

Minutes

Maryland State Commission on Criminal Sentencing Policy
House Judiciary Committee Room
Lowe Office Building, Room 121
Annapolis, Maryland
November 8, 2000

Commission Members in Attendance:

Honorable Andrew L. Sonner;
Charles F. Wellford, Ph.D.;
Honorable Marna McLendon;
Honorable John C. Themelis;
Domenic R. Iamele, Esquire;
Director Barry L Stanton;
Russell P. Butler, Esquire;
Colonel David B. Mitchell;
Arthur A. Marshall, Jr., Esquire;
Honorable Joseph F. Vallario, Jr.;
Amy Brennan, Esquire and Patty Chappell, Esquire, for Stephen E. Harris, Esquire;
Robert Gibson for Stuart O. Simms;
Senator Delores Kelley

Staff Members in Attendance:

Michael Connelly;
Claire Souryal-Shriver;
Douglas J. McDonald;
Kate Wagner;
Jennifer Cox

Visitors:

Antero Pietila, *The Baltimore Sun*
Meghann McLawley, Student
Brian Deer, Student
Bill Nolan, Law Clerk (Judge Sonner)
Delegate Ann Marie Doory, District 43, Baltimore City
Judge Daniel M. Long, Circuit Administrative Judge, 1st Judicial Circuit

1. Call to order of general meeting

2. Roll call and declaration of quorum

3. Reading and Approval of minutes, October 2, 2000 meeting

Judge Sonner called for the reading and approval of the minutes. No additions or changes were made, and the minutes were approved.

4. Report from Executive Director

Dr. Connelly welcomed the Commissioners and introduced the information in each Commissioner's packet. Judge Sonner explained that included in the information packet was the first chapter from Alfred Blumstein's new book, *The Crime Drop in America*. Dr. Connelly asked the Commissioners if viewing the meeting materials on the SCCSP's web site would be easier than sending out hard copies. Senator Kelley answered yes, that would be fine. She also suggested a two columned chart should appear on the web site. One side would show the enabling legislation of the Commission, highlighting the mandates of the Commission and the other side would show the progress and action that has taken place to fulfill the mandates. Senator Kelley suggested that the Commission might look into producing a training video to distribute throughout the courts, Department of Parole and Probation, and the State's Attorneys Offices to explain guidelines worksheet completion. Colonel Mitchell stated that the State Police Department would make available the equipment needed to produce such a video.

Connelly stated that the Guidelines Manual was currently being revised and the 2000 Annual Report was nearing completion for the December 1st deadline. Doug McDonald had meetings planned to get feedback from practitioners regarding the production of a new Sentencing Guidelines Manual. The Commission staff felt it was necessary to get input from those who use the Manual most often. Also, the Commission staff has created a brochure to distribute to those who participate in worksheet preparation detailing common mistakes and how to remedy them.

Dr. Connelly stated that along with Dr. Wellford, he recently attended the Justice Research and Statistics Association Conference in Minneapolis. Connelly moderated a panel discussion in which Kim Hunt, Executive Director, the District of Columbia Sentencing Commission, Judge Richard Gebelein of the Delaware Sentencing Commission, and Debra Dailey, Director of the Minnesota Sentencing Commission participated.

Senator Kelley asked if a representative from the Commission had met with the staff of the Lt. Governor to discuss the progress of the Corrections Options Program. Dr. Connelly answered that the meeting was put on hold until after the election and was to be scheduled in the coming weeks. Senator Kelley and Ms. McLendon volunteered to meet with the Lt. Governor's staff.

Judge Sonner introduced Delegate Ann Marie Doory and Judge Daniel Long, both representatives from the Article 27 Revision Committee. Delegate Doory stated that the Article 27 Revision Committee, on which Mr. Butler also serves, would like to work with the Commission. She stated that both her committee and the Sentencing Guidelines Subcommittee of the SCCSP would benefit from communicating with each other. Senator Kelley agreed that currently Article 27 of the Code of Maryland lacks symmetry and needs reorganization.

5. Subcommittee Reports

A. Sentencing Guidelines

Dr. Wellford introduced a revised list of Departure Factors to the Commission for its review along with a draft of language that would accompany the list in the Guidelines

Manual. Dr. Wellford stated that the revisions made to the list were done to make it easier for judges to cite reasons for departure. Wellford emphasized that the two open-ended reasons for departure showed that the judge was not limited to an exclusive list of reasons for departure. The language in the draft of the manual section enforced this point that judges were not limited to the common departure factors list. Delegate Vallario apologized for the confusion regarding his participation in the conference call. Vallario stated that he was extremely concerned that the List of Common Departure Factors limited a judge's decision to sentence above or below the sentencing guidelines range to only a few reasons. Vallario suggested that the list compiled by the Administrative Office of the Courts (AOC) that encompasses every reason given for departure (over 500 reasons), including database codes, should be distributed to all judges. Judges would then record a code that matched their reason for departure.

Senator Kelley stated that the AOC list was too long and many reasons overlapped. She added that the subcommittee went through the entire list and pulled out general reasons that encompassed the most common reasons. She said that the list was called "Common Reasons for Departure," with the emphasis on Common, and clearly gave judges the opportunity to state other reasons for departure from the guidelines. Vallario stated that the common reasons were not sufficient and sounded like excuses. Senator Kelley stated that the list explained reasons for departure after the fact and was not exhaustive.

Ms. McLendon stated that the new list addressed Delegate Vallario's concern in that it was not an exhaustive list. The language in the Manual section that would accompany the list reinforced that point. The list was a tool to gather information on why judges were departing from the guidelines and would prove to be very helpful. Ms. Brennan suggested that the explanation of the departure list always be paired with "Common Reasons for Departure" as to ease judicial concerns that the guidelines were becoming mandatory. She stated that the language helped to counter the fear of that problem. The Commission agreed that the two documents should always be distributed together.

It was suggested that the word "simply" be taken out of the first paragraph of the draft of the section of the new manual that would explain the Common Departure Factors list. Mr. Gibson stated that reason number 1, "The parties reached a plea agreement that called for a reduced sentence," was unclear. Gibson said that agreements were reached with State's Attorneys and with the Department of Parole and Probation for different reasons. Ms. Brennan explained that this had been discussed extensively in the subcommittee and this format was decided on to protect defendants who might be suspected of giving information to authorities from retaliation. Mr. Butler suggested that the terms "he or she" and "his or her" be replaced with "judge" and "defendant" respectively. Senator Kelley suggested that all of the verbs be changed to past tense to reflect that the judge would be explaining reasons for departure from the guidelines after sentencing, not deciding why to sentence above or below the guidelines. Judge Themelis suggested that the phrase "but are not limited to" be added before the list of departure factors. The Commission voted on the changed language and approved the section of the new Manual and the Common Reasons for Departure.

Dr. Wellford introduced Table A—The Sentencing Guidelines Offenses, Table C—Non-Article 27 Felony Offenses with a Maximum Penalty of One Year or More, Table F—

Offenses currently excluded from the Sentencing Guidelines Offenses, and Table G—New Offenses Effective October 1, 2000. All were approved without discussion. Dr. Wellford then introduced the draft of the proposed changes to language in COMAR pertaining to the Commission.

B. Outreach—Discussion and recommendations

1. Web Site

Kate Wagner described changes and additions to the Commission’s web site including the new section on Criminal Justice Resources, which includes sections on sentencing publications, Maryland State Government, and criminal justice links and the new section, Sentencing in the News. Senator Kelley suggested that a calendar of events be added to the site. She also suggested that Commission staff contact the State Department of Education in order to facilitate a program, teaching children about criminal justice. Ms. Brennan added that the website address, www.gov.state.md.us/sentencing, should be put on the Commission stationary.

2. Public Information Act

Dr. Connelly stated that Dr. Souryal-Shriver had an information request from the *Washington Post* that took 4 days to put together. This type of request was becoming more common, showing the need for a Commission policy on the matter. Senator Kelley stated that it was important that the Commission come up with a set of overarching principles regarding dissemination and disclosure of information and data. Ms. Brennan added that there was a statewide review in process regarding compliance with the Freedom of Information Act. Dr. Connelly stated that Commission Staff had completed every request that had been taken, but a formal policy needed to be drafted. Dr. Souryal-Shriver stated that the most recent request from the *Post* was regarding lifers in Maryland.

8. Old Business

There was no old business.

9. New Business

Dr. Connelly stated that the first Monday of the next month would be December 4th. He asked the Commission if they felt the need to meet so close to the holidays. It was suggested that since the Commission had just finished a bulk of their work, it would be useful to begin to meet 4 times a year as set in its enabling legislation. Quarterly meetings were agreed upon, unless otherwise needed. The next Commission meeting was set for Monday, January 8th at 4:00 in the House Judiciary Committee Room.

The meeting was adjourned.