butler, Esquire;  
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;  
Honorable Arrie Davis;  
Honorable John Themelis;  
Domenic Iamele, Esquire

**Staff Members in Attendance:**

Michael Connelly;  
Dan Goldman;  
Haisha Thompson;  
Kate Wagner;  
Kristi Waits

**Visitors:**

Sally Marker, Governor's Office of Crime Control and Prevention

**1. Call to order**

Judge Sonner called the meeting to order.

**2. Roll call and declaration of quorum**

It was noted that Kate Wagner had taken roll, and quorum had been reached.

**3. Approval of minutes, February 2001 meeting**

The Minutes were approved. Robert Gibson stated that the minutes from the last meeting were already on the website. He said that the word draft needed to be added to them, as they had not yet been approved by the Commission.

**4. Report from the Executive Director**

A Planning Report Series was introduced to the Commission including reports on Recodification, Alternative Sanctions, Sentencing Disparity, the Aging Prison Population, and Judicial Compliance. Dr. Connelly introduced the new staff attorney, Dan Goldman. He stated that he and Judge Sonner

had met with a U.S. Parole Commissioner, the State Defense Bar, and the Sentencing Committee Baltimore City Circuit Court recently, and that all the meetings had gone well. Connelly also reminded the Commissioners that the NASC meeting was going to be held in Kansas City on June 4-6, and he, Judge Sonner, and Commissioner Butler would be attending. Connelly announced that he had just completed the current services budget request for FY2003. He stated that the new guidelines would go into effect July 1 and that printing of the worksheets and the new manual and training would take place in the interim.

Judge Doory asked if the Commission was planning on adopting the reports. Judge Sonner stated that the reports were submitted to the Commission, rather than being authored by the Commission. Judge Doory stated that attaching the Commission's name to reports might be dangerous. He used the example of the report on recodification, stating that Judge Wilner had been working on this issue for years but the report makes no mention of his efforts. Judge Doory asked if the Commission was going to review the reports. Judge Sonner said no, as the reports were done by consultants to the Commission.

Judge Themelis said that his problem with the reports was that the state seal and the Commission's name were prominently displayed on the covers of the reports. Senator Kelley stated that the reports were on issues that called for research, not recommendations. She asked who the report would be distributed to. Dr. Connelly answered that it was planned to be sent to other state sentencing commissions, selected members of the Executive and Legislative branches of the state government and to Circuit Court Administrative Judges. He added that there would be a cover letter that would accompany all the reports explaining that the reports were not authored by the Commission, but rather were authored by consultants to the Commission. Commissioner McLendon stated that the reports' covers could be altered to add the language "Position Papers To." She stated that the reports contained useful information that should be examined. Senator Kelley stated that the Commission asked the graduate students to research these topics. Judge Doory stated that he was not comfortable with the reports going out. He said that a document could turn up anywhere and could be used out of context. Judge Themelis said that he strongly objects to putting his name on statements such as "Racial disparity does exist." Mr. Gibson stated that his department was the source for much of the data used in the reports, and that he had not checked over the reports.

Senator Kelley stated that the graduate students worked under faculty guidance at the University of Maryland. She suggested that the report be titled to show that it is comparable to any other thesis. Judge Sonner suggested that the covers of the reports be altered to make it clear that they are reports to the Commission and that a cover letter accompany all reports explaining the reports. Judge Doory suggested that the Commission wait until the next meeting to vote on the matter. Director Stanton stated that there was nothing to review, because the graduate students were asked to do research on these issues. He said that even after review, it would still be research. Judge Themelis stated that another problem with the report is that the list of Commissioners is the first page of the reports, again alluding to the Commission's adoption of the reports. Senator Kelley proposed a motion to vote on changing the cover to reflect that the reports are submitted to the Commission not authored by the Commission. The motion was seconded and the vote passed 8-7.

Dr. Connelly announced that a report on the progress of the Commission toward their legislatively mandated goals had been completed and was going to be put on the website. He stated that nothing had surfaced from the public information request from the Washington Post. Senator Kelley stated that the Commission should have an entire meeting devoted to coming up with policies and standards that would be used to deal with such problems. She stated that a standardized procedure would benefit the Commission. Dr. Connelly also stated that work was started on an employee manual for the SCCSP staff.

Dr. Connelly stated that there was still work being done on Corrections Options by the Commission staff. Senator Kelley suggested a one-day conference with a high-profile keynote speaker such as the Lt. Governor that would unite all stakeholders and would tie together many resources. Judge Themelis said that when Secretary Stuart O. Simms spoke to the Commission he stated that there was no money in the DOC budget in the foreseeable future for Corrections Options. Mr. Gibson stated that there was a significant amount of money in the DOC budget for Corrections Options, but for back-end programs. He stated that DOC would need more money to finance front-end programs. Judge Doory said that a conference sounds like a program sponsored by Governor William Donald Schaefer, which was called "Crime Solvers". But he said that was put on by the Governor's office, which has a great deal more resources than the Commission. Senator Kelley suggested that a subcommittee be set up in the Commission to work on this. Senator Kelley proposed a motion to begin work on setting up a one-day conference; the motion passed.

Judge Sonner asked Senator Kelley if she would be willing to chair the effort, she agreed.

Commissioner Iamele asked if this sort of thing was too broad for the Commission to get involved with. Senator Kelley said that if the administration was willing to help, it would be feasible. Commissioner Stanton said that communities needed to be solicited. Senator Kelley stated that all stakeholders would be included. Commissioner McLendon stated that this conference was not a substitute for community outreach. She emphasized that a smaller-scale effort would be easier to be accomplish. Dr. Connelly stated that it was possible to do both if enough time were available.

Dr. Connelly asked the Commissioners if they had suggestions for topics that would be researched by staff in addition to their current project on Diminution Credits. Senator Kelley suggested that the staff put together generic information pieces on several topics that would be available on the web site or from the Commission office. Judge Davis stated that attention by the media and policymakers had on diminution credits had painted them as a horror story. Senator Kelley stated that the Commission should contribute to the public's education on this and other issues. Commissioner Iamele raised the concern that the Commission should look at getting data from the District Courts; he stated that the cases in District Court outnumber those in Circuit Court by a ratio of 10 to 1. Judge Doory said getting involved with the District Courts would be a disaster. Judge Davis added that ideally it would be a good idea to look at the cases in the District Courts, but it was not possible. Dr. Wellford said that it would be useful to examine how other sentencing commissions in other states are answering this question.

##### **5. Update on Legislation from 2001 General Assembly**

Dr. Connelly stated that bills making home detention a condition of probation and concerning lobbyists serving on Commissions were of interest to the Commission. Judge Sonner asked if the ethics bill could be amended next year. Commissioner Butler said that there was a grace period to give time to those who objected to make an argument. He said that a position paper would be appropriate.

##### **6. Report from Sentencing Guidelines Subcommittee**

Dr. Wellford stated that the draft of the Guidelines Manual was amended to include probation revocations. Judge Doory voiced his concern over how that would affect judicial compliance. He said it would be possible for a judge to be counted out of compliance twice, once for sentencing under the guidelines for sentencing probation, then once for sentencing over the guidelines at the revocation. Ms. Brennan said that it was unfair to judges who gave offenders the benefit upfront but then, when offenders came back before the judge, sentenced within the guidelines. Judge Themelis said that most split sentences are in compliance. He said he was in favor of this.

Judge Themelis asked if the question about defendant representation on the new worksheet was

relevant to sentencing. Senator Kelley said that it was another way to examine sentencing data. Ms. Brennan said that her office would not object to that question being asked on the worksheet. It was suggested that "other" be removed as a choice for representation. Judge Themelis also suggested that the phrase "and proven" be added to "restitution requested" question and that the "subsequent offender" question be elaborated upon to read, "subsequent offender filed and proven." The Commission passed these suggestions.

Judge Themelis stated that most of the victim information was handled by the State's Attorney, and not with the judge. Commissioner Butler stated that the parole notification did not fall under the category of victim information and should be separated on the worksheet. He added that the old worksheet had a blank titled "Institutional/Parole Recommendation/Additional Info", which should be added to the new worksheet. The Commission approved the motion to add the Institutional/Parole Recommendation box.

Judge Doory stated that he feared that those filling out the worksheet would skip most of the new questions. Commissioner McLendon stated that this worksheet probably would not be perfect from the start, but it was a beginning to start collecting better data on sentencing. Commissioner Butler asked if a sentence to any corrections options program should be considered compliant. Alternatives to incarceration would include Break the Cycle, Drug Treatment Court, and COPS. Judge Doory said that Break the Cycle was nothing compared to Drug Treatment Court. Dr. Wellford said that the Sentencing Guidelines Subcommittee had plans to put alternative sanctions in the sentencing matrix for eligible offenders. Senator Kelley suggested to count Drug Treatment Court as compliant, but to take the other alternative sanctions on a case-by-case basis. Judge Themelis made a motion to treat all sentences to Drug Treatment Court as compliant. Commissioner McLendon stated that there was not enough thought put into this and that a piecemeal approach was not the best way to do this. Judge Themelis stated that he urged the Commission to pass this motion now to encourage other counties to establish Drug Treatment Courts. Commissioner Butler asked the Commission to wait on a vote on this. The motion passed 7-6.

The next Commission Meeting was set for September 10th. Judge Sonner asked for a motion to adjourn, with no objection.