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COMMONWEALTH OF PENNSYLVANIA
HOUSE OF REPRESENTATIVES
COMMITTEE ON JUDICIARY

In re: Oversight Hearing of the Pennsylvania
Commission on Sentencing

* * * * *

Stenographic report of hearing held
in Room 140, Majority Caucus Room,
Main Capitol Building, Harrisburg, PA

Wednesday,
May 1, 1991
10:00 a.m.

HON. THOMAS R. CALTAGIRONE, CHAIRMAN
Hon. Kevin Blaum, Subcommittee Chairman on Crime
and Corrections

MEMBERS OF COMMITTEE ON JUDICIARY

Hon. Jerry Birmelin	Hon. Christopher McNally
Hon. Frank Dermody	Hon. Jeffrey E. Piccola
Hon. Gregory C. Fajt	Hon. Robert D. Reber

Also Present:

Galina Milahov, Majority Research Analyst
Mary Woolley, Republican Chief Counsel

Reported by:
Ann-Marie P. Sweeney, Reporter

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*58 pages
+ 176 attached pages

234 pages*

1991-099

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Dr. John Kramer, Executive Director,
Pennsylvania Commission on Sentencing

Dr. Cynthia A. Kempinen, Asst. Research
Director, Pennsylvania Commission on
Sentencing

APPENDIX

1 CHAIRMAN CALTAGIRONE: This is the House
2 Judiciary Committee holding an oversight hearing on the
3 Commission on Sentencing. I'm Chairman Tom Caltagirone
4 from Berks County. I'd like the members of the
5 committee to introduce themselves for the record,
6 starting from my left, Karen.

7 REPRESENTATIVE RITTER: Karen Ritter from
8 Lehigh County.

9 REPRESENTATIVE DERMODY: Frank Dermody
10 from Allegheny County.

11 REPRESENTATIVE PICCOLA: Jeff Piccola,
12 Dauphin County.

13 MS. WOOLLEY: Mary Woolley, Counsel to
14 the committee, Dauphin County.

15 MS. MILAHOV: Galina Milahov, Research
16 Analyst.

17 REPRESENTATIVE FAJT: Greg Fajt,
18 Allegheny County.

19 REPRESENTATIVE BLAUM: Kevin Blaum, city
20 of Wilkes-Barre.

21 REPRESENTATIVE BIRMELIN: Jerry Birmelin,
22 Wayne, Pike and Susquehanna Counties.

23 DR. KRAMER: Okay, thank you very much,
24 and I am John Kramer, Executive Director of the
25 Pennsylvania Commission on Sentencing, and also an

1 Associate Professor of Sociology and Criminal Justice
2 at Penn State University. And I'll talk a little bit
3 about our organization a little bit.

4 In order to dissuade any questions, I
5 have a three-hour presentation prepared for this
6 morning.

7 (Laughter.)

8 DR. KRAMER: No, what I will try to do is
9 if you look to the notebook which we've handed out,
10 Section A I have just tried to do an outline of some of
11 the Commission's main activities, responsibilities, a
12 little bit of our history, and I will go through that
13 fairly briefly, particularly for some of the members
14 who may not be familiar with what the Commission on
15 Sentencing is, what it does, how it operates, et
16 cetera, who is a member of the Commission, and then
17 open it up for questions. So to try to get moving on
18 this.

19 The Commission was created in 1978 by Act
20 319, and it established the Commission composed of
21 membership of 11 people. There are two State
22 Representatives - Representative Dermody is one of
23 those; Dan Clark is also a State Representative - two
24 Senators - Mike Bortner, a new Senate member, and
25 Senator Greenleaf are our two Senators. We have four

1 judges. They are appointed by the Chief Justice of the
2 Supreme Court. We have three gubernatorial
3 appointments. One is a district attorney. Rich Lewis
4 has, historically for the last several years, has been
5 replaced in the last nine months by District Attorney
6 Dukovich of Beaver County. A defense attorney, John
7 Moses, from Luzerne County; and a law professor or
8 criminologist, which is Al Blumstein, from
9 Carnegie-Mellon University.

10 The mandate of the Commission was to
11 write sentencing guidelines for all felons and
12 misdemeanants, and it is important to understand that
13 the Commission, when it wrote its guidelines in the
14 late '70's, early '80's, sentencing guidelines was a
15 new concept. The State of Minnesota had implemented a
16 Sentencing Commission to write guidelines. Our
17 guideline process, we started about six months behind
18 the State of Minnesota and since that period of time
19 now there's probably been 10, 12 other States at least
20 that have joined that process of creating a Sentencing
21 Commission to write sentencing guidelines. So in a
22 sense, the art of writing guidelines has changed
23 considerably since the early '80's, and I will return
24 to that issue shortly.

25 The enabling legislation required that we

1 specify a range of sentences for crimes of a given
2 degree of gravity, and you would see that if you looked
3 at the guidelines that we have ranked all crimes. In
4 terms of the seriousness of the offense, that basically
5 is established so as to indicate that the impact of the
6 crime of the victim is the basic factor that we look
7 at, and I have included in the materials today a review
8 of the policy that the Commission uses in ranking
9 crimes from death to serious bodily injury and other
10 things. The assessment focuses primarily on the impact
11 on the victim.

12 Also, for previous convictions we must
13 indicate that and we have incorporated a measure of
14 prior convictions looking at the frequency and the
15 severity of the prior convictions of the defendant. We
16 have to provide an increased severity for possession of
17 a deadly weapon. We have a weapon enhancement which I
18 will talk about more specifically in a few moments.
19 And we also had to, according to the mandate, prescribe
20 variations on account of aggravating and mitigating
21 purposes.

22 The process through which, and it's
23 important, we are an agency of the General Assembly.
24 Initially we were an independent agency when the
25 legislation was passed. In 1984-85 when we went

1 through our sunset revision process, the Senate
2 introduced an amendment to our legislation which
3 created us as an agency of the General Assembly, so
4 since 1985 we have been an agency of the General
5 Assembly, and we are not an independent agency any
6 longer.

7 The process is a little bit peculiar and
8 I think it's maybe helpful to understand the way in
9 which our guidelines are published and adopted. The
10 first thing we must do to change the guidelines is we
11 must adopt a guideline change, we publish it in the
12 Pennsylvania Bulletin, and then the first thing we have
13 to do is hold a public hearing on that proposed change
14 no sooner than 30 days and no longer than 60 days after
15 that publication day. For example, we have proposed
16 changes to implement the intermediate punishment
17 provisions adopted by the General Assembly in November.
18 We published those earlier in November, we held a
19 hearing on December 14th. The Commission now is going
20 through a process of reconsideration of those based on
21 the public hearing testimony. Once we have the public
22 hearing, the Commission then has to reconvene to
23 reconsider the comment, its proposal, and to take into
24 account the comments of the public, members of the
25 legislature, others, whoever might testify.

1 Now, in terms of doing that, what we do
2 then is we readopt the guidelines, either as they were
3 originally submitted or any amendments that we have
4 adopted to that. Once we submit them to the General
5 Assembly, for example today we are submitting a
6 proposed change to the guidelines to implement the
7 intermediate punishment proposal. That will become
8 published in the Pennsylvania Bulletin a week from
9 Saturday. The General Assembly, from that date, will
10 have 90 days to reject that change, and they'd have to
11 do so by a concurrent resolution. So what has to
12 happen then is there's a 90-day process for the
13 legislature to consider that, it's reported to the
14 House and Senate Judiciary Committees, and then that
15 particular proposal sits before the legislature for 90
16 days. If the legislature does not move on it, if it
17 does not make any -- introduce a concurrent resolution
18 and pass that concurrent resolution, the guideline
19 proposal takes effect at the end of that 90 days.

20 Originally in our legislation there was a
21 180-day period. It was 90 days for consideration by
22 the General Assembly and the guidelines took effect 90
23 days thereafter, and that extra 90 days was for
24 training and implementation. We now don't have that
25 90-day period for implementation. That, again, was a

1 change that was -- came about in 1988 when the
2 Commission -- when the guidelines were vacated for a
3 period of about six months based on a Supreme Court
4 decision invalidating a 1982 concurrent resolution that
5 basically said that in 1981 when the General Assembly
6 rejected the initial proposed guidelines by a
7 concurrent resolution, it did so unconstitutionally
8 because it failed to present that concurrent resolution
9 to the Governor. Consequently, that rejection was
10 overturned and the guidelines written as a consequence
11 of that were then invalidated. The General Assembly
12 re-enacted the guidelines in 1988, and as part of that
13 deleted that 90-day waiting period, that those
14 guidelines would go into effect more rapidly than they
15 would otherwise.

16 We are also, as part of the Commission,
17 responsible to act as a clearinghouse of sentencing
18 information. So what I have provided, by the way, just
19 a few things that we work on, one is our annual report
20 which we present to the General Assembly every year,
21 and it usually comes out in July. I also have just
22 provided a few particular reports or articles that
23 we've done out of the Commission. One is "Complex
24 Policy Choices." It was written with Judge Scirica and
25 myself. That was published in Federal Probation. It

1 basically details what the Commission did in its
2 decisionmaking process and writing guidelines.

3 Another paper that we've done is "Race
4 Differences in Sentencing," looking at our data,
5 looking at the issue of sentencing disparity by race in
6 Pennsylvania, and provided a copy of that report for
7 you.

8 And finally, there is a comparison of our
9 guidelines with those of Washington and Minnesota to
10 see what the policy recommendations of our Commission
11 and how they vary, and I have alluded to those in other
12 testimony. I won't go into detail on those today. If
13 you have questions about that, we would be glad to
14 entertain them.

15 We also, I indicated that we do these
16 analyses. Part of that is a consequence of our
17 monitoring of sentences. This year, for example, or
18 1990 we will have received approximately 60,000 forms,
19 reports on all sentences given in Pennsylvania, and we
20 get that particular form on every sentence given, and
21 we do that based on transaction, and in the process we
22 clean that information, we set that information up so
23 that it is available and accessible for our annual
24 report and other reports, and also to report to the
25 General Assembly when they are requested about the

1 impact of legislation. That data is used often to talk
2 about what might be the impact of a proposed change to
3 mandatory sentencing or if we increase the guidelines
4 by X number of months, what is that likely to mean in
5 terms of our prison populations, and we work with the
6 Correctional Population Projection Committee in issuing
7 such reports.

8 Now, the current guidelines, and I just
9 do this very, very briefly, the current guidelines
10 focus on, as I indicated before, are based on our
11 enabling legislation, several key factors. One of the
12 primary factors is the offense gravity, and what we
13 have is a 10-point scale which measures the seriousness
14 of the current conviction or convictions of the
15 defendant, and that runs from 10 being murder, down to
16 1, which are basically most Misdemeanor III's. So
17 again, we focus on that. The rationale behind that,
18 and if you want to look at Section B of the material
19 which I have provided, those are the rules that we use
20 for developing and assigning scores to offenses. For
21 example, deaths, serious bodily injury will indicate
22 what we did in deriving our scores. We basically set
23 those up to focus on the impact on the victim as well
24 as we could using basically statutory language, the
25 amount of theft activities, the amount of property

1 loss, et cetera, or the threatened injury. There are
2 some cases in which I won't go into detail on. We have
3 subdivided offenses so that we think that there is a
4 fairer result when you come to sentencing as a
5 consequence of that. For example, we have burglary, if
6 it's a structure adapted for overnight accommodation
7 and somebody's present is more serious than if it is a
8 structure not adapted for overnight accommodation and
9 nobody is present. The issue there is the danger to
10 the victim, the increased risk. So we use those two
11 factors to help us specify more clearly what we think
12 are more serious offenses.

13 The aggravated assault statute, for
14 example, puts together as a Felony I threatens serious
15 bodily injury or actual bodily injury. The Commission
16 makes a distinction in terms of the sentencing
17 recommendation depending upon whether there is actual
18 injury or not, so that's a distinction we make in the
19 way in which we rank crimes.

20 The most recent change appears towards
21 the end, and if you will notice in the last page or
22 page 5 where we break down offenses under the drug
23 statute, the Drug Code, and in that particular case we
24 do that both based on the type of drug and secondly by
25 the amount of the drug involved. Some arguments are

1 that 2 grams is a little too low, that we should change
2 that threshold, but we'll talk about that perhaps
3 later.

4 We focus then upon the culpability of the
5 defendant, the degree of injury, the amount of property
6 loss are crucial criteria in the way in which we rank a
7 crime.

8 The second major component is looking at
9 the severity or frequency of prior convictions. And we
10 do that, just to give you an example, if a person has a
11 prior Felony I conviction, basically, except for
12 burglary, each prior conviction for those gives them 3
13 points on the prior records score. Two such
14 convictions get them to a 6, which is the maximum on
15 the prior records score, and basically gets you to the
16 statutory maximum in most cases for the particular
17 conviction offense. And so that that is a way of
18 specifying that. Less serious crimes accumulate less
19 heavily in terms of the prior records score.

20 For each combination of those, the
21 offense gravity score and the prior records score,
22 there is a sentence range recommendation. That is
23 basically the guidelines, and so that range, if you
24 have an 8-0, for example, which is a defense gravity
25 score of 8 and a prior records score of 0, the sentence

1 range there is 24 to 48 months.

2 Now, if there are enhancements involved,
3 and we do enhance the sentence for various reasons.
4 For example, if the person possessed a deadly weapon in
5 the Commission of a crime there is an enhancement to
6 the sentence range. That 24 to 48 months goes from
7 being 24 months up to 36 months in the lower area, and
8 the upper number has 24 months added to it. So what we
9 do is we increase the severity of the guideline
10 recommendation considerably by the fact that the person
11 has possessed a deadly weapon. The argument for doing
12 that is that the individual has increased the danger to
13 the individual, to the victim in this case, and thereby
14 we want to reflect that in the recommendation of the
15 sentence. Okay. Greater culpability, greater risk to
16 the victim.

17 In terms of drug enhancements, if the
18 delivery of controlled substances to a person under the
19 age of 18, that range, whatever it may be, that range
20 is enhanced by 12 to 36 months, so that what the judge
21 is beginning to look at is a range which is both wider
22 and considerably longer if it is a transaction, if it
23 is delivery to somebody under the age of 18.

24 Similarly, if it is delivery within 1,000 feet of a
25 school, and that's private, elementary, et cetera, 12

1 to 36 months is added to the guideline ranges to
2 reflect that enhancement.

3 What has happened as a consequence of the
4 guidelines, just to briefly go through what we've done
5 and how we've -- what we think the impact has been.
6 One thing is clear, and we've talked about this in
7 other settings in terms of the proportion, numbers of
8 people that are currently incarcerated in Pennsylvania.
9 The incarceration rates have risen. In 1977 when we
10 began, we use as our base line information for writing
11 the guidelines, 38.9 percent of the people who were
12 sentenced in our random sample of 1977, 38.9 percent,
13 about 39 percent, received an incarceration sentence.
14 Now, in 1989-1990 we're looking at figures more
15 approximate to 57 percent, so we've had about a
16 20-percent increase in the risk of incarceration as a
17 consequence of the guidelines and some mandatory
18 provisions, and I think just probably there are other
19 aspects about that in terms of judges getting tougher
20 on sentences themselves. So it's not to take credit
21 solely for the guidelines. We're not arguing here that
22 the guidelines account for all of that change, but
23 clearly the severity of the risk of incarceration has
24 gone up.

25 There were particular areas of the

1 guidelines that that was our intent. We clearly
2 intended for certain offenses, burglaries and others,
3 to increase the incarceration rates; not necessarily
4 the length of incarceration if convicted but if
5 convicted the likelihood of one receiving an
6 incarceration sentence.

7 Secondly, incarceration rates have
8 increased particularly for violent offenses, and I
9 didn't present that. I guess the Crime and Delinquency
10 article which we did which basically goes through the
11 increasing lengths of incarceration. That leveled off
12 basically in the mid-'80's, which would be expected,
13 the guidelines have been in effect for several years,
14 but we had a considerable increase in length of
15 incarceration, particularly again for violent offenses,
16 in the early '80's as a consequence of the guidelines
17 and in combination with the mandatory bills which were
18 passed in 1982.

19 One of the key issues when we wrote the
20 guidelines was regional disparity, and one of the
21 things that has been -- we've looked at and you'll see
22 it if you look at some of the other pieces,
23 particularly the article on race, you'll see that
24 basically the regional difference impact has
25 diminished. It was intended, by the way, we left

1 relatively wide ranges compared to other jurisdictions.
2 I think it may be important for you to understand that.
3 I used the range of 24 to 48 months earlier about the
4 8-0 cell. If we were to look at the 8-0 cell in the
5 State of Minnesota, the State of Minnesota's guideline
6 range is 24, the same beginning point, to 26 months.
7 In other words, the judge has a 3-month range to select
8 from to be within the guidelines. Anything above 26
9 becomes a departure, anything below 24 becomes a
10 departure. Our guidelines give 24 to 48 in the same
11 cell. There are some differences in offenses. I am
12 not suggesting that makes them equal, but to give you a
13 comparison.

14 There are two reasons for that. One
15 primary reason is those guidelines were written to keep
16 prison populations basically at capacity, so they did
17 not want wide latitude. Secondly, they were concerned
18 about regional differences in sentencing and they
19 didn't want to have any regional differences in
20 sentencing. Our Commission felt that certain regional
21 differences were not necessarily improper and provided
22 within those ranges greater latitude to reflect
23 differences perhaps in some standards between
24 communities, and that was an explicit part of the
25 decisionmaking process. One can argue both sides of

1 that in terms of being proper/improper, but the feeling
2 was that there are some differences which should be
3 allowed to be reflected in the sentencing process and
4 could be allowed for within the guideline process.

5 Now, that seems to, the impact, the
6 regional difference in impact has changed considerably,
7 particularly the metropolitan, the Philadelphia/
8 Allegheny County versus the rest of the State
9 differences have been reduced tremendously over the
10 last 10 years. As the paper which I have presented,
11 not that it's going to be an interesting paper for you
12 to read, but let me just tell you that when we looked
13 at racial impact on sentencing, we looked at it in
14 various ways trying to see whether or not we could find
15 any racial impact in sentencing in Pennsylvania, and as
16 you'll see, in this particular study we found no real
17 racial factor that accounted for any sentencing
18 differences in the sentencing process in Pennsylvania,
19 and that's looking at counties by size and other
20 factors. A number of other factors were included in
21 that, and I think it's important to understand we did
22 not locate any racial differences.

23 Now, in terms of the one thing that I
24 indicated we had just submitted this morning to the
25 Pennsylvania Bulletin that will be published a week

1 from Saturday is basically a proposed change in the
2 guidelines to do three things, and I'll just go through
3 these. I am not planning on going into detail,
4 although we have a copy of the submission in Section E
5 of the material so that you can look at that if you
6 would like. You passed Senate Bill 718 and House Bill
7 251 last session. Both of those bills became one Act
8 193 and then Act 201 of 1990. Those particular bills
9 mandated that the Commission identify eligible
10 defendants for intermediate punishment. We have worked
11 on that for basically a year and a half. We began that
12 process actually at the request of two State
13 Representatives on this particular committee,
14 Representative Piccola and Representative Hagarty.
15 They had written us a letter in November of 1989 asking
16 for us to come forward with some proposals that may
17 help deal with the correctional crisis in Pennsylvania.
18 That was shortly after the riot at Camp Hill occurred,
19 and that letter came to us asking that.

20 We came back with some proposals, we met
21 with this committee, Representatives Caltagirone,
22 Blaum, Piccola were at that hearing last spring when we
23 talked about some of those proposals that we had
24 developed. At that time we were using the word of
25 "community sanctions." Terms have changed. The

1 concept has not changed but terms have changed,
2 terminology has changed. We went through "community
3 sanctions," "intermediate sanctions," and now
4 "intermediate punishments." The substance and the
5 concept has not changed, the label has changed.

6 Now, that proposal will incorporate a
7 couple of different things. It, one, what we had
8 proposed last spring and which we've gone forward in
9 the proposal is to identify certain cells which are
10 currently allowing for 12 months' incarceration to
11 reduce those to 11 1/2 with the intent of moving a few
12 people out of the State prison system, and that was
13 what we talked about last spring and that is -- all of
14 those are identified as the least dangerous, least
15 serious kinds of offenses. In order to deal with that,
16 we really had, before last spring, talked about the
17 community sanction option. That particular option now
18 as enabled in terms of statute and mandated in terms of
19 statute provides that within the sentence guideline
20 range you will note that in some areas we do specify it
21 as a sanction that the court should consider, and in
22 two areas, the 1-0 and the 2-0, the least serious
23 offenses and people with no prior convictions, we
24 basically have a guideline standard range of from
25 probation to intermediate sanction, so that a court

1 will have to indicate if they give incarceration in
2 those two areas, they will have to indicate why a
3 particular incarceration sentence is called for.

4 By the way, I think -- I don't have the
5 numbers right in front of me, but the 1-0 cell has
6 about 4,000 offenders in that cell and approximately 73
7 percent of those people currently get probation under
8 current sentencing standards. And you can ask any
9 questions about that that you might like.

10 The other issue, a boot camp bill passed.
11 You will also notice as part of that we've identified
12 certain cells in certain areas of the grid working with
13 the Department of Corrections to specify that the court
14 should consider identifying people in those cells that
15 have minimum sentences of 12 months in length or up to
16 24 months in length as being eligible for boot camps.
17 It is important that the court identify those people at
18 sentencing because if they complete the boot camp
19 program successfully and is prior to the expiration of
20 the minimum, then they are to be released immediately,
21 which is really a change in statute. Individuals are
22 not, under other circumstances, eligible for release
23 prior to the expiration of minimum whenever the
24 sentence is to Department of Corrections and the
25 maximum sentence is 24 months or longer. So that it is

1 important that that, in a sense, the court is then
2 saying it is permissible to reduce the minimum sentence
3 for these particular offenders because they have
4 completed the boot camp and they will be undergoing an
5 intensive supervision component at the completion of
6 that boot camp program. And basically, those
7 guidelines are written are not particularly major
8 changes, but it is important that judges begin to
9 identify such offenders.

10 There are a couple of other proposals
11 which I think are important to note in our proposed
12 changes. One thing that we felt had been overlooked,
13 and we had been speaking with the Mothers Against Drunk
14 Driving, one of the things that we had been concerned
15 about and talking to them about was the fact that there
16 is a homicide by vehicle statute which says if it
17 occurs with DUI it calls for a mandatory minimum of
18 three years. At one point in time several years ago,
19 Rob Lubitz of my staff went through and did an analysis
20 and we looked at about 170 cases approximately that
21 appeared to be homicide by vehicle with DUI and we
22 wanted to see what the conviction offense then was for
23 that crime. At that point in time we found about 22 of
24 those 170 actually ended up with a three-year mandatory
25 minimum and a conviction for homicide by vehicle while

1 DUI. In other words, it fell under the mandatory. The
2 other approximately 150 cases dropped out.

3 And so what we've done in the guidelines,
4 the current proposal, we are proposing that if there is
5 a homicide by vehicle and the person is driving under
6 the influence but there is not the nexus in the sense
7 of the conviction offense, if it doesn't fall under the
8 mandatory, we have increased the guideline
9 recommendations to cover those particular situations.
10 Sometimes those are plea bargaining arrangements, and
11 currently the guidelines we felt were not adequate to
12 cover that. I'm not sure they are currently adequate
13 to cover the severity of that situation, but we have
14 taken a step to at least in part remedy that particular
15 oversight. And what was happening is once you plea
16 bargain out of the mandatory, there really was no
17 particular guideline structure for that or any other
18 recommendation. The court could do whatever it felt
19 was appropriate.

20 The second area, as part of that
21 discussion, there was a recommendation from our
22 district attorney representative, Mr. Rich Lewis, and
23 that was that we have homicide by vehicle but there was
24 no particular coverage for any injury as a result of a
25 DUI accident. The current proposal submission provides

1 for a specific set of guidelines for DUI in which a
2 serious bodily injury results. It is not in terms of
3 years, it is in terms of months of incarceration, but
4 it is a step by way of trying to identify another
5 situation in which there is serious victim injury. It
6 is not noted in statute so it has not historically been
7 taken into account, but we in the guidelines can go a
8 little bit beyond statute and we are now saying to the
9 court in terms of that recommendation that if there is
10 a homicide -- if there is a driving under the influence
11 and there is an accident with serious bodily injury,
12 there are specific lengths of incarceration called for
13 under that particular circumstance. Historically,
14 there was no particular either mandatory or any other
15 guidelines to cover that particular situation. So we
16 have -- that is also a part of the particular
17 submission.

18 Let me take just a couple of moments now
19 to just talk about staff organization, and if you look
20 at Section G of the materials which have been provided
21 to you, and I have almost most of my staff with me
22 today, let me -- I'll introduce them as I talk a little
23 bit about the positions.

24 The organizational charted indicates that
25 we are a -- basically, this is people. We are a

1 relatively small organization. You will see that in
2 terms of budget. The Commission are unpaid except for
3 their expenses, and they all give a lot of time, a lot
4 of travel. As Representative Dermody notes, they have
5 to go to Philadelphia and other things to conduct their
6 business. I am the Executive Director. I vary in
7 terms of the amount of times that I work on the
8 Commission. It varies from 25 to 30 percent last year
9 to this year a higher percentage based on the fact that
10 we were writing the intermediate punishment legislation
11 or guidelines. We're also in the process of revision
12 of the guidelines. So I vary that, by the way, by
13 writing off my time at the university. Think of me as
14 a hundred percent calculation. I will, depending upon
15 the circumstances of the Commission or the pressures
16 from the university to teach, will vary how much my
17 write-off, how much the Commission pays for my
18 services. So last year they paid something like
19 \$15,000, \$16,000, I think, for my services last year.
20 This year my salary is \$48,000, so they'll pay probably
21 something like \$40,000 for my services. So it varies
22 from year to year the proportion of write-off, and
23 again, that fluctuates with how much time. Teaching,
24 it is very difficult to teach classes on, say, Tuesday
25 and Thursday morning and also be available for hearings

1 such as this and other things, and so that's the way I
2 try to manage that.

3 We have on staff, I have beside me Dr.
4 Cynthia Kempinen, and she, if you look under Senior
5 Associate Director, is that particular person. She's
6 been with the Commission for eight or nine years.

7 DR. KEMPINEN: Nine.

8 DR. KRAMER: Nine years. She got her
9 Ph.D. at Penn State University a few years before that
10 and has been with us now, started out, by the way, the
11 only position we had at that time was a data coder, and
12 I think I paid her \$13,000 for the first year she
13 worked for us as a data coder, and all she did was sit
14 in front of a computer and put data in. She monitors
15 and runs the monitoring evaluation aspects of the
16 Commission. She does an awful lot of the drafting of
17 the, for example, the submission that went to the
18 Pennsylvania Bulletin this morning was all done by Dr.
19 Kempinen. She also as involved with we're doing a
20 revision of the guideline process. We have
21 questionnaires going out. She both constructed that
22 questionnaire and is also now in the process of
23 analyzing that to get input. We sent out about 11--

24 DR. KEMPINEN: 1,300.

25 DR. KRAMER: Oh, 1,300 questionnaires to

1 judges and others about the guidelines, and at some
2 point in time we'll get a report, this summer we will
3 get a report back to you about the responses, but
4 basically we're trying to develop background for the
5 Commission as they go forward in terms of reviewing the
6 guidelines, and so we have judges, district attorneys,
7 all judges, all district attorneys, all chief probation
8 officers, all public defenders, a sampling of defense
9 attorneys, and who did I forget?

10 DR. KEMPINEN: A sampling of the
11 assistant DAs and a sampling of the public defenders.

12 DR. KRAMER: A sampling of the assistant
13 DAs. And those 1,300 people will help us to get a
14 better view of the guidelines and allow us a more
15 comprehensive revision, reconsideration of the
16 guidelines in the future.

17 Miss Jody Hobbs, further to my right, has
18 been with the Commission now about nine months, but she
19 worked two years -- Jody worked with us for two years
20 as a graduate student at Penn State. She then went and
21 worked with the U.S. Sentencing Commission for one
22 year, and then late last summer she returned, September
23 she returned to the Pennsylvania Commission on
24 Sentencing. And she is an Associate Director. She is
25 in charge of the development and training in terms of

1 the guidelines. We are also, as part of our revision
2 process, traveling to various counties, one of which is
3 Luzerne County we've been to and harassed in Luzerne
4 County, particularly by Judge Toole, but we had a nice
5 dinner with John Moses, I will say that. We are going
6 to approximately 14 counties and we are interviewing
7 judges, we are interviewing district attorneys,
8 assistant district attorneys, defense attorneys, public
9 defenders and others, particularly in terms of the way
10 the guidelines are used in the sentencing process, and
11 that is both -- it's a fairly labor intensive activity.
12 Jody sets all that up, manages that, gets that
13 information on each of the counties, and then we go out
14 and help her do interviews. But she is running that
15 particular component, as well as doing training. This
16 summer she'll be doing, with the Pennsylvania
17 Commission on Crime and Delinquency, a series of
18 training sessions on intermediate punishment, and we'll
19 be doing those in June. There are four, day and a half
20 sessions scheduled with the Commission on Crime and
21 Delinquency.

22 As you see the others, we have some
23 graduate students, those are all part-time. We have
24 two data clerks, encoders, that their job is basically
25 those 60,000 cases. We just added one. We had one

1 person basically doing all those thousands of cases,
2 putting them into the computer for analysis, and so we
3 have just added another person to assist in that
4 particular phase of the aspect. We also have a
5 research associate who does our data analysis, Miss
6 Carol Zeis, who hopefully will complete her Ph.D. at
7 Washington State or the University of Washington. I
8 always forget the two.

9 DR. KEMPINEN: I think it's Washington
10 State.

11 DR. KRAMER: Washington State.
12 Whichever. And she, in fact, today is in Harrisburg at
13 a meeting of the Correctional Population Projection
14 Committee working on the impact of some other
15 legislation.

16 That, basically, is staff, and if you
17 look at the budget in thousands of dollars, under B,
18 deserves some explanation. '89 and '90, our budget was
19 \$328,000. In '90-'91, there are two numbers there.
20 \$370,000 was our regular request, and then we had
21 requested \$125,000 for revision of the guideline, a
22 two-year allocation, a special allocation
23 non-continuing for revision of the guidelines as part
24 of our review for a 10-year review of the guidelines.
25 That was approved. I think we asked for \$130,000 and

1 we got \$125,000, and that money has been -- about half
2 of that will be spent this year and the rest will carry
3 over for next year for continuing our interviews in the
4 counties, our analysis of the questionnaire data, and
5 then particularly with commissioners looking at what
6 other States are doing and trying to revise the
7 guidelines. Our timetable for that is July of 1992.
8 We may be a little delayed in that process because of
9 the -- we did not anticipate when we set our timeframe
10 the intermediate punishment bill passing, the boot camp
11 bill has passing, and so we have the last six months
12 spent probably a large part of our time working on
13 those two pieces of legislation and guideline
14 revisions.

15 So that our request for next year for
16 '91-'92 is \$480,000. That incorporates a position, a
17 coder position and another position in part because we
18 found this year that we have been overloaded. We had,
19 to give you a sense of that, when we sat down in the
20 spring deciding whether we had time to hire somebody
21 and train them, we decided it was better to absorb
22 those tasks within current staff rather than try to go
23 through the training process and have another body
24 around, so we have delayed any of that movement, which
25 would have been under the special moneys allocated from

1 the State for our revision process. We do anticipate
2 going forward with that after July 1st, and we'll see
3 what happens with the current year budget, which we
4 know is not something to be counted on. So we'll wait
5 and see.

6 Let me just close by making a note about
7 membership additions to the Commission. There are
8 other things that we could discuss and debate about
9 what the Commission should do or changes in the
10 guideline recommendations, but I think that our
11 membership of the Commission would be strengthened by
12 other kinds of representation. One is that the
13 interaction between sentencing decisions and
14 corrections is an important nexus. What we do, what we
15 do in terms of our sentencing recommendations has a
16 direct impact on the Department of Corrections. We
17 have worked with the Department of Corrections, and
18 under the current administration the Department of
19 Corrections has been particularly good, but
20 historically that link has not been very strong, and I
21 think that one consideration for recommendation would
22 be an excellent commissioner, whoever it would be,
23 would be the Commissioner of the Department of
24 Corrections. The input of that perspective would be
25 probably helpful to the Commission.

1 Another is the impact of our guidelines
2 on workloads and information loads. The area of
3 probation and parole is another area that probably
4 would be helpful to have an additional membership.
5 That could be Chairman of the Board of Probation and
6 Parole or it could be somebody from the Chief Probation
7 Officer's Association. I'm not sure how that should be
8 specified. The Chairman of the Parole Board is mainly
9 involved with paroling issues. Really one of the major
10 things we deal with though is the probation issue,
11 gathering information for the court, making sure the
12 guidelines are calculated and that the expectations are
13 reasonable to the court. So that's why I didn't
14 specify the Chairman of the Parole Board in that
15 particular situation.

16 Other States use citizen
17 representative/victim representative on the Commission.
18 That's another area that would be worthy of
19 consideration. I'm not sure if it was debated in the
20 late '70's when this Commission was being established.
21 There, as I understand it, the debate primarily was
22 between judges and legislators, how many of each of
23 those were going to be on the Commission. I don't know
24 that there was an awful lot of consideration given to
25 somebody like the Commissioner of Corrections, citizen

1 representatives, victim representatives, Probation and
2 Parole representation. All of those three would be
3 important substantive input, I think, to the guideline
4 process.

5 So let me just say -- well, one other
6 thing, and I think there's a House Resolution 66 which
7 would mandate for bills that there be an assessment
8 done. It would also be worthy of recommendation that
9 the Commission, any changes in guidelines, any changes
10 in parole guidelines, any of those processes that have
11 an impact on prison populations I think just as much as
12 any action that you take directly are also actions
13 which build on correctional populations and should be
14 considered to have an assessment done of those to make
15 sure that you're clear about what's happening.

16 Just to give you an example, 10 years ago
17 if we were meeting we would have had a prison
18 population of 8,000 or 9,000. Today we have 23,000.
19 The responsibility of that comes from sentencing
20 guidelines, mandatory penalties for which you're
21 responsible. It comes from parole decision changes
22 which the Parole Board is responsible. In other words,
23 we really have to have an assessment of all of those
24 actors if you want to have a good handle on the prison
25 population impact, and some of those are more subtle

1 than others, but they are just as important and
2 unanticipated so that I think that mandate or that
3 clarification in statute is important.

4 We do assessments if it's possible, and
5 you'll notice in our proposal submission those are
6 available upon request, but those, I think, should be
7 more than that. I think they should probably be
8 mandated as part of the process.

9 Let me stop at that point and open up for
10 questions.

11 CHAIRMAN CALTAGIRONE: Very good.

12 Members?

13 Jeff.

14 REPRESENTATIVE PICCOLA: Just a couple,
15 John.

16 BY REPRESENTATIVE PICCOLA: (Of Dr. Kramer)

17 Q. I think I know the answer to this but I
18 want to make sure. On page 25 of your annual report,
19 the '89-'90 annual report, Table 10, and actually on
20 Table 11 as well, the second most frequently cited
21 reason for departing from the guidelines above the
22 guidelines is plea agreement. Why would anyone plea
23 bargain to get a sentence above the guideline?

24 A. Well, you could be having a situation in
25 which there is a drop in the charge, either numbers of

1 charges or prior record charges, although we don't see
2 that very often, or dropping a deadly weapon
3 enhancement. There are a number of ways in which a
4 prosecutor may make a suggestion that it may look as
5 though that would be an absurd result. On the other
6 hand, if they move forward with other criteria, the
7 guideline recommendation may be considerably higher. I
8 think that would be, would you have any--

9 DR. KEMPINEN: I think another reason
10 might be if they have current multiple convictions but
11 they're separate transactions and for our purposes then
12 we get those on separate forms. So if somebody is
13 convicted, say, of a robbery and somebody is convicted
14 of a burglary, which would be lesser, it might look as
15 though for the burglary the person is plea bargaining
16 to a higher sentence when in reality the higher
17 sentence was a reflection of the robbery charge but
18 they're getting concurrent sentences because they might
19 be up for sentences at one time.

20 DR. KRAMER: That's one area that,
21 particularly the multiple offense situation is, that I
22 think we'll have to look at carefully as we go through
23 the revision process, because I think that's an area
24 that's difficult. We use separate transactions as
25 being really separate sentences, and I think

1 historically judges have sort of brought those together
2 for one sentencing decision. And there are some
3 situations, a couple of other jurisdictions have
4 developed ways of merging those together to come up
5 with a consolidated result, and whether those are
6 satisfactory for our Commission I'm not sure, but at
7 least it would be something that we'll probably look at
8 in the next year or so is the guideline revision
9 process.

10 BY REPRESENTATIVE PICCOLA: (Of Dr. Kramer)

11 Q. On Table 11, the more significant figure
12 is, of course, the number of times a plea agreement,
13 plea bargaining is cited for departing below the
14 guidelines. Do you keep records as to each individual
15 one of those citations as to what the guidelines would
16 have called for had they not engaged in a plea
17 agreement?

18 A. For example, in another part of this
19 report you'll see where we talk about departures,
20 dispositional or durational. We would look at
21 departures whether or not -- say we recommend an
22 incarceration sentence of five years and the sentence
23 is a two-year sentence. That would be a durational
24 departure. They have departed below the guidelines.
25 They are giving incarceration which we called for, but

1 they are giving a length less than we recommend. That
2 would be a durational departure. We also then look at
3 it in terms of dispositional. If the person gave
4 probation, then we would also have that identified and
5 we could then tie together these statements of
6 justification with the departure and with whether or
7 not it was a durational or a dispositional departure
8 and how far was it.

9 Yes, we have that information. We have
10 all of that by case, by transaction.

11 Q. Is there any -- have you looked at plea
12 bargaining at all in any comprehensive way?

13 A. We looked at it. Perhaps I'll have Dr.
14 Kempinen talk about it. She and Mr. Lubitz did a plea
15 bargaining evaluation using -- there's another data set
16 that's available which we will sometimes use which is
17 the docket transcript form data, and the Administrative
18 Office of Pennsylvania Courts keep that data, look at
19 that.

20 Perhaps you want to respond to that,
21 Cynthia?

22 DR. KEMPINEN: Yeah. We also did a
23 questionnaire where we had sent out to the district
24 attorneys in the various counties asking questions
25 about the plea bargaining process which I think we

1 might have obtained quite a bit of information from
2 that because some of the information from the docket
3 transcript, we were missing a significant number from
4 that. Basically what we found out is that plea
5 bargaining obviously does occur and there are certain
6 areas surrounding our guidelines where they are more
7 apt to occur. For example, perhaps in a deadly weapon
8 enhancement, and we've also found out going to counties
9 and interviewing people that we have certain aspects of
10 our guidelines that perhaps people like but for the
11 wrong reasons they use it as a plea bargaining tool as
12 opposed to an enhancement, and so we have found out
13 that there are plea bargainings around our guidelines.

14 BY REPRESENTATIVE PICCOLA: (Of Dr. Kramer)

15 Q. I would be interested in any
16 comprehensive report that you might be able to develop
17 on plea bargaining.

18 A. Okay. Let me first give you--

19 Q. These two tables indicate at least in
20 '89-'90 that there were only around 1,100-and-some-odd
21 plea bargains. There must be more plea bargains than
22 that.

23 A. Absolutely. Yes.

24 DR. KEMPINEN: This is only if they put
25 this down as one of their reasons. Now, there might be

1 times when it's a plea bargain but they're not
2 indicating on the report that this was the purpose
3 behind the sentence, and so therefore we wouldn't have
4 any way of knowing that. So it's only if they indicate
5 that.

6 DR. KRAMER: The other study we did look
7 at situations in which the original charge was dropped
8 in terms of severity or also looked at situations in
9 which number of charges were decreased, going from 5,
10 burglary accusations, to 1, conviction. That is
11 suggestive of a plea bargaining process. It is not
12 necessarily a measure of plea bargaining, but we looked
13 at that in that study a couple of years ago. Why don't
14 we provide you a copy of that report and you can look
15 at that and that might be helpful. And then we can
16 also do more with our data, although we don't get the
17 initial accusations, so we have to rely upon the
18 Administrative Office of Pennsylvania Courts for that
19 information, and timeliness becomes a problem for that.

20 MS. HOBBS: Table 11 only represents 12
21 percent of the cases, too, because there are many cases
22 that there was a departure from the guidelines.

23 REPRESENTATIVE PICCOLA: Right. And the,
24 as they said, it doesn't necessarily -- you wouldn't
25 pick it up if it wasn't reported as a plea bargain.

1 DR. KEMPINEN: Well, no, we do keep track
2 of whether it's a plea bargain or if it's a jury trial
3 or a bench trial.

4 REPRESENTATIVE PICCOLA: Oh, you do.
5 Okay.

6 DR. KEMPINEN: But that's not reflected
7 here. This is only if it's a departure and the reason
8 the judge is giving for departing from our guidelines
9 is because of the result of a plea agreement, but we do
10 keep track also of the way that the guilty plea was
11 entered or found guilty.

12 REPRESENTATIVE PICCOLA: Okay, and you do
13 have in that material in terms of--

14 DR. KEMPINEN: We have that in here.

15 DR. KRAMER: I'm just looking to see if I
16 can locate it real quick.

17 Okay, if you look on page 14, type of
18 disposition, Figure D, you will see that there is -- on
19 our form, our sentence guideline form, we ask whether
20 this is a jury trial, other trial, plea, negotiated or
21 non-negotiated plea. You'll notice negotiated plea
22 sentences by type of disposition, 52 percent indicated
23 some sort of negotiation process as part of those
24 pleas. Now, what they will often do will not plea to a
25 departure from the guidelines, they will do the more

1 surreptitious process is kind of, well, deadly weapon,
2 enhancement applies but we won't use it in this case,
3 and of course that's an invisible situation for us. We
4 won't know that.

5 REPRESENTATIVE PICCOLA: Um-hum.

6 DR. KRAMER: Other situations would be in
7 which they might go to the lower part of the standard
8 range. So for example I mentioned that 8-0 cell
9 before, which is 24 to 48 months. They may bargain
10 down, well, we'll give you the 24 months, so we'll
11 mitigate to the mitigated range, which is 18 to 24
12 months, as opposed to a total departure. So there may
13 be that kind of movement. We could look at these cases
14 a little more closely to see what kinds of offenses
15 that involved with.

16 DR. KEMPINEN: We do have on 15 and 16 by
17 county and then by offense conviction included in here.

18 MS. HOBBS: It would be difficult for us
19 to get that quantitatively, although in the county
20 study that we're conducting we are talking extensively
21 about the plea bargaining process and how the
22 guidelines fit in and we get quantitative numbers but
23 nothing that we can say 9 times out of 10, but we can
24 get sometimes, often, frequently, those type things,
25 which would come in from a report through the State.

1 REPRESENTATIVE PICCOLA: Yeah, I would
2 encourage you to pursue that. I would find that
3 interesting.

4 DR. KRAMER: It is -- one of the major
5 concerns as the State moves to, you know, you move to
6 mandatory or other kinds of sentencing provisions, they
7 can become paper lions in the sense that it may be
8 reasonable policy but courts, meaning district
9 attorneys, judges and others, can circumvent those
10 fairly readily if they so desire. The only way it
11 makes a difference, of course, is if the defense or the
12 district attorney appeals a departure. In a plea
13 agreement situation they are obviously not going to
14 appeal on either case, so that there is no, in a sense,
15 recourse at this point in time to deal with that
16 particular situation.

17 BY REPRESENTATIVE PICCOLA: (Of Dr. Kramer)

18 Q. One other question on the report. Your
19 annual report also indicates that in '89-'90 you
20 processed 52,000 sentence reports. Would you
21 anticipate that going up in the current year?

22 A. Well, for 1990 we're at approximately
23 60,000.

24 Q. 60 already?

25 A. And I would anticipate that that will --

1 I hope it doesn't continue. I hope for various reasons
2 that it doesn't continue to go up much larger than that
3 because it translates into roughly 20 percent, 18 to 20
4 percent get a State prison sentence, and if you're
5 getting random distribution of those numbers, we're
6 going to get an increasing number of people getting
7 State incarceration, county incarceration, and that
8 portends as a serious problem for the State in many
9 areas. But I would -- a significant growth in the last
10 two or three years has been in the area of drug
11 convictions. I mean, that doesn't account for all of
12 it, but a serious area of increase for convictions has
13 come in that particular area.

14 Q. Okay. Thank you.

15 A. You're welcome. Thank you.

16 CHAIRMAN CALTAGIRONE: Kevin.

17 BY REPRESENTATIVE BLAUM: (Of Dr. Kramer)

18 Q. John?

19 A. Yes.

20 Q. The changes that were made at your April
21 5th and April 23rd meeting which will take effect on
22 August 9th, I want you to help me understand them a
23 little better.

24 A. Okay.

25 Q. As I go to page 4 of Section E, the four

1 offenses which the Commission decided were of a serious
2 nature and should be changed, can you walk me through
3 that and tell me the changes that were made and
4 examples of that?

5 A. Sure.

6 Q. Are there any charts in here that can
7 show me how it was before and how it's being proposed?

8 A. No, but it might be easier to look at
9 page 10. It might be a little bit easier to look at
10 than that particular language.

11 Let me indicate that involuntary -- let
12 me go through these and I'll just highlight the changes
13 and stop me if I'm going and not being helpful.

14 There were several new offenses created,
15 so the changes that we're proposing in the guideline
16 ranking of offenses are either new offenses or some
17 nuances of other parts of statute, and so what happens
18 then, for example, in involuntary manslaughter, when
19 there is also a conviction for DUI arising from the
20 same transaction, it's an offense gravity score of 6.
21 Prior to that it had an offense gravity score of 5,
22 which allowed for non-incarceration, and we changed
23 that to basically make sure that there was a guideline
24 for incarceration for that situation. It allowed for
25 incarceration considerable, but it didn't have a bottom

1 floor that in a sense prevented incarceration.

2 Skipping down to 2506, which is the
3 fourth offense down, drug delivery resulting in death,
4 is a new offense. And what we had looked at, it's a
5 Felony I, which is automatically ranked, given an
6 offense gravity score of 7 until re-ranked by the
7 Commission. Anytime the legislature creates a new
8 crime and puts a statutory grade on it, we have what we
9 call an omnibus classification. It goes to a
10 particular classification until we have a chance to
11 rank it. Felony I's automatically become a defense
12 gravity score of 7 unless we change it. The Commission
13 looked at this particular crime. In this case we have
14 a death resulting, and with death, if you were to look
15 back at our defense gravity score classification, with
16 a death resulting we rank that as an offense gravity
17 score of 10. So it was a 7 before, which would give
18 you a sense of the range. The range for a 7-0 is 8 to
19 12 months, so basically county prison length. When you
20 get to 10 it's 48 -- I forget. 48 to 120 months, so
21 anywhere from 4- to 10-year range. Because of the
22 issue of death and the other issues that range is
23 particularly wide, but the bottom floor there is a
24 four-year period of incarceration.

25 We didn't do anything with assault on

1 sports officials. It's a Misdemeanor I. We left that
2 the way it was. And of the omnibus classification,
3 concealment of whereabouts of a child, the same thing.
4 I mean, it allows latitude. We're not sure what kinds
5 of offenses or behaviors are going to fall into that.

6 Luring a child into a motor vehicle the
7 Commission did rank higher than the omnibus
8 classification, which would have been a 3 to a 5.
9 Again, the range of behaviors that might fall in there
10 might be very wide, but that is an increase of severity
11 versus other Misdemeanor I's. In other words, normally
12 we would be having Felony III's that would be ranked to
13 5. In this particular case we took a Misdemeanor I
14 that the legislature created and gave it a higher
15 ranking. In other words, when you set a grade on it,
16 you set a statutory maximum. The Commission then looks
17 at it and says, well, we think -- we understand the
18 legislature thinks it's prime, it should be in statute,
19 and we are saying we think it's probably a little more
20 serious than other Misdemeanor I's that the legislature
21 is creating, so in this case we gave an offense gravity
22 score of 5.

23 The aggravated indecent assault, which is
24 3125, would have had an automatic offense gravity score
25 of 6. The District Attorneys Association recommended

1 an offense gravity score of 7. The Commission was
2 offended by the behavior much more than that and felt
3 that an offense gravity score of 8 was appropriate.
4 And that gets to the difference between a 7 and 8 is
5 considerable.

6 Q. And it used to be 6?

7 A. Well, automatically a Felony II becomes a
8 6 until we re-rank it. It was not a 6 because the
9 Commission said we think it should be a 6, it was a 6
10 because any Felony II created by the legislature
11 becomes a 6 until we re-rank it, and we have to go
12 through the re-ranking process and get it approved by
13 the legislature before it becomes an 8, so this next
14 90-day period, what you're basically doing between now
15 and August 9th is saying whether you do think that's an
16 appropriate number, calling for at least two years'
17 confinement in the 8-0 with no prior record
18 classification.

19 Indecent assault we've also re-ranked to
20 raise to make it more serious. It was an offense
21 gravity score of 2 and it goes to a 3. That's because
22 of the implementation of intermediate punishment
23 statute sections to make sure it's not in an area that
24 goes, that calls for probation to intermediate
25 punishment to get it out of that to allow for

1 incarceration for the court on first convictions.

2 I think that's basically the major ones.
3 There is a section which I mention in my presentation
4 and I would want to draw your attention to. If you
5 look at page 9 and 10, the bottom of page 9, "When one
6 or more victims suffered serious bodily injury, the
7 guideline sentence recommendation (in months) for
8 convictions under 75 Pa.C.S. 3731...are as follows."
9 Basically right now those are not covered by any
10 particular length, and what we did was for first
11 convictions set a range of at least 4 to 6 months;
12 second conviction, 7 to 9; third conviction, 9 to 11;
13 and fourth, 12 months. Again, the 12 months gets you
14 to the statutory limit for that particular behavior,
15 and so when I alluded to the implications of behavior,
16 serious bodily injury, which ordinarily if you look at
17 the guidelines, our guidelines in terms of
18 proportionality of a serious bodily injury result,
19 we're usually talking about an offense that's in the
20 area of a 9 or an 8. This, because the legislature has
21 graded, and I'm not suggesting the legislature regrade
22 the offense, but DUI as a Misdemeanor II, the maximum
23 sentence is 24 months. This takes you to the statutory
24 maximum based on previous, if the person has a previous
25 DUI record. And so those limits are, in a sense,

1 working within statute. You will see that it does
2 violate a little bit our general procedure for ranking
3 crimes, particularly those with serious bodily injury,
4 and victim impact here is diminished a little bit as a
5 consequence of that.

6 Q. Could you get us, for instance, on page
7 10 when we talk about involuntary manslaughter going
8 from a 3 to a 6, luring a child into a motor vehicle
9 went from a 3 to a 5. Can you get us information and
10 charts which makes this clearer to us, the changes that
11 are being proposed that we have to decide on prior to
12 August 9th, which really means prior to June 30th,
13 hopefully?

14 A. What kind of information?

15 Q. Just something that makes it more clear
16 to me, you know, what it would have been, what it is
17 now and--

18 A. If you go back to--

19 Q. --and what wasn't eligible for
20 intermediate punishments and what we're making now
21 eligible for intermediate punishments?

22 A. Okay. If you look to page 12. You see,
23 the pages after 10 are not numbered. If you look to
24 page 12, two pages back from that.

25 Q. Okay.

1 A. Let's take the 3 offense gravity score.
2 Basically, what you end up with a 3 offense gravity
3 score--

4 Q. Where am I looking at? Most
5 misdemeanors?

6 A. Most misdemeanors, and you see the second
7 section up is a 3.

8 Q. Okay, right.

9 A. Okay. If your current offense has an
10 offense gravity score of 3 and your prior record score
11 -- and the prior record score is the next row over, it
12 goes 0 through 6.

13 Q. Um-hum.

14 A. If you have 0 prior record, the standard
15 range right now is 0 to 6 months, and then you have
16 aggravated and mitigated ranges, and then the ranges
17 build as you go across. But the ranges stay in general
18 upper limit there of, for example, with a prior record
19 score of 6, the range is 8 to 11 1/2 months. If you
20 take that behavior which we made a 5 rather than a 3,
21 you go up two more columns in a sense or two more rows,
22 you go up to offense gravity score of 5, the range goes
23 0 to 11 1/2. And when you get to the offense gravity
24 score or prior record score of 6, the range is 24 to 36
25 months.

1 So that what happens particularly with
2 individuals who have a prior record involvement, and
3 depending upon the severity of those prior record
4 involvements, all of a sudden you're going from an 8 to
5 an 11 1/2 for a 6 up to a 24- to 36-month
6 recommendation under guidelines. So the impact here is
7 primarily for people who have prior convictions, and
8 the difference between the 3 and 5 there is primarily
9 with people with prior convictions, and the numbers go
10 up considerably. The recommendations, the guideline
11 severity goes up considerably under those
12 circumstances.

13 So that's, if you look at that particular
14 scenario, let's take the drug dealing example that
15 death resulting from drug dealing. The omnibus
16 classification was a 7. If you look on page 11, the
17 page right previous to this, the 7-0 I mentioned is an
18 8- to 12-month range. The 10-0 is a 48- to 120-month
19 range with no prior convictions. If you are looking at
20 prior records score, of course if you have a 6 prior
21 records score, the range under 7 is 43 to 64, versus
22 102 to 120 months, which are getting to -- basically
23 you are at the statutory maximum at 120, and that's why
24 you see all of those clipped at 120. That's the
25 statutory maximum. These are all minimums, and the

1 minimum can be no greater than one-half the maximum,
2 and therefore we're cut off at 10 years when we
3 established the minimum, and that's what the 120-month
4 figure represents.

5 Q. Right.

6 A. If we took the aggravated indecent
7 assault, which is perhaps a key one, if you look there
8 at the 6-0 range, under 6-0, and that's the top of page
9 12, again not numbered, 6-0 the range is 4 to 12
10 months. Basically a county confinement sentence. And
11 with a very long prior record you're getting about a 3-
12 to 4-year incarceration range, 33- to 49-month range.
13 Once you take that to an 8 offense gravity score, which
14 is the Commission's recommendation, even with no prior
15 record you're talking about a 2- to 4-year minimum
16 sentence. Maximum sentence would be at least double
17 that, and if you look at somebody with a prior record
18 of 6, the range gets to be a 5- to 7-year, 5- to 8-year
19 kind of minimum range under the guidelines. So that
20 the severity of the guidelines is increasing
21 considerably.

22 If you took it to a 9, 9 happens to be
23 rape and involuntary deviate sexual intercourse, which
24 are Felony I's, and so 8 is proportionately we felt an
25 appropriate reduction, distinction between rape and

1 involuntary deviate sexual intercourse versus the
2 aggravated indecent assault. That's the way in which
3 the calculations get set up.

4 Q. Okay.

5 A. And the information. It is not easy for
6 somebody who doesn't do this day in and day out, and I
7 don't do it as much as the two individuals to my right
8 know this much better than I do, but that's the way it
9 sets up.

10 And then we have a second chart, by the
11 way, Representative, if you go back to it would be
12 effectively I think page 13 or 14, a totally separate
13 chart for drug trafficking offenses. And those are
14 distinguished by amounts and by type of drug, so that
15 the charts you were looking at before does not include
16 drug offenses at all. Now, we have been criticized, by
17 the way, for being -- we're really in general tougher
18 than the mandatories, and we've been criticized I think
19 primarily for taking where we have narcotics less than
20 that 2 gram is a little low. People are telling us now
21 that we should reflect what is called an "eight ball."
22 I don't know what an eight ball is exactly either.
23 I've been told several times and I keep forgetting, but
24 anyway, an eight ball, which would be around
25 3-point-something grams, it would be a better

1 representation of amount of drug that would be
2 possessed that would actually be there for trafficking
3 purposes. They're saying our 2 grams is often there
4 for possession, for use, and it tends to escalate the
5 penalty a little bit more severely than is probably
6 appropriate. And those comments from district
7 attorneys, basically. Although when we did this we had
8 tried to contact district attorneys to get a good sense
9 of what was an appropriate number, because I certainly
10 have no sense of those amounts. But we tried to
11 reflect the severity of the drug, the risk of the drug
12 of injury to the victim, and secondly to the amount to
13 indicate the culpability of the offender in terms of
14 the transaction.

15 I think one of the Senators on the
16 Commission at one point in time said when we were doing
17 this, we're really kind of looking at the wholesalers
18 and the retailer kind of notion here of market with the
19 retailers being the kind of in-between category and the
20 wholesalers being those who tend to transport, don't
21 sell perhaps directly themselves to users but transport
22 with the idea of profits, and that's the kind of notion
23 that we were trying to incorporate here within the
24 guideline process.

25 Q. Now, if I didn't hear that explanation,

1 how would I, by looking at this, realize that we may be
2 making a change between possession of 2 grams up to 3
3 grams? You know what I'm saying?

4 A. We're not making any changes here.

5 Q. I want to take this home and I want to
6 read it and I want to understand the changes that are
7 being recommended. I'm wondering and asking you to
8 help me understand how I am going to do that?

9 A. Well, part of what we try to do is by way
10 of the preamble with the offenses and listing those,
11 describing those and pointing those out specifically we
12 try to go through and highlight what are the specific
13 changes that we're making recommendations about. The
14 only changes in the drug statute that we're making
15 relate to identifying certain cells for people being
16 eligible for boot camps, and that's the only change in
17 the -- I think that's correct, the only change with
18 regard to the drug. There is no intermediate
19 punishment for drug offenders, by the way, by statute
20 that they were not allowed. So what we do, in terms of
21 the presentation, we try to go through each particular
22 change, specify what some of the debates are about
23 that, and that's the verbal presentation that you're
24 picking up on on page 4 about the offenses.

25 Then what we do is present -- that really

1 is not, that description is not adopted by the
2 legislature when they don't reject it. The only thing
3 that is adopted is what happens to appear in Annex A or
4 any other annexes that are there. So what we -- the
5 early discussion is there to kind of tell you what
6 we're doing and why. And then, because once you go
7 back to the grid chart and all those other things it
8 becomes very, very difficult to follow. Or you could,
9 the best thing to do is just call me and ask me what
10 you should do with it and I'll tell you you should
11 approve it. I can't think of a better recommendation
12 than that, personally.

13 (Laughter.)

14 DR. KRAMER: No, we try to, and so we try
15 to go through describing perhaps in more detail than we
16 should but trying to give people an idea of why we're
17 doing this and what we considered in doing it and in
18 some cases referencing who made recommendations about
19 doing that that we pursued and followed it in making
20 that adoption, and then in the annex is what the
21 proposed changes are specifically and where they would
22 change in the guidelines. But in a sense, while
23 clearly we are probably missing a little bit, that's
24 our intent in that early description.

25 REPRESENTATIVE BLAUM: Okay. Thank you,

1 Mr. Chairman.

2 DR. KRAMER: By the way, I guess in
3 response, I'm not sure in terms of your first question
4 whether there is other ways in which we could present
5 this which would be more helpful to you. I'm not sure
6 if my taking you through that made it clear or whether
7 you would like to see some other document that would--

8 REPRESENTATIVE BLAUM: If you have
9 another document, that would be fine.

10 DR. KRAMER: Well, I don't think we have
11 another document, but we can prepare another document.

12 REPRESENTATIVE BLAUM: No, you've helped
13 me. Thank you.

14 CHAIRMAN CALTAGIRONE: No other
15 questions?

16 (No response.)

17 CHAIRMAN CALTAGIRONE: The meeting is
18 adjourned. Thank you.

19 DR. KRAMER: Okay, thank you, sir.

20 (Whereupon, the proceedings concluded at
21 11:25 a.m.)

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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me during the hearing of the within cause, and that this is a true and correct transcript of the same.

Ann-Marie P. Sweeney
ANN-MARIE P. SWEENEY

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