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The Virginia Criminal Sentencing Commission
June 17, 2002
Meeting Minutes

Members Present:

Judge Stewart, Judge Bach, Douglas Guynn, Judge Harris, Arnold Henderson, Judge Honts, Judge Humphreys, Bernard McNamee, Judge Newman, Reverend Ricketts and Clarence Williams

Members Absent:

Gary Aronhalt, Jo Ann Bruce, Howard Gwynn, Judge Hudson, Judge Johnston and William Petty

The meeting commenced at 10:10 a.m. Judge Stewart announced that there were two new members of the Commission. The two new members are Judge L.A. Harris and Sheriff Clarence Williams. Judge Stewart also presented gifts of appreciation to the Commission's former Chair, Judge Ernest Gates and to former member Mr. Mark Christie. He then asked the Commission members to approve the minutes from the last meeting.

Agenda

I. Approval of Minutes

Approval of the minutes from the March 25, 2002, meeting was the first item on the agenda. The Commission unanimously approved the minutes.

The second item on the agenda was the Intermediate/Alternative Sanction Programs Report. Judge Stewart asked Mr. Walt Pulliam, Chief of Operations at the Department of Corrections to discuss this item on the agenda.

II. Intermediate/Alternative Sanction Programs Report

Mr. Pulliam began by saying that he wanted to update the Commission on the alternative sanction programs. He provided a laminated referral guide to all the community corrections programs to each member of the Commission. This referral guide lists residential community corrections options on one side (Adult Residential Care, Boot Camp, Youthful Offender Program, Diversion Centers and Detention Centers) and non-residential options on the other side (Probation, Intensive Probation, Electronic Monitoring, Day Reporting Centers and Drug Courts). This guide is provided to all circuit court judges as a quick reference tool that lists the eligibility guidelines for each program and the services offered. Mr. Pulliam continued by displaying a chart that gave an overview of the Department of Corrections. The community corrections office is currently overseeing 38,282 probationers and 4,809 parolees. In addition, they handle the

supervision of 6,599 offenders from other states under the inter-state compact agreement. The number of offenders being referred to community corrections is not diminishing but, Mr Pulliam warned, the number of available program slots may decrease due to budget constraints. He then reviewed the offender characteristics of state responsible offenders.

Mr. Pulliam reported that use of the non-violent risk assessment instrument in the six pilot sites increased diversion/detention referrals. The type of offenders being referred in the six pilot sites was, in his estimation, a better candidate group than the offenders being referred from the non-pilot sites. However, he advised that the statewide expansion of risk assessment is expected to increase the department's workload in the non-pilot circuits. He also observed that another change that will take place on July 1st might increase their workload – that Commonwealth's Attorneys will be able to make diversion/detention referrals. He also noted that 64% of offenders have substance abuse issues.

Mr. Pulliam then discussed budget cuts which has diminished the capacity of some alternative programs. The boot camp program (100 beds) and Tidewater Women's Detention Center (104 beds) are now closed. The Department also lost some substance abuse funding which is very relevant given that 64% of the felons have substance abuse problems. Positions related to those programs have been abolished and all vacant positions have been frozen or delayed. Also, Fairfax Correctional Unit has closed and Staunton Correctional Center (784 beds) is scheduled for closing in June 2003. Day Reporting Centers and Drug Court Program funding was reduced significantly and included funding for FY 2003 only.

Mr. Pulliam then reported on the Department's response to the budget cutbacks. He pointed out that the Detention Center Incarceration Program is expected to handle the cases that formerly were referred to the Boot Camp Incarceration Program. Additional beds have also been added to several men's detention centers. He observed that the effectiveness of the programs would suffer if more beds were added without additional staff members.

He concluded by saying that the Department is trying to strengthen the substance abuse programming in diversion and detention centers. Mr. Pulliam also touched on another problem that is adversely affecting the Department – the ambiguity of many court orders. He pointed out that the Department is responsible for accurately interpreting the court orders and establishing a tentative release date for each offender. Unfortunately, many court orders are not easily interpreted. He said he has been working with the judiciary and circuit clerks to identify the issues and clarify the information required by the Department. Mr. Pulliam felt that a standardized court order would resolve most of the problems and, at the same time, make it easier for judges and clerks to send someone to an alternative program. A standardized and consolidated court order would also, he observed, be easier for the clerks and judges to complete.

Reverend Ricketts asked Mr. Pulliam if the Department still has empty beds. Mr. Pulliam said the Department does not have any empty prison beds. Reverend Ricketts

asked if the Department still leases prison beds to house out-of-state inmates. Mr. Pulliam answered that the Department has been leasing out beds to other states but that many of the contracts were set to expire and likely will not be renewed. He noted that the revenue from the lease agreements was instrumental in helping the Department manage with a reduced budget. He noted that the termination of the lease agreements would create serious budget problems for the Department. For example, he cited one prison, Sussex II, where no funds have been appropriated to run the facility. Operational costs came from rent revenue and without that revenue the Department would have to ask the General Assembly for new money to operate the facility. He noted that other options are being explored by the Department to determine ways to operate with reduced funds. Reverend Ricketts wondered if these problems were contributing to the growing backlog of state responsible inmates being housed in the local jails. Mr. Pulliam responded that it is one of the reasons. Reverend Ricketts also asked if all the halfway houses are being closed. Mr. Pulliam remarked that the Department of Corrections does not operate the halfway houses but, to his knowledge, these programs were still operating.

In closing, Mr. Pulliam thanked the Commission for their work in getting General Assembly approval for allowing probation and parole officers the ability to electronically access juvenile records. On this subject, Dr. Kern commented that the implementation of this access is not going to be easy. In his discussions with the information systems experts with the Supreme Court, Dr. Kern said that each local probation office or Commonwealth's Attorneys' office would require a logon ID for each jurisdiction for which they would like to check juvenile records. One logon ID is not sufficient. Therefore, due to the architecture of the information system, doing a statewide check of all the juvenile courts will be very time consuming and inefficient.

Judge Stewart thanked Mr. Pulliam for his presentation. He then asked Ms. Farrar-Owens to cover the next item on the agenda, Sentencing Guidelines reanalysis: Overview of Methodology

III. Sentencing Guidelines Reanalysis: Overview of Methodology

At its March 2002 meeting, the Commission approved the project of conducting a thorough reanalysis of five years worth of truth-in-sentencing decisions to form the foundation for revisions to the Virginia sentencing guidelines. Ms. Farrar-Owens began her presentation by discussing the benefit of such a reanalysis. She reminded the Commission that current sentencing guidelines are based on patterns of sentencing and time served for the time period of 1988 through 1992. By examining sentencing practices under the truth-in-sentencing/no parole system, the reanalysis will provide a more recent picture of Virginia's experiences since the abolition of parole, Ms. Farrar-Owens stated. She noted that, since 1995, revisions of the guidelines have been based on examination of compliance and departure patterns; however, analyzing sentencing data holistically, taking into consideration all the factors that may affect sentencing outcome, is a more precise approach.

Ms. Farrar-Owens then discussed the data to be used for the guidelines reanalysis: the pre/post-sentence investigation (PSI) data system. PSI information is collected and maintained by the Department of Corrections (DOC). Probation and parole officers prepare PSIs and submit them to DOC's central office. The PSI contains a vast array of detailed information regarding the offender and the offense(s) committed. Ms. Farrar-Owens advised the Commission that a PSI report is not completed on every felon convicted in circuit court. Cases that do not result in a prison term or a term of supervised probation will not always have a PSI. Ms. Farrar-Owens stated that in order to achieve a comprehensive analyses it is necessary to supplement the PSI data. The method of supplementing PSI data has evolved with DOC policy and practice and the availability of automated data systems. Today, sentencing guidelines data is used to identify felony cases that do not have a PSI in the system. Information on the guidelines form is used to generate a PSI record for each case without an existing PSI. Ms. Farrar-Owens shared with the Commission that reanalysis will begin with 126,533 cases, of which approximately 23% are supplemental PSIs generated from the sentencing guidelines database.

Next, Ms. Farrar-Owens presented the methodology that will be used by staff for the guidelines reanalysis. The general methodological approach has been in place since 1987. The judiciary approved this methodology for the development of the Virginia's first discretionary sentencing guidelines. The Judicial Sentencing Guidelines Committee of the Judicial Conference of Virginia oversaw the development of the early guidelines. Judges approved the concept of discretionary guidelines that were descriptive of historical sentencing practices. The judiciary endorsed the concept that sentencing guidelines should be grounded in the historical incarceration rate and that the ranges should represent the middle 50% of historical sentences.

The judiciary also endorsed the concept that the most recent five years of available data would most accurately capture current judicial thinking. Use of a full five years of data would minimize year-to-year fluctuations and reduce the likelihood of spurious results in the sentencing models. Statistical models of sentencing were developed. Models were developed for each offense group by type of judicial sentencing decision. The judiciary reviewed and approved the statistical techniques utilized by the guidelines staff to model sentencing practices. This initial historically grounded sentencing guidelines system was developed by judges for judges. She continued by saying that prior to 1995, reanalysis was preformed using the accepted methodology to periodically update the guidelines based on the most recent five years of data. This has not been done under the truth-in-sentencing because five years of sentencing data under the new system has only recently become available.

Ms. Farrar-Owens then discussed an historical example by referencing the drug sentencing guidelines. She displayed a chart of drug sentencing events by type of disposition from 1987 to 1991. Of the 24,901 drug cases analyzed, 42% of drug offenders were sentenced to prison and 42% received no incarceration. She reviewed how the modeling of the prison in/out decision was developed and the statistical methods used in the analyses. Logistic regression was used to identify significant factors and

discriminant function analysis was used to determine the independent effect of each factor.

She briefly discussed the significant factors for the drug prison/non-prison sentences from 1987 to 1991. A pie chart illustrated the influence of both significant legal and extralegal factors on the sentencing decisions. The legal circumstances of these cases (type of primary offense and additional counts) accounted for 29% of the legal factors while prior record accounted for 11.7%. The significant extralegal factors, in order of influence from highest to lowest, were circuit identity, judge identity, gender, employment record, race, counsel and offender's education. Judge Humphreys asked if the analyses results were generated from both types of statistical techniques previously discussed. Ms. Farrar-Owens responded affirmatively that both types of statistical techniques were used. Judge Humphreys inquired as to why drug quantity and type of drug were not on the list as significant factors. Ms. Farrar-Owens responded by saying that drug quantity and type of drug were information items that were not systematically collected until 1991. This is, however, information that can be studied at this time. Dr. Kern also commented that over the past decade that 93% of the convictions involving Schedule I/II drugs involve cocaine. Other Schedule I/II drugs, such as heroin and LSD occur with so little frequency that their presence is not statistically significant.

Ms. Farrar-Owens next covered the topic of how the worksheets scores are developed from the statistical weights of the significant factors in the models. She reviewed specific examples of how the guidelines scores traced back to relative statistical influence of the respective factors.

Ms. Farrar-Owens concluded by proposing a work plan for the Commission's consideration. She proposed that sentencing models developed through statistical analysis would be presented to the Commission as they are developed. Input from the Commission members is vital to guide and shape the analysis. She noted that the Commission has not made prescriptive adjustments to the guidelines. Prescriptive adjustments have, however, been legislatively directed by the General Assembly and include midpoint enhancements for violent offenders, nonviolent offender risk assessment and sex offender risk assessment. She reported that reanalysis of murder, robbery, rape and sexual assault offense groups are currently being conducted. Supplemental data collection for rape and sexual assault cases has begun. Ms. Farrar-Owen said that some preliminary models would be presented at the September 9th meeting.

Judge Stewart thanked Ms. Farrar-Owens for her presentation. He then asked Mr. Fridley to cover the next item on the agenda, Sentencing Guidelines Training Program – Status Report.

IV. Sentencing Guidelines Training Program – Status Report

Mr. Fridley began his presentation by saying that he and Ms. Kepus have been conducting training sessions throughout the state. Training is being offered in twenty-two different locations around the state and it will continue through August. He provided the members with a class schedule that detailed all the areas of the state where the different training sessions will be offered. There will be two types of seminars offered. A two-hour training seminar will focus exclusively on new changes to the guidelines system. A five-hour session will also be offered and this will target new guidelines users. All classes will be approved for MCLE credits. Mr. Fridley noted that 814 people have already registered for training and he expected to train at least 900 guidelines users by the end of the summer. He displayed a chart that provided the percentage of registered attendees by job type. The majority of the classes will consist of probation officers followed by private defense attorneys.

Mr. Fridley reported that the new worksheets were also available on the website this year. He observed that some of the guidelines users have expressed an interest in being able to enter and complete the worksheets online. Other comments that have been offered by users concern problems encountered with multiple jurisdiction crime sprees and departure reasons not being filled out by judges in some cases.

Judge Harris reported that the multiple jurisdiction crime spree scenarios present a real problem. He pointed out that if an offender commits a singular robbery in Henrico, Chesterfield and Richmond, the completed guidelines in each jurisdiction will be tremendously different that if the same offender committed all three robberies in a single jurisdiction such as Henrico.

Judge Stewart thanked Mr. Fridley for his presentation and then asked Dr. Kern to discuss the next item on the agenda, the National Association of Sentencing Commissions Annual Conference.

V. National Association of Sentencing Commissions Annual Conference

Dr. Kern reminded the Commission that Virginia would serve as host to the Annual Conference of the National Association of Sentencing Commissions. The conference will be held on August 4-6, 2002 at the Williamsburg Lodge. Dr. Kern reported that several Commission members have signed up for the conference. He referred members to the conference brochure that was enclosed in their materials. The Commission's website has been revised to provide conference information and also allows people to register and pay online. Judge Stewart commented that he had attended a previous conference and that he found it to be extremely worthwhile. He noted that by hosting the conference it provided a wonderful opportunity for the Commission members to attend and engage in mutual discussions with sentencing commission members and staffers from over 25 other states. He encouraged all members interested to attend. Dr. Kern said that the Commission would reimburse members for hotel and travel costs.

Dr. Kern stated that there are twenty-seven sentencing commissions around the country plus the United States Sentencing Commission. The conferences in the past have included agendas that have had a very narrow focus and dealt only with sentencing guidelines topics. This year, the national planning committee decided to broaden the scope of the agenda to entice non-sentencing commission people to attend the conference.

Dr. Kern then discussed the topical panel sessions that are being offered at the conference. He noted that one session would focus on Proposition 36 that has taken effect in California. This was a voter referendum that mandates that first and second time drug possession offenders must receive drug treatment instead of incarceration as a sanction. Another session will focus on fiscal accountability in sentencing legislation assessing the costs of different types of get-tough measures. Dr. Kern noted that Senator Stolle is a speaker on this panel session. Dr. Kern continued by reviewing all of the other scheduled panel sessions. A tour of Courtroom 21, located at the law school at the College of William and Mary, will also be offered at the conference. In sum, Dr. Kern said that the agenda covered the full range of sentencing issues being addressed across the nation. Dr. Kern also pointed out that the conference would feature some very noteworthy and respected speakers. Dr. Kern strongly encouraged the members to attend. Reverend Ricketts did inquire about outside programs for guests. Dr. Kern advised Reverend Ricketts that the Courtroom 21 tour is open for everyone and an optional Tavern Dinner will take place on Monday night at the King's Arms Tavern. Judge Bach asked what kind of response has the commission received to date. Dr. Kern said that 30 people have already registered but that it was hoped that the conference would attract approximately 100 people.

Judge Stewart thanked Dr. Kern for his presentation and then discussed the next item on the agenda, Miscellaneous Items.

VI. Miscellaneous

Judge Stewart began by detailing the dates for the remaining Commission meetings for the year. The Commission is scheduled to meet on September 9 and November 4.

Judge Stewart then briefly discussed the sub committee assignments. The Commission took a short break before presenting a gift to Judge Gates for his years of service to the Commission.

With no further business on the agenda, the Commission adjourned at 12:15 p.m.

A lunch and short dedication ceremony was given in honor of Judge Ernest P. Gates who served as the Commission Chair for seven years.