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The Virginia Criminal Sentencing Commission
July 31, 1998
Meeting Minutes

Members Present:
Judge Gates, G. Steven Agee, Judge Bach, Mark Christie, Judge Honts, Henry Hudson, Lane Kneedler, Judge McGlothlin, Judge Newman, Reverend Ricketts, and Judge Stewart

Members Absent:
Jo Ann Bruce, Peter Decker, Frank Ferguson, Judge Johnston, William Petty, and Bobby Vassar

The meeting commenced at 10:05 a.m. Judge Gates began the meeting by making reference to the revised Code of Virginia which provides that the Commission Chairman appoint a Vice Chairman. Accordingly, Judge Gates announced that he was appointing Judge Stewart as Vice Chairman of the Commission as first order of business.

Agenda

I. Approval of Minutes

Approval of the minutes from the July 31, 1998 meeting was the first item on the agenda. The Commission unanimously approved the minutes with one correction. The modification involves an error on the last page that identifies the date for the next Commission meeting as September 23. The correct date for the next Commission meeting is September 28.

The second item on the agenda was the Sentencing Guidelines Compliance Report. Judge Gates asked Ms. Farrar-Owens, Commission Research Associate, to discuss the next item on the agenda, Sentencing Guidelines Compliance Report.

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 was condensed and a complete compliance update was in the packets distributed to each member. The analysis in the packets included all cases received through July 15, 1998.

Overall Sentencing Guidelines Compliance: She noted that the Commission has received 54,281 cases to date. The Commission is receiving about 20,000 cases a year. Ms. Farrar-Owens commented that overall compliance with the guidelines was nearly 75%. The aggravation rate was reported as 13% and the mitigation rate, 12%. She commented that the overall compliance rate has remained steady around 75% but that

during the most recent fiscal year (FY 98) the departure pattern had shifted slightly in favor of more mitigations (51% of the departures). Previously, the departure pattern had slightly favored departures above the guidelines.

Compliance by Offense: Ms. Farrar-Owens observed that compliance rates within offense groups range from a high of 82% in the larceny offense group to a low of 62% among the sexual assault offenses. Kidnapping and sexual assault have had the lowest compliance rates of all the offense groups since the adoption of the new guidelines system.

Habitual Traffic: Ms. Farrar-Owens remarked that the focus of her presentation would be on those aspects of the guidelines that were revised and became effective July 1, 1997. The Commission has about a year's worth of data on the changes that took effect in 1997. Ms. Farrar-Owens then spoke about the impact of changes in the habitual traffic offender statute. This modification allows judges to suspend the 12 month mandatory minimum incarceration term and sentence offenders to detention center, diversion center, or boot camp in cases where the judge feels an alternative sanction is appropriate. Of the 890 habitual traffic cases sentenced since July 1, 1997, only 11% have had the mandatory minimum sentence suspended and been sentenced to one of the alternative sanctions. Because of its potential impact on Virginia's prison population, the Commission will be closely monitoring the impact of this change. The initial data suggests that circuit court judges are not applying alternative sanctions often in these cases but this may change as the availability of detention and diversion centers expands.

Drug Guidelines: A significant change to the drug guidelines effective July 1, 1997 was the addition of a factor accounting for the quantity of cocaine involved in a sales offense. Ms. Farrar-Owens noted that this guidelines modification has two components. First, the offender who sells less than one gram of cocaine and has no prior felony record ends up with a dual recommendation: either the traditional incarceration recommendation (usually 7 to 16 months) or detention center. The judge has the option to select either sanction and still be in compliance with the guidelines.

The Commission has received 329 cases of first-time felons convicted of selling a gram or less of cocaine. These cases were targeted for the dual option guideline recommendation of either traditional incarceration or detention center incarceration. In 16% of these cases, judges have opted for incarceration in a detention center. In 7% of these drug cases it appeared that the boot camp incarceration program was selected. Approximately 12% of these drug felons received no incarceration and 4% received incarceration of six months or less. The remaining 61% of these first-time cocaine sellers received traditional incarceration of seven months or more. The Commission will continue to study the impact of this change to the drug guidelines over the next year.

The second component of the guidelines revisions dealing with cocaine centered on the larger quantity cases. For offenders who sell one ounce or more of cocaine, the recommendation is increased by three years and for offenders who sell ½ lb. or more, the recommendation is increased by five years. The data gathered at this point reveals that

101 offenders have received the new enhancement. Compliance in these cases is only 55%, with nearly all the departures reflecting sentences below the guidelines. The overall mitigation rate for these cases is 37%. Ms. Farrar-Owens then presented information concerning the reasons judges cite when sentencing below the guidelines in these larger quantity cases (n=38). In 26% of the mitigation cases, judges noted the offender's cooperation with the authorities for imposing a term below the guidelines. She said that the Commission will continue to closely monitor these cases.

Sex Offenses Against Children: Recent guidelines revisions also added a factor to the sexual assault guidelines for crimes in which the victim was younger 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 167 sexual assault cases since July 1, 1997 that involved victims younger than 13. Judges have complied with the new sentence recommendation at a rate of nearly 64% compared to the 61% compliance rate prior to the change. Compliance is up by only 3% but the departure pattern for these crimes has now reversed itself – previously the departures were mostly aggravated in nature, now they are largely mitigated. Ms. Farrar-Owens then presented information concerning the reasons judges cite when sentencing below the guidelines in these sexual assault cases (n=45). In 27% of the mitigation cases, judges noted the offender's potential for rehabilitation and weak evidence in the case as an explanation for imposing a term below the guidelines.

Ms. Farrar-Owens then continued by saying that she would like to briefly discuss the issue of guidelines worksheets received by the Commission that require departure explanations but do not have them. As Dr. Kern mentioned at the last Commission meeting, there was interest expressed on the part of some legislators to attach some kind of penalty or oversight function for a judge's failure to enter a reason when sentencing outside the guidelines. When the truth-in-sentencing laws took effect, judges were for the first time required to provide a written reason when departing from the guidelines. It took some time for the judges to adjust to this new requirement. However, Ms. Farrar-Owens reported that it is very rare for the Commission to receive a worksheet that is absent a required departure reason.

Judge Gates then asked Ms. Jones and Ms. Floyd to discuss the next item on the agenda, an update on the Risk Assessment Project.

Offender Risk Assessment Project - Status Report

Ms. Jones informed the members that a copy of the presentation was included in their packet and a risk assessment form was there as well. Ms. Jones began by reporting that the Commission has seven and half months of completed risk assessment forms (yellow forms) from the four pilot circuits. The Danville area is the last circuit to join the pilot program and the Commission only has four months of data from the 22nd Circuit. She reminded the Commission that risk assessment worksheets are only attached to the

guidelines forms for those felons convicted of fraud, larceny, and drug crimes. She noted that the Commission has received 854 of these worksheets to date and nearly half of the cases are from Fairfax. Among these 854 worksheets completed in drug, larceny, and fraud cases, only 377 had the risk assessment form (section D) scored while the remaining 477 cases were not scored. Among these latter cases, the guidelines recommendation was probation/no incarceration in the great majority (n=315). The intent of the risk assessment program is to target offenders who would be recommended for prison or jail incarceration. The remaining 166 cases where a risk assessment form was not completed were ineligible due to a prior violent record, current violent offense or a drug offense involving the sale, distribution, or possession with intent, etc. of cocaine of a combined quantity of one ounce or more, or problems associated with completing the form correctly.

She then spoke about the remaining cases (n=377) that were scored on Section D. Ms. Jones and Ms. Floyd separated these cases into four different groups based on recommendations and outcome. The first group of cases (n=56) were characterized by a risk assessment instrument score recommending the offender for an alternative punishment and the judge agrees and sentences the offender to an alternative (15%). The second group of cases (n=73) included cases where the risk assessment instrument score did not recommend alternative punishment but the judge chose to sentence the offender to an alternative (19%). The third group of cases (n=44) involved cases where the risk assessment instrument score recommended an alternative but the judge opted not to sentence the offender to an alternative (12%). The last and largest group of cases (n=204) concerns cases where the risk assessment instrument does not recommend an alternative and the judge agrees not to sentence the offender to an alternative sanction (54%). In over half of the cases, the risk assessment instrument did not recommend an alternative and the sentencing judge concurred. Mr. Christie asked if the Commission could analyze those offenders who were recommended for an alternative and actually received the alternative sanction or an incarceration sentence. Ms. Jones said she would present that information next.

Ms. Jones continued by saying that of the 377 cases that were scored on the risk assessment form, only 100 of the offenders were recommended for an alternative punishment. Among these 100 cases, 56% of the offenders received an alternative sanction while 44% were not sentenced to alternative punishment. These 56 cases were also separated into four groups. The first group represents offenders recommended for prison but who received a probation sentence (n=21, 38%). The second group of offenders are those who were recommended for prison but were sentenced to a jail term (n=4, 7%). The third group of offenders are comprised of those who were recommended for jail but received a probation sentence (n=18, 32%). Mr. Kneedler asked if the 32% of the offenders who received a probation sentence received a sanction that included alternatives like the detention center. Ms. Jones responded that in this case the probation sentence does include detention center commitments. The fourth group of these cases was comprised of an other category (n=13, 23%). The “other” category was comprised of offenders who were recommended for jail but were authorized for work release, electronic monitoring, weekend incarceration or jail farm. She continued by pointing out

that of the 56 offenders recommended by the risk assessment instrument for an alternative, 16 were sentenced to a detention or diversion center.

Ms. Jones then focused on those cases not recommended for an alternative. Of the 377 risk assessment forms completed, about 73% did not recommend an alternative. Only 27% of the cases with a completed risk assessment form were characterized by an alternative sentence recommendation. Ms. Jones pointed out that the legislative directive to the Commission was to examine the feasibility of placing 25% of non-violent prison bound felons in an alternative punishment program. Thus, the evidence to date illustrates that the risk assessment instrument is recommending about the same proportion of felons targeted in the legislative directive.

With the cooperation of the Department of Corrections, the staff checked on the status of all the offenders in the pilot sites sentenced to a detention center, diversion center, or the boot camp program. The majority of the offenders sentenced to a Department of Corrections alternative are still participating in the program (n=21).

Ms. Jones then presented some recommendations for the Commission's consideration. The first issue pertained to judges not providing a reason for not choosing an alternative punishment. In 48% of these cases, judges cited no reason for departing from the risk assessment recommendation. Judges noted reasons relating to alternative programs in 18% of the cases. The most frequently cited departure reasons relating to alternatives were the offender declined the program or was not physically or mentally suitable. She said that the staff would like to get more feedback from the judges about why they choose not to sentence to an alternative when it is recommended. She recommended that the Commission should send a letter to all judges in the pilot sites and explain to them that these reasons are important to the Commission. Mr. Kneedler asked about the percentage of judges that do not provide departure reasons on the sentencing guidelines forms. Ms. Farrar-Owens commented that this number is relatively low and has been declining over time. In non-risk assessment sentencing guidelines situations, when a judge leaves the departure reason blank, the form is sent back to the judge for a written explanation. Ms. Jones commented that the departure reasons are required by law but that it does not apply to the risk assessment recommendations. Judge Gates recommended calling the chief judge in each circuit participating in the pilot program to remind them of the importance of this information. Judge Bach felt that most judges in the pilot sites were not consciously ignoring the forms but just probably forgetting to fill out this section. Judge McGlothlin expressed a view that the judges should know how important this pilot program is. It was finally agreed that the best approach to resolve the problem would be to remind the judges in the pilot sites about the importance of this information.

Ms. Jones then presented the second issue which pertained to the risk assessment forms being improperly completed on regular sentencing guidelines forms. To date, the Commission has received 259 cases that should have been filled out on the specially designed yellow risk assessment form. The completion of the risk assessment cases on this form is important because the cover sheet informs the judge if the offender is

recommended for alternative punishment. She said that a letter was sent out to the chief probation officer, Commonwealth's attorney and the chief judge in each of the pilot site circuits making them aware of the problem. She believed that the letter solved this problem but the Commission will continue to closely monitor this problem.

Ms. Jones next focused on a concern that the pilot site study was not generating as many cases as was originally expected. She offered some reasons for the lower than expected caseload. For example, Circuit 31 (Prince William, Manassas) chose not to participate in the pilot study and the Commission substituted Circuit 22 (Danville area) which has a smaller caseload. Also, the improper use of regular sentencing guidelines forms for risk assessment cases resulted in a much lower turnout of risk assessment forms.

Ms. Jones recommended to the Commission that the number of pilot sites be increased. She offered two primary rationales for the expansion. First, the pilot study has been underway for over a year now and there have been no significant problems encountered in any of the existing pilot sites. Secondly, in order to complete a thorough evaluation of the risk assessment program, an adequate number of cases are needed to assess the impact on the use of alternative punishments and on recidivism rates. Thus, Ms. Jones and staff felt that some additional circuits could be brought into the pilot project. She recommended as good candidates Circuit 4 (Norfolk), Circuit 7 (Newport News) and Circuit 12 (Chesterfield, Colonial Heights). She offered some reasons why these locations would be appealing for the pilot program. Circuit 4 accounts for 10% of all drug, larceny and fraud work sheets the Commission receives. Circuit 7 has a high volume of cases and a high compliance rate. Chesterfield and Colonial Heights (Circuit 12) have a high rate of pre-sentence investigations completed. Ms. Jones also mentioned that, in the event that these circuits could not participate, Circuit 2 and Circuit 11 would serve as good alternative sites. Judge Newman made a motion to invite Circuit 4, Circuit 7 and Circuit 12 to the risk assessment pilot study. The motion was seconded. The motion passed without opposition.

Mr. Christie asked Judge Gates if the Commission would consider adding Circuit 13 (Richmond) to the pilot study. He felt that Circuit 13 with its high volume of drug cases would add a great deal to a feasibility study on risk assessment. Judge Gates remarked that Circuit 13 has a very low compliance rate with the sentencing guidelines. Judge Honts asked if the Commission would approve asking all the alternative sites, including Circuit 13, to participate. Judge Gates asked the Commission to vote on this motion and it passed without opposition.

Ms. Jones next turned attention to a phenomenon that has been observed wherein judges sentence offenders to multiple alternative programs or sanctions. She cited as an example a situation where the sentence includes commitment to both the detention and diversion center incarceration programs. A slide was displayed that cited the Code of Virginia section that pertained to the eligibility for Detention Center (§19.2-316.2). Ms. Jones interpreted the language in the Code as saying that if an offender qualified for one program it would disqualify him for another. She then asked the members if they agreed with this interpretation and if they felt the multiple use of alternative sanctions was a

problem. Several judges on the Commission responded that they felt that this was not a problem. Ms. Jones did remark that there were very few of these cases reported on the data base. Judge McGlothlin commented that he has utilized multiple alternative sanctions in a situation where the offender needed the services and structure of both programs. Mr. Agee noted that the Commission should exercise caution before sending a letter to judges condemning this practice. Judge Bach felt that the Commission should follow these cases to get more information on this issue.

Ms. Jones concluded her remarks by noting that the pilot project was proceeding nicely and that updates would be provided at all future Commission meetings.

Judge Gates thanked Ms. Jones for her presentation and then asked Neal Kauder, Principal from VisualResearch, and Brian Ostrom, National Center for State Courts, to discuss the next item on the agenda, the Offender Risk Assessment Project - Evaluation Grant Proposal.

Offender Risk Assessment Project - Evaluation Grant Proposal

Dr. Ostrom began by saying that he was very pleased to work with the Sentencing Commission on the risk assessment project. He remarked that the risk assessment instrument has sparked a lot of attention nationally. Speaking to the evaluation study design, he commented that the initial target area of focus would be on documenting the process by which the instrument was drafted. He said that the evaluation would include interviews with judges, Commonwealth's attorneys and probation officers about their experience with the risk assessment pilot project. The final stage of the evaluation would focus on the relative effectiveness of the risk assessment instrument. Dr. Ostrom noted that the federal grant money has been awarded by the National Institute of Justice to support this evaluation research but that the National Center for State Courts has not received the money needed to start the project. Dr. Ostrom said that the National Institute of Justice assured the Center that the grant would be funded shortly. Judge Stewart asked about the time frame of the grant evaluation. Dr. Ostrom answered that the project would take two years to complete.

Judge Gates thanked Dr. Ostrom for his presentation and then asked Ms. Philpott, Research Analyst with the Crime Commission to discuss the next item on the agenda, Sentencing Enhancements for Sex Offenders (Senate Joint Resolution 69).

Sentencing Enhancements for Sex Offenders (SJR 69)

Ms. Philpott began discussion on this item by noting that much more work was required on the response to this Senate Joint Resolution (post sentence civil commitment of some

sex offenders) and that the information she was presenting was in a draft format. Ms. Philpott invited any of the Commission members to the next meeting in September to help with any suggestions. She said the committee that is researching the topic of post-sentence civil commitment is chaired by Senator Howell and that one of the Sentencing Commission members, Mr. Ferguson, is participating. The post-sentence civil commitment is designed as continued incapacitation for the most violent offender who is considered to still be at risk to society. This civil commitment would target sex offenders at the end of their sentence who have not been responsive to treatment.

She presented three preliminary proposals developed by their committee which would have some impact on the sentencing guidelines. The first proposal was to modify section C of the sentencing guidelines to identify offenders that are sexually violent predators. If an offender is identified as a sexual predator this would require the probation officer to fill out another form. This new form would require that the offender undergo a psychiatric evaluation. If the defendant is found to have a psychiatric condition then two sentences would be imposed - a penal sentence and an indeterminate civil commitment that would commence at the end of the penal sentence.

Ms. Philpott presented the second proposal that is very similar to the current risk assessment work sheet being tested in the guidelines. This proposal centers on requesting that the Sentencing Commission develop a risk assessment work sheet specifically for sex offenders. Offenders assessed at high risk would receive the maximum in the sentencing range. Another proposal along these lines is to request the Commission to alter some of the sentencing ranges of certain sex offenses involving children.

The last proposal being considered by this committee is to create a "habitual sexual offender" status that ensures additional penalties. The additional penalties could include a new criminal penalty for habitual sexual offender status and lifetime probation with certain terms and conditions.

She concluded by reviewing the topic of post sentence civil commitment. The resolution stated that the study of civil commitment should consider less restrictive alternatives for a graduated release. Ms. Philpott said that mental health services does not provide less restrictive alternatives. Mental health services, she noted, have group homes but these homes do not have any security component.

Reverend Ricketts commented that the second proposal sounded feasible and sensible. He felt that the Commission may not want to undertake the whole project but that it could research the idea. Dr. Kern said that the Commission could initiate a study of sex offenders that have re-offended over a three to four year period. After collecting that data, the staff could study the entire universe to analyze the offenders who re-offend and those who do not. Ms. Philpott questioned if the Crime Commission could get the number of §19.2-300 evaluations that have been ordered by the court. Judge Gates felt that Supreme Court may have that information. Judge Newman commented that the third proposal of creating a habitual sexual offender status has potential. Judge McGlothlin remarked that several of the committee proposals would require normative changes to the

sentencing guidelines and he felt the Commission should keep the guidelines as close to a historical base as possible. He went on to note that the third proposal looked like a legislative change that would not effect the guidelines directly. Judge Gates assured Ms. Philpott that the Commission would helped the Crime Commission with this research.

At this juncture, Reverend Ricketts informed the members that Ms. Philpott would be leaving the Crime Commission and joining the Peace Corps in April, 1999. He offered Ms. Philpott best wishes and good luck in this career change. All of the Commission members also offered their best wishes to Ms. Philpott and thanks for all her work for the Commonwealth.

Judge Gates thanked Ms. Philpott for her presentation and then asked Mr. Fridley to discuss the next item on the agenda, sentence revocation data base status report.

Sentence Revocation Data Base Status Report

Mr. Fridley started his presentation by saying that the Commission has been collecting information on sentence revocations for one year. The form was designed to replace the ten page post-sentence report prepared by probation officers in these types of cases. He said while this change reduced the workload for probation officers, the amount of information available on probation and suspended sentence violations increased dramatically. The increase in information is a result of combining each revocation report with the original Pre-sentence Investigation Report (PSI). Mr. Fridley said that he has matched about 78% of the revocation reports to the original PSI.

He then continued by giving the members a snapshot of some of the data available as a result of the Commission implementing this report. The Commission can now identify why an offender was returned to the court. The top four reasons why an offender was returned to court are drug use, fail to report to the probation officer, special conditions and new law violations. Regardless of the reason for the violation, the data allows us to determine the amount of time that an offender received specifically for the probation or suspended sentence violation. Mr. Fridley presented a chart that gave a preliminary look at the average revocation sentence. This information is very important in forecasting prison populations and developing legislative impact statements. The Commission has been providing the Department of Corrections this information for use in the forecast process.

Mr. Fridley noted that this data should be of great use to the Commission as well as other criminal justice agencies. He observed, however, that there is a concern with the small number of reports received from some circuits. Since this is the first time a comprehensive effort has been made to collect this type of sentence violation data, the universe is unknown. But, he pointed out that a comparison of the number of cases across selected circuits reveals unusual findings. For example, he noted that Chesapeake, Suffolk and Hampton have reported at least 300 violations while Norfolk has reported fewer than these and that Richmond and Henrico have reported even fewer. To alleviate

this problem, the Commission sent letters to probation chiefs to ask them to compare the number of reports we received to the number of violations that they had processed. The Commission did receive a slight increase in the number of reports after the distribution of the letter. Some circuits still have low submittal rates.

Several probation chiefs did contact the Commission and indicated the numbers were correct (i.e., Roanoke, Franklin, Fairfax, Fredericksburg, Halifax, Staunton, and Botetourt). Several chiefs did not respond to the letter and this could be a sign that the implementation of the new form may have a few problems. The Commission did develop a handout for the clerks at their annual conference. The response from the clerks was limited. Mr. Fridley asked the members what they thought about this problem and any advice to correct this problem. Judge Newman commented that the letters should be sent to the probation officers. Judge Gates said the responsibility of filling out the form is the sentencing judge. Mr. Hudson thought that the letter should be sent to the probation officers asking them to remind their judge to fill out the revocation report. Judge Gates commented that this could put the probation officer in an awkward position. Mr. Agee observed that if the judge doesn't respond to the probation officers request then they will not likely respond to a written letter. Judge Newman said it is a simple form and he would fill it out if someone presented him with it. Judge Honts asked if the Commission should sent a letter to the probation chiefs. Judge Gates said he has heard some judges complain that the statute does not require judges to fill these forms out. Ultimately, the decision was made by the Commission to attempt to address this problem with a letter both the probation officers and the judges.

Judge Gates thanked Mr. Fridley and then asked Ms. Smith Mason to cover the next item on the agenda.

Training Update

Ms. Smith Mason gave the members an update on the training sessions recently held around the state. The training staff has conducted sessions in Roanoke, Lynchburg, Virginia Beach, Fairfax and Clarke County. She said that a training session would be held next week in Richmond. Training is also required for all new probation officers and this training is held in Goochland County at the Training Academy for the Department of Corrections.

She also announced that we have seen an increase in manual sales among defense attorneys. Ms. Smith Mason said that when staff travel around the state for different training sessions they receive useful feedback about the guidelines. One of the most frequently heard compliments centers on our hotline. The hotline phone rings many times a day with calls from probation officers, Commonwealth's attorneys and defense attorneys with questions on the forms. Unlike prior training seminars, Ms. Smith Mason noted that negative comments on the guidelines system were not voiced by the attendees.

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

Miscellaneous Items

Mr. Christie asked the judges on the Commission about the release of the compliance figures by judge and what type of feedback they had received. Mr. Christie felt that releasing this data might have broken the commitment made to the judges in 1994 that such information would not be released. He was wondering if the judges heard any comments about this issue. Dr. Kern said only one judge called to complain to him about this issue. This judge, Dr. Kern noted, felt that the General Assembly would use this information against judges during their re-election hearings. Judge Gates said that most judges he spoke with were pleased with their compliance rates. Judge Gates also commented that he has recently been privileged with attending two national conferences on sentencing and that the Virginia system is receiving much praise from others around the nation.

Mr. Kneedler said he was concerned about the commitment made with the judges in 1994 as well. He was delighted to hear that the judges were pleased with their compliance rates. Mr. Kneedler did express his concern about members of the Courts of Justice Committee misusing this data for other reasons. He felt it was important to stress the fact that a 75% compliance rate is a success and not a C grade. Mr. Kneedler remarked that the news stories he had read were fair and offered all the necessary caveats about the data but that this did not preclude others from putting an illogical twist on the percentages.

Mr. Christie commented on the Virginian-Pilot newspaper request for our database. He questioned if the Commission is collecting too much data. The Commission, he continued, should only collect the data that is needed to do our job. Mr. Kneedler agreed with Mr. Christie but reminded everyone that about ten years ago the Judicial Committee on Sentencing Guidelines did know exactly what was needed to do the job and therefore erred on the side of over-inclusiveness of factors. He said the Commission could restrict what is now being collected but that he would have some concerns about that decision. Dr. Kern added that the Commission collects the bare minimum of information on the guidelines forms for each case. Then, he noted, the staff merge the guidelines data base with the Pre-sentence investigation data base which contains over 200 factors of information for each case such as race, sex and employment, etc. This information is not subjected to release under the Freedom of Information Act. Mr. Christie asked if that information is in our data base. Dr. Kern said that it is not in our sentencing guidelines data base. The information from the pre-sentence investigation is confidential and not subject to release to the public.

The request from The Virginian-Pilot is for the sentencing guidelines data base which contains information which is public and in the court files. The reporter from the Virginian Pilot was initially interested in the sex and race of the offenders but the

Commission does not collect this data. Mr. Christie asked if the data has been sent to the reporter. Dr. Kern said the data was sent about a month ago. He felt that the reporter was looking for more information that we gather. The Commission released only the raw data and Dr. Kern said a programmer will be needed to analyze this data.

Dr. Kern then directed the members to a handout that included the project costs for the Commission's multi-media conferencing room. The actual cost was $30,000 above the budgeted cost for the conference room. He said that the Commission has saved money by not buying new computer equipment this year and we also have $150,000 in non-general fund money. Judge Gates said there has been some concern over the Commission spending this money but he felt this is a good idea for the Commission and other state agencies that may use the room. A motion was made to approve the revised budget and the motion was seconded. The motion passed without opposition from the members.

With no further business, Judge Gates then asked the Commission to discuss future meeting dates for 1998. Dr. Kern said that the Sentencing Commission meeting schedule for the remainder of 1998 was September 28 and November 16.

With no further business on the agenda, the Commission adjourned at 12:20 p.m.