

Maryland State Commission on Criminal Sentencing Policy
House Judiciary Committee Room
Low Office Building, Room 121
Annapolis, Maryland
December 3, 2001

Commission Members in Attendance:

Honorable Andrew Sonner, Chair;
Claire Souryal-Shriver, PhD for Charles Wellford, PhD;
Russell P. Butler, Esquire;
Janis Judson, PhD;
Honorable Timothy Doory;
Barry Stanton;
Colonel David Mitchell;
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 Lee 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
Judge Joseph F. Murphy, Chief Judge, Maryland Court of Special Appeals
Nancy Fortier, Maryland Catholic Commission
Roberta Roper, Stephanie Roper Foundation

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 2001 meeting

The minutes were approved, with the addition of Judge Davis to the attendees.

4. Discussion of report from Executive Director

Dr. Connelly announced that the latest COMAR process would be finished and ready to go into force on January 1. He added that the Annual Report was completed and would be distributed to the Commission later in the week. Connelly said that the departure rates, as published in Annual Report, improved significantly from past years. But he stated that the submission of worksheets had dropped 30-45% from last year. He added that Judge Horne had said that he had a problem with the worksheets, because he felt they violated separation of powers. Some judges believed that the SCCSP was created to help the judges, and was now monitoring them. Also because the worksheet was difficult for some judges to fill out they just simply declined to use them. Connelly said that the number of worksheets submitted to the SCCSP appeared to be down, so there was either less sentencing or judges were just not filling out the form.

Judge Themelis said that education has a lot to do with the rate of judicial compliance. He added that a request should be made for a budgetary increase to supplement judicial training. Themelis said that in the past AOC sent a letter to each judge requesting worksheets that had not been submitted. Dr. Connelly said that a 6th full time staff member was needed to do that job. Senator Kelley stated that the SCCSP needed to communicate effectively to the judiciary to remind them that the two groups were interdependent and to explain the rationale for submitting worksheets. Dr. Connelly said that he has explained the rationale to the judges with whom he has met, but some judges just will not fill out the worksheet. Kelley said that the SCCSP Annual Report should show which judges are not reporting. Judge Sonner said that he would talk to Judge Bell and ask him to issue an order that would require judges to fill out worksheets. Sonner added that the SCCSP needed to make the worksheet as simple as possible to remove any obstacles from judges from filling them out. Judge Davis said that the SCCSP should remove all complexities on the form first, so that there are no reasons for objection from judges. Judge Doory suggested that the judges be asked for their suggestions on how to make the worksheet easier to use, such as perhaps splitting the judges' sentencing information from the rest of the required information. Mr. Gibson asked if the issue was the form itself or if some judges had a problem with the actual guidelines. Judge Sonner said that it was both, but he said improving the form could help.

5. Article 27 Committee recommendations

Judge Murphy was introduced by Commissioner Butler. Judge Murphy thanked the Commission for the opportunity to present the Article 27 Revision Committee's recommendations for changes in penalties. Patrick Kent said that the State Public Defender's Office had concern that the SCCSP was working beyond its legislative mandate. He said that much of the changes that were proposed were penalty increases and the changes to increase the maximum sentence. He asked what the basis was for such a wide change. He said a particular problem was the increase in penalty of 2nd degree Murder from a 30 year to a 40 year maximum. He said that the Public Defender's Office would vote against any penalty increase. Delegate Vallario stated that changing penalties was the duty of the legislature, not of the SCCSP.

Judge Murphy said he was just presenting proposals for consideration. He said that this effort arose from 7-8 years of examination of penalties by the Article 27 Revision Committee to see if there were disparities. He said that Commissioner Butler thought it would be useful for both committees to work on the project. Judge Murphy said that there were penalty increases proposed but that was to make sure that each judge had the widest possible area of discretion when sentencing. He said that to the extent that there was disagreement, the Article 27 Revision Committee would review those points. Judge Murphy said that he was confident that each sentencing judge would deal appropriately with each sentence. He added that just because there was a maximum did not mean that it was presumptive.

Judge Murphy said that the Article 27 committee tried to compare offenses with those on the books to try to make them match.

Commissioner Butler said that the idea of recommending penalties that were proportional came from Delegate Ann Marie Doory. He said that he thought the recommendations were a good product and that Maryland had been criticized in the past for the lack of proportionality in penalties. Judge Sonner opened the issue for discussion. Judge Doory said that his basic concern was whether it was appropriate for the SCCSP to make penalty recommendations as laid out in the legislative mandate. Senator Kelly said the SCCSP was by statute required to look at disparity, and a lack of proportionality was disparity. Patrick Kent said that he reviewed the enabling legislation and that he did not think that it was the appropriate forum for these types of recommendations. Judge Doory agreed. Judge Sonner said that he thought it was appropriate but a lot of thought and discussion was needed. Delegate Dembrow said that changing penalties was a legislative function, but the task of reviewing each offense is beyond the scope of the legislature. There was a motion to start discussion on the matter.

Delegate Vallario said that hearings were needed on a case-by-case basis for each proposed change. Judge Murphy said that the Article 27 Committee was responsible for improving the criminal code, and these proposed changes were a starting place. He added that he was just presenting the changes for consideration, and he would understand if the SCCSP declined to approve them. Dr. Connelly said that if fines were considered corrections options, then this was in the legislative mandate of the SCCSP. Senator Kelley made a motion to cease discussion. A motion was made to approve the recommendations from Article 27 and adopt them. 6 votes were cast for the motion, 6 votes were cast against the motion. Judge Sonner cast the tie-breaking vote for, so the motion passed. Judge Murphy stated that the Article 27 Committee would make it clear that the SCCSP approved the changes in fines, but only Article 27 would approve the changes in incarceration. Judge Murphy said that he would make it clear that the SCCSP supports moves toward proportionality but did not support specific increases in penalties. Mr. Kent asked that the SCCSP be shown the final language. Judge Sonner thanked Judge Murphy for addressing the SCCSP.

6. Discussion of possible legislation on mandatory supervision and diminution credits

Dr. Connelly stated that he met with Patricia Cushwa of the Parole Commission, Bob Gibson, and others to discuss the language in the bill regarding mandatory supervision and parole. Commissioner Butler explained that the bill would eliminate the "banking" issue of mandatory supervision. He said that the objective of the bill was to 1.) make mandatory supervision the same as parole and 2.) answer the question of when does a consecutive sentence start. Ms. Cushwa stated that the language made mandatory supervision the same as parole in a clear, simple manner that addresses the inconsistency problem. Ms. Cushwa delivered a statement from Secretary Stuart Simms that said DPSCS would defer to the Parole Commission on this matter, but that the proposal seemed logical. Ms. Cushwa said that the fiscal note/bed impact would need to be researched, but that changing the existing bill would help. She said that consecutive sentences were not possible some times unless a revocation hearing took place.

Roberta Roper thanked the SCCSP for their consideration on matter of amending the language of the bill. She said that victims were often met with confusion, intimidation, and frustration regarding the criminal justice system. She said most frustrating to victims were the intricacies of mandatory supervision and diminution credits. She added that this was a public trust and confidence issue. Ms. Roper said that the proposals for changes in language were good ones. It was moved to recommend both bills to make diminution credits the same for mandatory release and for parole. The motion passed with 9 votes for and 3 votes against. Patricia Cushwa said that since 1970 there had been three changes in the law and it was important for sentencing judges to know what their sentence really

means. Robert Gibson said that he could not give a bed impact on the first bill, but there was a possibility of a dramatic bed impact on the second one. Ms. Cushwa said that the legislature would look toward the SCCSP for direction on this bill.

Delegate Dembrow asked that the agenda for the next SCCSP meeting include examination and comment on the new bills on sexual predators and reconsideration for the 2002 legislative session.

7. **Adjournment**

The next SCCSP meeting was scheduled for February 4, 2002. The meeting will be held at the Judicial Training Center in Annapolis at 4:00 pm in Training Room 3.