

*DRAFT      DRAFT      DRAFT      DRAFT      DRAFT      DRAFT*  
**The Virginia Criminal Sentencing Commission**  
**September 23, 1997**  
**Meeting Minutes**

**Members Present:**

Judge Gates, Jo Ann Bruce, Mark Christie, Richard Cullen, Peter Decker, Frank Ferguson(*counsel to the Commission*), William Fuller, Judge Honts, Judge Johnston, Lane Kneedler, Judge Newman, William Petty, Reverend Ricketts, Judge Stewart and Bobby Vassar

**Members Absent:**

Judge Bach, Judge McGlothlin and Robert Bobb

The meeting commenced at 10:05 a.m. with Judge Gates welcoming the newest member of the Commission, William Petty, Commonwealth's Attorney for the city of Lynchburg. Mr. Petty was appointed to the Commission by Governor Allen to fulfill the remaining term of Richard Cullen who vacated his term when he assumed duties as Attorney General. Judge Gates noted that the Commission was indeed fortunate that Mr. Cullen would continue to serve on the Commission in his capacity as Attorney General.

**Agenda**

**I. Approval of Minutes**

Approval of the minutes from the June 23, 1997 was the first item on the agenda. The Commission unanimously approved the minutes.

The first item on the agenda was the office renovation plan. Judge Gates reminded the Commission that they had tentatively approved, pending actual cost estimates, a plan to renovate vacant office space on the fifth floor of the Supreme Court building and convert it to a conference room. The money to fund the renovation would come from non-general fund monies accumulated by the Commission from training and manual fees. Judge Gates observed that the architect assigned to this project by the Department of General Services, James DePasquale, was present and had brought along a detailed drawing to convey a better idea of what form the renovation would take. Judge Gates then asked Mr. DePasquale to discuss his ideas for the conference room renovation.

**II. Office Renovation Plan**

Mr. DePasquale began by displaying an illustration of his proposal to convert unused office space into a state of the art conference room. The plan envisions a meeting room facility that would accommodate approximately forty persons. The conference room would be designed to take advantage of the latest audio/visual/computer technology , much of which is already owned by the Commission. He discussed which area on the fifth floor would be affected by the plan. The area is currently composed of eight small

internal offices which have been unoccupied for a number of years. The area is currently used as storage space. The plan would involve the demolition of most of the existing internal walls to create a large open space. The conference room would have double glass door entrance and also a secondary entrance in the back. One office would remain unaffected and would be converted to a computer room which would house the Commission's central computer and line printers. Mr. DePasquale remarked that the area targeted for the renovation had a unique architectural feature in that it is lined with columns which once graced the outside of the building. He noted that the Supreme Court building had been built in four stages and that the exterior columns had been covered over when an addition was made in the 1940s. The proposed renovation plan would involve the re-exposure of these columns so that they would line the exterior of the conference room. He pointed out that the re-exposure of the columns would be easily achieved by simply taking off the sheet rock covering that currently conceals them. He remarked that the columns were capped by rather prominent and distinguished looking capitals but he feared that they might not be salvageable due to the manner in which he thinks the columns were covered up. In any event, Mr. DePasquale said that he thought that the space targeted for renovation was an ideal area for a meeting room facility.

Mr. DePasquale discussed the seating arrangements in the conference room. Speakers, podium and a pull down screen would be in the front of the room. He spoke about the grid-like ceiling that would also be exposed. Mr. DePasquale indicated that the room would be designed to specifically address the planned use of integrated audio-video and computer equipment. Mr. Petty inquired about the dimensions in this conference room. Mr. DePasquale responded that it would be approximately 1800 sq. ft.

With no further questions, Judge Gates thanked Mr. DePasquale for coming to the meeting and presenting the renovation plans. Judge Gates noted that the next step in this process would be the Department of General Services requesting bids from contractors for various pieces of the renovation work. At that time, the Commission will have a very good idea of the costs involved. Judge Gates then asked Ms. Farrar-Owens to discuss the next item on the agenda, an update on the compliance rates for the sentencing guidelines.

### **III. Sentencing Guidelines Compliance Report**

Ms. Farrar-Owens presented a series of charts to summarize the compliance rate patterns and trends. She explained that the presentation is condensed and a complete compliance update is in the packets distributed to each member.

**Sentencing Guidelines Compliance:** For the time period January 1, 1995 through September 12, 1997, almost 38,000 work sheets were submitted to the Commission. Ms. Farrar-Owens said that overall compliance continues to remain at 75%. When departing from the guidelines judges are sentencing above the guidelines in 54% of the departures and below the guidelines in 46% of the departures. She noted that the overall compliance rate among the cases sentenced after July 1, 1997 when the revisions took effect is also 75%.

**Compliance by Offense:** Ms. Farrar-Owens observed that larceny, with a compliance rate of 82.6%, was the offense group with the highest compliance rate. In contrast, kidnapping offenses, with a rate of 57%, yielded the lowest compliance rate. Ms. Farrar-Owens noted that the violent offense groups still have the lowest rates of compliance particularly kidnapping, sexual assault and rape.

**Compliance by Circuit:** Ms. Farrar-Owens stated that compliance rates varied greatly across circuits. The circuit-specific compliance rates range from a high of 87% to a low of 64%. Of those circuits with high compliance rates, Circuit 7 (Newport News) and Circuit 8 (Hampton) have compliance rates of 87.1% and 84.8% respectively. She also noted that Circuit 23 (Roanoke) currently has the lowest compliance at 64%. Roanoke also has the highest mitigation rate in the state at 21%. Roanoke is the only circuit with a drug court. She observed that the existence of the drug court may explain a significant portion of the mitigation. She explained that Circuit 22 (Franklin and Pittsylvania counties) has about the same compliance rate as Roanoke but it has the highest aggravation rate in the state. She concluded by saying that compliance rates across circuits is fairly evenly distributed. Seven circuits have compliance rates of 80% or more, and 8 have rates in the 60s. The remaining circuits have compliance rate figures in the 70s.

**Reasons for Departure:** Ms. Farrar-Owens next presented information concerning the reasons judges cite when sentencing above or below the guidelines. For the time period January, 1995 through September, 1997, when judges have sentenced below the guidelines, they cited “alternative sanction” in 21% of the cases. Alternative sanctions include boot camp incarceration, detention and diversion centers, or any community-based program. In 16.2% of the mitigation cases, judges noted the offender’s potential for rehabilitation as a rationale for imposing a term below the guidelines. The reasons for aggravation have not changed substantially since the last meeting. The degree of criminal orientation of the offender and having previous convictions for the same offense as the current conviction still lead the reasons for upward departures from the guidelines at around 13% each. The amount of drugs is still being cited as an upward departure rationale at around 5%.

**Sentencing Guidelines Compliance in Jury Cases:** Ms. Farrar-Owens proceeded to discuss sentencing guidelines compliance in jury cases. Of the 873 jury cases, jury sentences were within the guidelines 41.8% of the time. Juries imposed sentences higher than the guidelines in 46.8% of the cases and imposed sanctions lower than the guidelines 11.9% of the time. Juries sentence above the guidelines at a rate that is 3 and ½ times the aggravation rate in non-jury cases although the mitigation rate is nearly identical. She noted that 29.4% of the jury sentences were modified by judges. In about 12% of all jury cases, the judge brings a jury sentence that is beyond the guidelines into compliance with the guidelines recommendation.

**Sentencing Guidelines Compliance by Year and Offense:** Ms. Farrar-Owens then presented data about compliance trends. She said that the most notable compliance trend

is the remarkable stability in the figures. Compliance by several different measures have remained relatively stable since the early stages of the no-parole guidelines.

She discussed compliance in assault cases by calendar year and it has been consistent with an ever so slight improvement in compliance over time. For burglary of dwelling cases she described the opposite pattern. Compliance has dropped just a little while mitigations and aggravations have both gone up. Compliance has always been very high among larceny cases. She noted a slight increase in compliance over time. For homicide, she found that in the last year, compliance appears to have dropped nearly 10 percentage points. She explained that this result may be affected by the small number of cases on which it is based. Nonetheless, she noted this is an area that staff will continue to watch as the number of cases increase. Finally, rape has always had one of the lowest compliance rates by offense. While the total number of cases is not large, it is encouraging to see improvement in compliance over the last year and the decrease in the percentage of mitigations.

**Midpoint Enhancements:** Compliance in midpoint enhancement cases has been between 65% and 66% since 1995. The vast majority of the departures have been downward departures. These compliance and departure patterns have been stable. Looking at the mitigations in midpoint enhancement cases, however, she noted that the length of departure has been increasing. The average departure from the low end of the guidelines range has increased slightly. The number of cases represented only about 5% of the total.

**Durational Compliance:** Ms. Farrar-Owens then presented a chart on durational compliance. In the past, an analysis was completed of durational compliance in all cases which were recommended by the guidelines for incarceration. The durational compliance for those cases recommended for incarceration is 71%. The mitigation rate appears high because cases which were recommended for incarceration but received probation are included in the analysis. She also discussed durational compliance for cases which were recommended for incarceration but actually received an incarceration sentence. For these cases, durational compliance is nearly 76% and the departures favor aggravation. She asserted that this method is actually a more focused way of looking at durational compliance.

**Quantity of Cocaine:** Ms. Farrar-Owens then focused on the changes to the guidelines which took effect July 1, 1997. The first discussed revision concerned the new enhancements for those convicted of selling large quantities of cocaine. For offenders selling one ounce to ½ pound of cocaine the recommendation has increased by three years. For offenders selling ½ pound or more the recommendation has been enhanced by five years. She said that the Commission has only received 14 drug cases scored with the three year enhancement for cocaine quantity and only one case with the five year enhancement. She advised that these do not yet represent sufficient cases to discern any trends.

The drug guidelines revisions also provide an alternative recommendation in some cases. Offenders who sold one gram or less of cocaine and who have no prior felony record are recommended for either short prison incarceration or detention center incarceration. In those cases the judge can sentence either way and still be in compliance. There have only been 39 cases with this dual or optional sentencing recommendation. Of those, 15% or six offenders have been sentenced to detention center. Among these offenders, 13% received no incarceration, 15% received incarceration of 6 months or less, and about a third were sentenced to more than 6 but less than 12 months. Finally, about a fourth of these cocaine offenders were given sentences of 12 months or more.

Ms. Farrar-Owens pointed out that it could be that the Commission has not received many of the drug cases which are being sentenced to detention center incarceration. She said that the Commission has instructed judges to hold guidelines work sheets in these cases during the Department of Corrections' evaluation period, which can be up to 45 days. By holding the guidelines form, the judge can, if the offender is rejected for the program, communicate to the Commission the true final disposition in the case.

**Age of Victim in Sex Offenses:** The Commission also added a factor to the sexual assault guidelines for crimes in which the victim was less 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 21 sexual assault cases since July 1 which involved victims less than 13. The compliance rate for these cases remains unchanged from the old rate but the pattern of departure is different - instead of a large aggravation rate there is a large mitigation rate. Because the number of cases is so small, it is too early to draw any conclusions about the effect of the change on compliance.

**Habitual Traffic:** Ms. Farrar-Owens then spoke about the changes in the habitual traffic offender statute. This particular alteration is not a change in the guidelines but a change in the Code that was recommended by the Commission and passed by the General Assembly. This modification allows judges to suspend the 12 month mandatory minimum incarceration term and sentence offenders to detention center, diversion center or boot camp instead.

Of the 107 habitual traffic cases sentenced since July 1, only 7.5% have had the mandatory minimum sentence suspended and been sentenced to one of the alternative sanctions. Nearly two-thirds still received the 12 month sentence. Another 15% received a sentence between 12 and 14 months.

**Special Study of Embezzlement Cases:** Ms. Farrar-Owens provided a status update on the special study of embezzlement cases. In July, PSI information was requested from local probation offices around the state. The Commission has received PSIs from all but three Probation and Parole offices. She said that a follow-up letter will be sent by

September 24 to these offices. The PSIs received are being reviewed and characteristics of the embezzlement offense are coded. In cases for which the entire PSI was requested, the sentence narrative must be coded. In cases in which a Post-Sentence report was done, the prior record information must be coded. After the cases have been coded and keyed, the data will be cleaned in preparation for analysis. Of the 572 cases received, 23.3% have been coded and keyed, 22% have been coded but not keyed and 54.7% have not been reviewed. Some of the offense characteristics that Ms. Farrar-Owens will be reviewing are amount embezzled, nature of the offender-victim relationship, duration of embezzlement and the status of restitution. Once the data collection and analysis has been conducted, she will present the results to the Commission at a later meeting. Mr. Cullen told the newest member of the Commission, William Petty, the reason why the Commission decided to research embezzlement cases. The Commission felt that embezzlement cases were all being treated the same regardless of amount stolen. The study will help the Commission in its deliberation on whether to modify the larceny guidelines to accommodate information such as that being studied.

Judge Gates then asked Dr. Hunt to discuss the next item on the agenda, an update on the Risk Assessment Component to the Guidelines.

#### **IV. Risk Assessment Component on Guidelines System**

Judge Stewart, Chairman of the Research Subcommittee, began with a few comments. He said that the Research Subcommittee has obtained a small number of pilot sites. Judge Stewart said that the 19<sup>th</sup> Judicial Circuit (Fairfax County) and the 14<sup>th</sup> Judicial Circuit (Henrico County) have agreed to serve as pilot sites. Meetings with Suffolk and Prince William County judges are upcoming to see whether these sites also want to participate. A tentative agreement has also been made with the Danville area to participate but no meeting has been set to discuss the project with local officials. Judge Stewart then asked Dr. Hunt to take over the presentation.

Dr. Hunt began by reviewing information that has been presented in the meetings with pilot site officials. A draft of the risk assessment work sheet is completed and each member was given a copy. Dr. Hunt then reviewed some information that has been presented in past meetings. He said that risk assessment involves estimating an individual's likelihood of continued involvement in crime and classifying offenders regarding their relative risk of such continued involvement. Dr. Hunt said that using risk assessment means developing profiles or composites based on overall group outcomes. Groups that statistically demonstrate a high degree of re-offending are labeled high risk. The standard used to judge risk classification is not perfection, but the degree to which current practice (i.e., existing recidivism rate) can be improved. Dr. Hunt named several factors associated with higher risk of felony reconviction like prior felonies and/or misdemeanors, unemployment, never married, young and/or male offender and committed a crime without an accomplice. The risk assessment instrument will determine the feasibility of placing 25% of nonviolent offenders in alternative sanctions like boot camp, day fines, diversion center, detention center, home incarceration, day reporting, ISP, probation and community service. Dr. Hunt said that almost 2,500

offenders may be recommended for alternatives by 1999-2000 if the program is implemented statewide. If all the pilot sites agree to participate in the risk assessment study, Dr. Hunt estimated that almost 400 offenders may be recommended for alternative programs in 1997-1998.

He then spoke about the risk assessment work sheet which is being labeled Section D. The risk assessment component adds a third step to the sentencing guidelines for certain property and drug crimes with incarceration recommendations. Mr. Ferguson asked Dr. Hunt if a judge would be out of compliance if the work sheet recommends an alternative program and the sentencing judge opts not to comply with this decision. Dr. Hunt said this would not be out of compliance if the final sentence were still within the otherwise recommended incarceration range in the guidelines. Dr. Hunt pointed out that in the risk assessment cases the guidelines will still convey to the judge the recommended incarceration length along with the risk assessment information. He continued by saying that the new work sheets and cover sheets will also request information when a judge chooses not to follow the risk assessment recommendation. These work sheets will only be distributed to the initial pilot sites. Section D of the work sheet will only be completed when incarceration is recommended. If the offender scores nine points or less, then the judge may select either traditional incarceration or an alternative sanction.

Mr. Petty made a point that he believed that the Department of Corrections (DOC) does not have sufficient facilities to accommodate the volume of offenders who will be recommended for these alternative punishments. Dr. Hunt said that it was true that the DOC does not currently have the space needed but they (DOC) claim that, if the demand is there, existing sites can be quickly converted to detention and diversion centers. Mr. Petty asked what happens if a judge sentences an offender to a diversion center and there is a waiting list. Dr. Hunt said that DOC would tell the judge that there is a waiting list for that facility. After that, the judge would have to decide to sentence the offender to a local program, place him on the waiting list for the alternative punishment program, or impose a traditional incarceration sentence. Judge Stewart added that DOC is well aware of the Commission's plan with respect to risk assessment. Mr. Christie indicated that DOC should be able to accommodate the expected influx of these nonviolent felons by converting field units for this purpose. He felt that DOC is planning to convert these facilities if the demand and the projections support the need. Mr. Christie asked if it was an appropriate time to make a comment about the work sheets. He said that a Commonwealth's attorney told him that a judge in his circuit would not deviate from the guidelines because it was too much trouble to write a departure reason. Mr. Christie felt it would be easier for the judge to depart if the Commission inserted check boxes with the most frequently cited reasons for departure. Judge Gates remarked that this topic had come up before under the old sentencing guidelines system. He noted that the idea of check boxes for common departure reasons was rejected then because it was seen as being too convenient for the judges. Judge Stewart added that the Commission gave that check box idea serious consideration but determined it would not be a good idea. Judge Stewart said the Commission is really interested in the reasons why judges feel the guidelines are not appropriate and that the articulation of the reason is best left up to the

judge. Furthermore, he added that it should usually only take a minute or two to write a departure reason.

Mr. Kneedler asked if all the alternatives involved in risk assessment require confinement. Dr. Hunt said that confinement is not required in some of the alternatives such as day reporting centers. Mr. Petty commented that there may be a greater number of offenders going into these alternative programs than we are assuming due to the application of the risk assessment instrument in plea agreement cases. He felt that a judge will see an alternative program as a tougher sentence than probation. Mr. Vassar asked if an offender would have a risk assessment form completed in a plea agreement situation. Dr. Hunt said if the sentencing guidelines recommendation was probation/no incarceration the form would not be completed. Judge Stewart asked Mr. Petty if he felt that the risk assessment would add to the number of offenders being sentenced to alternative sanctions. Mr. Petty said that alternative programs meant to divert felons from traditional incarceration are not being sold at the local level and some judges and prosecutors are not that familiar with these sentencing alternatives. Rather than being used for its intended purpose, he felt that the risk assessment instrument had the potential to be used in the prosecutor's office as a device to ensure that high risk cases not be recommended for probation. Judge Stewart agreed that the risk assessment instrument could be misused in this fashion but said that it would not be valid to use it to identify high risk probation cases. The risk scale, he noted, is only valid when applied to cases which otherwise would be recommended for incarceration.

Mr. Cullen commented on a concern that those in the field will see a contradiction in cases where the sentencing guidelines have recommended incarceration and then, after the risk assessment, are recommending alternative sanctions instead of incarceration. Mr. Decker added a concern that DOC could have a problem finding space for the offenders who are allowed to work during the day. These offenders would have to be housed close to their place of employment and DOC does not have enough facilities around the state to accomplish this plan. He suggested the DOC attend one of our future meetings and address this issue. Judge Gates responded that Mr. Walt Pulliam from DOC spoke with the Commission last month about alternative sanctions. Mr. Decker said Mr. Pulliam said the space was available but it seems unbelievable. Dr. Kern said that the sanction program that allows the offender to work during the day is the diversion center program. There are only two functioning diversion center programs in the state, one is in Richmond (women's facility) and the other in Chesterfield County (men's facility). Dr. Kern said that it was likely the case that DOC could quickly convert existing space into detention centers but that the creation of diversion centers will likely take longer and be a more complicated process.

Dr. Hunt continued with the presentation by discussing how the work sheets would be scored. He gave an example of an offender whose primary offense was fraud. If the offender is recommended for incarceration on section B or C, then the risk assessment form needs to be filled out which is section D. He noted that in training we highlight that some offenders are not eligible for risk assessment. Any offender that has a prior conviction of any offenses listed in the manual on pp. 51-59 (offense defined as violent)



is ineligible for risk assessment. If any additional offenses at the time of sentencing are listed on pp. 51-59, the offender is also not eligible for risk assessment. Also, if any of the offenses at sentencing involve the sale, distribution or possession with intent of a Schedule I or II involving a quantity of cocaine of one ounce or more, the offender is ineligible.

Dr. Hunt reviewed each of the factors on the new work sheet. Mr. Petty asked if the Commission provides a working definition for employment. The Commission will be distributing an instructional manual with the new work sheets. The probation officer will use the same definition of employment that is used for the pre-sentence investigation(PSI) report. Dr. Hunt said the guidelines cover sheets were altered for offenses that pertained to risk assessment. A check box for risk assessment recommendations has been added. In the pilot site work sheets, the judge will be asked to write on the back side of the cover sheet a departure reason if he departs from the recommendations and any additional information he would like to add. Mr. Kneedler said he understands some of the members' concerns that the offenders would normally be recommended for prison and are now being recommended for alternative sanctions. He believes this is a small group of offenders but he does agree with Mr. Petty that this risk assessment form will be used for other unintended purposes. Judge Gates said that the Commission can address all of these fears during the pilot site project. The pilot project will help the Commission answer these types of questions and concerns.

The risk assessment is best scored beginning with a pre-sentence report. Probation officers in the pilot sites will be asked to complete all risk assessment work sheets after completing a PSI. The PSI contains all the factors needed to accurately score the instrument. The initial pilot sites have relatively high levels of pre-sentence report completion. Although a large number of PSI are completed, this study will increase the workload for probation officers in the pilot site. The target implementation date is November 3, 1997. The program will continue for at least one year. Training will be offered in the next month to probation officers and attorneys. Dr. Hunt said the Research Subcommittee will evaluate the impact of the risk assessment project and report to the Commission at a later meeting.

At his juncture, Judge Gates called for a ten minute break. After the break, Judge Gates turned to the next item on the agenda and asked Mr. Kauder, Research Consultant from VisualResearch, to discuss the next item on the agenda, an Evaluation of the Risk Assessment Component.

## **V. Evaluation of Risk Assessment Component - Grant Proposal**

Mr. Kauder began by providing the Commission with some background on the grant solicitation put out by the National Institute of Justice (NIJ), the research agency of the United States Justice Department. NIJ is interested in seeing research organizations like

the National Center for State Courts (NCSC) expand their relationship with state and local policy groups like the Commission. Their hope is that this partnership would lead to research that is relevant to policy makers. Mr. Kauder felt that NCSC and the Commission would be a perfect match and together could evaluate programs like risk assessment. NIJ would like to focus on sentencing and corrections issues and risk assessment fits very nicely in both those areas. Virginia is the first state that has developed an empirically based risk assessment tool and has attempted to integrate it into a structure like sentencing guidelines. Mr. Kauder believes that other states are going to be very interested in the monitoring and evaluation of this program.

Mr. Kauder said that the benefits for this partnership to the Commission would be the provision of additional resources to conduct, monitor, and evaluate the pilot project. The Commission would also have ready access to a national level research/evaluation team. The NCSC would benefit by having the opportunity to work with a well-established and respected staff and sound databases.

He then spoke about the project components. Mr. Kauder said NIJ has not awarded the grant yet but we should know within the next month or so. The first component of the project is to evaluate the process of risk assessment development. Researchers must determine what work sheet factors are used and what methods were used to determine factor selection. Mr. Kauder said the evaluation would document how the final risk model evolved and what methods were selected to weight the factors. The second component of the study would be to evaluate the use of risk assessment in the four pilot sites. Among other things, the evaluation would analyze 1.) compliance with the risk assessment recommendations, 2.) availability and use of alternative programs, 3.) ability of offenders to complete sanctions, 4.) Judge's perceptions of the risk assessment tool as effective, 5.) impact on incarceration rates and 6.) workload implications for probation officers.

The third component of the project would be to measure recidivism among diverted offenders. The study would involve about 400 offenders who would be tracked during and after diversion. Recidivism will be examined for a one year follow-up period at first and then eventually a three year follow-up. The final component of the grant will be reporting the results to the Commission, NCSC and NIJ. The study methods will be reported in a full grant report. Judge Johnston asked if the grant could evaluate the offenders who were not diverted. Mr. Kauder said that was not included in the study methodology. Mr. Christie felt that both groups of offenders should be followed up in an evaluation but that it would probably add a great deal of expense to the study. Mr. Christie continued by saying that it would be prudent to complete this first phase of the study and worry about tracking the other offender group later.

Judge Gates turned to the next item on the agenda and asked Dr. Kern to provide an overview of the 1997 Annual Report Outline.

## **VI. 1997 Annual Report Outline**

Dr. Kern presented a proposed outline for the 1997 Annual Report. He noted that last year's Annual Report proved to be a success with the Commission receiving many favorable comments on its content. Given the success of last year's report, the proposal for this year calls for a report that follows the same format. He said that the introduction would be very similar to last year's report with a new section on the community corrections revocation data system. Dr. Kern said that the Commission would hear a presentation on this topic later in the meeting. The other new section in this chapter is the implementation of guidelines revisions. This is the first time the Commission has approved changes to the guidelines. This section will deal with the revisions and the implementation of the new manual that took place in July '97. Another part of the introduction that is also new is the offense seriousness survey section. Dr. Kern added that the Commonwealth's attorneys have agreed to be re-surveyed for the offense seriousness study. The Commission will re-issue the survey to the Commonwealth's attorneys. There will also be a section on the embezzlement study that Ms. Farrar-Owens presented earlier in the meeting.

Dr. Kern said that Section Two of the Annual Report is very similar to last year's report. There are several parts of the section that are new such as compliance trends over time, compliance per 1997 guidelines revisions, and the jury trial rate trends. The next chapter would cover risk assessment and sentencing guidelines and would be an in-depth discussion of the project. This chapter would be a documentation of the development and implementation of the risk assessment instrument.

The next chapter in the report would address the impact of the new sentencing system. This chapter will detail the goals of the sentence reform and impact to date. He said that the Commission has enough data to address some of the stated goals of the sentence reform program. To illustrate, Dr. Kern discussed a chart that analyzed recommended and actual disposition for selected felony sentencing guidelines offenses. The chart shows that the actual incarceration rate under the new sentencing scheme is very close to the historical incarceration rate which the guidelines emulate. Dr. Kern also presented twelve charts that compared the parole system time served midpoints with the new targeted midpoints (after the legislatively passed enhancements were added) and the actual time served midpoints. Dr. Kern observed that the data unequivocally illustrate that the new sentencing system is achieving longer prison stays for violent offenders. For example, offenders with no prior violent record convicted of first degree murder served an average of less than thirteen years in the past, now have an expected average time to serve of 46 years. The data revealed that, in most cases, the time served midpoints targeted in the new legislation were either being met or actually exceeded. Dr. Kern also noted that the proposed chapter would include some discussion on the 1997 official jail and prison bed space forecast. Another section would be added to discuss the expansion of alternative sanction options. This information would come from DOC and would detail when these programs are going to be expanded. The report would also cover a discussion of the offender notification program which is ongoing.

The final chapters of the Annual Report would include Commission recommendations and the future plans for 1998 and beyond. To date, the Commission has tentatively recommended only one change which deals with the legislation covering the appointments of members. Dr. Kern asked the Commission to notify him if they have any other recommendations for this section. Judge Gates felt that the proposed revision to the legislation should include provisions for the Commission to appoint a vice chairman in case the Chairman can not attend the meeting. In summing up, Dr. Kern noted that the future plans section would include topics like the re-analysis of sentencing data of no parole cases, implementation and evaluation of risk assessment, efficiency in work sheet automation and integration of intermediate sanctions in guidelines.

Dr. Kern noted that sections of the Annual Report would be distributed to the Commission at the next meeting and that any remaining sections would be mailed. A timetable would be followed to allow staff to integrate any revisions and have the report completed on time for the December 1, 1997 deadline.

## **VII. Sentencing Revocation Data System - Implementation Report**

Judge Gates turned to the next item on the agenda and asked Mr. Fridley to provide an overview of the new sentencing revocation data system.

Mr. Fridley presented the revocation data collection form to the Commission. He said that the Department of Corrections helped to design the form to collect data on probation and post release supervision revocations. The data collected will be most immediately used to assist in the forecast of prison populations and our own analysis of sentencing practices. Parole, probation, and post release revocation data is not routinely available, and this data collection instrument will fill this void.

The probation revocation form has been in place since July 1, 1997. Basically the top half of this form is filled out by the probation officer. The officer identifies the offender and identifies the alleged violation. Based on comments from the field, the Commission has added the reason "fail to follow instructions." The bottom of the form should be completed by the judge or his or her designee. The judge would indicate if the offender was in violation and the sanction imposed. Also due to user comments, the Commission has added a block for incarceration. If incarceration is imposed the judge should enter the length of the sentence and, if applicable, the period of probation. There is also a block to be checked if the defendant is placed on indefinite or indeterminate probation.

Mr. Fridley said that the form was designed to save time. The completed form is scanned thus eliminating the need to key each field and the form can be destroyed after scanning. This one page form replaces the ten page post sentence reports that probation officers needed to complete for technical probation violations. The court is required to process this form, but the time to check two blocks and enter a sentence, date and sign should be minimal.

Mr. Fridley then presented a chart with the number of revocation reports received by circuit. The Commission has received the greatest number of forms from Circuit 8 (Hampton) and the lowest number from Circuit 30 (counties of Lee, Scott and Wise). The numbers for all circuits may appear low. Mr. Fridley prepared a fact sheet about the forms to be distributed to the Circuit Court clerks. Paul DeLoach with the Education Department of the Supreme Court will review the distribution process for this report and the guidelines with the clerks.

Of the 748 cases received, the number one reason cited for the revocation is a new law violation, followed by failure to abide by special conditions, mainly failure to participate in specific drug, alcohol, or mental health treatment programs. Several reasons can be reported on each report. Of those with new law violation, 27% were for larceny offenses and 21% for drug offenses. Mr. Fridley said he will continue to report findings to the Commission as the number of reports received increase.

### **VIII. Miscellaneous Items**

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

Dr. Kern introduced the new research associate, Kim Floyd, to the Commission. Ms. Floyd started on July 1, 1997. She is a Ph.D. candidate at Virginia Commonwealth University (VCU) in social psychology. Ms. Floyd has a strong research background and has assisted in teaching statistics courses at VCU.

Dr. Kern moved on to report that he received a call from a prosecutor who is puzzled by a result on the sentencing guidelines. He questioned if the guidelines emulated historical practice. This attorney requested the raw data for his own use to see whether the guidelines actually were correct. Judge Gates noted that the Commission had adopted a policy of not releasing its data and thought this precedent was sound and should be followed. The Commission agreed and decided not to release the data to this prosecutor.

With no further business, Judge Gates reminded the members that the next full meeting of the Commission is set for Monday, November 10, 1997. The meeting will begin at 10:00 a.m. in the Judicial Conference Room in the Supreme Court Building.

With no further business on the agenda, the Commission adjourned at 1:20 p.m.