

SUMMARY OF THE APRIL 28, 1998 COMMISSION MEETING

The quarterly public meeting of the Pennsylvania Commission on Sentencing was held on Wednesday, April 28, 1998 at the Penn Harris Hotel and Convention Center in Camp Hill, PA. Following an Executive Session to discuss personnel matters, the meeting was called to order at 9:53 a.m. with the following individuals in attendance:

Commission Members present: Representative Frank Dermody, Chair; Senator Jeffrey Piccola, Vice Chair; President Judge Charles Brown; Senator Jay Costa; President Judge Robert Dauer; Professor Laurie Magid; District Attorney Merritt (Ted) McKnight; Attorney William Tully.

Commission Staff present: Mark H. Bergstrom, Executive Director; Dr. Cynthia Kempinen, Deputy Director; Akin Adeseun; Helene Polanichka; Cathy Dittman.

Others present: Professor Joseph Mistick, Duquesne University School of Law; Diann Stinney, Pennsylvania Bar Association; Sonya Hoffman, Student Shadow to Mr. Tully.

Approval of Minutes of the January 27, 1998 Work Session and the January 28, 1998 Commission Meeting

President Judge Dauer moved to approve the minutes of the January 27, 1998 Work Session and the January 28, 1998 Commission Meeting. Senator Costa seconded the motion. The motion passed unanimously.

Boot Camp Subcommittee

Responding to the recommendation made during the Work Session the previous evening, Chairman Dermody established a Motivational Boot Camp Subcommittee and charged it with the responsibility of developing recommendations regarding the effective use of the boot camp. Senator Piccola was appointed Subcommittee Chair and members include Professor Magid and District Attorney McKnight.

Data Collection and Reporting

Executive Director Bergstrom reported on the publication of a revised Comment to Pa.R.Crim.P. Rule 1405, which emphasizes the requirement under the Sentencing Code [204 Pa.Code '303.1(e)]

to submit a guideline form in all cases in which the conviction involves either felonies or misdemeanors. This change was requested by the Commission.

Deputy Director Kempinen provided an update on the status of the Commission's Sentencing Software. Staff is presently using Centre County Probation as a pre-beta test site, and has identified several other counties for participation in an upcoming beta test. The software has been demonstrated at several guideline training sessions and displayed at the Commission's exhibitor booth during the PCCD's Technology 2000 & Beyond Conference. Staff has recently hired a manager of information technology to

coordinate Commission automation and continue the programming necessary to complete the sentencing software package. Software packets are available to any Commission members upon request.

Executive Director Bergstrom also reported on efforts to integrate the Commission's automation efforts with other projects throughout the state. Discussions have been held to involve the Commission in the state-level J-NET project as well as to integrate the Commission's software application with county-based criminal justice applications, such as those developed for use by district attorneys, probation offices, and county jails. Staff is pursuing a new position in conjunction with PCCD to take on responsibility for the development of uniform statewide codes for both state and county applications.

Deputy Director Kempinen addressed several issues relating to sentencing data. Discussion was prompted in part by several errors in the 1996 Annual Report found by staff and District Attorney McKnight. Dr. Kempinen described the increasing difficulty in working with sentencing data, in part because of the complexity and in part because of the significant differences between the various editions of the guidelines. Because of these factors, it is difficult to undertake a year-to-year comparison and therefore difficult to identify all errors. Staff is working to correct the errors in the 1996 Annual Report and, when complete, will send corrections to all recipients of the Report. To date, the errors identified are: (1) type of conviction is miscalculated; and (2) the values for jail and prison are reversed.

Executive Director Bergstrom reviewed the status of the various annual data sets and the schedule for documentation and release of the data to the University of Michigan and the public. He also discussed the previously conducted audit of guideline forms and the concerns regarding under-reporting. Based on the limited data available and anecdotal reports, there seems to be substantial under-reporting from Philadelphia. This is particularly true of Municipal Court, which disposes of thousands of cases covered by the guidelines but does not submit guideline forms. While preliminary findings by county were reported to each President Judge, it was not possible to account for all under-reporting for several reasons. First, staff assigned to the project was part-time and funded by a grant that expired. Second, each county processes cases differently, which makes tracking a county-by-county process. And third, with existing data, it is difficult to completely match conviction information with sentencing information. Several steps have been taken to permit a more comprehensive, in-house audit in the future: an expanded internal tracking system of forms received has been implemented at the Commission; under the 1997 guidelines, the forms are conviction-based, meaning the Commission should receive one form for each conviction offense; and discussions have been held with the AOPC and the PCCD to obtain conviction-based data which staff will be able to match with conviction-based sentence forms. Based on these changes, a future audit of sentences imposed under the 1997 guidelines should be possible.

Release of Information Policy

A memorandum was sent by Chairman Dermody on March 9, 1998 to all common pleas judges in Pennsylvania describing the release of information policy revision. Commission members were provided with copies of all correspondence received and responses sent. Deputy Director Kempinen reviewed the draft Release of Information Policy which distinguishes between release of the entire data set versus release of specific reports, and establishes a >public menu= of standard reports readily available upon

request verses specific custom reports that must be requested of and approved by the Commission. She described the data contained in the four standard reports: type of sentence; conformity of sentence; mandatory sentence; and place of confinement. Restitution order, based on average (mean) dollar amount ordered, was included in the >type of sentence= due to increased interest in this data and the recent change in statute mandating imposition. Discussion included the formatting and presentation of the data, as well as the written comments of Judge Ludgate [Berks Co. Court of Common Pleas] regarding the quality of the data and the scope of the information disseminated.

Professor Mistick, who has worked with staff to develop the draft policy, addressed the original purpose of the policy: achieving the legislative goal of the Commission to Adisseminate information@ while complying with other Acts (e.g., Criminal History Records Information Act; HIV-related Information Act; the Mental Health Act, etc.). In addition, it is necessary to limit the level of staff resources dedicated to dissemination of information so as to allow the Commission staff to fulfill its obligations under statute. The menu of standard reports was based on the most common requests, an was intended to meet a >reasonableness standard= which balances information release confidentiality and staff resources.

Senator Piccola suggested that the policy specifically provide that a copy of any judge-specific information should also be released to the judge along with the name of the individual or agency requesting the information. This is consistent with the policy adopted by the General Assembly for release of information on Members= expense accounts.

Discussion included some changes to the text of the policy: to define >cleaning= of data; to permit custom reports by staff for the Governor=s Office, the PCCD, and AOPC. There was also support to release of the written policy and standard reports to all judges for comment prior to the next Commission meeting.

Commission Staff Organization

Chairman Dermody reported on several personnel matters approved during the Executive Session. The Commission approved the staff organization plan included in the meeting materials, providing for an Executive Director and Deputy Director, for the contracting of sentencing research with John Kramer, and for the contacting of Legal Counsel by the Commission Chair. The Commission further approved the appointment of Mark Bergstrom as Executive Director and Cynthia Kempinen as Deputy Director.

Legislative Update

Executive Director Bergstrom reported on recently enacted legislation which impacts on the guidelines: Acts 1998-19, 1998-38 and 1998-40. The omnibus OGS scores will apply to these new/modified offenses. Any changes to OGS assignments will be considered at the end of the 1997-98 Session. The Commission was also provided with copies of related criminal justice legislation that does not impact on the guidelines: Acts 1998-3 and 1998-26. The Commission also was advised of the creation of an Intermediate Punishment Task Force by the House Judiciary Committee. The Executive Director will contact the Task Force Chair and Minority Chair to identify some concerns regarding the existing legislation and offer any assistance.

Seminars and Conferences

Executive Director Bergstrom reviewed the training sessions conducted by Commission staff during the past quarter and scheduled training sessions. Commission members were also reminded of the National Association of Sentencing Commissions [NASC] conference being held in Minneapolis, MN [July 19-21, 1998]. The Commission will cover the cost for any Commission members interested in attending; to date, in addition to the Executive Director and Deputy Director, President Judge Brown and Professor Magid are attending. Commission staff has offered to host the conference in the year 2000 in Pittsburgh.

Discussion also covered the Forum on Racial Disparities panel scheduled for Friday, June 12, 1998 in Hartford CT. The Executive Director and several Commission members have been invited to attend this workshop sponsored by the Council for State Governments. Very little information is known about the purpose or structure of the panel, but the Executive Director will plan to attend and report back.

Other Issues

District Attorney McKnight raised a concern regarding the lack of increase in the funding for drug & alcohol treatment as an intermediate punishment in the FY1998-99 budget. Initial projections [1995] estimated a need of \$26 million for first year statewide implementation of comprehensive treatment for Level 3 offenders, but the 1997-98 budget included only \$10million, which resulted in only 12 counties receiving funding. The same level of funding is included in this year=s budget, which diminishes the potential for additional counties to receive funding. He encouraged legislative members of the Commission to work for increased funding for intermediate punishment.

District Attorney McKnight also asked that the minutes of the meeting acknowledge the contributions that John Kramer has made to the Commission over his 18 years as Executive Director. Executive Director Bergstrom discussed some preliminary plans developed by staff for a reception and the work underway to create an updated mailing list of current and past Commission members and staff. Staff will try to nail down the details and communicate with Commission members in the near future.

President Judge Brown offered the following motion:

The Pennsylvania Commission on Sentencing wishes to acknowledge Dr. John H. Kramer for his exceptional service as Executive Director from 1979 through 1998; to commend him for all of his efforts as a pioneer with this Commission and in this field; and to recognize his work in Pennsylvania for the cause of sentencing guidelines and sentencing in general.

District Attorney McKnight seconded the motion. The motion passed unanimously.

In honor of Secretary=s Day, the Commission acknowledged the valuable service of Cathy Dittman in handling all of the details of the quarterly Commission Meetings so well.

The next Commission Meeting will be held in Harrisburg on June 23-24, 1998.

The Commission Meeting was adjourned at or about 11:33 a.m..

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Last Updated: March 10, 1999

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