

**Maryland State Commission on Criminal Sentencing Policy**  
**House Judiciary Committee Room**  
**Low Office Building, Room 121**  
**Annapolis, Maryland**  
**June 3, 2002**

**Commission Members in Attendance:**

Honorable Andrew Sonner, Chair  
Charles Wellford, PhD  
Russell P. Butler, Esquire  
Janis Judson, PhD  
Honorable Timothy Doory  
Captain Matt Lawrence for Colonel David Mitchell  
Delegate Joseph F. Vallario, Jr.  
Patrick Kent, Esquire for Stephen E. Harris, Esquire  
Robert Gibson for Stuart O. Simms  
Senator Delores Kelley  
Honorable Arrie Davis  
Delegate Dana Lee Dembrow  
Honorable Robert Riddle

**Staff Members in Attendance:**

Michael Connelly, PhD  
Philip Laffey  
Kate Wagner  
Kristi Waits

**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 4th and May 5th Meeting**

Since quorum was not met at the May meeting, the minutes from the previous two meetings were approved.

**4. Report from the Executive Director**

Dr. Connelly said that on the suggestion of Senator Kelley, he spoke with the Office of Financial Administration (OFA) about the Rule of 500. OFA informed him that positions were, by law, set aside for agencies in case a grant was awarded, but positions did not come with any money. Dr. Connelly announced that, thanks to Commissioner Riddle, he was invited to the State's Attorney's Association annual meeting to talk about the newly-added victims information section on the worksheet. He added that he had been in contact with Twilah Shipley and Jodi Finkelstein of the Family Violence Council

about continuing the Commission's focus group efforts. Connelly said that although the budget had been cut, it might be possible to team up with the Family Violence Council in order to save costs. Dr. Connelly also said that he spoke with Fred Williams about incorporating the Commission's training video in with the new judge training each year. He added that staff would be traveling to Washington County to the State's Attorney's office there for a training session on June 20.

Dr. Connelly said that in order to improve the Commission's profile in the General Assembly, the Commission could start faxing out a periodic update on Maryland sentencing data. He compared the effort to the CESAR FAX that is currently distributed relating to drug issues. Connelly said that the Commission's fax would be sent to Commissioners, other state sentencing commissions, and selected members of the General Assembly, such as the members of the Senate Judicial Proceedings Committee and the House Judiciary Committee, and the President of the Senate and the Speaker of the House. The fax would take the place of the newsletter that the Commission had previously distributed.

Dr. Connelly said that he would be meeting with all interested circuit court administrative judges this summer and showing them information compiled by Jill Farrell on cell-by-cell sentence averages for their circuit. He also announced that there would be a hearing on June 4, 2002 of the State Ethics Commission on lobbyist participation on executive boards and commissions that he and Commissioner Butler would attend. Connelly also announced two new summer staff members, Dave Bierie and Gary Locust, both Master's students in the Criminology & Criminal Justice Department at the University of Maryland. Connelly said that Greg Jones has left the Commission and thanked those Commissioners who had helped with his job search. He also said that Phil Laffey would be leaving the staff this summer to start law school at the University of Connecticut. Connelly thanked Phil for his work on the COMAR regulations, the training sessions, and the training video.

Dr. Connelly announced the annual NASC conference would be held this summer in Williamsburg. He said that the Commission's budget cuts would make registration difficult, but that anyone interested should contact him.

## 5. Sentencing Guidelines Subcommittee Report

### A. Discussion and approval

#### 1. *Classification of 2002 offenses*

Dr. Wellford said that the chart titled New Legislation summarized the Sentencing Guidelines Subcommittee's recommendations for seriousness categories for the new offenses that came out of the most recent legislative session. He said that the first offense up for discussion was HB 256/SB 345, Leaving the scene of an accident involving serious bodily injury or death. He said that there was a distinction of seriousness categories and penalties in this offense for injury and death. Patrick Kent said that he had concerns about making the distinction between injury and death. Commissioner Riddle said that the previous serious category for injury and death was 3 and 5 respectively.

Delegate Vallario said that the intention of the bill was to make this offense a felony. Judge Doory asked if there was a need for two different serious categories. He said that by assigning a 5 to both, it would allow for more discretion to the judge. It was noted that Driver failing to remain at the scene resulting in injury has a 1-year maximum penalty and is a seriousness category 7, and resulting in death has a 5-year maximum penalty and is a seriousness category 5. It was also noted that manslaughter by automobile is a

seriousness category 4.

Delegate Vallario said that the guidelines should allow for the greatest amount of judicial discretion. Senator Kelley said that the commission should not forget the guidelines are voluntary. Mr. Kent said that although the guidelines are voluntary, in his experience the first question the judge asks when sentencing is, "What do the guidelines say?" Commissioner Butler stated that the seriousness categories suggested by the guidelines were consistent with other offenses, basing the seriousness category on the maximum penalty. Judge Sonner asked the Commission to vote on the matter. **The Commission voted to pass the motion, Leaving the scene of an accident involving serious bodily injury or death; resulting in injury has a seriousness category 5 and resulting in death has a seriousness category 4.**

The next offense discussed was HB 691/SB436, New penalties for third or subsequent theft under \$500 convictions. The Sentencing Guidelines Subcommittee recommended either a seriousness category 6 or 7. Mr. Kent said that the Commission should not increase the seriousness category one of the least serious offenses, misdemeanor theft. He moved to make this offense a 7. Judge Doory said that this offense carried a maximum penalty of 5 years, and that only with the highest offender score could the guidelines provide for a 5-year sentence for a seriousness category 7. Commissioner Butler added that any subsequent offense usually increased one level from the original offense. Phil Laffey said that he and Commissioner Butler ran different sentencing scenarios to see how the guidelines would change by making this offense a 6. He said that now the penalty for the second and third theft offenses range from probation to 3 months. By making HB 691/SB436 a seriousness category 7, the range would still start with probation, but have an upward bounds of 6 months.

Mr. Kent said that he had a problem with those sentencing scenarios because they did not account for probation revocations. Senator Kelley said that the recent ruling in California that rendered three-strikes laws cruel and unusual punishment made her feel that this offense should be a seriousness category 7. Commissioner Riddle noted that making the offense a 6 would just allow a judge to sentence an offender for 3 more months and remain within the guidelines. **The commission voted to pass the motion, New penalties for third or subsequent theft under \$500 convictions has a seriousness category 7.**

The next offense discussed was HB 1036, Established penalties for violations of commercial motor vehicle operation and license laws under Maryland Security Act of 2002, Fraudulently obtain license/Improper use of licenses. The Sentencing Guidelines Subcommittee recommended a seriousness category 6 for improper use of license and either a 4 or 5 for fraud.

Mr. Kent said that improper use of a license is analogous to driving without a license, which is not an incarcerable offense. Commissioner Butler said that offenses that carry a maximum penalty of 5 years usually carry a seriousness category of 5, but he did not think that was appropriate, so the subcommittee thought 6 would be fitting. Don Hogan said that this bill bumped up penalties for driving while having a suspended, revoked, etc. license to a 5-year maximum and a \$10,000 fine. He said that the new offense in the bill was fraudulent application. Mr. Kent moved to make improper use of license and fraud both a 7.

Delegate Dembrow said that the intention of the bill was to target potential terrorist truck

bombs, but he added that he would hope for judicial departure in that situation. Commissioner Butler said that offenses with a 1-year maximum penalty usually are a seriousness category 7, and those with a 5-year maximum penalty should be a 5 or 6. He added that the Commission should be consistent when assigning seriousness categories to the offenses. Judge Doory added that with a seriousness category 7, this offense would not carry a realistic 5-year penalty. Delegate Vallario said that he thought the Commission should eliminate all motor vehicle offenses from the guidelines. **Judge Sonner asked the Commission to vote on assigning a 7 to the fraud offense; the motion did not pass. A motion was made to make the fraud offense a seriousness category 6 and the license offense a 7 and it passed.**

The next offense discussed was HB 1147, Crimes - Sexually Violent Predators - Sentences, allowing the state to seek to determine if an offender is a sexually violent predator, and allowing a maximum life sentence if the offender is determined to be a sexual predator. Patrick Kent explained how the statute would affect convictions of subsequent offenses if the offender were determined to be a sexually violent predator. Judge Doory said that this statute is different from anything the Commission has previously dealt with. He suggested that the Commission might not want to establish guidelines for it. Delegate Dembrow said that the intention of this bill was to punish offenders in rare circumstances such as the Elmer Spencer case in Frederick. Commissioner Butler said that every judge would have discretion on the sentencing, and it would be a disservice to the system not to give it a seriousness category.

Dr. Wellford said that every member of the Sentencing Guidelines Subcommittee, excluding Mr. Kent, agreed on the proposed seriousness category, and he hoped that Mr. Kent did not think that something was sneaked in. Senator Kelley said that the Commission should let the offense stand alone so that it can function as the legislature intended it to, and to give latitude to the sentencing judge. **There was a motion to vote for a Seriousness Category 1; it did not pass. Commissioner Butler noted that the general practice was to increase the seriousness category by one level for a subsequent offense. There was a motion to put a note in the guidelines that said the Commission declines to classify this offense until more experience with its use is known. The motion passed. All other new offenses were approved with their suggested seriousness categories.**

## *2. New language for Guidelines Manual*

There was a motion to add the following items to the Sentencing Guidelines Manual: unidentifiable race, no victim, announcement of 50% of sentence will be served. Commissioner Butler said that he would like to strike "eluding" and "resisting arrest" from the language referring to "no victim." **The additions to the manual passed with the edit that Commissioner Butler suggested.**

## **B. Virginia Sex Offender assessment**

Dr. Connelly introduced a publication by the Virginia Criminal Sentencing Commission, Assessing Risk Among Sex Offenders in Virginia. He asked if the Commission would be interested in hearing more about this program. Senator Kelley asked if the program was going well. She said that she would want outcomes before a presentation from the Virginia Commission would be helpful. Commissioner Butler said that it might be useful to wait until the NASC annual meeting to see if there was a presentation on the program. Dr. Wellford said

that one problem with the program was that it did not tell about the amenability to treatment. He added that although the risk assessment was done well, the rest had little empirical evidence. Wellford said that Kim Hunt could talk about the program's problems as well as the successes. Judge Doory suggested that those traveling to the NASC annual meeting could report back and the Commission could ask Kim Hunt if more information was needed.

### C. Data for reconsideration of cell ranges

A data set was given to all Commissioners to review on reconsiderations in all of the cell ranges.

## 6. Reporting of judicial reconsiderations

Dr. Connelly said that new legislation required the Commission to report judicial reconsiderations by offense type and by circuit in each annual report. Senator Kelley said that the bill had no relationship to the Commission's budget and resources. She suggested that the Commission report back to the legislature that they cannot afford to do this. Dr. Wellford stated that few reconsiderations were even being reported. Judge Sonner suggested the Commission compare its reconsiderations with AOC. **Dr. Connelly asked the Commission if they would recommend sending the matter to the Sentencing Guidelines Subcommittee or an ad-hoc committee for action. The motion passed to send the matter to committee so that action could be proposed.**

## 7. Parking and future meetings

Dr. Connelly said that, because Parking Lot C was no longer available at the Lowe House Office Building, the Judicial Training Institute would be a possible alternative for future meetings. He asked if the Judicial Training Center in Annapolis would suit everyone's schedules during the legislative session. There were no objections. Future meetings of the Commission will now be held at the Judicial Training Center.

## 8. New Business

Judge Doory said that there was an article in the June 3rd edition of the Baltimore Sun regarding a drop in sentence lengths for Baltimore City gun crimes. A line from the article read, "On the issue of shorter sentences, [Baltimore City State's Attorney, Patricia] Jessamy noted that a change in sentencing guidelines reduced the jail term on a critical felony charge her lawyers routinely use in shooting cases." Judge Doory said that the Commission should look at the actual sentences for Assault I and handgun charges that have changed seriousness category in the last year. Bob Gibson said that trying to find single count Assault I charge is problematic because it does not happen very often. Judge Sonner said that by August the Commission should have an answer to this article. Senator Kelley warned that the Commission's work could turn into an election issue for Jessamy. Kelley asked if the Commission should invite her to a meeting to ask her about her goals. Judge Davis said the Commission should not get political.

## 9. Adjournment

The next meeting was set for September 16, 2002 at the Judicial Training center. Dr. Connelly said that staff would have information regarding Judge Doory's request for data on Assault I sentences since the seriousness category change. Judge Sonner thanked Phil Laffey for all of his hard work and wished him luck in law school. The meeting was adjourned.