

Maryland State Commission on Criminal Sentencing Policy
House Judiciary Committee Room
Low Office Building, Room 121
Annapolis, Maryland
September 10, 2001

Commission Members in Attendance:

Honorable Andrew L. Sonner;
Honorable Timothy Doory;
Russell P. Butler, Esquire;
Arthur A. Marshall, Jr., Esquire;
Delegate Joseph F. Vallario, Jr.;
Patrick Kent, Esquire (Replacing Amy Brennan) for Stephen E. Harris, Esquire;
Robert Gibson for Stuart O. Simms;
Senator Delores Kelley;
Director Barry Stanton;
Honorable John Themelis;
Charles Wellford, PhD

Staff Members in Attendance:

Michael Connelly;
Philip Laffey;
Haisha Thompson;
Kate Wagner;
Kristi Waits

Visitors:

Twilah Shipley, *Governor's Office and Office of the Attorney General, Family Violence Council*
Jodi Finkelstein, *Director, Governor's Office and Office of the Attorney General, Family Violence Council*
Frank Weathersbee, *State's Attorney for Anne Arundel County*

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, May 2001 meeting

The Minutes were approved.

4. Request to speak-Frank R. Weathersbee, State's Attorney, Anne Arundel County

Mr. Weathersbee stated that he was unclear on what the Commission wanted in terms of probation violations, and who was responsible for the additional work. He said that in Anne Arundel county

many judges give probation very frequently, which in turn causes many probation violations. He said that violations could happen 1 month to 5 years after the initial sentencing. He added that it was not clear whether at the probation violation whether to use a new offender score, or to use the offender score as calculated at the initial sentencing, as the two scores could differ. Mr. Weathersbee said that his major concern was that the Sentencing Guidelines Manual did not speak to filling out worksheets on probation violations. He said that many offices such as Parole and Probation had a lot more information than the State's Attorney's Office in respect to filling out the worksheet. He said that he took the letter sent from the Commission dated June 14th to his administrative judge who also had questions on the new policy.

Judge Themelis stated that Mr. Weathersbee raised an excellent issue. He said that he too looked in the manual for guidance, but the manual had little mention of filling out worksheets for probation violations. He stated that he had his clerk prepare the worksheet for each probation violation. He said that ultimately the responsibility for the worksheet is with the judge, so the judge or more likely the judge's staff should fill out the worksheet.

Judge Doory said that it was possible for a change in circumstance to change the offender score, such as juvenile charges dropping off because of the older age of the offender. Judge Themelis said that the Commission was looking to capture original guideline range that the judge faced. Senator Kelley added that the change was done in part to make the guidelines more understandable to the general public. Mr. Weathersbee said that in his opinion, comparing the original guidelines to the new guidelines at the time of the probation violation was like comparing apples and oranges. He added that this would cause more of a distortion of the guidelines and therefore further alienating the public. He said that it would be useful to look at statistics on violations of probation.

Judge Themelis said that the defendant must face new guidelines on the new offense that he has committed. He stated that the defendant must "pay the piper" at some point. He said that the Commission intended to capture statistics on judges going back to the original sentencing guidelines. Mr. Weathersbee said that the Commission gave no statement as to what to do, nor does it say who is responsible for it. Commissioner Butler asked the Commission if they should track reasons for violations of probation. Delegate Vallario said that he was not looking at violations of probation as a crime. Mr. Weathersbee said if the Commission isn't clear on what the process is, imagine how the state's attorneys feel. Dr. Wellford stated that the Sentencing Guidelines Subcommittee should re-examine the issue. Mr. Weathersbee thanked the Commission. Judge Sonner stated that the matter would be referred to the Sentencing Guidelines Committee.

Judge Themelis stated that the Commission has discussed the issue to death. He added that the matter needed to be clarified in the manual. Dr. Wellford stated that there would be two different sets of data if violations of probation were tracked in the Commission's database. Dr. Connelly said that it would be possible to publish two sets of data.

5. Discussion of report from Executive Director

Dr. Connelly said that he has met with the Baltimore City Judges and Judge Bell recently to discuss the new manuals and worksheets. He also introduced staff members Haisha Thompson and Phil Laffey who have moved from summer interns to full time employees. He also introduced Jill Farrell who will continue working part time for the Commission along with her work with Professor Shawn Bushway. All new staff members are products of the Criminology and Criminal Justice department at the University of Maryland. Connelly also noted two items in the Commissioner's information packets; a draft report on the Deliberative Focus Group on Corrections Options in Howard County and an Article from the New York Times on the softening of sentencing across the country.

6. Discussion and action on proposed Annual Public Meeting, Nov. 5 or 19, 2001

The Annual Public Meeting was set for November 5th, 2001 at 7:00 pm following a general meeting from 5:00 to 6:00 and an hour break for dinner.

7. Discussion and action on dissemination of Planning Seminar Reports

Dr. Connelly stated that the Commission had two examples of ways to remedy the problem of the state seal on the cover of the Planning Reports. The Commission voted to adopt the example where the entire state seal was covered.

8. Discussion on Options for Commission Information Policy

Dr. Connelly stated that Pennsylvania has the most advanced, formal, and documented information dissemination policy. He added that he spoke with Rick Kern of the Virginia Sentencing Commission. Mr. Kern said that Virginia's data system is not as extensive as Maryland's. He stated that Virginia can not produce reports that are as in-depth as the ones that Maryland can produce. Judge Themelis stated that he talked with staff at both the Virginia and the Pennsylvania Sentencing Commissions and said that the difference in policy is that in Virginia notifies the judges in the jurisdiction that a request was made for information about their sentencing practices. He said judges were able to comment on the results of the request. He said that following an information request in Virginia, an article in the Washington Post was met favorably by the public. The article contained not only the raw statistics from the sentencing commission but also included comments from the judges in that jurisdiction.

Judge Themelis suggested that the administrative judge of the jurisdiction in question be informed before information was given to outside agencies. Dr. Connelly said that he agreed. Senator Kelley said that notification might be logistically cumbersome for the small staff. She said that the judges have the right at any time to look at the Commission's data. She said that in the information policy it should be made clear that the press is not the only group that can make public information requests. Judge Themelis said the problem is that judges wouldn't know when public information requests were made. He said they would feel they would have to protect themselves asking for month reports detailing their sentencing data. Commissioner Butler said that Pennsylvania's information policy should be sent to the Attorney General. Dr. Wellford said that Pennsylvania publishes two sets of data, one with judges' names and one without judges' names. Mr. Gibson said that in some small counties with only one judge would not be protected. He added that since the Commission does not use or keep track of the judges names, why should anyone else? Judge Sonner stated that after every public information request, the Commission staff will notify AOC. The motion passed.

9. Discussion and action on potential letter on possible revision of recent ethics legislation

Senator Kelly stated that the legislation was drafted to abolish the absolute ban on registered lobbyists, as in the case of Commissioner Butler, allowing lobbyists representing non-profit groups with no conflict of interest. The Commission approved the draft to be submitted to the General Assembly.

10. Discussion of possible new items for guidelines worksheets

A. Announcement of 50% sentence

The Commission staff received a request that a box be added to the worksheet that noted if the judge had announced that the offender must serve 50% of his or her sentence (for applicable

crimes) at the time of sentencing.

B. "No victim" in victim information section

It was also requested that a box for "no victim" for crimes without a victim be added to the victim information section so that those not filling out that section of the worksheet for crimes without a victim would not be non-compliant.

C. Domestic violence notation

Dr. Connelly stated that the Attorney General had contacted the Commission to ask for better information on crimes of domestic violence. Twilah Shipley and Jodi Finkelstein, representatives of the Family Violence Council a product of the offices of the Lieutenant Governor and the Attorney General addressed the Commission. They introduced the publication, "Stop the Violence: A Call to Action. They stated that as they have been updating the publication they have found a lack of data on crimes of family violence. They stated that the community is interested in the statistics on these crimes.

Senator Kelley asked if the Commission would consider making family violence one of the aggregating factors. She added that the Commission needed to take this matter seriously. Judge Doory asked if this was within the statutory mandate of the Commission. There was consensus that there was nothing in the mandate that prohibited the Commission from exploring this matter. Judge Sonner asked which crimes would be classified as family violence. Ms. Shipley said the Commission could include a whole host of crimes. Judge Sonner said that a possible problem with classifying crimes as family violence would be that offenders might agree to a guilty plea if their crimes were not listed as crimes of family violence. Dr. Wellford said that the Sentencing Guidelines Subcommittee had discussed the issue of tracking crimes of family violence and that a possible solution to the difficulties that presents would be to track victim characteristics, such as was the offender a significant other, family member, etc. Judge Themelis suggested that a crime of family violence could be considered an aggravating factor, possibly worded as "victim abused over period of time."

Judge Doory said that the problems with defining a crime as a crime of family violence were evident when the legislature had trouble defining "dating relationship," and ended up defining it as a peace order. He said that the Commission needed to develop genuine specifics and figure how it will change the guidelines. Ms. Shipley said that she would be willing to look into this issue further and discuss it with interested parties. Patrick Kent said that the office of the Public Defender would be willing to assist in the effort. Delegate Vallario asked how many domestic violence cases get to Circuit Court. He said that most of these cases are heard in District Court. He added that the number of cases that the Commission would track would be very low. Judge Sonner asked if any Commissioners would be willing to work on this with Twilah Shipley. Patrick Kent and Senator Kelley said they would work with the Family Violence Council on this matter.

11. Report from subcommittees

A. Sentencing Guidelines - Dr. Wellford

1. Worksheet advisory group

The Commission authorized the Executive Director to put together a worksheet advisory group of practitioners who have daily exposure to the worksheet and know how potential

changes would affect the entire process. Dr. Connelly said that the group would be made up of law clerks, Parole and Probation workers, Assistant State's Attorneys, secretaries and would meet a few times yearly.

2. Classification of offenses from 2001 General Assembly

Dr. Wellford introduced "Table B," to the Commission. The table showed the seriousness categories for the new offenses passed in the 2001 legislative session assigned by the Sentencing Guidelines Subcommittee. The Commission voted to accept all of the seriousness categories except one new prostitution offense. Commissioner Butler said that Judge Melanie Shaw-Jeter brought up the discrepancy that the original offense of prostitution of children under 16 was assigned a III, but the proposed change made the offense a IV to stay consistent throughout all the prostitution offenses. Delegate Vallario asked how the sentencing guidelines range would change. As a III, the range would be from 3 months to 4 years, and as a IV, the range would be from probation to 2 years. It was proposed that the prostitution offense be assigned a seriousness category III. The motion passed.

3. Request for planning money for electronic submission of worksheets

Dr. Wellford stated that if the Commission wanted to move ahead to automated worksheets, they needed to ask for funding assistance. Dr. Connelly said that the Commission's budget would have to be amended as it had already been submitted to the Governor's Office. Judge Themelis said that in his contact with judges, he said that more than likely they are not computer literate. Senator Kelley said that the request for money would be for the plan and study of automating the worksheets, not the implementation. Judge Doory asked how much would the Commission need to ask for. Dr. Wellford said that he did not know yet.

4. COMAR submissions

Dr. Wellford said that the courts would benefit from COMAR submissions happening 1-2 times a year, such as once in January and once in the Summer.

B. Article 27/Commission subcommittee-Commissioner Butler

Commissioner Butler said that the joint subcommittee was a product of Delegate Ann Marie Doory's suggestion to the Penalties Subcommittee of the Article 27 Revision Committee that fines and proportionality should be examined. He stated that there would be material to review at the November 5th meeting. Commissioner Butler said that the subcommittee decided not to assign fines to offenses that were a seriousness category I or II. He said that the general rule that the subcommittee followed was \$1,000 for each year of the statutory max. If an offense had a maximum sentence under a year, a fine of \$500 was assigned.

12. New Business

Judge Sonner said that the Commission should discuss their goals for the coming year. He said that his goal was to try to get the judiciary to accept the value of the sentencing guidelines. Judge Themelis agreed. Dr. Connelly said that Robert Gibson, Commissioner Butler, and Dr. Wellford all submitted ideas for goals that will be focused on.

The last order of business was to examine the changes to COMAR, including the information about

ABA pleas and sentences to Drug Court. The changes to COMAR were passed and the process would be started to try and get the regulations finalized by January 1.

The meeting was adjourned.