

Maryland State Commission on Criminal Sentencing Policy
House Judiciary Committee Room
Low Office Building, Room 121
Annapolis, Maryland
November 5, 2001

Commission Members in Attendance:

Charles Wellford, PhD (acting chair)
Russell P. Butler, Esquire;
Arthur A. Marshall, Jr., Esquire;
Delegate Joseph F. Vallario, Jr.;
Patrick Kent, Esquire for Stephen E. Harris, Esquire;
Robert Gibson for Stuart O. Simms;
Senator Delores Kelley;
Honorable John Themelis;
Honorable Arrie Davis;
Delegate Dana Dembrow;
Honorable Robert Riddle

Staff Members in Attendance:

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

Visitors:

Patricia K. Cushwa, *Chairperson* - Maryland Parole Commission
Johnny C. Whitehead, *Senior Policy Advisor* - Office of the Lt. Governor

1. Call to order

Dr. Wellford, as acting 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 been reached.

3. Approval of minutes, September 2001 meeting

The minutes were approved.

4. Discussion of report from Executive Director

Dr. Connelly welcomed the Commission and thanked them for their attendance. He stated that the budget of the SCCSP would be cut 1½ % and it was possible the cut would be up to a 4% cut. He said that a 1½ % cut would be absorbed by cutting the travel budget of the SCCSP and other peripheral

costs. Connelly announced that the SCCSP staff had put together a Sentencing Guidelines Worksheet workgroup. He said to transfer the worksheets to an electronic process would be extremely cost prohibitive, and at the present time the money was not available in the budget. He said what might be feasible to create and distribute is a program that would help with scoring calculations. He added that a program to compute the guidelines would make the calculations more accurate and easier to do.

Connelly said that he and Phil Laffey met with the Baltimore City Circuit Court Judges recently to talk about the changes in the worksheet. He said a result of the meeting was that Judge Cannon was invited to speak to the Commission about the need for more viable corrections options in Baltimore City. She voiced the opinion that other alternative sanctions should be put into the guidelines, such as non-incarcerative drug treatment programs.

Connelly stated that he and staff members looked at every new worksheet that had been submitted to the SCCSP from July 1 through October 30 to examine the compliance with the new sections of the worksheet. He said that there was much more information on reasons for departure that had been missing from the old worksheets and that the departure codes were helping to gather this information. He said that information on race had been reported 98% of the time in the past. The sample of new worksheets show that race is now being reported 94% of the time. He said that the victim information is being reported on about 50% of applicable cases. He noted that Baltimore City brings the rest of the state up in compliance on reporting this information.

Connelly said that Judge Sonner asked the Commission what to do about the under reporting of new data inquiries on the worksheet. Judge Sonner suggested sending a letter to Chief Judge Bell with the data about the lack of reporting, and Judge Bell could get the information out to the judges. Connelly suggested that the letter would emphasize that the SCCSP understands the difficulty of getting used to a new system. Senator Kelley suggested that a narrative article including summary data of how counties compare be distributed to all of the judges. Robert Gibson asked whether the Judiciary had sent out reports of this nature in the past. Judge Themelis stated that judges were notified monthly to tell them if guidelines worksheets were missing for specific cases. Gibson said that then there was some precedent to follow.

Judge Themelis stated that part of the problem is that there is a lack of formal training at the Judicial Training Center for new judges. Dr. Connelly said that the SCCSP staff had prepared a script for a training video that would also be available to view on the website. It was decided that Judge Sonner would meet with Judge Bell to discuss this.

5. Discussion and action on proposed amendment to lobbyist legislation

Senator Kelley stated that there were two versions of the bill drafted that dealt with the SCCSP's concern that the General Assembly had been too heavy-handed when they updated ethics statutes to prohibit any registered lobbyists from serving on state boards and commissions. She said that Commissioner Russell Butler represented a non-profit organization and has been enormously helpful to the SCCSP. Kelley said that the goal of the bill was to ask for an exemption for Butler. Kelley asked the SCCSP which version of the bill would be more likely to pass through the General Assembly. Dr. Wellford said that the first bill was more narrow and specific to Russell Butler and the second bill is more general and would ask for exemption of all lobbyists who represented non-profit organizations.

Delegate Dembrow stated that there was debate over this bill on the floor and he was displeased with the outcome because he felt that lobbyists were often most knowledgeable about a specific interest and were now excluded from state boards and commissions. Delegate Dembrow felt that it was a long

shot to try and "un-do" the ethics bill in the House. Senator Kelley asked with that in mind, which bill would be more likely to pass? Commissioner Butler said that the ethics bill banning lobbyists from serving on state boards and commissions went into effect on November 1, 2001 and states that lobbyists currently serving could stay on until November 1, 2002 and that specific boards and commission could appeal on a case by case basis. He added that the SCCSP should put a bill in relating specifically to the commission, instead of trying to encompass all other non-profits. Delegate Dembrow said that he would like to see an even broader bill that would eliminate the prohibition all together, but for the SCCSP, the narrower bill would be a better bet. Senator Kelley moved that the SCCSP sponsor the narrow bill, which would be SCCSP-specific. The motion passed.

6. Discussion and action on information request form

Dr. Connelly presented an information request form to the SCCSP to ask for their approval with any amendments in order to follow the Freedom of Information Act. He said that if any information requests were judge-specific, the judges would be notified in advance. Delegate Dembrow asked what the intended purpose of the form was. Connelly answered that the SCCSP was voting to formalize the process. He also said that the SCCSP would be notified before any major reports were released. Commissioner Iamele said that the cost estimates might be limiting. Connelly said that the staff offers to any requestor that they may come to the office and fill the request themselves. Senator Kelley said that requestors needed to be aware that the SCCSP is a small organization on a limited budget and that the business of the Commission comes first. Robert Gibson suggested that the form be reorganized so that all requestor information was together and was labeled appropriately to make filling out the form easier. Dr. Wellford moved that the form be approved with the organizational changes.

7. Discussion and action on mandatory supervision legislation

Commissioner Butler gave a brief review of the Hutchinson case for the new commissioners. Don Hogan said that the legislature tried for a compromise and decided that if a new crime is committed while an offender was on mandatory supervision, the offender would not be entitled to diminution credits on the new crime until time had been served in full on the old crime. Patricia Cushwa, chairperson of the Parole Commission gave a brief description of the Parole Commission and their role in diminution credits. She said that the legislation and the fiscal notes must be consistent.

Robert Gibson stated that the Division of Corrections had received a request to examine the legislation and policies that affected diminution credits. He said that DOC has interpreted the legislation regarding diminution credits. The Joint Committee's report that is in the works addresses all relevant issues. He said that there is a perception that violators "bankroll" diminution credits. The Joint Committee will try to 1.) rewrite law or 2.) address a smaller group. It was noted that the SCCSP needed counsel to support legislation. Russell Butler suggested a workgroup to discuss diminution credits and work out the language.

8. Old business

The SCCSP approved the addition of announcement of 50% of sentence and "no victim" in victim information section to the worksheet when the next submission to COMAR goes through.

9. New business

o Report from Domestic Violence Workgroup

Senator Kelley said that the domestic violence workgroup was successful but that there was not

a lead role for the SCCSP in the collection of data since most of the domestic violence cases take place in district court. She said that a study would be productive to see how the cases are handled. She added that the Baltimore County State's Attorney would be a willing participant.

- **Report from the Article 27/Commission subcommittee**

Commissioner Butler said that Delegate Ann Marie Doory asked the SCCSP to look at the proportionality of penalties. After the fines were reviewed, the goal of Doory was for the Article 27 Revision Committee and the SCCSP to jointly introduce legislation that would make fines consistent. Commissioner Butler said that the Article 27 Revision Committee had approved the suggestions of the subcommittee. He said that Judge Sonner suggested a separate meeting to go over the recommendations. December 3rd was mentioned because Judge Murphy would be available.

Dr. Connelly said that common rules were used such as, if the legislature set a fine it was kept, and if not, the fine was set for \$1,000 for every year of the maximum sentence.

10. **Adjournment**

The general meeting was adjourned.

11. **Break for dinner**

12. **Public meeting**

The Annual Public Meeting began with Judges Evelyn Omega Cannon and Allen Schwait addressing the SCCSP. The judges thanked the SCCSP for the changes in the last year concerning ABA pleas, probation revocation, and drug treatment court. The judges requested that more alternative sentences, involving drug treatment, be accepted as within the sentencing guidelines.

Students from the Criminal Justice planning seminar at the University of Maryland Criminology and Criminal Justice Department presented information to the SCCSP on the effectiveness of sentencing guidelines system, trends in women's sentencing, and trends in sentencing for sexual abuse and domestic violence.