



Virginia Criminal Sentencing Commission

100 North Ninth Street • Richmond, Virginia 23219 • Tel.: 804.225.4398 • Fax: 804.786.3934

Meeting of the Virginia Criminal Sentencing Commission

March 22, 2021

10:00 am – 12:30 pm

Meeting held via Zoom

FINAL

Meeting Minutes

Members Attending via Zoom: **Judge Edward L. Hogshire** (Chairman), **Judge Charles S. Sharp** (Vice Chairman), **Diane Abato** (for K. Scott Miles), **Delegate Les R. Adams**, **Timothy S. Coyne**, **Marcus Elam**, **Judge Steven C. Frucci**, **Judge Patricia Kelly**, **Judge W. Revell Lewis**, **Judge Thomas Mann**, **Judge Jack S. Hurley**, **Judge Stacey Moreau**, **Kyanna Perkins**, **Senator John Edwards**, **Kemba Smith Pradia**, and **Shannon Taylor**

Members Absent: **Judge James Fisher**

WELCOME

Judge Hogshire, Commission Chairman, welcomed members and attendees before calling the meeting to order. He introduced two new Commission members. Judge Jack Hurley of the 29th Circuit (Tazewell) was appointed by Chief Justice Lemons to fill the vacancy left by Judge Moore when his term expired at the end of 2020. Mr. Marcus Elam, Regional Administrator for the Department of Corrections' Eastern Region, was appointed by the Senate of Virginia to fill the vacancy left by Judge Yoffy.

AGENDA

The meeting agenda is available at: <http://www.vcsc.virginia.gov/2021Meeting/AgendaMar2021.pdf>

APPROVAL OF MINUTES FROM LAST COMMISSION MEETING

Minutes from the meeting held on November 4, 2020, were approved as submitted. The meeting minutes are available at: <http://www.vcsc.virginia.gov/2021Meeting/Minutes110421.pdf>

REPORT ON THE 2021 GENERAL ASSEMBLY (REGULAR AND SPECIAL SESSION I) AND LEGISLATIVE IMPACT ANALYSIS

Presentation link: <http://www.vcsc.virginia.gov/2021Meeting/2021GeneralAssembly.pdf>

Ms. Farrar-Owens, the Commission's Director, described the many activities of Commission staff during the 2021 Session of the General Assembly. These activities included the preparation of fiscal impact statements, as required by statute, responding to legislators' requests for supplemental information, monitoring legislation, observing the judicial interview process and providing technical assistance to other agencies. Ms. Farrar-Owens provided an overview of the requirements pertaining to fiscal impact statements that must be prepared by the Commission. She reviewed several pieces

of legislation. She noted that her presentation was not intended to be comprehensive but served to highlight several bills related to the Commission, sentencing guidelines, or criminal penalties.

IMPACT OF 2021 LEGISLATION ON SENTENCING GUIDELINES

Presentation link: <http://www.vcsc.virginia.gov/2021Meeting/Impactof2021Legislation.pdf>

Mr. Boelsche, Research Associate, discussed House Bill (HB) 1936 and its impact on the sentencing guidelines. The effect of the legislation is to reduce the maximum penalty for completed robbery offenses except in cases involving serious bodily injury or death. Current guidelines do not reflect the classifications of robbery defined in HB1936. After July 1, the current guidelines will not accurately reflect the typical or average robbery outcome for each of the new classifications. Revisions to the robbery guidelines cannot be implemented until July 1, 2022, at the earliest.

Judge Moreau made a motion to suspend the Robbery guidelines when robbery is deemed the primary offense in the sentencing event until the staff can secure new data to analyze in the future. Judge Hurley seconded the motion. The Commission voted 16-0 in favor.

Ms. Taylor asked if the staff would change the current robbery Virginia Crime Codes (VCC) to reflect the changes. Ms. Farrar-Owens stated that staff would issue new VCCs that would map to the classifications of robbery in the legislation. Ms. Taylor asked if the sentencing guidelines cover sheet would be required in cases where robbery is the primary offense so that the staff could collect pertinent data. Ms. Farrar-Owens responded by saying that the cover sheet would still be required along with the supplemental case information form. The guidelines will continue to cover carjacking offenses (§ 18.2-58.1) since HB1936 did not modify that statute.

Judge Kelly commented that the impact of HB1936 needs to be sent to all circuit court judges before July 1. Ms. Farrar-Owens reported that she had contacted the director of Judicial Education to request that the Commission be included in the agenda for the upcoming Judicial Conference in May. The staff also planned to send out a newsletter to judges, Commonwealth's Attorneys, public defenders and other attorneys to inform them of the significant changes to the guidelines that will take effect on July 1, 2021. The newsletter will also be posted on the Commission's website.

Mr. Fridley, the Commission's Deputy Director, then discussed House Bill 2038 and its impact on the guidelines system. In 2020, the Commission completed a large-scale multi-year study to revamp the Probation Violation Guidelines (PVG). As a result of the study, the Commission recommended expanding the guidelines to cover violations stemming from new felony and misdemeanor convictions, replacing the current instrument with two instruments, adjusting the low end of the range to "time served" when the judge determines that a probationer has a good rehabilitation potential, and revising the instrument to standardize the information provided to circuit court judges. HB2038 specifies limits on probation and caps for sentences imposed for technical probation violations (as defined in the bill). HB2038 will require the Commission to adjust the implementation of the new Probation Violation Guidelines, which take effect on July 1, 2021.

Mr. Fridley listed several options for adjustments to the Probation Violation Guidelines to make them compatible with the requirements of HB2038. The Probation Violation Guidelines could be adjusted to recommend no incarceration for the first technical violation, as specified in HB2038. The guidelines could also be adjusted to recommend a range of 0 to 14 days for a second technical violation, per the legislation. Mr. Fridley stated that the Probation Violation Guidelines could be implemented as approved by the Commission, and accepted by the 2021 General Assembly, for the third or subsequent technical violation and for new law violations.

Judge Moreau and Judge Hurley asked staff to add a box on the disposition sheet where the amount of total revocable time could be entered by the judge.

Judge Moreau made a motion to approve the proposed amendments to the Probation Violation Guidelines to reflect the statutory changes adopted by the General Assembly. Judge Hurley seconded the motion. The Commission voted 16-0 in favor.

IMPLEMENTATION OF SENTENCING GUIDELINES SUPPLEMENTAL CASE INFORMATION FORM

Presentation link: <http://www.vcsc.virginia.gov/2021Meeting/SGSupplementalCaseInfo.pdf>

Mr. Fridley reminded members that, in November 2020, the Commission approved the Supplemental Case Information Form, which would be incorporated into the guidelines worksheets beginning July 1, 2021. The Commission approved this form to address the critical need for information. The one-page supplemental form will be a vital and essential tool for providing information to circuit court judges and to the Commission. The form must be completed by the individual preparing the guidelines for the court and included in the sentencing guidelines packet submitted for sentencing. Mr. Fridley reviewed a small number of modifications to the form that were recommended by staff.

As reported by Mr. Fridley, staff had requested and received feedback on the form from stakeholders. The Deputy Director of the Department of Corrections noted the potential impact on probation officer workload and stressed the importance of sufficient training for probation officers. Members of the Virginia Association of Commonwealth's Attorneys (VACA) felt the information sought on the form was overly broad and burdensome. VACA members indicated that Commonwealth's attorneys would not have access to much of the information requested on the form. VACA members also felt that most of the requested information was already available to the judge in some way and that many of the questions are already asked on the sentencing guidelines worksheets. Some VACA members did not feel that judges needed case details when a plea agreement had been struck between the prosecution and defense.

Mr. Fridley emphasized that answers to most of the questions on the form are needed to accurately score sentencing guidelines. Mr. Fridley noted that the Commission would not require the guidelines preparer to interview the defendant to complete the form, nor would the Commission require that information pertaining to the defendant's substance use issues, treatment history, education, employment, or military service be verified by the preparer. Although some of the information may be provided to judges in some cases, standardized information is not provided to the judge in every case, nor is the information available to the Commission. Scoring of the current guidelines worksheets does not provide the necessary detail in all cases. Factors on the guidelines often group elements together for scoring purposes (e.g., a factor with the same points scored for physical, threatened or emotional injury). Moreover, the guidelines worksheets vary and individual worksheets do not contain all possible factors. Standardized information is relevant for judges in crafting sentencing decisions and necessary for the Commission to fully analyze sentencing patterns and determine if factors should be revised or added to a worksheet.

With no motion to change the implementation date, Judge Hogshire stated that the Supplemental Case Information Form would be implemented on July 1, 2021, as previously approved.

RECENT CRIMINAL JUSTICE TRENDS IN VIRGINIA

Presentation link: <http://www.vcsc.virginia.gov/2021Meeting/RecentCriminalJusticeTrends.pdf>

Ms. Farrar-Owens provided an overview of recent crime and criminal justice trends in the Commonwealth. The indicators tracked by the Commission have captured the impact of the COVID-19 pandemic on Virginia's criminal justice system. Ms. Farrar-Owens presented a series of charts showing recent trends in crime rates, arrests, drug cases submitted to the Department of Forensic Science, and court caseloads. She also displayed charts showing trends in Virginia's local-responsible jail population and the state-responsible inmate population.

MISCELLANEOUS ITEMS

Ms. Farrar-Owens informed members that staff had requested and received data from the Fairfax Circuit Court Clerk's Office. Because the Fairfax Circuit Court Clerk does not participate in the state's Court Case Management System (CMS), Fairfax data had not been available in the past. Going forward, Fairfax Circuit Court data will be included in the Commission's research.

Ms. Farrar-Owens sent a draft of the Commission's Spring 2021 newsletter to members prior to the meeting. She asked if members had any additional comments, suggestions or corrections. None were stated. Ms. Farrar-Owens indicated that the newsletter would be sent out in early April.

Ms. Farrar-Owens asked if the Commission would like staff to make guidelines data available to the public on the Commission's website (within the data dashboard). The dataset would be de-identified (i.e., personal, case-specific and judge identifiers would be removed). There was consensus among members for staff to move forward with this addition to the website.

Ms. Farrar-Owens reminded members of the remaining 2021 meeting dates: June 7, September 13, and November 3.

With no comments and there being no further business, the Commission adjourned at 12:16pm

NEXT VCSC MEETING:

Date: Monday, June 7, 2021

Time : 10:00 am

Host Site:

Virginia Criminal Sentencing Commission, 100 North Ninth Street, 5th floor, Richmond Virginia 23219
Available via Zoom video conferencing.

Members of the public may request participation by sending email to Carolyn.williamson@vacourts.gov.

Respectfully submitted by:
Carolyn Williamson, Research Associate

Minutes Reviewed by:
Meredith Farrar-Owens, Director
Judge Edward Hogshire (Ret.), Chairman