



Commission Meeting Minutes: May 21, 2009

The public meeting of the Pennsylvania Commission on Sentencing was held on Thursday, May 21, 2009 at the Commission's Harrisburg Office at 408 Forum Building, Capital Complex, Harrisburg, Pennsylvania. Members were also connected via video conferencing from Duquesne University Law School and via telephone conference, and staff connected via video conferencing from the Commission's University Park office. The meeting was called to order at 1:04 PM with the following individuals in attendance:

Commission Members present: Representative Frank Dermody, Chair; Senator Mary Jo White, Vice-Chair; Professor Steven L. Chanenson; Senator Jay Costa, Jr.; District Attorney Marjorie Fox; Judge Linda K. M. Ludgate; Judge Jill Rangos; Attorney Marc S. Raspanti; Judge Harold Woelfel; Judge Sheila A. Woods-Skipper.

Ex Officio Members present: Victim Advocate Carol Lavery, Office of the Victim Advocate.

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.

Public Comment Period

There were no requests for public comment.

Approval of Minutes of the February 5, 2009 Commission Meeting

District Attorney Fox moved to approve the minutes of the February 5, 2009 Commission Meeting. Judge Rangos seconded the motion. The motion passed unanimously.

Budget and Management Committee

Chairman Dermody welcomed the two new commission members: Judge Rangos and Judge Woelfel. Executive Director Bergstrom advised the Commission that an appointment/reappointment notice will be sent to the Governor for the law professor Commission member position. Mr. Bergstrom also introduced a new staff person, Trevor Squillario, a systems analyst.

Given the new appointments, changes were made to the Commission's committees. Mr. Bergstrom announced the new structure. Attorney Raspanti will take over as Chair of the Data Management and Access Committee. Judge Woods-Skipper will serve as Chair of the Policy Committee. Judges Rangos and Woelfel will become members of the Research Committee and the Policy Committee. The Policy Committee is generally a Committee of the Whole and generally meets prior to the Commission meeting. Internal staff issues and policies will typically be worked through with Judge Woods-Skipper, Senator Costa and Representative Reichley.

Mr. Bergstrom continued by addressing changes to the Reform Work Groups. Judge Rangos and Judge Woelfel will serve as co-chairs of the Sentencing and Resentencing Work Group in place of Judge Turgeon.

Each year the Commission is required to solicit an audit of its closed out fiscal years. Mr. Bergstrom advised that a standard letter was prepared and sent to three parties to obtain quotes for an audit of fiscal year 2007-2008. One response was received from Parente Randolph in the amount of \$8,500. This group has prepared Commission audits for a number of years; the last fee was \$8,200. Staff recommended moving forward with the audit.



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Judge Ludgate moved to authorize a service purchase contract with Parente Randolph in the amount of \$8,500 for the financial audit of fiscal year 2007/2008. Judge Woods-Skipper seconded the motion. The motion passed unanimously.

Mr. Bergstrom addressed the budget situation. While no modifications were requested at this time, it appeared that the Commission will close out fiscal year 2007/2008 with a small short-fall. The Commission has an annual service purchase contract with The Pennsylvania State University. The contract identifies the maximum amount of funds that the Commission would spend in a year. Each month the Commission is billed by the University for expenses incurred the previous month such as salary, fringe, or operating expenses. These are then paid from the appropriation kept in the Commonwealth account. Therefore, June's expenses will not be billed until July and would be paid from the new appropriation. At the August meeting, any budget modifications needed to close out fiscal year 2008/2009 will be requested.

Continuing, Mr. Bergstrom reminded the Commission that it initially requested an appropriation for 2009/2010 of approximately \$1,971,000. The Governor's proposal was \$1,364,000, 6% below the 2008/2009 funding level. Most agencies received reductions in funding for the upcoming fiscal year. Therefore, the Commission was not singled out; however, it is troubling and does not address funding for the new responsibilities assigned last fall. The House and Senate also have budget bills. The House, in Bill 1416, has adopted a budget that basically mirrors the Governor's proposal in respect to the Commission; the appropriation is listed as \$1,364,000. Senate Bill 850 reduces the appropriation to the Commission to \$1,159,000.

Mr. Bergstrom proceeded to outline three options based on these various funding levels. The first option is based on receiving an appropriation for 2009/2010 equal to that of fiscal year 2008/2009, \$1,451,000. Some reductions are made in various categories based on increases in fixed costs such as licensing and addressing the 2008/2009 short-fall. For instance, travel would be reduced from \$127,000 to \$36,000.

The second option is recommended if the appropriation is \$1,364,000 as listed in the Governor's and House's proposals. The Commission would need to reduce travel costs substantially from the baseline of \$36,000 to \$17,000. Parking reimbursement would be eliminated for staff parking on campus or in Harrisburg. It eliminates all committee meetings or work group meetings that would require any travel reimbursement. Supplies and operating expenses are reduced, including mailing costs, telephone, maintenance, repairs, printing, membership, etc. The Annual Report would be published electronically and not printed. Consulting fees would be reduced. While we retained the court reporting service, the hours were reduced by half. The contract for legal counsel with Professor Mistick is retained; but support for legal research is eliminated. Enhancements and changes to SGS Web are eliminated; but the support for a test or training site is retained.

The third option reflects a funding level of \$1.159 million found in the Senate Bill. In addition to the previously mentioned reductions, two data entry staff positions would be eliminated. Reimbursement would be eliminated to the Executive Director for teaching two courses as part of the MOU with Penn State. There would be a 10% reduction in salary to all staff salaries. This is premised upon the assumption that the fringe rate paid on salaries would remain unchanged in the next fiscal year. If this increases, additional changes would be required. Supply and operating costs would be further reduced. For instance, the Wests and Purdons updates would be cancelled. All memberships and registrations would be eliminated and supplies and materials costs reduced. Last, the training site for SGS Web would be eliminated. These are very severe cuts, but it was the only way to balance the budget.

Staff recommends the Commission approve these as the options based upon the final budget bill that the General Assembly approves. We hope that something better will come forward or that we will find funding through another source like grants.



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Judge Ludgate moved that the Commission approve the 2009/2010 Commission budget based on three options. District Attorney Fox seconded the motion. The motion passed unanimously.

Further discussion ensued. Attorney Raspanti asked if these were the only options and if one will be selected that is dependent upon whichever budget bill is enacted. Executive Director Bergstrom explained that there are limited discretionary funds that allow flexibility. One area of increasing costs includes software licenses that are required for SGS Web and other applications. These total \$15,000 for the next year and are necessities. These costs are fixed. Discretionary funds are the only budget items that can be reduced. While reckless, it is the only way to balance the budget.

Chairman Dermody asked what this will mean for staff and training held across the state. Executive Director Bergstrom responded that there would be no funds for travel. The only options would be to hold training on-site in Harrisburg or University Park if there were no room rental fees. Notices would normally be mailed. But the funds for postage would be reduced. Therefore, the Commission would need to rely on the list serves recently developed by staff for notifications.

Additionally, Executive Director Bergstrom expressed the difficulty in possibly eliminating two data entry staff positions which have been long-term positions at the Commission. The staff are currently entering the backlog of 2003 cases. He further explained that these positions are used in other roles. For instance if there is a research project that requires data entry or research on SID's, these staff perform that role. However, these are the only two positions that historically the Commission has ever considered eliminating, and only when the backlog of sentencing forms was entered. And even then, it was thought that one position would remain.

Judge Ludgate told the Commission that that Legislature needs to be reminded that the work assigned the Commission as a result of the Reform Legislation will be impacted. Meetings will need to be shorter since lunch cannot be provided for a full day's meeting. She went on to say that staff should not be pressured to take on additional work when they will have fewer resources available and experienced a reduction in salary. Chairman Dermody and Executive Director Bergstrom both agreed that the reform work could not move forward in any meaningful way without funding to support it. They reiterated that the three options discussed were based upon current responsibilities and not work assigned under the reform legislation.

Judge Ludgate moved that the Executive Director send a formal letter to the Chairs of the Judiciary Committees and Appropriations Committees that based upon budget cuts, the Commission would not be able to begin work resulting from the reform legislation. Attorney Raspanti seconded the motion. The motion passed unanimously.

Judge Woelfel directed attention back to the budget issue by asking what realistic final budget figure may be expected. Both Senator Costa and Chairman Dermody suggested that it would fall between the Governor's proposed figure and the figure in Senate Bill 850. Executive Director Bergstrom expanded upon this. He said that if the final appropriation was between the Governor's figure and Senate Bill 850's figure that he would recommend following Option 2 and retaining staff positions but reducing salaries by 10%.

Mr. Bergstrom directed the Commission's attention to the 2009/2010 Service Purchase Contract with the University in the amount of \$1.7 million. This amount takes into account a number of grants that are run through the Commission. The total operating budget of the Commission is generally well over \$2 million. The figure in the Service Purchase Contract represents the portion that will most likely be run through the University as opposed to being run directly through the Commonwealth. The University invoices each month for expenses that are paid from the set-aside of Commonwealth funds.



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Senator Costa moved that the Commission approve the 2009/2010 Service Purchase Contract in the amount of \$1.7 million with The Pennsylvania State University. Judge Rangos seconded the motion. The motion passed unanimously.

Executive Director Bergstrom then directed attention to the Service Purchase Contract with Professor Joseph Sabino Mistick for legal services. This has been a long-standing contract based on \$30,000 with quarterly payments.

Senator Costa moved that the Commission approve the 2009/2010 Service Purchase Contract in the amount of \$30,000 with Professor Joseph Sabino Mistick for legal services. Senator White seconded the motion. The motion passed unanimously.

Executive Director Bergstrom continued on the budget topic of grants. There are a number of grant applications. First, there is an initial application for SGS Web reform legislation enhancements. This was presented at the February meeting in the amount of \$400,000 with a \$100,000 match requirement. Given the lack of funds to serve as match, Mr. Bergstrom negotiated a waiver of the match with the Commission on Crime and Delinquency (PCCD). Therefore, the grant application has been repackaged and submitted as a \$300,000 grant with no match requirement. It is essentially federal funding that will cover enhancements to SGS Web based on the reform legislation. This includes RRRRI and other provisions. Mr. Bergstrom reminded the Commission that it is not uncommon for the Commission to spend hundreds of thousands of dollars annually to enhance the application to reflect legislation changes. This will not be possible under the proposed appropriations for 2009/2010.

The second grant application is an initial application for a chief strategist for information sharing. This is submitted at the request of the PCCD. The Commission will serve as a pass-through for federal funds to support PCCD in system wide projects that also benefit the Commission on Sentencing. This coordinates projects like JNET and other system-wide technology efforts. There is no match requirement since it is basically a pass-through. There are benefits to the Commission. It is first at the table for discussions so that it can leverage the SGS Web application against others. Additionally, it provides a vehicle to add supplemental funds via PCCD for the Commission's own purposes.

Senator Costa moved that the Commission approve the initial grant application for a chief strategist for information sharing and that it be submitted to PCCD. District Attorney Fox seconded the motion. It passed unanimously.

The third grant application is for a planning, research, and evaluation consultant. It is also a pass-through for funding to PCCD. A unit at PCCD was responsible for doing population projections among other responsibilities. Upon the retirement of its director in 2007, it became somewhat dysfunctional. A joint Commission/PCCD staffer, Diane Shoop, filled the void and took on many of the responsibilities. But she is currently at the Commission full-time. Therefore, PCCD hired an outside consultant to review operations and identify steps to reinvigorate the unit. PCCD envisions hiring a consultant to rebuild the unit before hiring a permanent replacement for the director. This grant supports a consultant to do that and to work with the Commission, the Department of Corrections, and the Board of Probation and Parole and others to do planning and research across criminal justice agencies. No match is required on this grant.

Senator Costa moved that the Commission approve the initial grant application for a chief strategist for information sharing and that it be submitted to PCCD. Judge Ludgate seconded the motion. It passed unanimously.



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In terms of an information item, Executive Director Bergstrom pointed out that the Intermediate Punishment Continuation Application approved at the February meeting included a 30% match requirement. An agreement reached with PCCD changes the match requirements. The Commission will pay a 20% match on activities exclusively the Commission's and will pay no match on other items that are of a collaborative nature with PCCD. Based on this agreement, the match requirement for the overall grant was reduced to 6%. This grant was already approved and submitted but with a substantial savings to the Commission.

Last, a solicitation for federal stimulus funding request was discussed. This \$2 million request includes a general funding request to underwrite all expenses related to the reform legislation for the five functional work groups. The Speaker of the House provided a letter of support. Executive Director Bergstrom had conversations with the Governor's Policy Office regarding this project and funding. While he anticipates some funding, the level is undetermined. Additionally, it was made clear any funding received should be viewed as fixed-term funding, i.e., funding for activities or positions or building enterprises during a two-year period of time. It is not to be viewed as the starting point for a full-time, ongoing position. This is consistent with the request. Any positions created would be fixed-term staff positions via Service Purchase Contracts. The Commission would contract with a person for a year or two to do whatever responsibilities were assigned related to building an application or building a knowledge base in county or state parole guidelines or resentencing. Mr. Bergstrom was not sure if these funds could be leveraged to fill in funding gaps. These are federal funds dispensed through PCCD; however, the Governor's Policy Office is very involved in determining who will receive funds.

Judge Woods-Skipper moved that the Commission prepare and submit an application for federal stimulus funds to support work created by the reform legislation. Judge Ludgate seconded the motion. It passed unanimously.

Senator Costa indicated that he would also send a support letter.

Executive Director Bergstrom noted the changes in location and times of Commission meetings brought about by changes in financial circumstances were previously published in the *Pennsylvania Bulletin*. They will require republishing. The August meeting originally scheduled for August 20th in State College will be held in Harrisburg using video conferencing. The December meeting originally scheduled for December 10th in Philadelphia will also be held in Harrisburg with the same type of arrangements.

Additionally, Professor Chanenson raised the issue of one of the research projects underway, the HR 12 Mandatory Minimum Study. The Commission is required to provide a final report with recommendations in October 2009. This necessitates the Commission review outcomes of the study and consider recommendations at the August meeting. A vote on final recommendations should be scheduled for September; a video conference or teleconference will suffice. September 17th at noon was agreed upon.

Attorney Raspanti moved to adopt the new meeting schedule of August 20th and December 10th in Harrisburg and utilizing videoconferencing and teleconferencing as needed. Judge Wood Skipper seconded the motion. It passed unanimously.

Data Management Committee

Ms. Zeiss noted that SGS Web has more than 1 million offenses as of March 31st. She stated that the level of SGS Web Help Desk calls remain the same.

Ms. Joan Lisle states that her unit has focused on the legislative impact analyses that will enable the legislature to look at the impacts from various proposals before legislation is introduced. She discussed the current data requests. One is a contracted request for 1996 and 1997 data sets and requires Commission approval. Effective



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with the 1998 Release of Information Policy, judges names were no longer confidential fields in the data set. As this data set pre-dates that policy, Commission approval is required for the release of the data sets with judges' names included. Executive Director Bergstrom added that these data sets are more than 10 years old and judges involved have already stood for retention.

Judge Ludgate moved that that the 1996 and 1997 contracted data sets be made available as requested with judge name but without social security numbers. Judge Woelfel seconded the motion. It passed unanimously.

Discussion ensued about the use of the data sets. Ms. Lisle noted that the researcher has already been provided 18 sets of data and submitted IRB approval. Dr. Kempinen also noted that researchers sign forms under the contracted release protocol that they will not release any specific information, such as judge name, in their reports.

Ms. Lisle further reported that documentation on Commission data has been developed to provide a better overview for users of sentencing data.

Executive Director Bergstrom added two notes. First, Ms. Lisle and Ms. Hu have been doing a tremendous amount of work on providing public accessible sentencing reports using SAS software the Commission purchased last year. Users will be able to create many different ad hoc reports via the web. It is currently in a test environment. Second, Ms. Lisle has been working with the simulation model and developing projections. She has provided information for testimony and to respond to inquiries from the General Assembly on potential impacts from changes in legislation. Both the SAS and simulation model have proved to be useful tools and good investments, and Mr. Bergstrom wanted to recognize Ms. Lisle for her contributions.

Research Committee

Professor Chanenson asked that Commission members review the interim reports on the HR 12 project. He reminded them that they would need to take the abstract issue of mandatory minimum sentences and make recommendations to the General Assembly.

Dr. Kempinen discussed the three interim reports that were completed since the prior Commission meeting. This includes findings from the Legislative Survey. Given it had a 7% response rate, findings were not generalizable but provided an indication of what legislators think in terms of the primary purpose of mandatory sentencing. They support all the purposes with rehabilitation reflecting the least supported purpose. However, they were supportive of rehabilitation for DUI. The second interim report focused on the Offender Survey on Sentencing. There was a 24% response rate. The survey included a series of questions concerning thoughts prior to committing crimes, after the crime, and so forth, to obtain an idea of what knowledge of sentencing offenders have at the point they commit their crimes. Offenders did not think about what types of sentences they may receive if they were caught until after they were arrested. Offenders were able to identify what offenses were subject to mandatory sentences. The third report looked at trends in the sentencing of offenders who have been convicted of drug delivery crimes and violent crimes. It indicated that the Commission has an increase of in the numbers of crimes coming through the system. However, the proportion of crime that is violent and the proportion of that crime that is drug delivery has remained fairly stable throughout the 20-year period examined.

Dr. Kempinen also highlighted two policy shifts that corresponded to the data changes. First, the 1990 to 2007 data reflect correlating reductions in sentences to jail as sentences to intermediate punishment increased after this sentencing alternative was legislated. Therefore, the policy was effective in targeting specific offenders. Second, there was an increase in the average minimum sentence for violent offenders, particularly around 2001 and 2002.



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This was the period when the legislation changed with respect to the mandatory minimum sentence for repeat violent offenders. Therefore, the policy shift impacted minimum sentences in general for violent offenders.

Dr. Kempinen noted that the recidivism study was underway after a delay in receiving the last bit of required data. She also noted that Professor Chanenson expressed interest in substance abuse problems of drug delivery people. A summary of the risk assessments by the Department of Corrections was provided. It shows that offenders dealing the lower level of drugs are the ones at most risk for recidivism. These are individuals who are substance abusers and more likely to continue to commit crime because of that.

A second project in process is the Economic Sanctions Study under the direction of Professor Barry Ruback. An interim report is provided. Most notable is the wide range of economic sanctions used. There are over 2,600 different categories of economic sanctions, and yet 15 of those account for over 50 percent of economic sanctions imposed. While there are many options, many are not utilized on a regular basis.

Dr. Kempinen stated that the report on the State Motivation Boot Camp was issued earlier this year and the study is in maintenance mode. She added that the unit is gearing up for the State Intermediate Punishment evaluation. She is in discussions with the Department of Corrections to obtain a comparison sample in order to examine the recidivism of offenders sentenced to State Intermediate Punishment versus state prison.

She also mentioned that the Effectiveness of Sentencing Project has been on hold while the mandatory sentencing study is completed. Though the issue of examining trends as done for the mandatory study is compatible with this project mission as well.

Executive Director Bergstrom added that at the morning's Policy Committee meeting, members discussed Professor Sherman's proposal for work with Court of Common Pleas in Philadelphia, and his proposal was distributed. While the Commission is not able to financially support the project, it can encourage and promote support of the study in order to increase the Commission's understanding of the role of risk at sentencing. Judge Woods-Skipper added that it is clear that Professor Sherman wants the support of the Commission. There are many details to work out, and the project is anticipated to begin in the fall or early 2010. Lenfest is expected to fund the project. The Commission's support of the project will be instrument in securing the funding.

Senator White moved that a letter supporting Professor Sherman's study with the Court of Common Pleas be drafted for signature by the Chairman and submitted to Lenfest and Professor Sherman. Attorney Raspanti seconded the motion. Professor Chanenson abstained as he is an adjunct faculty member at the University of Pennsylvania. The motion passed with one abstention.

Policy Committee

Ms. Shoop noted that in terms of outreach, the Outreach and Policy Support Unit responded to more than 400 sentencing inquiries and held 27 seminars which included more than 900 individuals. Twenty-three of the seminars were requested by counties. One seminar was held in the Capitol Complex targeting legislative staff. There was one SGS Web Basic training and one SGS Web Advanced training held. Additionally, a session was held specifically for Philadelphia courts. The Villanova Sentencing Workshop was conducted in March and April. More than 4,100 6th Edition, Revised Sentencing Guideline Supplements were distributed. The Executive Director provided testimony for the House Transportation Committee. Last, the Annual Report is nearly complete, and should be released July 1st.

Executive Director Bergstrom directed members' attention to the fee schedules for products and services provided by other sentencing commissions. At a previous meeting, the Commission discussed implementing fees. Most other sentencing commissions do not charge for services or charge for the cost of a publication and so forth. Kansas,



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Maryland, and Virginia stood out as including fees. This Commission has a split policy in that practitioners working for government agencies are not charged, but others are charged fees. This will become a moot issue as the Commission is forced to publish electronically on the web site due to budget reductions. Unless there is interest, the Commission will continue to focus on publishing electronically and keeping costs to a minimum.

Executive Director Bergstrom launched a discussion of legislation introduced and tracked to date for Session 2009/2010. He pointed out House Bill 1218 requires the Commission to establish a sentencing database. It is the third session Representative Schroder has introduced this bill. As noted, work done by Ms. Lisle and Ms. Hu to develop an on-line sentencing database will closely match the requirements set forth in the legislation.

Mr. Bergstrom identified Commission notebook materials including the case law summary covering the last quarter and a copy of the testimony he presented to the House Appropriation Subcommittee on Criminal Justice. This testimony relied heavily on work done by Dr. Kempinen, Ms. Lisle, and Ms. Ripka. It provided a primer on what the Commission is and what it does as well as some sentencing trends. He proceeded to further highlight the copy of the testimony he provided to the House Transportation Committee on 75-3742, accidents involving death or personal injury.

He further expanded on the direction of projections. Baseline data show the number of persons by sentences by type and minimum and maximum sentence averages. Projections to these data are based on changes such as grade or the imposition of a mandatory minimum sentence. Results are translated into how many extra bed days or cells would then be required in a given year. Expenses can then be calculated.

Chairman Dermody asked members if there was any additional discussion on the reform work groups. Activities were discussed in depth during the morning policy meeting chaired by Judge Woods-Skipper. While there were no additional comments, Executive Director Bergstrom reminded members that given the budget, the expectation would be that work groups would meet a maximum of once a quarter, teleconference and video conference would be utilized to reduce travel costs, and no lunches would be provided.

Miscellaneous

Chairman Dermody reported that the NASC conference would be held August 2 through 4 in Baltimore. He stated it is a great conference, and many members and staff have attended in the past. However, given the Executive Branch and Legislative Branch have adopted a 'no travel out-of-state' policy, the Commission would be unable to officially attend the NASC Conference. Anyone wanting to attend would need to assume financial responsibility for attending. Executive Director Bergstrom added that he would attend NASC but would pay his own way. He added that Professor Chanenson would be a panelist; Villanova may underwrite his costs.

Chairman Dermody closed the meeting by stating his appreciation of everyone connecting to the meeting via telephone and video conference even though a number of technical difficulties were experienced. He expressed hope that the August 20th meeting in Harrisburg would be in person.

The Commission meeting was adjusted at 2:31 PM.