

Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, Maryland

June 5, 2006

Commission Members in Attendance:

Honorable Raymond G. Thieme, Chair
Delegate Curtis S. Anderson
James V. Anthenelli, Esquire
Russell P. Butler, Esquire
Leonard C. Collins, Jr., Esquire
Honorable Arrie W. Davis
Honorable Timothy J. Doory
Richard A. Finci, Esquire
Robert Gibson
Senator Delores G. Kelley
Patrick Kent, Esquire, *representing Nancy S. Forster, Esquire*
Laura L. Martin, Esquire
Chief Gary W. McLhinney
Kate O'Donnell, *representing Honorable J. Joseph Curran, Jr.*
Honorable Joseph F. Vallario, Jr.

Staff Members in Attendance:

Shawn Flower
Stacy Najaka, Ph.D.
David Soulé, Ph.D.

1. Call to order

Judge Thieme called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 4:05 p.m. when quorum was reached and roll was taken.

3. Approval of minutes, March 6, 2006 meeting

Robert Gibson requested a minor revision in the minutes for the March 6th meeting. On page 6, he suggested the text should read "...the Pre-trial Release program implemented a new assessment tool" instead of "...the Parole Commission implemented a pretrial assessment tool."

The minutes were approved as amended.

4. Report from the Executive Director

a. Revision to agenda

Judge Thieme announced two minor changes to the agenda. Rick Kern, the Director of the Virginia Criminal Sentencing Commission, had to cancel his planned presentation due to a personal situation. Mr. Kern will contact the Commission staff about presenting at a future meeting.

Judge Thieme also announced that Dr. Wellford could not attend the meeting as well so Dr. Soulé would present the report from the Guidelines Subcommittee in his stead.

b. Simulation Model Update

Dr. Soulé provided an update on the status of the simulation model being developed by Applied Research Services (ARS). John Spier from ARS reported that the initial goal to build a simulation model to test guidelines policy is complete. ARS is currently working on the next phase, which focuses on building a model that projects bed-space. Last month, ARS received corrections data from the Department of Public Safety and Correctional Services (DPSCS) which includes the stock population, admissions, and a release file.

ARS is working on the final phase which includes the development of length of stay estimates. They are working with DPSCS and the Commission's staff to understand the data and to identify the best predictors and variables that need to be included in the step. ARS hopes to have a working model by the end of summer, at which time another progress report will be given.

c. Presentation to 5th Judicial Circuit Conference on June 2, 2006

Dr. Soulé was invited to present at the 5th Judicial Circuit Conference by Judge Diane Leasure, the administrative judge for the fifth circuit. During his presentation, Dr. Soulé reminded the judges about the importance of submitting accurate and complete data, including reasons for departure. He also explained to the judges how the Commission uses the submitted data and provided feedback relative to their specific jurisdictions. Dr. Soulé commented that it was a very positive experience and a good opportunity for information sharing.

d. Data entry of cases involving home detention

The Commission staff presented an issue to the Guidelines Subcommittee regarding how the staff records guidelines cases involving home detention. The staff noted home detention is sometimes included in the active sentence and is viewed by the judge as a term of incarceration, while at other times it appears that judges interpret home detention as part of the suspended sentence. Therefore, the Commission staff sought advice from the Guidelines Subcommittee regarding how to consistently data-enter home detention and whether home detention should be included when calculating the total active sentence.

During the course of discussing this subject with the Guidelines Subcommittee, Leonard Collins and Patrick Kent both agreed that the law is clear in regards to home detention and that it should be treated as a period of incarceration. Therefore, the Guidelines Subcommittee decided that the amount of time served on home detention should be recorded in a separate field in the database rather than be included with incarceration, credit, or suspended time. The Subcommittee also decided home detention should be included when the total active sentence is calculated. Because this action was simply an accounting issue for the staff, it does not require any action or vote by the Commission. However, the Subcommittee felt it would be a good idea to notify the Commission of this matter for information purposes.

Richard Finci noted that there are many courts which grant discretion to the jail for determining whether home detention will be utilized. He asked how the staff would handle a sentence where the judge gave a year of home detention within the discretion of the Corrections Department. Dr. Soulé replied that the staff would have to rely on how the worksheet was completed to indicate the type of sentence and whether any portion was to be served in home detention. Any time to be served on home detention would now be recorded in a separate field and included in the active sentence which is used to determine whether the sentence is compliant with the guidelines. It was reiterated that by definition, home detention is considered a corrections options and therefore is deemed compliant with the guidelines as long as the total of the active sentence and suspended sentence is within or greater than the recommended guidelines range.

Delegate Vallario expressed concern that offenders with sentences that are actively taken to local detention centers for non-violent offenses are entitled to parole. However, home detention sentences are not consistently considered for parole. Delegate Vallario stated that something should be done to ensure that the non-violent offenders are receiving their parole hearings. Additionally, years ago the Parole Commission changed the amount of good time a person could obtain while incarcerated, from five days to ten days. Delegate Vallario further explained that the local detention centers are only applying five days which is an issue the Commission should consider addressing.

Russell Butler believes the Commission already conducted a study comparing local detention centers within the jurisdictions a few years ago. Dr. Soulé commented that the Commission staff will identify if this study was completed and forward a copy of the report (if any) to the Commission.

5. Report from the Guidelines Subcommittee – Dr. Soulé for Dr. Charles Wellford

a. Revised information dissemination policy

In the last Guidelines Subcommittee meeting, the Commission staff presented a revised draft of the Commission's information dissemination policy for the Subcommittee to consider recommending for adoption. Most of the revisions were minor editorial changes. The major revision involved removing the

“Standard Reports” section that appeared on the second page of the policy. In reviewing the document, the staff noted this section indicated that the Commission regularly produces a series of three standard reports. However, these reports are not particularly meaningful and the Commission is not legislatively mandated to produce these types of reports. The language for this section originally came from the policy of the Pennsylvania Sentencing Commission and does not translate well to the reports produced by the Commission’s office.

The Subcommittee unanimously approved this revised document and thus was submitting it to the full Commission for review. Russell Butler noted one typo in the draft submitted to the Commission. On the first page, the document should read, “...or the judge’s designee” instead of “judge’s designed”.

By unanimous vote, the Commission accepted the submitted revisions for the information dissemination policy with Mr. Butler’s correction and approved its adoption.

b. Review of classification for new/revised offenses – 2006 Legislative session

The chart provided by the Commission staff includes 10 offenses for the Commission to review. However, five of these 10 offenses have a one year maximum penalty. Since the Commission has already adopted a policy of assigning a seriousness category of VII for any offenses with penalties of a year or less, the Subcommittee unanimously agreed to recommend the adoption of the assigned seriousness categories of VII for these five offenses. The other five offenses with penalties greater than one year will be reviewed separately.

By unanimous vote, the Commission accepted the recommended seriousness category of VII for all new and/or revised offenses from the 2006 Legislative session with maximum penalties of one year or less. These five offenses and the corresponding bill number are:

- I. SB 521 (Chapter 29) – Hunting Via an Internet Connection (NR, §10-426)
- II. HB 957 (Chapter 595) – Regulation and Licensure of Polysomnographic Technologists: Criminal penalty for practicing as a Polysomnographic Technologist without authorization and/or for practicing while not under the supervision of a licensed physician (HO, §14-5C-23(A))
- III. HB 616 (Chapter 335) – Vehicle Law: Commit or engage another to commit a violation of the motor vehicle law or reckless driving for the purpose of making recordings of activity without permission (TR, §27-101(z))

- IV. HB 524 (Chapter 329) – Criminal Offenses: Driving without having been issued a license – Arrest and Penalties – Subsequent (TR, §27-101(y))
- V. HB 387 – False Report Causing Issuance of AMBER alert (CR, §9-501)
Note: HB 387 ultimately was not passed prior to the expiration of the 2006 Legislative session and therefore this offense will not be added to the Guidelines Offense Table.

The Commission next individually reviewed the recommended Seriousness Category for the remaining 5 offenses which all carry maximum penalties greater than one year.

- VI. HB 1301 (Chapter 491) – Telephone Privacy Act of 2006: Prohibiting person from knowingly obtaining, attempting to obtain, soliciting or conspiring to obtain a telephone record without authorization or by fraudulent, deceptive or false means; Prohibiting knowingly selling or attempting to sell telephone record (CR, §7-304)
- By unanimous vote, the Commission voted to adopt the suggested seriousness category VII for this offense.
- VII. SB 125 (Chapter 116) – Falsifying or altering permits, licenses and certificates to demonstrate compliance with certain environmental regulatory requirements (EN, §1-302)
- By unanimous vote, the Commission voted to adopt the suggested seriousness category VII for this offense.
- VIII. SB 773/HB 1329 – Licensure of Speech Pathologist Assistant: Criminal penalty for representing to the public that one is a Speech-language Pathology Assistant without authorization (HO, §2-408)
- By unanimous vote, the Commission voted to adopt the suggested seriousness category VII for this offense.
- Note: SB773/HB 1329 ultimately was not passed prior to the expiration of the 2006 Legislative session and therefore this offense will not be added to the Guidelines Offense Table.
- IX. SB 144 (Chapter 19) – Maryland Stem Cell Research Act of 2006: Prohibition against conducting or attempting to conduct human cloning; Prohibition against purchase, sale, transfer for valuable consideration and prohibition against giving valuable consideration to encourage production of material for sole purpose of medical research [83A, (Business & Economic Development), §5-2B-12 (first offense) and 83A, §5-2B-13 (subsequent offense)]

Judge Doory asked if there were any similar offenses in the offense table. Dr. Soulé replied that it was difficult to find an analogous offense for this offense. The staff searches the offense table for comparable offenses based on crime category, felony/misdemeanor classification, and maximum penalty, but it was especially difficult to find a similar offense for this particular crime.

Patrick Kent indicated his belief that the suggested seriousness category of III was too high for the subsequent offense. He motioned to decrease the seriousness category for the subsequent offense from III to IV. The Commission considered the two offenses separately.

- By unanimous vote, the Commission voted to adopt the suggested seriousness category of V for the first offense (83A, §5-2B-12).
- By a vote of 7-3, the Commission voted to adopt the modified seriousness category of IV for the subsequent offense (83A, §5-2B-13).

X. HB 1036 (Chapter 478) – Prohibiting Operation of an Assisted Living Program without a License (HG, §19-1808 to 19-1810)

Senator Kelley indicated there are some individuals who commit this offense and are not aware because the State failed to sufficiently educate the residents about this new regulation. As a result, she felt that for a first-time offender, the suggested seriousness category of VII was adequate.

Russell Butler indicated he believed this offense should be categorized as a person offense and not as a property offense. He further explained that there are no property, person, or drug felonies in the offense table that have a five year maximum penalty and are categorized as a VII. Mr. Butler suggested that in order to maintain consistency with comparable offenses, the first and subsequent offenses should be assigned a seriousness category of VI and V, respectively.

Richard Finci asked how difficult it was for an individual to obtain a license to operate an assisted living program. Kate O'Donnell replied that it is a two part process. Initially, the individual has to prove that their facility meets certain requirements including size and capacity. Secondly, the individual has to prove that a medical person is on staff to oversee medications administered.

Judge Doory questioned whether the Commission should figure out if this offense should be classified as a person or property offense before deciding the seriousness category. He also stated that if the focus of

the bill is to protect people, then the offense should be considered a crime against a person.

Russell Butler thought it would be helpful if he provided a few examples of the potential guidelines ranges depending on how these offenses were categorized. The guidelines range for a category VII property offense for an offender with no prior record is probation to one month. If the property offense has a category of VI, the range is probation to three months. Finally, the range for a category V property offense for an offender with no prior record is probation to six months. These three examples demonstrate that the lower end of the ranges will always be probation. The only part of the range that changes with the seriousness category is the upper limit. Additionally, if the offense was categorized as a person offense, points would be given for special vulnerability of victim.

Senator Kelley questioned why the Commission should consider identifying this offense as a person rather than a property offense. Senator Kelley indicated her belief that this offense was about obtaining a business license and does not fit the criteria for a person offense because no one is being hurt.

Delegate Vallario commented that this is a licensing violation and should not be categorized any higher than a VII. He stated that the bill addresses people who have licenses and those who do not. Delegate Vallario indicated his belief that this bill does not deal with fraud and should not be considered as such with a higher seriousness category.

Russell Butler explained that the guidelines range for a person offense for an offender with no prior record would be probation. If the point was added to the offense score for vulnerable victim, the guidelines range would be probation to six months. If points were added for victim vulnerability, the range would be from probation to two years. Therefore, the lower part of the guidelines range for all first time offenders who knowingly or unknowingly commit this offense, would be probation.

Leonard Collins stated that he does not believe that it is the Commission's function to question the wisdom of legislature. Mr. Collins indicated that while first time offenders may not be aware of this statute, a subsequent offender would be aware of their status and would then have knowingly chosen to ignore the chance to obtain the license. Mr. Collins motioned to categorize the offense from a property offense to a person offense and to raise the seriousness category for the subsequent offense from VI to V.

- By a vote of 6-7, the motion failed to categorize the offense type for HG, §19-1808(2)(I) and HG, §19-1808(2)(II) as person offenses. The Chair voted to break the tie.

Russell Butler motioned to increase the seriousness categories from VII to VI for the first offense and VI to V for the subsequent offense.

- By a vote of 6-7, the Commission denied the motion to adopt a seriousness category of VI for HG, §19-1808(2)(I), first offense. The Chair voted to break the tie.
- By a vote of 7-6, the Commission adopted the suggested seriousness category of VII for HG, §19-1808(2)(I), first offense. The Chair voted to break the tie.

Delegate Vallario motioned to decrease the suggested seriousness category of VI to VII for HG, §19-1808(2)(II), subsequent offense.

- By a vote of 4-9, the Commission denied the motion to adopt a seriousness category of VII for HG, §19-1808(2)(II), subsequent offense.
- By a vote of 9-2, the Commission voted to adopt the suggested seriousness category of VI for HG, §19-1808(2)(II), subsequent offense.

c. Review of classification for selected tax and perjury offenses

Dr. Soulé explained a few errors were detected in the guidelines offense table relative to the selected tax and perjury offenses identified on the table provided to the Commissioners. Specifically, the guidelines offense table currently incorrectly lists the specified tax and perjury offenses as felonies, rather than misdemeanors. Additionally, there were seriousness categories for similar offenses that the Subcommittee felt the Commission should consider for amendment to maintain consistency with other ten year misdemeanors.

- By unanimous vote, the Commission voted to amend the guidelines offense table to correctly identify the selected offenses as misdemeanors, rather than as felonies.

The Commission next reviewed the proposed seriousness category recommendations. Patrick Kent felt that the third offense among the three perjury offenses is substantively different than the first two and should be treated as such. Russell Butler motioned for the Commission to separate the three offenses, vote for the two straight perjury offenses and address the third offense separately.

- By unanimous vote, the Commission adopted the recommended seriousness category of IV for the first two perjury offenses which were: CR, §9-101(a) and CR, §9-101(c).

Delegate Vallario indicated he did not believe the seriousness category for public assistance fraud in application [CR, §8-504(b)] should be changed from V to IV, especially since it was previously re-categorized as a V by the Commission effective July 1, 2001.

Russell Butler felt that the Commission should review other similar offenses before changing the seriousness category. He moved to table this issue, and give the Guidelines Subcommittee time to create a list of comparable offenses for the Commission to review.

Judge Doory asked why the Guidelines Subcommittee considered changing the seriousness category for this offense considering it was just recently revised by the Commission in 2001. Dr. Soulé explained that the Subcommittee usually makes recommendations based on maintaining consistency with other comparable offenses. In this case, the offense CR, §8-504(b) (public assistance fraud in application) specifically indicates that the penalty is perjury (CR, §9-101). Therefore, the subcommittee felt the seriousness category for perjury and a fraudulent public assistance application should be the same.

Patrick Kent seconded Russell Butler's motion to table the issue until the Commission is given information about comparable offenses and additional information as to why the Commission changed the seriousness category in 2001.

- By unanimous vote, the Commission agreed to table this issue and refer it back to the Guidelines Subcommittee for further review.

d. Review of classification for DUI/DWI offenses

The Commission staff felt the DUI/DWI offense section in the Guidelines offense table was confusing and also was missing a few relevant offenses. Dr. Soulé explained that there has been a lot of confusion between the two acronyms and that some users may be using an incorrect acronym when completing the guidelines worksheet. DWI, which is driving while impaired, requires a blood alcohol level up to .07. On the other hand, DUI, which is driving under the influence and is more severe, requires a blood alcohol level of .08 or more.

Leonard Collins noted that sometimes it is difficult to classify offenses into the three categories of offense types. Most vehicle offenses are categorized as person offenses. Mr. Collins also noted that some of these offenses dealt with alcohol or other controlled dangerous substances. Therefore, the Commission should look into reclassifying these offenses as drug offenses rather than person offenses.

Senator Kelley stated that these DUI/DWI offenses are classified as person offenses because the prevention of human injury is the main intent. When committing certain drug offenses, an individual only harms themselves. However, when an individual tries to operate a vehicle while impaired or under the influence of a substance, they become a danger to other humans.

Kate O'Donnell agreed with Senator Kelley and stated that because these offenses are person offenses, it identifies them as more serious with harsher penalties.

Richard Finci noted that in these types of cases, P&P officers would be required to find the prior records and if they do not have access to them, this could create incorrect guidelines ranges and increase the amount of incorrect worksheets. It would also be difficult to get the required information to correctly classify the offenses as first, second, etc.

Russell Butler noted that the Commission previously categorized most of the DUI/DWI offenses on the table with more than one year penalties. However, they were not called "driving under the influence" they were called "driving while impaired". Therefore, the Commission is not creating new classifications, but is updating the name from driving while intoxicated and under the influence, to driving under the influence and impaired, respectively.

Richard Finci wanted to know if individual driving records reflect multiple counts of prior driving offenses and how they are characterized in court according to first, second, etc. Russell Butler answered that they count up the prior convictions. Kate O'Donnell replied that she has not seen the characterizations of previous driving offenses on a record clearly indicating whether the offender is a first time offender or a repeat offender.

Patrick Kent motioned to table this issue till the next Commission meeting after the Guidelines Subcommittee has researched the topics that arose from this subject. The Commission voted to table this issue and refer it back to the Guidelines Subcommittee for further review.

e. Review of classification for possession of counterfeit items

Dr. Soulé explained that this offense was added by legislature in 2004 and it has not yet been classified by the Commission.

- By unanimous vote, the Commission adopted the suggested seriousness category of VII for CR, §8-601(c)(2).

f. Review of classification for inmate assault, causing contact with bodily fluids

Dr. Soulé indicated these offenses are incorrectly listed in the offense table as one offense and need to be separated into CR, §3-210 and CR, §3-205(a).

Dr. Soulé asked the Commission to consider deleting this offense as it appears in the offense table and re-list the offenses with their correct information.

Richard Finci asked whether "inmate assault" is listed in COMAR as CR, §3-210. Russell Butler stated that the offense has to have a sentence that is consecutive and cannot be suspended; however, there are still two degrees of "inmate assault". He further explained that the legislature amended "inmate assault" onto the same

section of “causing contact with bodily fluids”. Additionally, when legislature changed the numbers it was all listed as CR, §3-205(a), instead of being separate.

- By unanimous vote, the Commission adopted the motion to separate CR, §3-210 and CR, §3-205(a).

A separate motion was made to adopt CR, §3-205(a) as a new offense and categorize it with a seriousness category of V.

- By unanimous vote, the Commission voted to adopt the new offense and suggested seriousness category of V for CR, §3-205(a).

g. Calculating adult prior record

Dr. Soulé explained that the Guidelines Subcommittee reviewed this proposal because Commission staff had received a few phone calls indicating that there is some confusion on how to interpret our current instructions for calculating the adult prior record. The current instructions on page 22 of the manual state that the person completing the worksheet should count the number of prior adjudications of guilt according to their seriousness category, and once that is done, identify the number of adjudications in the most serious category of offenses. Finally, the person filling out the worksheet is to look at other less serious offenses to determine level of prior record. A few pages later in the manual under “Additional Instructions” it states that if prior multiple convictions relate to a single criminal event, the worksheet should be scored using only the offense with the highest serious category. The staff proposed that this last additional instruction be moved to the forefront of the instructions. This would clarify the Commission’s intent that if multiple convictions are linked into one event, then the worksheet should be scored using only the offense with the greatest seriousness category.

Leonard Collins commented that since these instructions were written, the guidelines have changed so that when there is an offense with multiple victims, the bottom of the guidelines range stays the same, but the upper limit of the guidelines range is multiplied by the number of victims. He suggested that if there is a single criminal event with multiple victims, the Commission should take this into account when scoring the prior record. This would be more consistent with the modification in terms of accounting for multiple victims.

Senator Kelley commented that the issue before the Commission only deals with an editorial change and not how multiple victims affect prior record. She also commented that the Guidelines Subcommittee agreed to only present the editorial change and that the Subcommittee would need time to review the multiple victims issue at a later date.

Judge Doory stated that he did not believe it made sense to change this section of the instructions at this time when there may be additional revisions to the instructions at a later date. Senator Kelley noted that Judge Doory’s suggestion would create a time lag if the entire section were to be sent back to the Guidelines

Subcommittee for review. Senator Kelley added that since there is confusion on the part of those who complete the worksheets now, the Commission should adopt the proposed revision to provide more immediate clarification. Finally, Senator Kelley noted that if the motion were approved, the editorial changes could be posted on the web page for those who need guidance when calculating prior record as soon as the revision was officially adopted in COMAR.

- By a vote of 7-3, the Commission adopted the suggestion from the Guidelines Subcommittee to reorganize the language for calculating the adult prior record.
- By unanimous vote, the Commission agreed to refer Mr. Collins' proposal regarding multiple victims and calculating the prior record to the Guidelines Subcommittee for further review.

6. Presentation on Results of Statewide Correctional Options Inventory – Shawn Flower, MSCCSP Policy Analyst

Shawn Flower presented an update on the correctional options inventory being conducted by the Commission staff. Ms. Flower first reviewed the Commission's enabling legislation which under the Criminal Procedure Article, Section 6-208(a) states: "The sentencing guidelines shall include sentencing guidelines for ordinary sentences and sentencing guidelines for corrections options". In the Fall of 2005, the Commission identified the need to inventory what correctional options services were available throughout the state. This project, which focuses on "front-end" corrections options, would establish a comprehensive list of all possible alternatives to incarceration that are available in each jurisdiction.

There were two goals of the current correctional options inventory project. The first was to update an inventory conducted by Commission staff in 2001. The second goal was to expand the inventory and ascertain the number of individuals who could be served in these programs at any one time and in one year.

Ms. Flower explained that in order to be as inclusive as possible, a broad definition of "Correctional Options" was adopted to include any type of intermediate sanction and/or alternatives to incarceration available to circuit judges. An Access database was created to manage the inventory data. This database captured the type of correctional option/alternative, contact data, program data and comments from the jurisdictions. The type of correctional option or alternative included intensive supervision, work release, home detention, and substance abuse treatment.

The first step in the inventory project was to contact the Parole & Probation office in each county. Each supervisor was sent a letter listing the correctional options that were identified as available during the 2001 inventory process. The letter requested that the supervisor confirm the list and note any revisions, additions or deletions. A brief description of a variety of correctional options was provided and the supervisor was asked to advise if the county utilized a sentencing alternative that was either not

contained on our list or could not be appropriately associated with any of the programs as described in our glossary of terms.

The list provided by Parole & Probation was then cross-referenced with each of the following:

- The Local Detention Center or Sheriff's Office
- State's Attorneys Office
- Public Defenders Office
- County Administrative Judge's Clerk
- Circuit Court Criminal Division Clerk
- DPSCS Capital Construction, Alternative to Incarceration Program Reports
- DPSCS Office of Planning and Statistics

Summary of Inventory

All 24 jurisdictions have the following programs:

- Parole and probation
- Home detention with electronic monitoring
- HG, §8-507 substance treatment
- Weekend incarceration
- Community service

Jurisdictions vary according to which agency administers the program, terms of capacity, and in terms of need.

There were various programs that only existed in some counties, but not all counties. Work release exists in all jurisdictions except Prince George's, which is currently working on establishing a work release program. There are drug courts in Anne Arundel, Baltimore City, Frederick, Montgomery, Prince George's and Wicomico counties. In addition, there is a re-entry court in Harford County and two new drug courts in Cecil & Carroll counties which are in the planning stages. The High Intensity Drug Trafficking Area Program (HIDTA) exists in Baltimore City, Baltimore County, Charles, Howard, Montgomery, Prince George's counties.

The Graduated Sanctions and Intensive Urinalysis, the program formerly referred to as "Break the Cycle", exists in Baltimore County, Howard, Somerset and Wicomico counties. Outpatient Substance Abuse Treatment exists in Cecil, Frederick, Montgomery, and Wicomico counties. Carroll, Frederick, Harford, and Howard counties have the "Shock" Education Program - PADDD (Positive Alternatives to Dangerous and Destructive Decisions). Referrals to services and linkage serve as alternative placements in Baltimore City and Baltimore County.

The HIDTA program is primarily a jail-based substance abuse treatment program with aftercare and monitoring in the community. The referral process and the population eligible to participate vary between counties. In Baltimore, Charles, and Prince George's counties, judges sentence an offender to the detention center with a recommendation to HIDTA. In Howard County, offenders are court ordered into

HIDTA, while in Baltimore City the HIDTA participants are parole or mandatory supervision cases. These cases were designated for HIDTA upon release because their first level of treatment was in the Department of Corrections and their release order contains a condition for treatment

There are some programs that are exclusive to a single jurisdiction. For instance, the Felony Drug Initiative Program in Baltimore City is similar to a drug court but is for severely addicted repeat offenders who are facing long prison sentences. The remaining single county programs are primarily utilized by the district court, but are available to circuit court judges. Howard County utilizes Victim Offender Mediation, Victim Impact Panel and Shoplifters Alternatives programs. Baltimore City and Worcester County have access to the Felony Drug Initiative Program and the First Offender Program, respectively.

There have been changes over the last five years in the availability of correctional options. Community service and home detention are now available around the state. There are eight more circuit court drug courts in 2006 than in 2001. While the 2001 inventory indicated the existence of six Day Reporting Centers, they are no longer available.

In summary, the inventory project revealed that in 2006 there is greater parity in alternatives available and all counties have some of the same types of alternatives. Additionally, there is a greater variety of alternatives to choose from including greater utilization of work release and drug courts.

The next step for the Commission is to decide what should be done with the results of the inventory project. The Commission should consider a review of the definition of corrections options. The definition as provided in COMAR 4.22.01.02 reads:

Correctional Options Means the following:

- (a) Home detention;
- (b) A corrections options program established under law which requires the individual to participate in home detention, inpatient treatment, or other similar programs involving terms and conditions that constitute the equivalent of confinement;
- (c) Inpatient drug or alcohol counseling under Health General Article, Title 8, Subtitle 5, Annotated Code of Maryland; or
- (d) Participation in a drug court or HIDTA substance abuse treatment program.

One question that has been raised is whether specific programs (e.g. work release) are considered a corrections options program based on the Commission's definition. This is important because the corrections options definition impacts compliance calculations.

Dr. Soulé noted that the reason the Commission staff was asked to do this inventory was because the Commission is legislatively mandated to include sentencing

guidelines for corrections options. In prior years, the Commission has devoted a tremendous amount of time towards the incorporation of corrections options into the guidelines and this inventory was completed to gain an understanding of what is available statewide as well as in individual jurisdictions. Therefore, Dr. Soulé indicated he believes it is important for the Commission to re-address the Commission's mandate for corrections options and clarify how this mandate will be achieved.

Senator Kelley indicated that the staff has provided a valuable service with the inventory project and suggested a summary of the findings should be posted on the Commission's website. She noted that the issue of whether work release should be considered a corrections options is an important topic for the Commission to address. Senator Kelley reminded the Commission that part of the mandate given to the Commission statutorily was to find judges compliant if they used corrections options. Additionally, the Commission was expected to facilitate the development of a state-wide system. Senator Kelley suggested that the findings of this inventory project should significantly help the Commission in their strides to complete this mandate.

7. Old business

a. Date, time, and location for annual Public Comments Hearing

Judge Thieme announced that the Public Comments Hearing will be held September 18, 2006 at the Lowe House Office Building in the Baltimore County Delegation Room at 6:00 pm. The Public Comments Hearing will follow the regularly scheduled Commission meeting which will be held from 4:00-5:15 pm. The Commission will break for a light dinner at 5:15 and resume with the public meeting starting at 6:00 pm.

8. New business and announcements

a. National Association of Sentencing Commissions (NASC) Annual Conference, August 6-8, Philadelphia, PA.

Judge Thieme announced that the Commission budget will support the attendance of a few Commissioners and he urged the Commissioners to attend if available. Richard Finci informed the Commission that Dr. Soulé is on the planning committee for the conference this year and that it is important for the Commissioners to support him by attending. Dr. Soulé asked anyone who is interested to please contact him to complete registration prior to June 30th.

9. Adjournment

The next meeting was set for Monday, September 18, 2006 at 4:00 p.m. The annual Public Comments hearing will follow at 6:00 p.m.

The meeting adjourned at 6:05 p.m.