

Maryland State Commission on Criminal Sentencing Policy
Judicial Training Center
Training Room 3
Annapolis, Maryland
September 16, 2002

Commission Members in Attendance:

Charles Wellford, PhD, Acting Chair
Roberta Roper for Russell P. Butler, Esquire
Honorable Timothy Doory
Lt. Leese 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
Director Barry Stanton
Arthur A. Marshall, Jr., Esq.

Staff Members in Attendance:

Michael Connelly, PhD
Jaime Wagner
Kate Wagner

Visitors:

Donald Hogan
Honorable M. Brooke Murdock, Eight Circuit Court of Maryland
Guy Cherry, Legislative Services
Kim Hunt, District of Columbia Sentencing Commission

1. Call to Order

Dr. Wellford, acting as Chair called the meeting to order.

2. Roll Call and Declaration of Quorum

It was noted that Kate Wagner had taken roll, and quorum had not been reached at the beginning of the meeting.

3. Approval of Minutes, June 3rd Meeting

Since quorum was not met, the June 3rd minutes were not approved.

4. Report from the Executive Director

Dr. Connelly welcomed the Commission and stated that as a result of the primary election 2 Commissioners, Delegate Dembrow and Senator Mitchell, would need to be replaced. He added that those Commissioners whose term ended in 2003 would need to decide if they would like to be

reappointed so that the process would be expedited. Dr. Connelly announced that this fall, 5 new undergraduate interns from the University of Maryland would be joining the staff of the Commission. He thanked Dr. Laure Brooks for her help in getting interns from the Department of Criminology and Criminal Justice.

As of Friday, September 13, 2002, Dr. Connelly had finished his meetings with all the Circuit Court Administrative judges around the state. He said the meetings went well, but some circuits that use clerks or administrative assistants to fill out worksheets are having trouble getting the criminal history section completed. He added that the 7th Circuit Judges brought up the point that sentences of offenders in HIDTA programs had mandated reconsiderations under law. Connelly announced that Judge Sonner would be sending a letter to Chief Judge Bell asking to discuss how the judges and the Commission should proceed in regards to reconsiderations. He announced that he had completed the budget, grant paperwork, COMAR submissions and Managing for Results. He said that the Commission had been approved for a 2% budget increase and that he hoped for full funding.

Dr. Connelly said that one way the Commission is trying to increase visibility is to publish regular one-page fact sheets called, "Sentencing Fax," that has been faxed to various policymakers and stakeholders. He also added that he would soon set up meetings with legislators on the appropriations committees. Connelly then introduced the information that each Commissioner had. He said that he had received a letter from the Urban Institute requesting the Commission's participation in a study on innovative research and data collection. Connelly added that he met with the State Victims' Rights Coordinating Council to speak to them about the Commission's efforts in collecting data on victim information. He said that the Baltimore City State's Attorney requested data on sentences by victims' variables and by offense. He said that from the data that have been collected, offenders whose made oral impact statements received longer sentences than those whose victims make written impact statements.

Connelly said that he had attended the NASC conference in Williamsburg and that they had been nice enough to waive the conference fee. He said that this year's convention was one of the best that he been to. He said that Dr. Wellford's presentation on the future of sentencing commissions was especially helpful. Connelly said that a panel on technology and sentencing moderated by Tony Fabelo of Texas was also informative. Connelly said that among the rest of the materials in the packet was a news article about the Massachusetts Sentencing Commission being restored.

5. Kim Hunt, Executive Director, Washington, DC Advisory Commission on Sentencing-Risk Assessment as a Tool for Sentencing

Dr. Hunt said that he would be presenting information to the Commission on his research and work involving risk assessments as a tool for sentencing in Virginia. He said risk assessment involves estimating an individual's likelihood of continued involvement in crime. Hunt added that risk assessment is already being done at arrest, at detention, and at prosecution. He said that this is because reducing risk is a major goal of the criminal justice system. However, Hunt said that often risk assessment is informal. Formal risk assessment is much more common at the back end, at release, than the front end, during sentencing. Hunt said that there are three main approaches to offender risk assessment. First Generation Risk Assessment is subjective, has poor inter-rater reliability, and the predictive accuracy is poor. Second Generation Risk Assessment is objective and data driven. It has good inter-rater reliability and produces satisfactory prediction. This type of risk assessment relies on mostly static and criminal history variables. Third Generation Risk Assessment has all the advantages of second generation but focuses on criminogenic concerns and allows for case planning to address an offender's criminogenic problems.

Risk assessment at sentencing can provide judges with a tool for selecting offenders for alternative sanctions. Virginia is currently using 2 tools, one to selectively divert non-violent offenders to alternatives, another to selectively incapacitate sex offenders. Risk assessment at sentencing is an actuarial approach. Offender characteristics and criminal record are used to develop profiles, not unlike the profiles developed by insurance companies. New offenders are scored based on profiles to separate high risk from low risk offenders. Profiles will not fit every individual; even the best instruments make errors. Hunt said that 2 types of prediction errors are possible. The first is a false positive prediction, where cases predicted to recidivate that do not actually do so, and the second is a false negative prediction, where cases predicted not to recidivate actually do.

Senator Kelley asked if any subset of the study that he completed on the risk assessment tool used in Virginia had better services or treatment than others. He answered that the study was done using historical data and information on treatment was not available, though many new programs have been instituted since then. He said that the risk assessment is, voluntary, and though it is a tool that can be used in sentencing, it is a limited tool. Hunt said that his study showed that Virginia judges used the risk assessment about 2/3rds of the time. Roberta Roper asked if, in light of the work done by the Maryland Sex Offender Task Force, this type of risk assessment could be used to target sex offenders who would benefit from treatment, rather than just penalizing them. Mr. Hunt said that Virginia has not focused on the treatment side of risk assessment.

6. Judge M. Brooke Murdock-"Tamar's Children"

Judge Murdock addressed the Commission to discuss a program, Tamar's Children, that is supported by the Maryland Chapter of the National Association of Women Judges. Tamar's Children is a multi-agency collaboration designed to serve pregnant and post-partum incarcerated women and their infants. The program creates a network of services designed to enhance health and growth for these mothers and infants. Central to this integration of services is the program's application of clinical case managers, able to access and coordinate the resources committed by multiple service providers (Social Services, Mental Health, Substance Abuse, Parole and Probation, Department of Public Safety and Corrections, Maternal Health and Prevention, Medical Services, and Housing).

This program would target pregnant women 18 years or older who have a history of substance abuse. Offenders convicted of drug distribution are not admissible, though attempted distribution and/or possession with the intent to distribute are acceptable. For the offender to be eligible for the program she must be sentenced to at least 10 months, excluding credit for time served. Judge Murdock stated that this program would be housed in the Baltimore City Detention Center, because it is a state facility and that would make an easier transition of "Tamar's Children" from a local to a statewide program. She said the program has two components. The first is to teach parenting skills to the mother, and the second is to provide service for the baby. Judge Murdock said there were 208 pregnant women in the correctional system last year, and currently the program is fully funded.

Senator Kelley said that the Legislative Women's Caucus supports the program. Judge Doory asked who the target of the program was. Judge Murdock said that the prime candidates would be those with a substance abuse problem. She added that because most drug sentences not involving distribution usually carried less than the required 10-month sentence for the program, she hoped judges would consider longer sentences in order to help women qualify for this program. Judge Doory asked how logistically a judge would get the person into the program. Judge Murdock said that the process could be done pre-sentencing by faxing a request to the program, then postponing sentencing for 30 days. If the offender is already incarcerated, the judge can bring the offender back to court with a request for modification if the sentence needs to be modified in order for the offender to qualify for the program. Judge Murdock added that the program is not going to capture all the women who are pregnant and

entering the criminal justice system, but it is a start. Director Stanton asked if the program was available at the local level. Judge Murdock said no currently, but hopefully it will expand.

7. Sentencing Guidelines Subcommittee-Discussion and Recommendations

A. Revision of matrix ranges

Dr. Wellford said that the subcommittee had put off considering changes in the sentencing guidelines until enough data had been collected to see the impact of making plea agreements and certain corrections options programs compliant with the guidelines. He said that after going over the data, that 78% of all sentences statewide would be within the guidelines. Delegate Vallario said that this was a very big improvement, most of all for Baltimore City because of the heavy use of ABA plea agreements there.

After reviewing the data, Dr. Wellford stated that the subcommittee recommended no changes in the matrices themselves. Senator Kelley moved, and Judge Davis seconded the motion. Bob Gibson asked if these statistics were drawn only from single count offenses. Dr. Connelly answered yes, but that they made up 80-85% of all of the cases that the Commission has recorded. Dr. Wellford added that the analysis of the multiple counts in the past have always shown similar results. But he recommended that staff make a table that included multiple count offenses. The motion to not change the guidelines matrices passed.

B. Presentation of mandated material on reconsidered sentences

Dr. Wellford introduced a letter from the Department of Legislative Services asking for a report to the General Assembly reconsiderations of sentences as explained in CP, §6-209. He said that Prince George's County was reporting with regularity, but all other jurisdictions were not reporting. Wellford said that JIS does show if a sentence was a result of a reconsideration and the Commission would be working with them for this year's report. He added that the information from JIS would be good to see what the Commission should be getting.

C. Funding online worksheet system

Dr. Wellford said that the Commission exploring a web-based system in order to move from paper to electronic submission of sentencing guidelines worksheets. He said that Dr. Connelly got an estimate from OACS at the University of Maryland of \$10,000 to set up the system. Wellford said that the subcommittee reviewed the proposal and decided it was a reasonable way to proceed over 2 fiscal years so that the fee could be broken into two payments. He added that the electronic system would not be mandatory. Senator Kelley moved to vote on going forward with the plan. Judge Davis seconded the motion. The motion passed.

8. Update on violent offense sentencing in Baltimore City

Dr. Connelly stated that Commission staff prepared a report for the Baltimore City Criminal Justice Coordinating Council. The report was distributed to the Commissioners. The overall trend showed a dip in sentence length for offenses with firearms in 2001, but that since 1997 sentence lengths are up.

9. Input to DPSCS workgroup on diminution credits and mandatory supervision

In response to a written request from Secretary Simms of DPSCS, input for a report on diminution credits and mandatory supervision was put on hold until the next full Commission meeting. Connelly said that the key component that was relevant to the Commission was that the Secretary of DCSPS

and the Chair of the Parole Commission were required to make a workgroup to examine diminution credits and mandatory supervision.

10. Initiation of regular prison population projections and costs

Guy Cherry from Legislative Services spoke about fiscal notes. He said that Fiscal Notes are made up of data to inform legislation. In regard to creating new crimes or changing sentencing options, fiscal notes project prison population. The courts track convictions in a very different manner than Division of Correction does intake. Mr. Cherry said that fiscal notes should be more data driven and that information that might be useful just is not being tracked. Senator Kelley said that the Commission should create a model for prison population projections. She added that the model would be useful for internal purposes as well. This matter was referred to the Sentencing Guidelines Subcommittee.

The next SCCSP meeting was set for November 18th at the Judicial Training Center in Annapolis.