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The Virginia Criminal Sentencing Commission
April 10, 2000
Meeting Minutes

Members Present:

Judge Gates, G. Steven Agee Judge Bach, Jo Ann Bruce, Mark Christie, Peter Decker, Frank Ferguson, Judge Honts, Lane Kneedler, Judge McGlothlin, William Petty, Reverend Ricketts, Judge Stewart and Bobby Vassar

Members Absent:

Judge Hudson, Judge Johnston and Judge Newman

The meeting commenced at 10:10 a.m. Judge Gates congratulated Mr. Steven Agee on his appointment to the Court of Appeals. He then asked the Commission members to approve the minutes from the last meeting.

Agenda

I. Approval of Minutes

Approval of the minutes from the November 8, 1999, meeting was the first item on the agenda. Ms. Bruce asked for a few points of clarification on the minutes but no changes were required. The Commission unanimously approved the minutes.

The second item on the agenda was an evaluation of the risk assessment instrument for non-violent offenders. Judge Gates asked Mr. Kauder, Principal of VisualResearch, to discuss this item on the agenda.

II. Evaluation of Risk Assessment Instrument for Non-Violent Felons

Mr. Kauder began by saying that the National Center of State Courts and VisualResearch are jointly working on the Virginia Risk Assessment Evaluation that is funded by the National Institute of Justice. He noted that the project has three main evaluation objectives: review the risk assessment study design and its findings, assess the implementation of the risk assessment program, and conduct a recidivism analysis. He then discussed each objective in detail. The first objective will address the rationale for risk assessment in Virginia, risk assessment use over the past twenty years in other states and the examination of the design and content of Virginia's instrument.

The second objective will evaluate the implementation, use and effectiveness of the risk assessment instrument. This section of the evaluation will attempt to determine if judges find risk assessment useful. The last objective shall be to conduct a recidivism analysis.

This analysis will test the predictive validity of the instrument and will assess the success of the risk assessment instrument actually in identifying the highest risk offenders.

The largest part of this study is to identify available data and information sources to be used for the risk assessment evaluation. Mr. Kauder said the evaluation will use databases from the Sentencing Commission and Department of Corrections. Case files from local probation offices will have to be retrieved manually. He then discussed some of the primary methods for achieving evaluation objectives. On-site interviews will be conducted with judges, probation officers, prosecutors, defense counsel and intermediate sanction program directors and counselors. The final step would be to analyze the data. Mr. Kauder expected to create a comprehensive database for 600 offenders evaluated by the risk assessment instrument. The database will include information like the offender's prior record, socio-economic factors, seriousness of offense, sentence recommendations, risk assessment scores, as well as recidivism data.

Mr. Kauder then gave an early assessment of the evaluation. Record keeping varies from site to site and some manual data collection will be needed. Local diversion programs appear more utilized than state programs. Information on local diversion programs must be collected on-site. He said that would make the evaluation more complicated than expected.

A letter was sent out to the Chief Circuit Court judge in the pilot sites to let them know that researchers will be conducting interviews in the next couple of weeks. Judges will also be asked to recommend other local officials for interviews. He concluded by noting that in the next couple of months, the interviews will be conducted and the manual data collection will be completed. Mr. Kauder felt that the database should be complete by August.

Mr. Kauder then introduced Walt Pulliam from the Department of Corrections. Mr. Pulliam distributed a hand-out that included data on offenders exiting special community programs in 1996 and release outcomes for offenders released from community corrections' special programs in 1998. Mr. Pulliam observed that the evaluation study would be especially useful to the Department of Corrections.

Mr. Pulliam asked the Commission to take two related matters into consideration when making decisions about the study. The Department of Corrections supports the development of actuarial instruments to aid in judicial and criminal justice decision-making, but the Department believes the process should take into account the results of actual participation and outcomes by felon offenders who have completed or are participating in these programs. Mr. Pulliam said that many offenders score relatively high on a risk assessment instrument yet have been successful in these programs and the community thereafter.

The second point noted by Mr. Pulliam concerned a circumstance where a judge imposes a special condition of program participation in lieu of the recommended guideline sentence to incarceration and the fact that this decision sometimes is viewed as out of compliance with the guidelines. He noted that while a specific reading of the compliance analysis conducted by the Commission will sometimes count these sentences as “in compliance,” most readers do not go beyond the initial in/out-of compliance notation. Mr. Pulliam asserted that the statutory definition and intent that established these programs as “probation” programs clearly intended for their use in lieu of imprisonment. He urged the Commission to consider any use of these alternative programs in lieu of any incarceration recommendation to be regarded as in full compliance.

Judge Gates thanked Mr. Kauder and Mr. Pulliam for their presentation. He then asked Dr. Kern to cover the next item on the agenda, General Assembly actions on new sentencing legislation.

III. General Assembly Actions on New Sentencing Legislation - 2000 Session

Dr. Kern said the Commission was very successful this year with our recommendations to 2000 Session of the General Assembly. All the recommendations that the Commission made in the Annual Report were approved by the General Assembly. The Commission made specific recommendations for revisions to the sentencing guidelines system. Those changes will take effect July 1, 2000.

He then gave a brief overview of some of the highlights of legislative action this past session. Dr. Kern discussed legislation that passed and failed. The presentation detailed some of the thinking of the General Assembly regarding sentencing issues.

The first bill he discussed was House Bill 383 that required juveniles found delinquent and adults found guilty for a first drug offense to be subject to periodic substance abuse testing, drug treatment and education. Dr. Kern said this bill also created three different sets of mandatory minimums. The guidelines would be contradicted by the mandatory minimum in certain instances. Mr. Kneedler commented that the mandatory minimum provisions in this bill did not correspond to a three time loser statute. Mr. Vassar asked if any state agency has researched the impact of mandatory minimums in Virginia. All of research that Mr. Vassar has read indicated that mandatory minimums are a waste of money. Mr. Petty commented that the bill’s enactment clause requesting the Sentencing Commission to study drug offender sentencing may, in effect, be an invitation to look at some of issues that Mr. Vassar brought to the Commission’s attention. Dr. Kern said that this bill charged the Commission with a study of the recommended sentencing midpoints for cases involving Schedule I/II drugs and marijuana where the defendant has been previously convicted of such an offense. The Commission’s study shall include an examination of whether the minimum midpoint is adequate in deterring recidivism and insuring that criminal justice sanctions are integrated with substance abuse treatment

services available through the Department of Corrections and local corrections agencies and facilities. The Commission's study shall be completed in time to make recommendations to the General Assembly on or before December 1, 2000.

Mr. Decker observed that legislation such as HB383 that is submitted without any input from the Commission undermines the actions taken by the Commission on drug offenses over the last four years. He expressed concern that the General Assembly must feel that the guidelines system and current sanctions are inadequate because they are enacting mandatory minimums. Mr. Christie agreed that mandatory minimums of the type found in HB383 are unnecessary because Virginia has good judges and guidelines with some flexibility. Mr. Christie asked Dr. Kern how much overlap exists between the new mandatory minimums and the discretionary sentencing guidelines. Mr. Christie wondered if some of the mandatory minimums simply reflected the guidelines. Dr. Kern responded that the original version of HB383 would have represented a severe departure from the guidelines in that it called for long mandatory minimums for second drug convictions. The final version of HB383 diverges much less frequently from the guidelines. Dr. Kern said that Dr. Creech would specifically address this issue in his presentation later in the meeting.

The second bill he discussed was House Bill 397 which specifies that only the Commission is to prepare fiscal impact statements for proposed legislation with a potential impact on correctional resources. The ten-year look forward period for the fiscal impact of proposed laws is reduced to six years. Furthermore, if the Commission does not have sufficient information to project the offender population impact, the words "cannot be determined" will be printed on the bill. This bill will become effective July 1, 2002.

The third bill discussed, House Bill 705, provides that when requested by the defendant, a jury shall be instructed that a person convicted of a capital offense committed or after January 1, 1995, will never be released on parole if given a life sentence. The bill also requested the Supreme Court, with the Virginia State Bar, to recommend jury instructions for non-capital felony offenses for further consideration by the General Assembly. The next bill was House Joint Resolution 395 that confirms the appointment of Judge Gates as Chairman of the Commission for a term of four years to expire November 30, 2004.

Dr. Kern proceeded to discuss Senate Bill 125. Initially, the bill would have required that each person convicted for a felony committed on or after July 1, 2000, and sentenced to an active incarceration term, to receive a post-release term and supervision period to be administered by the Parole Board. Dr. Kern read several amendments to this bill that will limit the application of this measure to only those instances where a judge fails to suspend at least 6 months of imposed incarceration time.

Dr. Kern spoke about several bills that did not pass the 2000 Session of the General Assembly. He concluded his presentation by giving the members a list of new bills that contain mandatory minimums.

Judge Gates thanked Dr. Kern for his presentation. He then asked Dr. Creech to cover the next item on the agenda, Proposed Legislation and Impact Analysis - 2000 General Assembly Session.

IV. Proposed Legislation and Impact Analysis - 2000 General Assembly Session

Dr. Creech presented an overview of the legislative impact process for the 2000 session of the General Assembly. The Commission produced 144 impact statements that were communicated to the Clerk of the House of Delegates, the Department of Planning and Budget, the Senate Finance Committee, the House Appropriations Committee, the Joint Legislative Audit and Review Commission, the Department of Corrections, the Compensation Board, and the Secretary of Public Safety. He displayed a chart that presented the types of changes in the contained bills assessed by the Commission. Forty-seven percent of the proposed legislation involved expansion or clarification of an existing statute and 24% represented a proposal to create a new crime. Of the 144 impact statements completed, 78.5 % became bills and 38% eventually passed both houses.

Judge Gates thanked Dr. Creech for his brief overview. He then asked Ms. Farrar-Owens to cover the next item on the agenda, Sex Offender Risk Assessment Instrument.

V. Sex Offender Risk Assessment Instrument

Ms. Farrar-Owens said that the staff has been working diligently over the last four months collecting data on out-of-state arrests and convictions for the offenders in the sample. This information will help identify recidivists most accurately. Ms. Farrar-Owens found that adding out-of-state data obtained from FBI rap sheets increased the number of prior arrests and increased the number of recidivist offenses.

She said there were two different analytical models used in the data analysis. The first model's analytical method (Method 1) required the same follow-up period on every offender. The set follow-up period tracked offenders for a five-year period to see whether recidivism occurred. Method 2 allowed for a variable follow-up period that ranged from five to nine years. Some prior research on sex offenders has concluded that longer follow-up periods are desirable because sex offenders recidivate at a slower pace than other types of offenders.

She identified significant factors in predicting recidivism by relative degree of importance for both methods. Both methods had nearly all the same factors but the relative importance of the factors varied. For example, under the second method, offender age and prior arrest record were the strongest indicators. She displayed a chart that converted the significant variables from both Methods 1 and 2 into factors on a worksheet. The points on the worksheets represented the relative importance of each factor. Regardless of whether Method 1 or 2 is used, all the worksheet factors are the same except age at first juvenile adjudication. There is, Ms. Farrar-Owens noted, more emphasis on age and prior arrest record on the worksheet premised on Method 2. Ms. Bruce asked if there was any difference between prior mental health treatment and commitment. Ms. Farrar-Owens responded that a treatment can be out-patient while a commitment is an inpatient stay in a facility. Judge Honts inquired as to why the point structure was so low for cases where there was no victim/offender relationship and the victim was under age 10. He observed that this type of offense is very serious and the offender is likely a true pedophile. Ms. Farrar-Owens answered that, in the study, strangers did not recidivate as frequently as step-parents and other family members when the victim was under age 10. Mr. Petty wondered if the length of sentence imposed on a stranger could explain this result. Ms. Farrar-Owens said that the result was consistent even when the analysis controlled for the amount of time served.

Ms. Farrar-Owens said that the goal of risk assessment is to identify offenders most likely to recidivate. The instrument should be tested to see how well it performs. If the instrument is successful in differentiating between recidivists and non-recidivists, offenders who score the lowest points on the instrument should have very low rates of recidivism while offenders who score the highest points should produce much higher rates of recidivism. She displayed a chart that showed rates of recidivism by various levels of predicted risk for both models. Offenders were scored out on both instruments and labeled low risk, some risk, high risk and very high risk of recidivism. She said that both models do well in identifying non-recidivists scoring at the low levels and recidivists scoring at the highest levels on the instrument.

Ms. Farrar-Owens then presented a chart that showed the types of sentences the offenders in the sample received. Offenders who would be considered the lowest risk received a prison sentence 50% of the time. The offenders considered to be at some risk went to prison more often than any other group. The very high-risk group went to prison only three-fourths of the time. Nearly all offenders in the study labeled high risk who received a probation or jail sanction did, in fact, recidivate. She noted that offenders released from incarceration in 1990-1993 were sentenced under the old parole system. Current guidelines would recommend significantly longer terms for many of the offenders in the sample.

The charts presented labeled sex offenders as low risk, some risk, high risk and very high risk. Ms. Farrar-Owens remarked that there was nothing magical about the break points

in scoring that coincides with these risk labels. The focus of the legislative mandate is to identify offenders at risk for recidivating. The legislative charge is not specific as to how to apply a risk assessment tool other than it “could be used to determine the range of sentences which should be imposed upon a convicted sex offender based upon the risk for reoffending.” The charts illustrated recidivism rates at four different scoring thresholds. The top 25%, the top 20%, the top 15%, and the top 10%. These charts allowed the members to compare the relative accuracy of each method at different scoring thresholds.

Ms. Farrar-Owens said that the legislative mandate requests the Commission to develop a risk assessment instrument for utilization with the sentencing guidelines. She asked the members to consider two options in this regard. The first option would be to inform the judge if the offender has a high risk of recidivism based on the risk assessment instrument. This option would allow the judge to decide how to incorporate risk information into the sentencing decision. A special section could be added for sex offenders that would identify an offender as high risk. Mr. Kneedler asked if the midpoint guidelines recommendation would be subject to adjustment. She said that the prison recommendation would be the normal guidelines range without any adjustment in this option.

The second option would increase the prison length recommendation based on the likelihood of recidivism and the offender’s age. Under current guidelines, offenders whose primary offense is forcible rape, sodomy or object sexual penetration are always recommended for a prison term. She said that is not the case for offenders whose crimes are covered by the Other Sexual Assault guidelines. This means that there may be offenders at high risk for recidivism who are recommended for probation or short terms of incarceration in jail. The guidelines system is not explicitly designed to identify and incapacitate sex offenders at high risk of reoffending. The Commission could make adjustments to the current guidelines to incorporate risk assessment into a sentence recommendation. A risk assessment instrument would be completed as part of the guidelines.

She displayed the Sex Offender Risk Assessment worksheet with a sample offender. A factor could be added on Section A of the Other Sexual Assault worksheet to ensure that the high-risk offenders would be recommended for Section C. The scoring on Section C would remain the same as the current guidelines. However, the Commission could establish a dual recommendation for high-risk sex offenders. In addition to the current recommendations, the guidelines could recommend a longer sentence for offenders determined to be high-risk. The judge would have two sentencing recommendations to consider. How much time to add to the current guidelines recommendation could be a normative decision or the decision could be linked to the data on sex offender recidivism.

Ms. Farrar-Owens then said the staff specifically looked at the time between an offender’s release from incarceration and the first re-arrest for a person or sex crime

subsequent to that release. The research examined how much longer the offender would have had to serve so that the new crime could have been averted due to longer incarceration. The analysis revealed that if offenders in the study had been sentenced under the current guidelines, more than half of the offenders who recidivated would have still been incarcerated when their new offense occurred.

She then focused on the issue of how much additional incarceration time could be added to high risk sex offenders in order to prevent recidivism. Mr. Petty commented that incarcerating sex offenders will reduce their ability to commit crimes but their desire will still be there when they are eventually released. Ms. Farrar-Owens answered that research shows the older offenders have a much lower likelihood of re-offending. If the Commission used option 1, those high-risk offenders who are young and have the shortest guidelines recommendations would receive the most time added. Sentencing guidelines recommendations for high risk offenders who are older or who already receive lengthy incarceration recommendations would be incremented to a lesser degree. A chart was displayed that illustrated the amount of months that would be added to the prison recommendation for high-risk offenders

Mr. Petty asked Mr. Ferguson if there would be an equal protection problem with using age to enhance punishment. Mr. Ferguson said that any time a particular group is categorized or singled out it raises the issue of equal protection. Judge Gates remarked that it should not be an issue since the guidelines are voluntary. Mr. Ferguson agreed with Judge Gates' comment. Mr. Christie felt that any recommendation that the Commission makes on this matter would be advisory. Judge McGlothlin commented that the outcome in 90% of these cases depended on what the Commonwealth Attorney wanted to do. He noted that the prosecutors use the sentencing guidelines as a tool for plea-bargaining. Judge McGlothlin stated that he would agree with the option that adds time to the prison recommendation.

Judge Bach felt that the cover sheet should indicate when an offender is considered to be high risk. Judge Bach said the sentencing judge could then take this into account when sentencing. He also said that he would not want to see a box labeling a sex offender as "not high risk." He observed that there would be offenders in this group who fall into a category that had a 50% recidivism rate. Judge Honts agreed with Judge Bach and said that the cover sheet should only have a high risk box. He commented that victims would not be thrilled to see an offender checked as not a high risk. Judge Stewart voiced agreement with Judge Honts on this matter.

Ms. Farrar-Owens asked the Commission if they wanted to recommend that a pre-sentence report be done in every rape and sexual assault case. Only the General Assembly can mandate pre-sentence reports. The Commission can urge the Circuit Court judges to order pre-sentence reports in all rape and sexual assault cases. The assessment of risk depends on accurate identification of prior arrests for person and sex offenses

(adult and juvenile) and out-of-state arrests. She displayed a chart for FY 1998 rape and sexual assault cases which showed that pre-sentence reports were completed in 72.5% of the cases.

Mr. Petty said the Commonwealth attorney could not complete this score sheet because they do not have some of the information required for the form. They would not have access to mental treatment or employment history. With regard to pre-sentence reports in these sex offense cases, he felt that it would affect plea negotiation practices in certain jurisdictions.

Commenting on the results of the sex offender study, Dr. Kern remarked that, while skeptical at first, he felt that this study resulted in a product that may prove to be very useful. He noted that the risk assessment instrument does a good job of discriminating the high risk offender. Reverend Ricketts asked if the resolution requesting the Commission's development of the risk assessment instrument was patroned by Senator Howell and, if so, was it offered as an alternative to civil commitment of sex offenders. Dr. Kern answered that it was Senator Howell's resolution and that it was his understanding that the resolution was seen as an alternative to civil commitment legislation that was pending before the legislature. The civil commitment legislation, however, also was adopted by the General Assembly but is not yet in effect.

Judge Gates agreed that the legislature wanted the Commission to complete this study because they were considering civil commitment for sex offenders. He asked the Commission whether it wanted to report its findings back to the legislature or go forward now and incorporate the risk assessment instrument in the guidelines. Dr. Kern said the 1999 Annual Report informed the General Assembly of the following: "Final Commission review of this research will take place in the spring. If the Commission determines that a useful sex offender risk assessment instrument can be developed, it will be integrated into the sentencing guidelines that become effective July 1, 2000." Dr. Kern noted, however, that this schedule is not reasonable given the amount of time that will be necessary to adequately train judges, probation officers, public defenders, defense attorneys, and Commonwealth attorneys around the state.

Mr. Christie made a motion to the effect that the risk assessment should be advisory and limited to the very high risk offenders. He added that the risk assessment should only be used when the judge seeks to have one completed. He further added that the Commission should report its findings and recommendations to the legislature in the next annual report with a planned effective date of July 1, 2001. Judge Gates felt that the Commission should defer these decisions to the June 12 meeting. Mr. Christie agreed with Judge Gates and withdrew his motion. Judge Gates said he was going to request that the Executive Committee meet first and come up with recommendations for the full Commission to consider at the next meeting.

Judge Gates thanked Ms. Farrar-Owens for her presentation. He then asked Ms. Farrar-Owens to also cover the next item on the agenda, Larceny/Fraud Study.

VI. Larceny/Fraud Special Study

Ms. Farrar-Owens said she would propose a methodology for the larceny study. One Commission member requested that the staff study the value of money or property stolen in larceny cases to determine if a factor could be added to the worksheet to add points in cases involving large amounts. She said that one of the first tasks in this study would be to survey other states. A bill was proposed during the 2000 General Assembly Session that would increase the dollar amount threshold for felony larceny from \$200.00 to \$300.00. This bill did not pass. However, in the discussion over this proposal, several members of the General Assembly expressed interest in what the grand larceny thresholds were in other states. This background then could prove of some use to both the Commission as well as the General Assembly.

For the study, Commission staff will use CY1998 and CY1999 sentencing guidelines data. The pre-sentence investigation (PSI) data would not prove to be a good data source for this study because it excludes offenders given unsupervised probation who were not sentenced to prison. The guidelines database contains 20% more larceny cases than the PSI. The PSI data is potentially biased for this study.

Ms. Farrar-Owens presented a chart that included all the offenses that could be selected for inclusion in the study. She recommended including fraud offenses in the study because many are deemed larceny by Code. She commented that some of the larceny and fraud offenses could be excluded from the study. Embezzlement and forging a public record could be excluded because the Commission studied embezzlement offenses in 1998 and because forging a public record did not involve loss of property. Mr. Ferguson suggested that the Commission omit unauthorized use. Ms. Farrar-Owens remarked that some cases of grand larceny auto are plead down to unauthorized use. Mr. Petty felt that the only offenses that should be included in the study are receiving stolen property and grand larceny. Ms. Farrar-Owens presented a list of fraud offenses that the Commission might want to include in the study. Judge Gates asked Mr. Petty to decide what offenses to include in the study. Mr. Kneedler asked if the study would lose any significance by excluding some of the larcenies and fraud. Mr. Petty felt that those offenses that typically involve lesser amounts of money would skew the study findings. Mr. Petty did agree that some of the fraud offenses should be included.

Ms. Farrar-Owens provided a revised chart with a listing of proposed crimes to include in the study. Judge Gates asked the Commission for a vote. The Commission voted 14-0 in favor of the recommendation.

Ms. Farrar-Owens then presented an overview of the sampling options, supplemental data sources and the data collection form. Cases would be selected in a random fashion from the 1998 and 1999 guidelines database. The study would use automated PSI narratives when available. The data collection instrument was also presented. Some of the information to be collected would include value of property stolen, type of item stolen and type of victim. Ms. Farrar-Owens talked about each factor on the data collection instrument. She concluded by presenting a proposed work plan. The study would be completed by September and presented to the Commission members thereafter.

Mr. Vassar asked if the staff could examine the length of time over which the larceny took place. She responded that the staff would include that information on the data collection form.

At this juncture, Judge Gates excused himself from the meeting and asked Judge Stewart, Vice Chairman, to lead the rest of the meeting.

Ms. Bruce asked Dr. Kern if the Commission provided the Gender Bias Task Force with the information they requested. Dr. Kern said that the information had been provided but that there had been no feedback on how it was used. Ms. Bruce also asked if the recommended adjustment to the guidelines to include felony DWI offenses was approved. Dr. Kern said that all of the Commission recommendations were approved by the General Assembly. Mr. Kneedler said the recommendations were approved because no action was taken by the General Assembly.

Judge Stewart then asked Ms. Kepus to cover the next item on the agenda, Sentencing Guidelines Compliance.

VII. Sentencing Guidelines Compliance Update

Ms. Kepus reported that for year-to-date FY2000 (as of March 22, 2000), over 10,000 work sheets were submitted to the Commission. She noted that overall compliance is up from 77.4% in FY1999 to 81.0% so far in FY2000. The aggravation rate was reported as 9.2% and the mitigation rate, 9.8%. She next presented information concerning the reasons judges cite when sentencing above or below the guidelines. Judges reported the decision to sentence an offender to an alternative sanction or the factor of rehabilitation potential more frequently than any other mitigation departure reason. The most common reason for sentencing above the guidelines, cited in 16% of the aggravations, is the acceptance of a plea agreement.

Durational compliance is defined as the rate at which judge's sentence offenders to terms of incarceration that fall within the recommended guidelines range. Ms. Kepus noted the high rate at which judges agree with the type of disposition recommended by the guidelines (88%). Durational compliance, however, is 81.8%. This result indicates that judges agree with the type of sentence recommended by the guidelines more often than they agree with recommended sentence length in incarceration cases.

Ms. Kepus stated that compliance rates varied greatly across circuits. Overall, 75% of the circuits increased their compliance rates. The highest compliance rate, 90.1%, is found in the Martinsville area (Circuit 21). She also noted that Circuit 29 in Southwest Virginia has the lowest compliance rate at 68.6%. Buchanan County, however, did have one of the highest compliance rate increases, up 8.7% since last meeting.

Ms. Kepus said that the compliance rates for all the offense groups have gone up since FY1999. Compliance for assault cases has risen more than 12.5%. The reasons for this rise in compliance may include the new factor added on Section C involving injury to multiple victims, more training emphasis on victim injury, and the fact that several new offenses were added to the assault guidelines. The compliance rate is particularly high on the two new offenses added - assault and battery against family member (3rd or subsequent) and assault against a law enforcement officer. Compliance for rape cases has also gone up more than 10.3% over FY1999 figures.

One out of every five cases has qualified for midpoint enhancements for a current or prior conviction for a violent crime. When judges depart from the guidelines in these cases, they are choosing to mitigate in the vast majority. Enhancements for a Category II prior record generated the highest rate of compliance for a midpoint enhancement (76%). The most severe midpoint enhancement, that for a combination of a current violent offense and a Category I prior record, yields a rate of compliance of 73% and compliance in cases receiving only a Category I enhancement is 69%.

She then discussed compliance within jury cases. Of the 171 jury cases, jury sentences were within the guidelines 35% of the time. Juries imposed sentences higher than the guidelines in 59% of the cases and imposed sanctions lower than the guidelines in 6% of the cases. Ms. Kepus observed that judges modified only 26% of the jury sentences.

Judge Stewart thanked Ms. Kepus for her presentation and then asked Mr. Fridley to discuss the next item on the agenda, Sentencing Guidelines Manual/Work Sheet Revisions for July 1, 2000.

VIII. Sentencing Guidelines Manual/Work Sheet Revisions for 7/1/2000

Mr. Fridley presented the sentencing guidelines modifications that were recommended in the Annual Report and approved by the General Assembly. The Commission made six recommendations for guidelines revisions. Four of the recommended revisions concerned traffic crimes, one proposal dealt with homicide and the last recommendation addressed larceny. Mr. Fridley said a new chapter on felony traffic would be added to the guidelines manual. This chapter would include all traffic offenses covered by the guidelines. He displayed the new traffic worksheet, Section B recommendation table and Section C recommendation table.

The fifth recommendation specifically dealt with felony homicide. Felony homicide will be stricken from the worksheet and will be scored the same as second-degree murder. The sixth recommendation adjusted the score on the larceny worksheet for offenders with multiple prior misdemeanor convictions. Mr. Fridley said the prior misdemeanor convictions and adjudications factor score will be increased by one point. The additional points will increase the likelihood that repeat offenders will be recommended for some period of incarceration.

Mr. Fridley then presented some guidelines modifications that were proposed by the users themselves. Several check boxes were added to the cover sheet, such as a box for nolo contendere under Method of Adjudication. The sentencing guidelines recommendation will have an additional check box that will indicate if the recommendation was adjusted due to a mandatory minimum penalty. He also said that another check box would be added to the Final Disposition that addressed whether the sentence was to run concurrently with another sentencing event.

Judge Stewart thanked Mr. Fridley for his presentation and then asked Dr. Kern to discuss the next item on the agenda, Miscellaneous Items.

IX. Miscellaneous Items

Dr. Kern reminded everyone that the next Sentencing Commission meeting is June 12, 2000, in the 3rd floor judicial conference room. The remaining meetings for 2000 are September 11 and November 6. Dr. Kern hoped that the new conference room would be ready by June 12 but was not optimistic. He announced that the National Association of Sentencing Commissions will hold their annual conference in Pittsburgh, Pennsylvania on August 6 - 8, 2000. Several members have attended in the past and any members interested in attending should inform Dr. Kern or Judge Gates.

Ms. Bruce asked the Executive Committee to consider releasing the results of the sex offender risk assessment study and the instrument to all judges as soon as the work is completed. She felt it would be unjust for the Commission to withhold valuable information.

Judge Stewart thanked Ms. Bruce for her comment and said that the Executive Committee would discuss the matter in May and again by the full Commission in June. With no further business on the agenda, the Commission adjourned at 1:20 p.m.