

Maryland State Commission on Criminal Sentencing Policy
Lowe House Office Building
Annapolis, Maryland
November 3, 2003

Commission Members in Attendance:

Judge Raymond Thieme, Chair
Honorable Curtis S. Anderson
James V. Anthenelli, Esquire
Russell P. Butler, Esquire
Honorable Arrie W. Davis
Honorable Timothy J. Doory
Richard A. Finci, Esquire
Robert Gibson
Senator Delores Kelley
Patrick Kent, Esquire for Stephen E. Harris, Esquire
Chief Gary W. McLhinney
Secretary Mary Ann Saar
Director Barry L. Stanton
Delegate Joseph Vallario
Charles Wellford, PhD

Staff Members in Attendance:

Gary Locust
Kate Wagner

1. Call to order

Judge Thieme called the meeting to order. He introduced himself to the Commission as the new chair and welcomed everyone to the meeting. New Commissioners Delegate Curtis S. Anderson, Mr. James V. Anthenelli, Mr. Richard A. Finci and Chief Gary W. McLhinney also joined Judge Thieme as new additions to the Commission.

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, April 21th meeting

The minutes were approved as submitted.

4. Report from Staff

Kate Wagner reported that she and Russell Butler had addressed the Mandel Commission on Structure and Efficiency of State Government on October 16th to present information on the continued existence of the Commission as an independent agency. She further reported that former Research Director, Kristi Waits has left the Commission for another professional opportunity in the private sector. Former intern and graduate student Gary Locust has taken over her duties. Wagner reported

that the Commission had a productive summer, taking full advantage of undergraduate interns to finally catch up with the data input of sentencing guideline worksheets. She announced that she attended the presentation of the Justice Policy Institute's report on race and incarceration to the Legislative Black Caucus on October 23rd and felt the Commission should know of the report's existence. She reported continued work with the Office of Information Technology at the University of Maryland to create the online worksheet submission system. And finally she said that the last COMAR updates were published in August in the Maryland Register and would finally be official in January after the Notice of Final Action had been published.

5. Presentation from Cynthia Golomb, Maryland Network Against Domestic Violence (MNADV) and Twilah Shipley, Family Violence Council (FVC)

Cynthia Golomb stated that she was presenting at the meeting to appeal to the Sentencing Commission to help gather data on domestic violence in the state. She said that in Maryland there is no specific domestic violence statute so information is hard to quantify. Judge Thieme asked if this was a presentation better suited for a body dealing with the District Court as the Commission only collects data on Circuit Court cases. Golomb said that we need somewhere as a starting point and has been impressed on the data collection and reporting of the Sentencing Commission. Judge Davis asked if the Commission would be providing a separate summary of data for the use of the MNADV. Golomb said yes, but the information would be also for the public.

Twilah Shipley said that she did not expect the Commission to enter into data collection in District Court matters, but she said that many domestic violence cases involve felonies adjudicated in Circuit Court. She said that the Family Violence Council issued a report in 2002 that showed this, and was recommended to present to the Commission by Senator Kelley. Golomb said that they were just asking about a change to the worksheet to capture data that is presently going uncollected. She also requested that a domestic violence aggravating factor be added to the Commission's list of common aggravating factors for data collection on guideline departures. She added that whether there was a protective order or what kind of relationship existed between the parties would also be useful information to collect. Senator Kelley said she encouraged the two groups to present at the meeting because of the serious nature of some domestic violence assaults that result in felonies. Judge Thieme referred this matter to the Sentencing Guidelines Subcommittee for further discussion.

6. Sentencing Guidelines Subcommittee-Discussion and Recommendations

A. Recommendation of seriousness categories for new offenses.

Dr. Wellford introduced the chart for recommendations of seriousness categories for new or modified offenses from the 2003 legislative session by the subcommittee. Judge Doory asked a question to the legislators on the Commission for some background on the purpose of the establishment of counterfeiting U.S. currency as a state offense. Delegate Vallario answered that the federal government asked the state to put it in to pursue low level offenders that were being missed at the federal level. Delegate Anderson said that despite the penalty of 10 years maximum, he believed the legislature did not intend for the offense to be as serious as a category V. Patrick Kent said that Anderson's input as a legislator would help the Guidelines Subcommittee come to more informed decisions in the future and voiced his desire for the subcommittee to be enlarged. Dr. Wellford said that depending upon the criminal history of the offender, the guidelines for counterfeiting if classified as a category V would start at probation.

Regarding the child abuse statutes, clarification was made about child abuse with death. Russell Butler suggested that 1st and 2nd degree child abuse be added for clarification. Dr. Wellford

added that the maximum penalty of the offense set by the legislature is the primary guide for setting a seriousness category. Judge Thieme said that it would be logical to increase the seriousness category since the penalty was increased. The new seriousness categories for child abuse and sexual child abuse passed despite the opposition of Patrick Kent. Identity fraud passed at the recommended categories of VI and VII depending on value of fraud. Finally, Altering the results of a drug or alcohol screening test was assigned a VII for the first offense, and a V for subsequent offenses. Delegate Vallario, Patrick Kent and Richard Finci opposed the enhanced seriousness category for the subsequent offense.

B. Report on ongoing cell revisions progress

Dr. Wellford said that the subcommittee has continued their work at examining the cell ranges. The goal is to eventually bring about a higher level of compliance to the historical goal of 65-66% compliance. The purpose of examining the cell ranges is to maintain proportionality and to better reflect the current sentencing practices. He said that there was an important adjustment last year to include ABA pleas and Corrections Options as within the guidelines. The initial data manipulation by the subcommittee did not include the increased compliance that has followed the inclusion of ABA pleas as within the guidelines. Wellford said the subcommittee still had to look at those numbers. He added that the subcommittee had no formal recommendations at this time, but they wanted to share their work with the full Commission.

Judge Doory said he thought the Commission should subtract out the ABA plea cases when reporting on compliance rates because those cases do not show a true picture of sentencing. He said that he thought the Commission should look at contested situations for their compliance. Senator Kelley said that maybe the Commission should revisit the matter of including ABA pleas as compliant. Patrick Kent said he understood the objections that some Commissioners had to including these cases as compliant, but he said the Commission need to show a representative picture of sentencing that includes ABA pleas. Russell Butler said it was a long process to look at each cell, and he suggested taking the data to the State's Attorneys, the Public Defenders and private attorneys, and to the judges to hear all the stakeholders comments.

Judge Thieme asked Judge Doory if he thought COMAR should be changed to change the policy on counting ABA pleas as within the guidelines. Judge Doory said he thought those cases should be removed from the statistical reporting of sentencing compliance. Dr. Wellford said that accounting for ABA pleas as within the guidelines greatly increases compliance, decreasing the need for any change to the cells to reach the 65-66% compliance rate goal. Judge Doory said that including the pleas as compliant is not reflective of what's really going on. Patrick Kent said COMAR dictates that the Commission count the ABA pleas as within the guidelines. Dr. Wellford said that he would work with staff to run some more data for the subcommittee and the full Commission to look at.

7. Old Business

Senator Kelley said that she felt the Commission needed to finally put in place a formal public information policy. She said that she worked with staff interns on a draft that was modeled from the Pennsylvania model.

Judge Doory said that he still had an objection to a section of COMAR in the "Scope of the Guidelines." He said the section that qualifies District Court appeals or Prayers for Jury trials, "Unless a PSI is ordered" doesn't make any sense. He said the guidelines either apply to cases or they don't. He said the guidelines shouldn't apply to any district court cases and moved to change this in

COMAR. Patrick Kent said he has had the same objection since the inclusion of that in COMAR, and agreed with Judge Doory. Russell Butler said it was added by the Commission after discussion. He said it fit with the scope of the guidelines to give the court some guidance in sentencing. The matter was referred to the subcommittee for further discussion.

The next meeting was set for Monday January 12th at 4:00 in Annapolis at the Judicial Training Center.