

DRAFT DRAFT DRAFT DRAFT DRAFT DRAFT
The Virginia Criminal Sentencing Commission
September 23, 1999
Meeting Minutes

Members Present:

Judge Gates, G. Steven Agee Judge Bach, Jo Ann Bruce, Mark Christie, Frank Ferguson, Judge Honts, Judge Hudson Judge Johnston, Lane Kneedler, Judge McGlothlin, Judge Newman, William Petty, Reverend Ricketts, Judge Stewart and Bobby Vassar

Members Absent:

Peter Decker

The meeting commenced at 10:05 a.m. and Judge Gates then asked the Commission members to approve the minutes from the last meeting.

Agenda

I. Approval of Minutes

Approval of the minutes from the June 23, 1999 meeting was the first item on the agenda. The Commission unanimously approved the minutes.

II. Virginia Gender Bias Task Force – Research Request

The second item on the agenda was a report on the Virginia Gender Bias Task Force. The Virginia Supreme Court has commissioned the National Center for State Courts to conduct a study of possible gender bias in the Virginia judicial system. A Task Force has been formed to oversee this effort and is being chaired by Justice Lacy. Bea Monahan of the staff to the Supreme Court is a representative of the Gender Bias Task Force. Judge Gates said that the Task Force would like some research assistance from the Commission. He then asked Ms. Monahan to provide the Commission with more details.

Ms. Monahan began by saying that Chief Justice Harry L. Carrico named a blue ribbon Task Force to study the issues of gender bias in Virginia's courts. The 23 member Task Force, chaired by Supreme Court Justice Elizabeth B. Lacy, held its first meeting on September 22, 1998. The eight men and fifteen women on the Task Force come from across the state and represent all levels of the judicial system. She gave a list of all the Task Force members to the Commission.

She then said that the Task Force was convened to identify ways to eliminate discrimination based upon gender in the court system. The group was also charged to research and identify areas of gender bias, study the overall process of handling gender discrimination, recommend ways to raise consciousness and sensitivity to gender issues in the court system and recommend training packages for the court system to institutionalize gender fairness.

Three committees, each of which is studying a range of issues to determine whether gender bias affects the courts, are conducting the Task Force's work. The research into these issues is being conducted by the National Center for State Courts. She named several issues that are being discussed by the Family Law Committee that include equal access to the courts for domestic matters, child support, custody and visitation, spousal support, equitable distribution and domestic violence. The Court Environment Committee is considering issues involving treatment of attorneys, witnesses, judicial selection and judicial ethics. Ms. Monahan said the substantive Law Committee is exploring various areas of the law as written and as applied to sentencing, sexual offenses, civil damages, sexual harassment, and stalking.

She continued by noting that the research completed to date has included mail surveys to judges, court clerks, magistrates and sexual assault and family violence service providers. Ms. Monahan then spoke about the data that the Task Force is requesting from the Sentencing Commission. The Task Force wants to know if there is a difference in the sentences received and served by men and women that are due to gender differences. She also gave the members a handout that included additional questions about sentencing patterns for men and women. Specifically, the Task Force wants to know if men and women are treated differently with regard to criminal sanctions for the same criminal offense. She concluded by saying that the Task Force would meet again on September 29. The work of the Task Force is scheduled to be completed by 2000.

Judge Gates thanked Ms. Monahan for her presentation. He said the Commission would discuss the data request later in the meeting

At this juncture, Judge Gates said before moving to the next agenda item, Dr. Kern notified him that some Commission members would like to discuss a recent Attorney General's opinion and a Supreme Court decision and their respective potential impact on sentencing practice. He said since Frank Ferguson has to depart the meeting early, the Commission should take up these items now. Dr. Kern said the first issue is a letter that deals with an Attorney General's opinion on whether or not a circuit court judge can impose home electronic incarceration on a case where an offender has been convicted of the habitual offender statute. Judge Johnston had specifically wanted a copy of this opinion discussed. The second issue dealt with a matter regarding a Supreme Court decision (*Baker v. Commonwealth*) that said a juvenile conviction could be null and void if

both parents are not adequately notified. This particular ruling could be important because juvenile convictions are counted in the sentencing guidelines system and sometimes are the source of a significant midpoint enhancement.

Judge Johnston said that the Blue Ridge Regional Jail staff has been letting habitual offenders serve their time on home electronic monitoring. The staff received several calls about this practice after the Attorney General's opinion was released. Judge Johnston wondered if legislation allowed home electronic monitoring as an alternative to traditional incarceration time for habitual offenders. Mr. Ferguson said that the General Assembly listed three specific alternatives to incarceration in these cases and home electronic monitoring is not among them. Judge Gates suggested that the Commission could revisit this issue at its next meeting at which time proposed legislation would be discussed.

Mr. Petty brought up the second issue about the Supreme Court decision that nullified juvenile convictions if the parents were not properly notified. He said the issue was brought up in a capital murder case in Lynchburg, which ended up in a first-degree murder conviction. He observed that the vast majority of juvenile cases that occurred before the Baker decision could be challenged due to failure to notify both parents. The issue came up in a case he was involved when the defense attorney noted that a juvenile conviction placed his client in a violent offender category in the sentencing guidelines. Mr. Petty said he was concerned about how this issue might play out in the future. Mr. Ferguson said it is possible that a court will say that a prior juvenile conviction cannot be used to enhance the guidelines. Judge Gates asked what the Commission could do about this issue. Dr. Kern responded that the sentencing guidelines score convictions even if they are on appeal. Dr. Kern said that the current practice is to score all juvenile convictions unless a court has officially nullified them. Mr. Ferguson agreed with Dr. Kern citing the fact that the case is still valid until the conviction is reversed. Mr. Ferguson said since the sentencing guidelines are discretionary there should be no legal obstacle to scoring all recorded juvenile convictions.

0III. Sentencing Guidelines Compliance Report

Ms. Farrar-Owens reported that in last year's annual report, the Commission used fiscal year data for the first time. Prior annual reports also included all the data collected since January 1995. This year's annual report will focus on FY 1999. She said that she would report on FY1999 compliance rates at today's meeting. These numbers are not final because the Commission is still receiving cases sentenced in May and June. She noted that she did not expect the percentages to change much at all from what she would present today. Ms. Farrar-Owens asked the Commission members for their approval of this data so she can begin writing the chapter prior to the November meeting.

Ms. Farrar-Owens reported that for the current fiscal year to date (FY1999) the overall compliance, compliance by offense group, and compliance in midpoint enhancement cases were all higher than what was reported for FY1998 in our last annual report. Compliance rates, in every respect, are higher this fiscal year than in previous years.

Recommended and Actual Disposition: For FY1999, over 18,000 work sheets were submitted to the Commission. Ms. Farrar-Owens said that judges are continuing to use probation and jail sanctions more often than they are recommended and prison sanctions slightly less often than recommended by the guidelines. For the purposes of compliance, detention center, diversion center and boot camp are considered incarceration.

Overall Sentencing Guidelines Compliance: Ms. Farrar-Owens noted that overall compliance is up from 74.7% in FY1998 to 77.2% so far in FY1999. The aggravation rate was reported as 11.3% and the mitigation rate, 11.5%. She noted that the Commission has received 18,927 cases so far for FY1999.

Compliance Within the Sentencing Guidelines Range: Given that the incarceration length ranges within the guidelines are sometimes rather broad, it is informative to examine where within the ranges judges sentence when complying with the guidelines. Ms. Farrar-Owens then presented a chart illustrating compliance within the sentencing guidelines range for cases in which the guidelines recommended an active prison term. She noted that 56.8% of the cases were sentenced below the midpoint while 23.3% were sentenced above the midpoint. 19.9% of the cases were sentenced at the midpoint exactly. Thus, about 77% of these prison terms were at or below the sentencing guidelines midpoint. In reviewing the average distance from the midpoint for sentences falling above and below it, Ms. Farrar-Owens noted that most of the sentences were clustered relatively close to the midpoint with a median departure range of five to seven months.

Durational Compliance: Durational compliance is defined as the rate at which judge's sentence offenders to terms of incarceration that fall within the recommended guidelines range. She mentioned the high rate at which judges agree with the type of disposition recommended by the guidelines. Dispositional compliance is 85% while durational compliance is 73.2%. This result indicates that judges agree with the type of sentence recommended by the guidelines more often than they agree with recommended sentence length in incarceration cases.

Compliance by Offense: Ms. Farrar-Owens observed that the offense groups covered by the risk assessment pilot program - fraud, larceny and drug offenses - have experienced increases in compliance rates. However, she said that the compliance rates for all the offense groups have gone up since FY1998 except for kidnapping, although for some crime groups the increase is small. Compliance for rape cases has gone up more than 6% between FY1998 and FY1999. Rape still has the highest mitigation rate while murder has the highest aggravation rate.

Compliance by Circuit: Ms. Farrar-Owens stated that compliance rates varied greatly across circuits. Overall, 15 of the state's 31 circuits demonstrate compliance rates in the 70% to 79% range, with an additional twelve circuits reporting compliance rates 80% or above. Only four circuits have compliance rates below 70%. She said that both high and low compliance circuits were found in close regional proximity, with no geographic pattern discernible. Most of the circuits in the Hampton Roads area of Virginia maintain compliance rates at or above the statewide average. The highest compliance rate, 87.5%, is found in Hampton (Circuit 8) but Newport News (Circuit 7) reported an 87% compliance figure. She also noted that Circuit 29 in Southwest Virginia has the lowest compliance rate at 60%. Roanoke has the highest mitigation rate in the state at 19%. Circuit 29 (Southwest Virginia) has the highest aggravation rate in the state, 23%.

Compliance by Fiscal Year for Selected Offenses: Ms. Farrar-Owens said that the burglary of a dwelling, drug, rape and sexual assault offense groups have shown the largest increases in compliance. The compliance rate for rape went up to 69% compared to the 62% figure previously reported.

Sentencing Guidelines Compliance by Fiscal Year for Selected Circuits: Ms. Farrar-Owens remarked that five circuits together submit about 1/3 of all guidelines cases. These circuits are Virginia Beach, Norfolk, Newport News, Richmond and Fairfax. Because these circuits are such big contributors to overall compliance, a specific look at compliance in these circuits is warranted. Fairfax is the only risk assessment pilot circuit included in this analysis. Ms. Farrar-Owens presented a chart that revealed higher compliance rates for all five circuits compared to their FY1998 rates.

Midpoint Enhancements: One out of every five cases has qualified for midpoint enhancements for a current or prior conviction for a violent crime. The compliance rate in midpoint enhancement cases has increased across all types of enhancements. Overall, when judges depart from the guidelines in these cases, they are choosing to mitigate in the vast majority. Compliance rates across the different types of midpoint enhancements are not consistent. Enhancements for a Category II prior record generated the highest rate of compliance of the midpoint enhancements (73%), and one of the lowest mitigation rates (21%). The most severe midpoint enhancement, that for a combination of a current violent offense and a Category I prior record reveals a rate of compliance of 68% and compliance in cases receiving only a Category I enhancement is 70%.

Reasons for Departure: Ms. Farrar-Owens next presented information concerning the reasons judges cite when sentencing above or below the guidelines. Judges reported the decision to sentence an offender to an alternative sanction or the factor of rehabilitation potential more frequently than any other mitigation departure reason. Mr. Vassar asked if the Commission knew how many plea agreements comprised the total number of cases. Ms. Farrar-Owens said we could report on the number of guilty pleas that occurred but

not plea agreements. The sentencing guidelines worksheet has a checkbox for plea agreement but it is checked inconsistently.

The most common reason for sentencing above the guidelines, cited in 16% of the aggravations, is that the offender's criminal lifestyle or history of criminality far exceeds the contents of his formal criminal record of convictions or juvenile adjudications of delinquency. In 13% of the aggravation cases, judges reported that the facts of the cases, or extreme aggravating circumstances and a plea agreement were reached.

Method of Adjudication: Ms. Farrar-Owens then presented information concerning the method of adjudication. For FY 1999, 84.6% of the cases resulted from a guilty plea, and only 13% of the cases have been tried by a judge. Overall, a jury has tried only 2.2% of the cases. The phenomenon of decreasing rates of jury trials since 1994 has likely resulted from the combination of the introduction of bifurcated jury sentencing in 1994 and the implementation of truth in sentencing. She mentioned that the annual report would contain an extensive discussion on jury trial information.

Sentencing Guidelines Compliance in Jury Cases: Of the 385 jury cases, jury sentences were within the guidelines 41.3% of the time. Juries imposed sentences higher than the guidelines in 45.7% of the cases and imposed sanctions lower than the guidelines in 13% of the cases. Ms. Farrar-Owens observed that judges modified only 23.6% of the jury sentences. Mr. Vassar asked if she knew what percentage of jury cases were violent vs. non-violent crimes before and after truth-in-sentencing. She said that she looked at rates of jury trials broken down by type of offense (person, property, drug). Mr. Vassar asked if it would be safe to assume that a big drop has occurred in non-violent jury trials. Ms. Farrar-Owens responded affirmatively. Mr. Petty asked if she knew how many jury cases sentenced above the guidelines were drug distribution cases that have a minimum sentence of five years. Ms. Farrar-Owens said that her analysis did not have the data broken down that way for this presentation.

Habitual Traffic: Ms. Farrar-Owens then spoke about the impact of changes in the habitual traffic offender statute. This modification allows judges to suspend the 12-month mandatory minimum incarceration term and sentence offenders to Detention Center, Diversion Center or Boot Camp Incarceration in cases where the judge feels an alternative sanction is appropriate. Of the 1,104 habitual traffic cases sentenced in FY1999, only 13% have had the mandatory minimum sentence suspended and been sentenced to one of the alternative sanctions. She said it was too early to conclude anything about changes that took effect this July 1.

Drug Guidelines: Ms. Farrar-Owens then focused on the modifications to the guidelines that took effect in July 1997. A significant change to the guidelines starting July 1 was the addition to the drug guidelines of a factor accounting for the quantity of cocaine involved in a sales offense. She said that the factor has two parts. First, the offender

who sells less than one gram of cocaine and has no prior felony record ends up with a dual recommendation: either the traditional prison recommendation (usually 7 to 16 months) or Detention Center Incarceration. The judge has the option to do either and be in compliance with the guidelines. She said starting last July 1, the Commission decided to add to the recommendations in these cases the Boot Camp incarceration program along with Detention or Diversion Center Incarceration.

The Commission has received 252 cases of first-time felons convicted of selling a gram or less of cocaine in FY1999. These cases were targeted for the dual option guideline recommendation of either traditional incarceration or Detention Center or Diversion Incarceration. In 23% of these cases, judges have opted for incarceration in a detention center. In 8% of these drug cases it appeared that the boot camp incarceration program was selected. Approximately 11% of these drug felons received no incarceration and 18% received incarceration of twelve months or less. The remaining 35% of these first-time cocaine sellers received traditional incarceration of twelve months or more.

The other part of the guidelines revisions dealing with cocaine centered on the larger quantity cases. For offenders who sell one ounce or more of cocaine, the recommendation is increased by three years and for offenders who sell $\frac{1}{2}$ lb. or more, the recommendation is increased by 5 years. The guideline recommendations are enhanced for offenders selling the largest amounts of cocaine. 95 offenders have received the new enhancement. In 14% of these cases, judges have opted for no incarceration or an alternative sanction. In 3.2% of these drug cases, the offender received incarceration of 12 months or less. Approximately 24% of these drug felons received incarceration of two years to four years and over 28% received incarceration of over five years.

Sex Offenses Against Children: The guidelines revisions in 1997 also added a factor to the sexual assault guidelines for crimes in which the victim was younger than 13 years old at the time of the offense. The addition of this factor increases the likelihood that offenders who commit sex crimes against the very young will be recommended for incarceration, particularly prison. Ms. Farrar-Owens continued by saying that we have received 177 sexual assault cases in FY1999 that involved victims younger than 13. In 12.4% of these cases, judges have opted for no incarceration or an alternative sanction. In 18% of these sexual assault cases, the offender received incarceration of 12 months or less. Approximately 23.7% of these sexual assault felons received incarceration of one year to two years.

1999 Changes to the Guidelines: In last year's Annual report, the Commission made 24 recommendations to the General Assembly. Seventeen of those recommendations were amendments to the guidelines. It has been two months since the changes took effect but because there is a lag time in getting worksheets (usually 6-8 weeks), we really only have two to three weeks of data. Ms. Farrar-Owens briefly discussed only four of the seventeen changes.

The first change she spoke about involved the drug guidelines. A judge was concerned that someone convicted of possession of a Schedule I/II drug was hardly ever recommended for incarceration time. The Commission added a factor on the drug worksheet that would increase the score if an offender has prior possession or sale convictions. This would increase the chance of receiving an incarceration recommendation. The compliance rate for possession of a Schedule I/II drug with two or more prior convictions for possession or sale is 78.1% with an aggravation rate of 12.5%.

She spoke about a couple of offenses that were added to the guidelines. One new offense is assault on a law enforcement officer and it was modeled after sentencing practices. The compliance rate for this offense is 90.5% with a 9.5% rate of mitigation. Another new offense is assault on a family member 3rd or subsequent offense. The compliance rate for that offense is 70% with an aggravation rate of 20%.

Judge Gates thanked Ms. Farrar-Owens for her presentation and then asked Ms. Jones and Dr. Kern to discuss the next item on the agenda, Sex Offender Risk Assessment Project – Status Report.

1 Sex Offender Risk Assessment Project - Status Report

Ms. Jones began by saying that she would discuss the major activities of the project, review the data collection instrument and give a status update on the data collection process. In June, the staff developed a data collection instrument, matched cases and selected a sample of offenders. During the month of July, staff recruited and hired data coders. The staff also requested rap sheets and PSI's for probation and jail release sample cases. At the end of the summer, the staff began to code probation and jail release sample cases. The matching of the prison release sample cases was finalized in August. Rap sheets and PSI's were requested from the State Police for the prison sample cases. The Commission received the prison sample rap sheets in September and the staff also requested FBI records to capture out of state convictions.

Ms. Jones then described the sex offender risk assessment data collection instrument. The instrument is an 11 page scan able form. The form will collect identifying information, juvenile social and criminal history, adult criminal record, instant offenses, recidivism and prior arrests. Ms. Jones said upcoming tasks that need to be completed prior to data analysis include coding prison release case rap sheets that have recently arrived. The staff also needs to follow up with the State Police on rap sheets not received. The Department of Corrections will also be contacted about PSI's that have yet to be received. Judge Gates commented that the staff has plenty of work to keep them busy on this project. Ms. Jones then spoke about the problems with some of the rap sheets and PSI's. The Commission did not receive 130 PSI's and about 200 rap sheets. Some of the reasons that the Commission did not get PSI's are that some cases have been

purged and some districts no longer have hard copies. The staff is still working with the State Police about the missing rap sheets. Ms. Jones then turned the presentation over to Dr. Kern.

Dr. Kern began by thanking Mr. Pulliam of the Department of Corrections for his help with this project. He also said that the State Police has been very helpful with this project. Dr. Kern remarked that the reason that some projects move slower than expected is due to problems with the data. The Commission members were provided with some examples that illustrated rap sheets with missing or erroneous information. Dr. Kern noted that it is hard to measure recidivism when the arresting agency does not properly fill out the form and send it in to the State Police. The biggest single problem that the Commission must deal with is missing dispositions. Dr. Kern discussed another example that classified a charge as a misdemeanor on the rap sheet when it was a felony. That was a very serious oversight but it would not have been caught unless checked with a PSI on this individual. Mr. Kneedler asked if anything is being done to improve the criminal history record keeping. Dr. Kern said that a task force was established a few years ago to improve the system and several good recommendations were made but rejected by the majority on the task force. Mr. Petty said that the State Police relies on the courts system to get dispositional information. He felt like it is a system-wide problem not just the State Police.

Judge Gates next asked Dr. Kern to cover the next item on the agenda, Prison Population Trends and Forecast.

V. Prison Population Trends and Forecast

Dr. Kern started by saying that this material was compiled by the Department of Corrections and was recently presented to the Policy Committee that oversees the inmate population forecasting work. During the course of their most recent meeting, Dr. Kern saw some data charts and thought it would be useful for all the Commission members to review this information.

Phase In of Truth in Sentencing: The first chart presented a graphical overview of a profile of the sentencing system incoming inmates have been sentenced under and a forecast of how it is expected to change over the next five years.

The chart represented the proportion of incoming inmates sentenced under the old parole system rules, incoming inmates sentenced under truth in sentencing and finally, inmates who are sentenced under both no-parole and parole rules (combo cases). Most of these cases are those where the inmate has been convicted of a new felony and the judge or parole board has revoked probation or parole for a crime initially punished under the old

parole system. The inmate must first serve his truth in sentencing time and then will begin to serve the sentence for the old crime.

The inmates sentenced purely under the parole system are quickly becoming extinct. In January of 1996, they comprised about 25% of all incoming inmates, and made up only 8% of those entering prison in June of this year. By the end of next year, it is anticipated that there will be no more inmates entering prison purely under the old parole system. The combo cases will filter out of the system at a slower rate – they made up about 35% of all prison admissions in January of 1996 and still comprised about 27% of all admissions in June of this year. This slow rate of attrition is again due to the high number of felons who have a probation or parole violation associated with their instant offense event. The combo cases are expected to gradually decrease over the next year and then drop at a faster rate until they are all filtered out of the system by the end of 2003 and start of 2004. Dr. Kern said it is forecasted that by June of 2004, all incoming prisoners will be serving time entirely under truth in sentencing.

Parole System/Truth in Sentencing – Estimated Length of Stay: The next graphic showed information that provides the estimated length of stay in prison for inmates in the forecast model who are entering prisons under the three different scenarios just discussed. This information is broken down by the DOC into those inmates convicted of violent, non-violent and drug crimes.

For the violent offenders, the estimated length of stay in prison is shortest for those coming into prison under the parole system – 86.5 months or about 7 years. This estimated length of stay is actually much longer than it was formerly and that is due to dramatically lower parole grant rates in operation now. Nonetheless, the estimated length of stay for violent offenders serving time under truth in sentencing is sharply longer – 125.6 months or about 10 ½ years (45% more time on average). The combo violent crime cases serve about 7 additional months over that served by those strictly under truth in sentencing.

Interestingly, the non-violent felons sanctioned under the old parole system are expected to serve about 50% more time in prison than non-violent felons sentenced purely under truth in sentencing. This discrepancy is due to the fact that the parole grant rates are sharply lower for all types of felons and the sentences for non-violent felons under no-parole are influenced by the guidelines, that in turn, are grounded in time served practices during much higher parole grant rates.

Dr. Kern said there is, however, no differences in projected length of stay in prison for drug felons sentenced under the old parole system and the new truth in sentencing system.

Prison Population Trends: FY 1990-1999: This chart provides observed data on the Virginia prison population growth over the past decade. Since 1990, the prison population has swelled about 84% - growing from 16,941 inmates in 1990 to just over 31,000 inmates now.

The prison population growth was greatest in the middle of the decade and since parole abolition has slowed down and become more predictable. The most recent observed spike in growth over the past year is being attributed primarily to another significant drop in parole grant rates for the “stock” population of inmates serving time under the old law.

Historical and Projected New Commitment Forecast – FY 1990-2004: Dr. Kern displayed a graphic that looked at the actual observed number of inmates committed to prison from 1990-1999 and a statistical forecast of what is expected through the year 2004. He said that it is worthy to note the relatively slow rate of growth that is forecast for prison admissions – only a projected total growth of 6% from 1998 – 2004. He commented that there is much speculation on the reasons for this unexpected rate of projected slow growth in our prison population. He remarked that the significant drop in the crime rate accounts for a large part of the slow growth. Some also argue it is the great economy, some say its demographics, and others argue it is tougher criminal justice policies, that, in turn, contribute to a drop in the crime rate. Whatever the reason, he said, the result of it is that prison admissions are projected to creep along at a slow pace over the next five years.

Projected Baseline State Responsible Population – FY 2000-2004: Dr. Kern displayed a chart that provided a look at the projected rate of growth in our prison system through the year 2004. Given the projected slow growth rate of prison admissions, the overall projected prison population is relatively flat - a modest growth of only 7% is forecasted over the next five years.

Proposed Forecast Adjustments (FY 2000-2004): The primary responsibility of the policy committee is to identify recent trends, policies or issues that may impact on the prison population forecast and then to make adjustments in the statistical forecast based on educated guesses on the impact of these “interventions.”

This last chart displays the adjustments to the prison population forecast presented to the policy committee. The first adjustment is for an issue that was the subject of a Sentencing Commission recommendation to the General Assembly last year. Specifically, the Commission requested that the ambiguity created by an Attorney General’s opinion that a 12-month sentence was not the same as a one-year term be removed. The General Assembly took no affirmative action to clarify the matter and so the DOC is now following the AG’s opinion and not taking inmates with 12-month terms. The prison forecast had assumed that 12-month terms and one-year terms were one and the same. Thus, an adjustment was required to back-out of the forecast the 12-month sentences.

The second major adjustment is due to the joint impact of the Virginia Exile legislation and bail bond reform. These reforms largely offset each other. The third adjustment concerns the habitual offender statute and the impact is due to revision that gets tougher on certain repeat drunk drivers. The result of all these adjustments is a net reduction in the prison forecast of over 350 inmates by the year 2004.

Judge Gates then asked Mr. Fridley to cover the next item on the agenda, New Edition Sentencing Guidelines Manual & Training on Revision.

2

3VI. Sentencing Guidelines Training Program

Mr. Fridley started by saying that he had been conducting two and three hour training sessions. The two-hour training sessions deal with new changes to the guidelines. The three-hour session is for new guidelines users. He said that 697 criminal justice professionals had registered for the seminars (63% probation officers, 13% Commonwealth's attorneys and 24% defense attorneys). Mr. Fridley commented that 36 sessions were held and six were by special request.

He also reported that 332 manuals have been sold. This manual represents the third edition of the Sentencing Guidelines Manual. Mr. Fridley said that the manual costs \$75.00 for defense attorneys. The Commission advertised the manual in Virginia Lawyer's Weekly and also featured the Manual at the Lawyer's Expo at the Annual Meeting of the State Bar in Virginia Beach. Judge Honts asked Mr. Fridley a question on guidelines rule interpretation. Judge Honts asked if a felon possesses a firearm is he considered under legal restraint? Mr. Fridley responded yes for the same reason that a habitual offender is scored as being under legal restraint if he drives and violates that Code.

Judge Gates thanked Mr. Fridley for his presentation. Judge Gates noted that the Commission has received a federal grant to work with the Department of Juvenile Justice on developing a data base system that would be capable of supporting a study of juvenile sentencing practices. Judge Gates next asked Ms. Ries to cover the next item on the agenda, Juvenile Sentencing Data Base Project – Status Report.

VII. Juvenile Sentencing Data Base Project – Status Report

Ms Ries started by giving a project overview. One of the project goals is to create a permanent database to collect and store juvenile sentencing data for studies and other applications. The Project would like to collect juvenile data from the Department of Juvenile Justice (DJJ) and Court Services Units (CSU) through designed forms or

electronic transmission. She said efforts to standardize and automate juvenile social histories (HJR 688) by DJJ would facilitate data collection by the Commission.

She said that the project would have to assess DJJ's Juvenile Tracking System (JTS) to determine type and availability of adjudication and dispositional data contained for use in the proposed database. The Juvenile Sentencing Project participated in the DJJ Juvenile Social History Workgroup in order to ensure quality and appropriateness of data selected for revised social histories. She said that the project would also develop forms to capture data collected by DJJ and CSU.

The project staff has been analyzing previously collected data to determine the focus of future studies after the database has been established. New contacts have been established at DJJ for continued access to records, facilities, personnel and other resources for the project. The staff will continue to work on a document for final reporting at the conclusion of the project. This document will include background, survey analysis, instrument development and technology utilization and descriptive analysis from test data. The Project staff will test developed forms of automated transfers at selected pilot sites. Training will be conducted for personnel to complete forms or enter data in an automated system. The staff will also monitor data collection processes in the new database in an automated system. The project should be complete by June 30, 2000.

Judge Gates next asked Dr. Kern to cover a number of miscellaneous items left on the agenda.

4VIII. Miscellaneous Items

Judge Gates asked the Commission to first discuss Ms. Monahan's request for data. He asked Dr. Kern how much work would be actually involved with this project. Judge Gates said he would really like to cooperate if the staff has the ability and time to furnish the request. Dr. Kern said a simple analysis could be done to find out the incarceration rate for males and females for felonies. He said a simple analysis like that would likely show differences. The only way to find out if there was true disparity is to conduct a thoroughly exhaustive study that would include all factors like economic status, race, sex, and education, etc. He said that would be a more complicated study but that is the only way to conclude if there are gender differences. The questions that Ms. Monahan wanted answered could not be answered without a comprehensive analysis. The Commission could complete this analysis but it would be available to the public. Another consideration is the time and resources it would take to complete the analysis. Dr. Kern said the Commission had a higher than unusual turnover in staff over the summer. Most of the positions at this time had been filled but the new employees still require training on the available databases. This analysis would take some time to complete but it could be done. Dr. Kern said the staff could complete it but not by their timetable. The analysis could be done by December 31 if the Commission so desires.

Mr. Agee felt that some of the questions would need a subjective or political decision during analysis. He said the Commission should not be making those decisions. Mr. Agee said that the Department of Corrections and not the Commission would better address one of the questions. He remarked that the questions posed by the Gender Task Force need to be more narrow and focused. Mr. Agee would not support the use of the Commission's time and funds to answer their broad questions.

Mr. Kneedler agreed with Mr. Agee about the vagueness of the questions. He felt that the Commission should complete some analysis where the data is available. If new staff is needed for this analysis then the Gender Bias Task Force should cover all expenses. Judge Newman said that all judges received a questionnaire from this Task Force. He spoke with Justice Lacy about the questions that he felt were impossible to answer. Judge Newman agreed that the questions being posed by the Gender Bias Task Force needed to be more specific. He said the Commission should complete the analysis if the questions on the handout can be more narrowly focused. Judge Gates felt that the solution for this issue would be for Dr. Kern to consult with Justice Lacy about The Commission's concerns about the analysis. Mr. Kneedler commented that Dr. Kern should rephrase the questions the Task Force wants answered. Judge Bach also felt that the Task Force should provide the Commission with funds since the staff is being taken away from their normal duties. Judge Hudson said the Commission should write a letter that we do have the data but we do not have the manpower or resources to complete the analysis.

Judge Honts made a motion that Dr. Kern restate the questions in the handout provided by Ms. Monahan. Mr. Agee said that any decision made about the analysis should be shared with the Commission at the next meeting. A motion to adopt this proposal was made and seconded. Judge Gates asked the Commission for a vote. The Commission voted 14-0 in favor of the recommendation.

Dr. Kern then told the Commission members that a copy of the final evaluation report on Truth-in-Sentencing implementation was included in their packet. Dr. Kern told the members that this is the report that Dr. Ostrom and Mr. Kauder of the National Center for State Courts have been working on for a year. The Justice Department will publish this document to share with other criminal justice agencies in the country. Dr. Ostrom pointed out at the last meeting that they would, with our permission, seek a continuation grant to follow-up with a recidivism study.

Dr. Kern told the members that Judge Gates, Mr. Vassar, Dr. Creech and himself attended the National Association of Sentencing Commissions in Salt Lake City on August 8-10. The Commission members attended panels on sentencing disparity, data and information systems and media relationships. The hottest topic at the Conference was release of judge specific compliance information. He said that Kansas and Pennsylvania are dealing

with this request from the media. These two states were very interested in Virginia's experience in this area. Dr. Kern said that next year's conference is in Pittsburgh.

He then told the members that the General Assembly might act on legislation in the upcoming session that allows for only the Sentencing Commission to complete correctional impact analysis on proposed bills. Heretofore, both the Commission and the Department of Planning and Budget have done impact analysis work. The fact that two independent analyses on proposed bills has been done has sometimes led to confusion among General Assembly members with regard to which impact took precedence. Dr. Kern asked whether any members of the Commission had any problems with such a proposal. Judge Gates asked for a vote on the issue. A motion was made to support the recommendations of the joint legislative committee and was seconded. Judge Gates asked the Commission for a vote. The Commission voted 14-0 in favor of the recommendation.

Mr. Petty asked if new offenses could be added to the guidelines. A new statute was added this year that deals with drunk driving 3rd offense. The goal of this new law is to focus on the multiple DUI individuals as opposed to the person that doesn't pay fines, etc. He proposed that the Commission try to cover these offenses as soon as possible. Mr. Petty hoped that the staff could study this before the General Assembly Session.

Dr. Kern handed out a timeline for the multi-media conference room. The foreman of the construction company has projected that the conference room would be finished by the end of November. He said that the members could take a tour of the room at the next meeting if it was complete.

He also asked the members to think about any changes they would like to the guidelines. The people in the field have not suggested any revisions to the guidelines at this time.

Dr. Kern also reviewed with the members the status of their terms. All the members of the Commission have terms that expire in 2000. He asked that most of the members seek another term to avoid a full turnover in 2000.

Several new employees have been hired over the summer and Dr. Kern introduced them to the members. The new employees are Irene-Eva Ries, Tama Celi and Tom Barnes. He also announced that one existing staff member would be leaving. Anne Jones decided to retire from her position. Dr. Kern said she would be greatly missed. He then handed out a sheet that described a proposed agency staff reorganization. Dr. Kern explained that the proposed reorganization would allow more opportunity for employees to advance and grow. He proposed this reorganization to the Executive Committee in a morning meeting prior to the full Commission meeting and they voted unanimously to approve it. A motion to adopt this proposal was made and seconded. Judge Gates asked the Commission for a vote. The Commission voted 14-0 in favor of the recommendation.

With no further business, Judge Gates reminded everyone that the next Sentencing Commission meeting is November 8, 1999, in the 3rd floor judicial conference room.

With no further business on the agenda, the Commission adjourned at 1:10 p.m.