



Maryland State Commission on Criminal Sentencing Policy
2008 Public Comments Hearing
House Office Building
Annapolis, MD 21041
September 23, 2008, 6:30 p.m.

Minutes

Commission Members in Attendance:

James V. Anthenelli, Esquire
Shannon E. Avery, Esquire, *representing Secretary Gary D. Maynard*
Chief Marcus L. Brown
Leonard C. Collins, Jr., Esquire
Major Bernard B. Foster, Sr.
Senator Delores G. Kelley
Patrick Kent, Esquire, *representing Nancy S. Forster, Esquire*
Laura L. Martin, Esquire
Honorable John P. Morrissey
Kate O'Donnell, Esquire, *representing Attorney General Douglas Gansler*
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

Jessica Rider
Stacy Skroban Najaka, Ph.D.
David Soulé, Ph.D.
Karlyn Sweetman

The Public Comments Hearing began when Dr. Charles Wellford called the hearing to order. He explained that the Public Comments Hearing is held annually to provide an opportunity for the public to bring issues before the Commission or to comment on issues previously addressed by the Commission. Dr. Wellford then welcomed any speakers to the podium.

Mr. George Simms, III, Assistant State's Attorney, Montgomery County State's Attorney's Office, addressed the Commission.

Mr. Simms indicated he would discuss three issues, one concerning the sentencing guidelines for felony theft, and the other two relating to sex offenses. With regard to the theft issue, Mr. Simms noted that the current sentencing guidelines for felony theft for first time offenders are probation to 6 months. Mr. Simms said that the problem with these guidelines is that they are the same for a person who steals \$600 as a person who steals \$600,000. Mr. Simms noted that frequently large amounts involved carefully planned out theft schemes, and are often perpetrated over a period of months, sometimes years. He further explained that these schemes can have a devastating impact on victims, whether they be elderly victims, individuals whose bank accounts have been emptied, or a business that has been forced to shut down and lay-off employees as a means of dealing with



their losses. Mr. Simms said that the Montgomery County State's Attorney's Office believes that this type of scheme should not be in the same category as a shoplifter who commits felony theft as a one time impulse. Mr. Simms suggested that a possible remedy may be to include a provision adding points for cases involving thefts exceeding a pre-determined amount, or in the alternative, language could be inserted to allow theft over a certain dollar amount as justification for the court to depart from the guidelines.

Next, Mr. Simms noted that age-based 3rd degree sex offense is currently a category V offense, resulting in a guidelines range of probation to probation for no injury, and a range of probation to six months for a non-permanent injury. Mr. Simms suggested that these guidelines should be increased.

Lastly, Mr. Simms noted that breaking and entering with the intent to commit an act of domestic violence is still a property crime like any other burglary is a property crime. Mr. Simms asked that the Commission consider making this kind of burglary a crime against a person, rather than a crime against property. He suggested that making this kind of burglary a crime against a person would give the court additional ability to impose a more appropriate sentence, and would result in higher guidelines for that particular offense.

Laura Martin asked Mr. Simms whether he wanted to raise the seriousness category of all 3rd degree sexual offenses, or just those related to age. Mr. Simms indicated that he was specifically requested that only the age based 3rd degree sexual offenses be raised to a category IV. Dr. Wellford asked Mr. Simms if the Commission were to consider the dollar amount as an aggravating factor in theft cases, whether there would be other characteristics of the offense or the victim that would be important factors to include in calculating a comprehensive offense score for property offenses. Mr. Simms stated that the number of victims might also be relevant and, in the context of theft schemes, the period of time over which those crimes were committed should also be considered. Senator Kelley then asked whether collateral damage, i.e. employees laid-off, should also be a consideration. Mr. Simms explained that collateral damages are accounted for in the form of restitution, and he isn't sure it needs to be addressed separately.

Judge Morrissey asked Mr. Simms if he had any suggestions on a dollar amount. Mr. Simms indicated that he thought the specific dollar amount is best left to be determined by the Commission.

Delegate Vallario noted that the issue with the theft statute applies for other offenses as well, such as CDS distribution (1gram of crack cocaine carries the same penalty as 49 grams).

Dr. Wellford asked if there were any additional speakers present who wished to address the Commission. Noting no additional requests to speak, the meeting was adjourned at 6:40 p.m.