

**Maryland State Commission on Criminal Sentencing Policy
Judicial Training Center
Training Room 3
Annapolis, Maryland
November 18, 2002
Annual Public Meeting**

Commission Members in Attendance:

Honorable Andrew L. Sonner, Chair
Russell P. Butler, Esquire
Honorable Timothy J. Doory
Robert Gibson for Stuart O. Simms
Senator Delores Kelley
Patrick Kent, Esquire for Stephen E. Harris, Esquire
Arthur A. Marshall, Jr., Esquire
Honorable Robert Riddle, Esquire
Director Barry L. Stanton
Honorable John C. Themelis
Charles Wellford, PhD

Staff Members in Attendance:

Michael Connelly
Haisha Thompson
Kate Wagner
Kristi Waits

University of Maryland Interns:

Laury Marin
Quennel Deverteuil
Jamie Wagner

Visitors:

Deborah Shipley, Maryland Justice Coalition
Elizabeth Shipley, League of Women Voters, Baltimore County
Frank Dunbaugh, Maryland Justice Policy Institute and Maryland Justice Coalition
Bessie Morgan, Prince George's County Chapter of Families Against Mandatory Minimums (FAMM)
Annie D. Howard, FAMM
Thomas Mostowy, Judiciary
Albert "Buzz" Winchester, Legislative Director, Maryland State Bar Association
Professor Steven Grossman, University of Baltimore Law School
Kenny Hughes, Maryland Justice Coalition
Alfreda Robinson, Maryland Justice Coalition

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, September 16th Meeting

The minutes were approved.

4. Report from Executive Director

Dr. Connelly introduced three of the interns currently working for the Commission, Laury Marin, Jaime Wagner, and Quinnel DeVerteil, all students in the Criminology and Criminal Justice Department at the University of Maryland. Connelly thanked Professor Laure Brooks for her assistance in placing interns from the department with the Commission. Connelly congratulated Commissioner Butler on his appointment to Executive Director of the Maryland Crime Victims Resource Center, formerly the Stephanie Roper Foundation.

Connelly said that he recently attended a symposium on voting rights of offenders hosted by the Sentencing Project. He also attended the BJA/JRSA National Conference in October. He gave a presentation titled, Public Deliberation and Correctional Options in Maryland: The Results of a "Deliberative Focus Group" Process. Connelly said that he and Judge Sonner had also met with Frank Broccolino, Kelly O'Conner, and Chief Judge Bell. Senator Kelley suggested that Connelly meet with Senator Frosh, the new Judicial Proceedings Chair. Kelley said that Senator Frosh would be able to recommend a Senator from the Judicial Proceedings Committee to fill the vacant spot on the Commission.

Connelly said that he had recently prepared a transition document requested by the new administration. The document included the names of Commissioners and their terms, the budget, and "hot button" issues. Connelly said that he added the 2002 Annual Report and all of the Sentencing Faxes as an appendix to the transition document. He said that he would like representatives from the new administration to come and speak at the next meeting in February.

5. Presentations from Public

Bessie Morgan-FAMM

Ms. Morgan thanked the Commission for the opportunity to speak to them. Morgan said that she was the Prince George's Chapter Coordinator for FAMM. She said the goal of FAMM is to work at the state and federal level to repeal mandatory minimums and to restore judges' discretion with the use of guidelines. She said that mandatory minimums usually capture low-level drug offenders such as addicts, couriers, and first time users. She also said that FAMM works to eliminate the disparity between the sentences given for crack cocaine and powder cocaine because of the way these sentences impact African-Americans. Morgan said that the U.S. Sentencing Commission reported that the mean sentences for distribution of powder cocaine is 77 months, but crack cocaine is 119.5 months. The long sentences for crack cocaine are comparable to the sentences given for violent offenses. She asked the Commission to support the efforts of FAMM to eliminate mandatory minimum sentences. She also asked the Commission to provide FAMM with sentencing data relevant to their policy goals. Morgan thanked the Commission for their time.

Frank Dunbaugh-Maryland Justice Coalition

Mr. Dunbaugh said that he represented the newly formed Maryland Justice Coalition whose goals were to eliminate disparity in sentences and reduce prison population. He said that he agrees with Ms. Morgan that the state should abolish mandatory minimum sentences. He said in his experience, judges do not like them because they take the judges' discretion away. Dunbaugh said that sentences should

be tailored to the individual and the individual case. He said that racial discrimination occurs because racism permeates everything in our society.

Judge Sonner thanked Ms. Morgan and Mr. Dunbaugh for their remarks

6. Presentation on study of reconsidered sentences

Buzz Winchester from the State Bar Association and Professor Steve Grossman from the University of Baltimore Law School spoke to the Commission about the beginnings of their study on reconsidered sentences in Maryland. Mr. Winchester said that the Maryland Bar Association decided to go through with the study, despite the lack of legal mandate from the General Assembly. He said that the study was comprised for two parts, one objective and one subjective. A survey will be sent to all judges in the state. A narrative will be given from each administrative judge on how that circuit keeps track of data concerning reconsiderations. Senator Kelley said that she was supportive of this study because it will supply data on reconsidered sentences since most information up until now have been anecdotal.

Mr. Winchester and Professor Grossman said that they expected to have their report ready in January or February to submit to the House Judiciary Committee and the Judicial Proceedings Committee. Judge Sonner thanked Mr. Winchester and Professor Grossman for their presentation and said that he and the Commission looked forward to reading their report on reconsiderations upon completion.

7. Sentencing Guidelines Subcommittee

Dr. Wellford said that at the last meeting the Commission not to change any sentencing guidelines cells in the matrices in light of how compliance was changed for the better when ABA pleas and Drug Court was taken as in compliance. But in light of work that Commissioner Butler had done with Kristi Waits, he and Patrick Kent were going to continue to examine the cell ranges to produce reasonable recommendations to have consistency in the cells. Judge Themelis said that taking ABA pleas into consideration as in compliance with the guidelines helps because of regional considerations. It also allows the judge to consider the quality of the case and the quality of the defendant. Themelis said that making ABA pleas compliant with the guidelines allowed the Commission to take caseload volume as well as other individual factors into consideration. He added that he would not want the Commission to rush to change the guidelines.

Commissioner Riddle spoke about his and Commissioner Butler's joint proposal to recognize multiple victims in the guidelines. If there were multiple victims in a crime, the guidelines would be raised to acknowledge. He said for example, if a drunk driver killed 4 people or 1 person, the guidelines would be the same. He said that most judge sentence above the guidelines when there are multiple crime victims, if the Commission recognized multiple victims it would keep the judges within the guidelines. The proposal read as follows:

The individual completing the worksheet shall determine the overall guidelines range by identifying the highest of the lower guidelines limit of all the offenses and by:

(a) except as provided in (b), identifying the highest of the upper guidelines limit; and (b) if there are separate offenses for different victims, by adding together the upper range of the highest of the upper guidelines ranges for each victim.

Commissioner Butler noted that this would only affect crimes with a seriousness category from III to VII. Judge Doory said that in an example under the new provision would give a judge a range from 7 to 30 years. He said that this was not a guideline at all; it was too wide to be of help to new judges.

Judge Themelis asked why the bottom of the guidelines wouldn't be changed as well. Patrick Kent said that the guidelines give a judge a guide for a typical case, and in atypical cases the judge has departure codes to explain departure. He said that he was opposed to this amendment. Judge Themelis said that departure codes don't put judges in compliance. Dr. Wellford said that the judges are given wider ranges now in multiple count cases. Judge Themelis withdrew his suggestion about modifying the lower bounds of the guidelines as well. The motion passes as written to include a provision for multiple victims in the sentencing guidelines.

The Commission reviewed changes to the Sentencing Guidelines Manual. Judge Themelis suggested that language be added to page 2 to explain the exceptions to departures from the guidelines. Patrick Kent asked about the language on page 1 that discusses guidelines offenses as they relate to PSI. Commissioner Butler said that this change was to create uniformity with the Manual and the regulations in COMAR. Dr. Wellford suggested that the matter be referred to the Sentencing Guidelines Subcommittee. The rest of the changes to the Manual were passed, including the addition of Tamar's children to the list of acceptable Correctional Options programs. Judge Sonner asked Commission staff to compile an alternatives to incarceration inventory. Staff will contact administrative judges to get a description of alternatives to incarceration programs.

8. Discussion of DPSCS proposal on diminution credits

Dr. Connelly suggested that in response to the request of DPSCS for the Commission's input on diminution credits, the Commission should submit the bill that was submitted last year to the legislature. Commissioner Butler added that Connelly should inform Secretary Simms of the Commission's previous attempt to work on this matter. The motion passes. Senator Kelly stated what passed in the legislature was Senator Miller's bill that was different from the Commission's bill.

9. Guidelines questions

Commissioner Butler moved that these questions of counting death twice in homicide cases and defining adjudication of guilt be discussed at the next meeting because of time constraints. This motion passed.

10. New commissioners and ethics forms submissions

Dr. Connelly said that commissioners whose terms were up in 2003 would continue to serve until their replacements were appointed.

11. New business and announcements

Judge Sonner said at the ASC conference he was impressed with the University of Maryland's Criminology and Criminal Justice Program. He told Dr. Wellford he was proud to be affiliated with the department. Dr. Wellford said that Dr. Patternoster in the department was on track to finish his death penalty study in January and he would speak to him about presenting the results to the Commission.

The next meeting was set for February 5th at the Judicial Institute at 5:00 in Annapolis. The meeting was adjourned.