



Commission Meeting Minutes: February 5, 2009

The public meeting of the Pennsylvania Commission on Sentencing was held on Thursday, February 5, 2009 at the Harrisburg Hilton and Towers, Metropolitan Room A, Harrisburg, Pennsylvania. The meeting was called to order at 9:11 AM with the following individuals in attendance:

Commission Members present: Representative Frank Dermody, Chair; Senator Mary Jo White, Vice-Chair; Senator Jay Costa, Jr.; District Attorney Marjorie Fox; Judge Linda K.M. Ludgate; Judge Jeffrey A. Manning; Attorney Marc S. Raspanti; Representative Douglas G. Reichley; Judge Jeannine Turgeon; Judge Sheila A. Woods-Skipper.

Ex Officio Members present: Victim Advocate Carol Lavery, Office of the Victim Advocate; Chairman Catherine McVey, Pennsylvania Board of Probation and Parole.

Commission Staff present: Professor Joseph Sabino Mistick, Counsel; Mark H. Bergstrom, Executive Director; Dr. Cynthia A. Kempinen, Research Director/Deputy Director; Catherine W. Dittman, Staff Assistant; Joan F. Lisle, Manager of Data Access and Dissemination; Carrie Peters, Sentencing Policy Specialist; Helene J. Placey, Sentencing Policy Specialist; Jodi R. Ripka, Office Manager; Diane Shoop, Manager of Outreach and Policy Support; Carol A. Zeiss, Manager of Data Management.

Guests present: Deputy Secretary Kathy Gnall, Pennsylvania Department of Corrections; Diane Morgan, Pennsylvania Association of Criminal Defense Lawyers.

Chairman Dermody called the meeting to order.

Public Comment Period

There were no requests for public comment.

Approval of Minutes of the December 18, 2008 Commission Meeting

Judge Linda K.M. Ludgate moved to approve the minutes of the December 18, 2008 Commission Meeting. Judge Sheila Woods-Skipper seconded the motion. The motion passed unanimously.

Reorganization and Nominations

Professor Mistick called for nominations for the offices of Chairman and Vice-Chairman. Judge Manning nominated Representative Frank Dermody for Chairman and Senator Mary Jo White for Vice-Chairman. Seeing no further nominations, Judge Turgeon moved that the nominations be closed. Professor Mistick called for the vote. Representative Dermody was elected Chairman and Senator White was elected Vice-Chairman viva voce.

Judge Jeffrey Manning moved to nominate Representative Frank Dermody to serve as Chairman of the Commission and Senator Mary Jo White to serve as Vice-Chairman of the Commission for the 2009-2010 Session. Judge Jeannine Turgeon seconded the motion. The motion passed unanimously.

Budget and Management Committee

Executive Director Bergstrom reminded the Commission that appointment notices were sent to the Legislative leaders on or after January 2nd, and that Judge Manning and Judge Turgeon are also up for reappointment.

A copy of the judicial letter to the Chief Justice was provided for the members' review. A copy of the signed Memorandum of Understanding (MOU) with Penn State University was provided for the members' review.

Mr. Bergstrom announced the resignation of Phil Ponselle, the Commission's Information Technology (IT) specialist. He is working in conjunction with the IT Office in the College of the Liberal Arts to determine the skill set needed to accommodate the Commission's growing software needs in order to replace Mr. Ponselle.



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Mr. Bergstrom then provided some highlights of the Governor's recent budget address. In fiscal year 2007/2008, the Commission received a State appropriation of \$1,470,000. Last year, the Commission only received \$1,451,000; and the Governor is recommending a further reduction to \$1,364,000 for FY2009/2010. This decrease adversely impacts the Commission's ability to take advantage of the limited Federal grant monies available, as many such grants depend on state matching funds. More specifically, the Commission relies heavily on Federal grant money to fund IT initiatives such as SGS Web, which has become the backbone for sentencing information statewide. At Chairman Dermody's suggestion, Mr. Bergstrom will document cuts made by the Commission in response to the lowered budget. Senator Costa suggested that Mr. Bergstrom visit the concept of extending the implementation of the Commission's new responsibilities over a three-year period to assist with the state budget shortfall. Senator White suggested that, should Mr. Bergstrom provide an analysis of the ways in which the Commission, if properly funded, could achieve significant savings in the state's correctional system, the Legislature would look more kindly on an increase during the budget hearings.

Mr. Bergstrom directed the Commission's attention to the operating budget. The increase in costs is due primarily to infrastructure costs such as adding the Harrisburg office, paper, letterhead, and such, as well as the printing and distribution of the revised guidelines, and the numerous training sessions provided by the Commission. Mr. Raspanti asked if there were any areas in which the Commission could generate income. Mr. Bergstrom responded that the Commonwealth of Virginia charges for their training sessions and materials, but that Pennsylvania does not charge governmental entities for training or materials and only charges a minimal fee for materials for non-governmental entities. He suggested that the Commission could discontinue the practice of printing materials; instead directing entities to the website where they could download information. However, the downside of no longer providing the materials is that entities may choose to ignore current guideline information rather than take the time to print it. The Commission could also consider charging for the seminars they provide. For data sets, the Commission does not charge governmental entities but does charge \$70 per request to non-governmental entities. Mr. Bergstrom offered to explore each of these potential revenue streams and report back to the Commission at the next meeting.

Judge Turgeon moved to approve the budget modifications as presented. District Attorney Marjorie Fox seconded the motion. The motion passed unanimously.

Mr. Bergstrom introduced the topic of grant applications. The County Intermediate Punishment Technical Assistance Grant provides support to the Commission's educational and outreach services, helps to underwrite the cost of the Villanova Sentencing Workshop, and offsets part of the salary costs of Helene Placey. The Commission shares this grant with the Pennsylvania Commission on Crime and Delinquency (PCCD), who use this grant to underwrite the cost of several staff that are working with counties through the Criminal Justice Advisory Board (CJAB) effort. The 30% matching requirement is paid through the Commission's state appropriations.

Mr. Raspanti moved that the Commission approve the submission of the grant application for the County Intermediate Punishment Technical Assistance Grant. Judge Manning seconded the motion. The motion passed unanimously.

Mr. Bergstrom next discussed the Correction Policy Research Support grant. This grant was initially used to underwrite a position to do correctional population projections through a committee that was established and chaired by PCCD, involving the Pennsylvania Board of Probation and Parole (PBPP), the Department of Corrections (DOC), the Commission on Sentencing, and others. DOC now leads this committee. In recent years, efforts supported by the grant are leading to the development of a modular web-based application to generate projections on sentencing, correctional population and parole supervision caseloads. Until recently, Diane Shoop's position at PCCD was funded through this grant. No matching funds are required. However, as PCCD cannot give



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itself a federal grant, the Commission has received and managed this grant, in exchange for which the Commission is able to develop some projections applications for itself.

Judge Turgeon moved that the Commission approve the submission of the grant application for Correction Policy. Judge Ludgate seconded the motion. The motion passed unanimously.

Mr. Bergstrom then moved on to the SGS Web Reform Legislation Application Development Grant. This grant was requested to help offset some of the Commission's technology costs, especially those immediate expenses related to the reform legislation. It is a \$300,000 grant, with a \$100,000 matching fund requirement. This is a pay-as-you-use grant, such that, should the Commission only utilize \$50,000 of the grant, it would only be required to pay 25% of that \$50,000, or \$12,500. Judge Turgeon questioned whether or not this grant could be utilized by the Sentencing/Resentencing Workgroup to collect data regarding the resentencing guidelines. Mr. Bergstrom indicated that the funds could be used in that manner, but that there were a number of other existing projects that are targeted for this funding, making it difficult to take on new reform projects including aspects of the Sentencing/Resentencing project.

Judge Turgeon moved that the Commission approve the submission of the SGS Web Reform Legislation Application Development Grant. Judge Manning seconded the motion. The motion passed unanimously.

Moving onto other potential areas of funding, Mr. Bergstrom identified the Federal Stimulus Grants as a possible source. Mr. Raspanti questioned whether or not this grant would be adversely affected by the declining economy. Mr. Bergstrom noted that the Commission has seen a decline in the availability of federal grants, just as many other organizations have seen. However, the Federal Stimulus funding has a very quick turn-around time, with a 60-day application period and a two-year timeline for spending the funds; a timeline which many agencies would find difficult to accommodate. Additionally, PCCD is fully aware of the Commission's interest in this grant and how the funding would be expended.

Mr. Bergstrom next discussed the National Criminal History Improvement Program (NCHIP) concept paper and application. He indicated that one key feature of this grant is that it is a soft match, meaning that the Commission could provide the matching funds as services rendered instead of cash. Previously, this grant was a set-aside for each state. Now, this grant is a competitive bid through a national solicitation, and for Pennsylvania agencies requires an application through PCCD. PCCD anticipates submitting a single application with two projects identified, both of which would target the improvement of the quality of information – specifically the matches between offense tracking numbers (OTN) and state identification numbers (SID). One concept paper would be created by the Pennsylvania State Police (PSP) and the AOPC to fund the improvement of RAP sheets as they exist by matching OTNs and SIDs. A second concept paper would be submitted by the Commission and JNET to accomplish a similar objective, but with a focus on obtaining information that cannot be updates or is not contained in RAP sheets, and particularly related to repeat violent offenders. Judge Turgeon added that coordination with National Criminal Information Center (NCIC) data would be helpful, and also questioned the quality and accuracy of the information if too many individuals are able to input data into one centralized system. Chairman McVey indicated strong support for this project, citing its benefits to DOC and PBPP.

Judge Turgeon moved that the Commission approve the submission of the NCHIP concept paper for the Chairman's review prior to its submission through PCCD. Judge Ludgate seconded the motion. The motion passed unanimously.



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Mr. Bergstrom also requested authorization to submit a Justice Assistance Grant (JAG) application in case Congress approves the Federal Stimulus funding and institutes an application process that would require such submission prior to the next Commission meeting.

Mr. Raspanti moved that the Commission approve the submission of a JAG Grant Application, should such a grant become available. Judge Woods-Skipper seconded the motion. The motion passed unanimously.

Data & Field Services Committee

Ms. Carol Zeiss noted that the Committee staff is in the process of closing out the 2008 data. Current 2008 figures are on a par with the number of cases for 2007. SGS Web experienced an increase of 185 phone calls requesting support. The staff will continue to encourage judicial verification of sentences and work with the AOPC to obtain the unreported SIDs and sentence information.

Ms. Joan Lisle discussed the current data requests. A researcher at the National Center for Juvenile Justice requested three of the data sets initially and has now requested 2007 data as well. Other than that, there were no unusual data requests. Ms. Lisle also discussed the progress of the publicly accessible reports project. She noted that the programming portion of the project is proceeding ahead of schedule, and that the IT team has created a pilot project in which an individual can create a dynamic report, selecting specific data years and/or specific counties. However, security issues remain before the pilot project can be tested publicly. The Committee is also pursuing the possibility of publishing such reports to a private site so that only those individuals who would require access to certain data sets would be able to enter the site and create reports. Judge Turgeon questioned whether or not she could create a report regarding the conformity of sentences to the guidelines and was assured that she could do so through SGS Web. Finally, Ms. Lisle discussed the internal training and standards regarding data input in order to ensure the accuracy of the publicized data.

Research Committee

Dr. Cynthia Kempinen informed the Commission that the 2009 Legislative Report that had been approved at the previous meeting was distributed to the Judiciary members. No further copies will be printed as the report is available for download from the Commission web site. She then drew the Commission's attention to the *Research Bulletin*, a summary of the findings from the 2009 Legislative Report on the DOC Boot Camp. This bulletin will be published on the web site only; no hard copies will be printed for distribution.

Judge Turgeon moved that the *Research Bulletin* be released for publication on the web site. Judge Woods-Skipper seconded the motion. The motion passed unanimously.

Dr. Kempinen then moved on to the Mandatory Sentencing Project. This project is comprised of six separate surveys. Information from the Judges, District Attorneys (DA), and Public Defenders (PD) provided the basis for the report on the processing of mandatory sentencing. Information from the Public Knowledge Poll provided insight into how frequently the average person can identify whether or not an offense carries a mandatory sentence. Information received from the Survey Research Center will be categorized and available for reporting shortly. Only 7% of the Legislative surveys were returned and will be used for analysis. Finally, 1,000 offender surveys were disseminated with the assistance of the DOC. The preliminary results show that, with respect to the Public Knowledge Poll, approximately 34% of the public could identify at least one offense, given three opportunities to do so, using a strict interpretation of what constitutes a mandatory eligible offense. This number rose to 51% of the public using a looser interpretation. These figures are a little higher than the judges, DAs, and PDs projected that the public would know. The legislators who responded to the survey indicated that they anticipated that approximately 40% of the public would be able to identify at least one mandatory eligible offense. Sex offenses against minors, violent firearms offenses, and DUIs were the three most frequently cited offenses by the public



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participants. The second survey issue gauged the public's understanding of the amount of time required to be served on state sentences prior to an inmate's release. The majority of public respondents indicated that they believed that a state inmate could be released prior to serving his minimum sentence. Chairman McVey suggested that part of the misunderstanding is that the general public holds the belief that, if an inmate is released prior to serving his maximum sentence, he has been released early, despite the fact that he has served his minimum sentence. Ms. Lavery added that the victims of crime are often under the misconception that an offender will serve, at minimum, 85% of his maximum sentence. These victims state that they received this information as part of a plea discussion, indicating a need for further education of the DAs and assistant DAs regarding mandatory minimum/maximum sentences. Judge Manning raised the issue that, once all of the exclusions are taken into account, Recidivism Risk Reduction Initiative (RRRI) only applies to drug cases, increasing the prison population with inmates who are non-violent yet prone to recidivate.

Mr. Bergstrom then guided the conversation toward the upcoming HR 12 Report that will be submitted to the House in October/November. The Commission will discuss these and other issues pertaining to HR 12 during the May meeting in order to formulate recommendations/positions for the Commission's vote at the August meeting, and subsequent inclusion in the HR 12 Report.

Dr. Kempinen reminded the Commission that the next logical step in the Mandatory Sentencing Project is to evaluate the three recidivism samples – the drug trafficking sample, the school zone sample, and the repeat violent offender sample. The Committee is comparing inmate who receive the required mandatory sentence with those who receive less than the mandatory to determine whether or not the sentence length affects recidivism rates. Dr. Kempinen then informed the Commission that the GPS mapping issue with Philadelphia was resolved, as the Philadelphia courts supplied the addresses of the offenses relative to the school zones to the GPS Corps.

Mr. Bergstrom added that Professor Larry Sherman from Penn and Professor Dan Nagin from Carnegie Mellon expressed an interest in the Commission's research regarding risk and reoffending, especially the risk of violent reoffense. The professors are working with the Philadelphia courts to study the issues of risk, reoffense, length of sentence, incarceration versus nonincarceration, and other relevant issues.

Chairman Dermody announced a brief break at 10:25.

Policy/Guideline Review Committee

Ms. Shoop drew the Commission's attention to the spring training schedule, during which Ms. Placey and Ms. Peters visited several counties to discuss guideline revisions and the reform legislation. Ms. Peters noted that some counties are uncertain regarding the effective dates of some of the legislation while other counties are in the process of changing their policies and practices accordingly. Ms. Placey added that some counties have expressed confusion regarding the effective dates of the sentencing guideline revisions which are under the Commission's jurisdiction versus the effective dates of the fines guidelines which are not. Mr. Bergstrom emphasized that, while the Commission is working in conjunction with PCCD and other stakeholders in the sentencing/probation/parole arena, much work remains to be done regarding the educational component. As a relatively small agency, the Commission lacks the resources to adequately address all of the IT needs, all of educational needs, and all of the reporting requirements instituted by the reform legislation.

Ms. Shoop redirected the conversation towards the legislative tracking spreadsheet, noting that a number of pieces of legislation have been introduced in the current session.

Ms. Shoop then introduced one action item – the resurrection of the newsletter, *The Monitor*. She indicated that she envisions the newsletter as a web publication, distributed solely through list serves rather than printed and



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mailed. Mr. Bergstrom reminded the Commission that this publication had originated as a quarterly, printed newsletter, but that it was discontinued due to staff and budgetary constraints. In its present incarnation, *The Monitor* is designed for publication twice per year, and includes a section for sentencing reports and/or data analysis. While complete reports are only released in the *Annual Report*, *The Monitor* could provide highlights of sentencing trends every six months or so.

Mr. Raspanti moved that *The Monitor* be published as presented and discussed. Judge Manning seconded the motion. The motion passed unanimously.

Mr. Bergstrom reminded the Commission that he is scheduled to attend the National Center for State Courts conference in Montgomery, Alabama, which is a national working group meeting on risk and needs assessments at sentencing.

Miscellaneous/Next Meeting

The next Commission meeting will be held on May 20-21, 2009 at the Holiday Inn Express in Seneca, Venango County. As this facility does not house a restaurant, staff will arrange transportation to an outside location. Additionally, the judges from the Bench, the public defender and the district attorney will be invited to attend the dinner and the meeting. The committee-of-the-whole meeting will begin at Noon on Tuesday, the dinner will begin at 6:00 Tuesday evening, and the Public Meeting will begin at 9:00 AM Wednesday morning.

The Commission Meeting was adjourned at or about 10:54 AM.