

**Maryland State Commission on Criminal Sentencing Policy
House Judiciary Committee Room
Lowe Office Building, Room 121
Annapolis, Maryland
October 8, 1999**

Commission Members in Attendance:

Honorable Andrew L. Sonner, Chair
Russel P. Butler, Esquire
Honorable Timothy J. Doory
Domenic R. Iamele, Esquire
Honorable Delores G. Kelley
Gail M. Lankford
Arthur A. Marshall, Jr., Esquire
Honorable Marna McClendon
Secretary Stuart O. Simms
Barry L. Stanton
Honorable John C. Themelis
Honorable Joseph F. Vallario, Jr.
Dr. Charles F. Wellford
Theodore Wieseman, Esquire for Stephen Harris, Esquire

Visitors:

Lt. Governor Kathleen Kennedy Townsend
Commissioner William W. Sondervan, Ed.D.
Adam Gelb
Robert Gibson
Dennis Hoyle
Jerome Rauch
Twilah Shipley

1. Call to Order and Introductions

The Chairman, the Honorable Andrew L. Sonner called the meeting to order at approximately 2:00 PM, October 8, 1999. Judge Sonner welcomed members to the first meeting of the Commission and anticipated a very interesting and meaningful journey. Judge Sonner then asked members of the Commission to introduce themselves and to provide a brief background statement. Judge Sonner began the introductions. He is currently on the Court of Special Appeals and has served on the court for 3 years. Before that, he was a prosecutor for thirty years, 26 years of which he served as the State's Attorney for Montgomery County. He has taken a particular interest in sentencing and has been concerned about the lack of communication between the research community and policymakers/practitioners. Judge Sonner looks forward to the Commission as a good opportunity to marry informed policy with informed research and expert opinion.

Judge Timothy Doory is an associate judge for the district court. He is a retired prosecutor, having spent 22 years in the Baltimore City system as an assistant state's attorney, before being appointed three years ago.

Ms. Marna McClendon is the State's Attorney for Howard County. She has served in that position for the last 4 and ½ years. She served as a law enforcement officer in the mid-1970s and at that time also went to law school. After law school, she became a prosecutor -- first in Baltimore County and then

in Howard County. She also did some civil practice, working for the Howard County Solicitor's Office. She served as their "defense attorney" for 6 years.

Mr. Russell Butler is an attorney in private practice. He has served as attorney and counsel to the Stephanie Roper Committee and Foundation for the last 14 or 15 years.

Dr. Charles Wellford is the Acting Chair of the Department of Criminology and Criminal Justice at the University of Maryland and a past president of the American Society of Criminology. He served as a member of the previous study commission (the Maryland Commission on Criminal Sentencing Policy) and is currently also a member of the sentencing commission for the District of Columbia.

Ms. Gail Lankford is the Director of Substance Abuse in Somerset County. She has worked in the treatment field for 16 years.

Mr. Arthur Marshall has been a practicing attorney for close to 40 years. He serves on the Board of Review at the Patuxent Institution. He served several terms as a State's Attorney for Prince George's County, about 24 years. For the last 12 years, he has represented criminal defendants.

Mr. Theodore Wieseman substituted for Stephen Harris, the State Public Defender. He noted that Steve Harris started the public defender's office in 1971. Before there was a state public defender's office, Mr. Harris ran an office out of a storefront. Around 1991, he became the second state public defender. Mr. Harris also served on the Maryland Commission on Criminal Sentencing Policy. Mr. Wieseman is a past public defender for Montgomery County and now works out of the central office of the State Public Defender.

Mr. Barry Stanton has worked in corrections for 20 years. He began his career in Frederick, Maryland. He served as the Corrections Director for Frederick County, Corrections Department for 6 ½ to 7 years. For the last 1 ½ years, he has served as the Director of the Prince George's County Department of Corrections.

Judge John Themelis was a prosecutor and contractual public defender in private practice. He was a district court judge for 4 years and has been on the circuit court for Baltimore City for 11 years.

Mr. Domenic Iamele is a criminal defense lawyer. He was one of the storefront lawyers that worked with Mr. Harris. He served as an assistant public defender. Currently, he is in private practice and does about 40% to 50% of his practice in the criminal courts. He stated that he hoped that the commission doesn't see the federal template as the place to go.

Senator Delores Kelley is the senator for District 10 which is 80% in Baltimore County and 20% in Baltimore City. She is interested in geographic disparity as well as in other forms of unwarranted disparity. She served on the study sentencing commission. She is also interested in ensuring that the district court has equal access to offender history; the use of computer modeling to project the impact of policy changes on correctional resources; and restorative justice.

Following the introductions, Judge Sonner alerted Commission members to the availability of a book titled *Race to Incarcerate* by Marc Mauer of the Sentencing Project. Copies of the book are available to Commission members. Marc Mauer, a resident of Maryland, is a foremost expert in sentencing and is responsible for the study that showed that 1 out of every 14 white males between the ages of 20 and 30 is on probation, parole, in jail or awaiting trial; compared to 1 out of every 11 Hispanics; and 1 out of every 3 African Americans.

Judge Sonner stated that he would like everyone to reach the same level of understanding about corrections research and experience, so that our proposals are based on a common set of information. He will be distributing information from the National Institute of Justice or Office of Justice Programs and other sources. Judge Sonner encourages members to submit information that they would like to have circulated among the commission members.

2. Review of Legislation Creating Commission

The discussion then turned to the enabling legislation and legislative charge of the Commission. Judge Sonner summarized the Commission tasks as follows: (1) translate the sentencing guidelines into COMAR; (2) accumulate sentencing data; (3) study and monitor judicial compliance; and (4) examine the existing sentencing guidelines and make changes. Judge Sonner noted that if we attempt to increase compliance to the existing guidelines, we will fall short. In order to move to an ideal, either sentencing patterns will have to change or guidelines will have to change, or some combination of the two.

Judge Sonner also observed that the judiciary as a group opposed the passage of the legislation and lost the battle. He, however, does not view the Commission as hostile to the judiciary. In contrast, he feels that it could be a great help to them by collecting the best information possible and by developing the best set of guidelines to achieve sentencing policy that is fair to all concerned. Improved guidelines would be of assistance to the judiciary, law enforcement, and crime victims. One charge of the Commission though is not to mimic the federal guidelines as they have proved to be a failure.

Mr. Iamele responded that he hopes that the Commission checks the propensity to become harsher towards crime and criminals. Obviously, some categories of crimes and some criminals deserve harsh punishment, but the Commission should guard against using this forum as a means of inching towards the harsher side of punishment. Perhaps we can use this forum to categorize certain classes of crime - some crimes are more of a social problem or a health problem, than a criminal problem. We may have to look at some of things that are being prosecuted and label them as inconsequential to the overall concept of justice in this country and certainly in this state.

Senator Kelley noted that the Commission must pay attention to certain structural problems such as sentencing practices that result in aging inmates. She noted that there may be a structural solution to the problem of geriatric inmates. She also observed that we should look to other states for effective policies to address structural problems.

Ms. McClendon commented on the importance of community sanctions or correctional options. She recommended a regional approach where each region of the state should have a full range of correctional options available.

Mr. Stanton agreed with Ms. McClendon and noted that there are a number of local counties that do not have correctional options. He observed, however, that while the regional approach is a good concept, there are costs attached, especially for rural counties. He asserted that we must make sure that everyone is tied in and treated fairly so that we can provide viable, alternative programs to the courts.

3. Transfer of guidelines to COMAR

Discussion then turned to the transfer of the voluntary sentencing guidelines to COMAR. Judge Sonner asked the Commission for the authority to find out how to transfer the guidelines to COMAR. He suggested that we first transfer the existing guidelines to COMAR and then create a list the things we would like to change.

Dr. Wellford suggested that state agencies may be able to help transfer the guidelines to COMAR.

Secretary Simms responded that he would be able to put a team together to facilitate the transfer.

4. Schedule of Meetings

The next agenda item was the Commission schedule of meetings. After discussion of Commission member schedules, it was agreed that the Commission would meet on the first Monday of every month at 2 p.m. in Annapolis.

5. Description of Maryland Corrections

Judge Sonner then asked the Commissioner of the Division of Correction, William W. Sondervan, Ed.D. to describe the current prison system. Commissioner Sondervan distributed handouts to commission members containing descriptive statistics.

Commissioner Sondervan noted the substantial increase in the number of inmates nationwide over the last decade. At present, we are approaching 1.9 million incarcerated individuals. In Maryland, in 1988 there were less than 13,000 inmates. Currently, roughly 30,000 individuals are incarcerated in Maryland.

The Maryland Division of Public Safety and Correctional Services operates 26 prisons across the state. It houses approximately 23,000 inmates and employs a staff of roughly 7,000. The annual budget exceeds 5 million dollars.

Sentenced offenders are transferred to a diagnostic center where they are then classified. Inmates are grouped into five security levels: Supermax, Maximum, Medium, Minimum, and Pre-release. Once inmates have been classified, they are transferred to a bed anywhere in the state depending on their security level. Inmates may work their way through the system, progressing for example from medium security to prerelease.

The design capacity for male inmates is presently 12,842 inmates. At present, 21,000 males inmates are currently incarcerated. The design capacity for female inmates is presently 616. At present, there are 951 female inmates.

In order to house the additional inmates, the Department of Public Safety and Correctional Services must rely on double-celling and non-conventional housing (housing in gymnasium or trailers).

[Note Commissioner Sondervan's description of Maryland Corrections continues after the remarks of Lt. Governor Kathleen Kennedy Townsend.]

6. Remarks of Lt. Governor Kathleen Kennedy Townsend

Kathleen Kennedy Townsend, the Lieutenant Governor, then addressed the Commission. She began by stating that she was pleased to see the sentencing commission and pleased that Judge Sonner had taken over as chair.

She then noted three major challenges with regard to sentencing and the commission. The first challenge is the lack of public confidence in the criminal justice system. The Lt. Governor attended many hearing where citizens voiced their concern about the criminal justice system. Lack of confidence in the system was a common criticism. Lieutenant Governor Kennedy Townsend stated that she hopes that the commission will seek to build public confidence in the system.

A second challenge to the commission is the presence of unwarranted sentencing disparity, particularly by race and also by jurisdiction (e.g., rural versus urban counties). She noted the study by Dr. Charles Wellford which found that African Americans were 10% more likely to be sentenced to prison, and, if incarcerated, their sentences were 16% longer than whites. Findings of disparity clearly do not increase public confidence. The commission will have to study the issue - why is that disparity there and what can we do to reduce it?

A third challenge relates to the need to more effectively use available correctional resources. The Lt. Governor does not believe that the state is using it's prison space as well as it could to protect public safety. The prison population has increased by 10,000 inmates in the past 2 to 10 years, but probation violators and drug violators account for approximately 2/3rds of that growth. The state should be able to find a better way of responding to violators and reserve our prison space for violent offenders.

The Lt. Governor would like to see a proposal for a Correctional Options Authority to figure out

which groups of inmates should be behind bars (and for how long) and which groups could benefit from greater supervision and treatment in the community. She stated that if we could strengthen our probation and parole system and show that we're effective, judges won't feel as compelled to put people behind bars because they don't think they're receiving adequate supervision in the community.

The Correctional Authority should have the authority to make decisions regarding changes to supervision level and how to respond to violations of supervision. If we had to go to court each time it was necessary to either increase or decrease someone's punishment, it would overpower the courts and preclude a quick response to violations.

The Lt. Governor urges the commission to help to develop a proposal for very a strong Correctional Options Authority to strengthen parole and probation. She believes that parole and probation is currently the "sleeping giant" of the criminal justice system. We haven't used it and when we do use it, it is very effective.

The Lt. Governor appreciates the service of the Commission members. She asserted that if we can get this job done - we could build confidence in the criminal justice system, end the disparity, and stop having to build prisons to house people who we could supervise in the community, if we strengthened our parole and probation system.

Judge Sonner opened the floor for questions and responded that he understands the concerns and priorities of the Lt. Governors and thinks that the sense of the commission is to be in complete accord with her. The Commission intends to work very closely with Adam Gelb.

Senator Kelley asked whether the Lt. Governor's office could be helpful in getting the existing sentencing guidelines transferred into COMAR. The Lt. Governor responded that her office would do everything that they can to be helpful to the commission.

Chairman Vallario then noted while we are all in accordance with what the Lt. Governor has been saying, there are some obstacles. One of the obstacles is mandatory sentences - for example, in drug cases which are considered nonviolent. One of the problems is that these offenders will never get to a correctional options program because they are sentenced without the possibility of parole. If there is one thing he would like to do is instead of building prisons, it would be to build places that would provide substantial drug treatment opportunities to people who really need it. Right now, there is no room in the inn. There are no places to go for people who really need treatment.

The Lt. Governor responded that she was very glad Chairman Vallario pointed that out. She is currently the chair of a task force on drugs. They are looking at what works, what's effective. They have noted some programs that are terrific and effective and others that are not. The task force is also looking at how to fund increased drug treatment because drug use in this state is clearly abominable. The Governor has put \$10 million of the tobacco money for drug treatment and they are looking at the best way to distribute it.

The Lt. Governor also contended that the commission should build support for more drug treatment. It would be helpful if the commission saw it as part of its role. We need to build confidence and get the message out (e.g., whether through television interviews or op-ed pieces).

The commission will need to come up with proposals and sell those proposals.

[Return to Commissioner Sondervan and the description of Maryland Corrections]

Commissioner Sondervan discussed the issue of the management of violent offenders. The Division of Correction relies on a set of rules, hearing officers to hear cases, and a matrix to determine punishment for offenses. One common punishment is "disciplinary segregation" which is like being in jail inside the prison. Inmates on disciplinary segregation are held in their cell for 23 hours per day and are not permitted television or visitors. Inmates who are found to cause a great deal of violence or have a destructive influence (e.g., gang leaders) may be sent to the Maryland Correctional Adjustment

Center or "supermax" where they are also held in their cells for 23 hours per day.

The proper classification and assignment of security level is important. The Division of Correction also has an interstate contract agreement where they can send particularly disruptive inmates to other states (e.g., gang leaders). Maryland, in return, accepts disruptive inmates from other states.

The Division of Correction provides a lot of programs, for example, alternatives to violence, alcoholics anonymous, domestic violence programs. As part of federal grant for Drug Free prisons, the Division is providing drug treatment to violent inmates.

As part of the Drug Free Prison Program, federal funds are devoted to drug interdiction, treatment and education. Security Corp is in all of our institutions - to make sure they are safe for employees. The Division has rewritten much of its policy and the policy is being enforced. Sanctions are imposed on inmates and individuals who bring drugs into the institution. Inmates are sanctioned administratively. For example, if inmate is caught with drugs or comes up positive on a urinalysis test, they lose their visiting privileges for 6 months for the first infraction; 1 year for the 2nd infraction, and indefinitely for the 3rd infraction. The Division works with the State's Attorney to ensure that people who bring drugs into the institutions are vigorously prosecuted.

The Division has instituted mandatory urinalysis for employees and inmates and has also reorganized the canine corp. They have 45 drug dogs which are used in the institutions everyday. Drugs are brought into institutions in many different ways - through regular mail, in trucks, in the possession of employees, by visitors. An ion scan machine is also available in Jessup which will be expanded to other institutions. Together, policies create a big deterrent to drug use/possession.

The Division has also developed proactive policy to monitor and collect intelligence on gangs or "security threat groups." The Division has identified 18 security threat groups to date. Security threat groups have presented a serious problem in other states, but luckily not as much of a problem in Maryland.

Commissioner Sondervan also asserted that programming also needs to be expanded. One of the programs that is important is a transition program to prepare inmates for release to the community, (e.g. job readiness skills) and help them get the things that they will need like identification cards, birth certificate, etc. It is also necessary to build partnerships with the community, so that the community will support those inmates when they get back.

Commissioner Sondervan invited members to tours of the institutions and stated that the Division is here to work with them and is willing to be of help in any way.

Judge Sonner asked who Commission members should call if they would like to tour any of the institutions.

Commissioner Sondervan responded that members should call him personally and he will set it up.

Judge Sonner asked Mr. Marshall to comment on his experience at Patuxent Institution.

Mr. Marshall stated he has been on their Board of Review for a number of years and has watched tremendous changes. He stated that it is a very viable institution and noted that the Board of Review and the aftercare system work very well. He also noted that it is a resource that the Commission may want to take a look at.

Senator Kelley stated that the Women's Caucus is concerned with sentencing practices for women (e.g., harsh sentences for women in subsidiary roles). She noted that around the country, we don't seem to have a lot of examples of good modalities of boot camps for women. Psychologically what works for men doesn't seem to work for women. In promoting a statewide correctional options programs, this would seem to be a structural problem. Women need equal access to correctional options programs, especially since program participation is tied to good time credits . Many women

are parents of minor children and the state has a vested interest in encouraging bonding, rehabilitation. Senator Kelley stated that we need equal access for women and men with respect to all major correctional options, including the boot camp.

Commissioner Sondervan responded that it has been a traditional problem for them to attract women to the boot camp despite the availability of beds. The Division recently sent a team to a national conference on boot camps sponsored by the National Institute of Corrections. One strategy to encourage female participation may be to have separate platoon for women and to change part of their program and curriculum. The Division is in the process of enacting this strategy.

Secretary Simms then spoke about the mission of the Department of Public Safety - "where are we?" and "where are we going?" He stated that the Department is planning on providing the legislature with a "blue print" for the future. He noted that he would provide a brief overview or glimpse of the blue print here. The blue print focuses on the concern for the violent offender (both management and individual bedspace needs). It proposes the further expansion of the current Western Correctional expansion effort, additional medium and pre-release beds, and the continuation of the master plan for women (which would involve adding additional beds and programs). Other important components of the blue print include: (1) the development of a plan for youthful offenders (is a separate facility required?); (2) focusing on mental health and substance abuse problems at Patuxent Institution; (3) deciding how to handle the antiquated Maryland House of Corrections (4) the integration of technology; (5) addressing the problem of substance abuse in a broad way, for example, by linking front-end and back-end policies/ practices; and (5) relationships with public, victims, restorative justice, and ways to meet public concerns, e.g. open parole hearings, posting information on the web site.

Mr. Stanton commended the Secretary and Commission Sondervan for the positive things they have done in the state system and also for supporting local corrections.

Chairman Vallario asked why the state of Maryland is housing federal prisoners.

Secretary Simms responded that the Baltimore City Detention Center (which is run by the Department of Public Safety) has had a contract with the federal government to accept 98 federal prisoners. As a result of a new agreement with the U.S. Marshall Service, they are currently housed in the supermax prison.

Judge Doory questioned whether probation violators also go to the diagnostic center?

Secretary Simms responded that probation violators come back through intake. The Division has worked with Parole and Probation to expedite the process.

Judge Doory asked whether they are classified simply as a probation violator or are they classified for the underlying crime which resulted in the probation sentence.

Mr. Gibson answered that a probation violator may either go to a local jail or to the Division of Correction. If the probation violator comes to the Division of Correction, the Division distinguishes between probation violation for a new offense and technical violations (violations of conditions of probation only). If a probation violator has already been convicted of a new crime, they may have already been classified based on that offense. But, the violation of probation may still effect the classification level. For example, if a person is convicted of a new non-violent offense and the violation of probation was for an underlying violent offense, that may effect the security classification (by moving them to a higher level). Basically, whether the probation violation comes in for a new offense or technical violation, the Division looks at the underlying offense.

Judge Doory then asked whether a person who is already incarcerated and is convicted of subsequent offense must be reclassified. For example, if a person is serving time for a burglary conviction and during the period of incarceration is convicted of theft, will they come back for reclassification.

Mr. Gibson answered that they are not moved from the existing facility, but the classifying unit within the institution may reclassify them.

Judge Doory questioned it would be possible to get statistics on the percentage of persons who are incarcerated persons are actually probation violators.

Mr. Gibson answered that it would be difficult. We can try to differentiate between technical violators and new offense violators, but it is not always as exact as we could like.

Ms. McClendon asked what offenses were included in the "drug abuse" category on a chart distributed by Commissioner Sondervan.

Mr. Gibson answered that the category includes all types of drug offenses.

Judge Sonner thanked the Secretary and Commissioner for the excellent presentations and announced that we had completed the agenda for today. He called for suggestions for future agenda items - items that members would like discussed. Judge Sonner also recognized the staff of Delegate Marriott, Mr. Rauch, who attended the Commission meeting.