

**MARYLAND COMMISSION**  
**ON**  
**CRIMINAL SENTENCING POLICY**



**FINAL REPORT**

**December 31, 1998**



# Maryland Commission on Criminal Sentencing Policy

Room 2220, LeFrak Hall, University of Maryland, College Park, MD 20742-8235  
(301)405-2926 Fax (301)405-4626

December 30, 1998

The Honorable Paris N. Glendening  
Governor of Maryland  
Statehouse  
Annapolis, Maryland

The General Assembly of Maryland  
c/o Karl S. Aro, Director  
Department of Legislative Reference

The Maryland Commission on Criminal Sentencing Policy is pleased to submit herewith its final report.

All members of the Commission join me in expressing our appreciation for the opportunity to have served on the Commission. We look forward to responding to any future request for information from the Governor or the General Assembly.

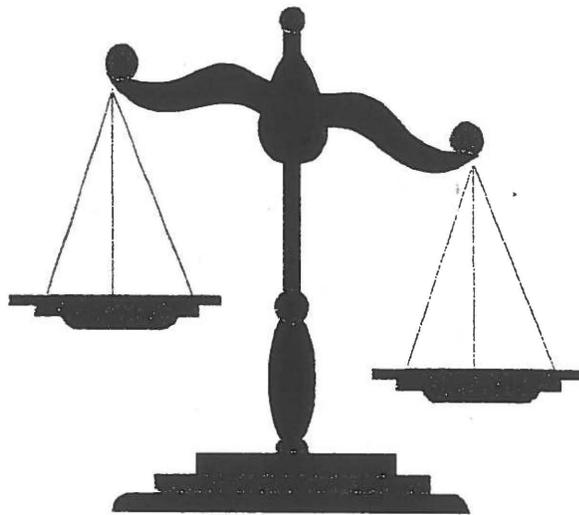
We are currently drafting legislation consistent with the recommendations contained herein, for presentation to the 1999 session of the legislature.

Sincerely,

A handwritten signature in black ink, appearing to read 'John F. McAuliffe', written over a large, stylized flourish.

John F. McAuliffe, Chairman

**MARYLAND COMMISSION**  
**ON**  
**CRIMINAL SENTENCING POLICY**



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## EXECUTIVE SUMMARY

The Maryland Commission on Criminal Sentencing Policy was established in 1996 to evaluate the state's sentencing and corrections laws and policies. This report and the recommendations it contains represent the Commission's findings and recommendations across three broad policy areas: (1) sentencing policies and practice such as the use of voluntary/advisory guidelines for judges; (2) utilization of corrections programs such as home detention or boot camp; and (3) practices regarding release from correctional institutions, such as discretionary parole.

The Commission's efforts were shaped by the legislative charge to the Commission, Chapter 563 of the 1996 laws. The Commission formulated the following mission statement based on its charge:

1. Promote sentencing that more accurately reflects the time that an offender will actually be incarcerated;
2. Concentrate prison capacity on the incarceration of violent and career offenders;
3. Reduce any unwarranted disparity in sentences for offenders who have committed similar offenses and have similar criminal histories;
4. Preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences;
5. Ensure that sentencing judges in every jurisdiction in the State are able to impose the most appropriate criminal penalties, including correctional options programs for appropriate nonviolent offenders; and
6. Ensure that the Secretary of the Department of Public Safety and Correctional Services and local correctional administrators have the authority to place appropriate offenders under their jurisdiction into correctional options and to remove offenders from those options.

The Commission's findings and recommendations in promotion of the mission statement reflects the work of Commission members, Commission staff, and the testimony of leading scholars, legal experts, and practitioners in the areas of sentencing policies and practice, corrections programs, and correctional release practice. The Commission identified the following issues and made the following main recommendations to further Maryland's progress in sentencing and corrections practice.

### Judicial Sentencing

Overview. Some of the most extensive penal reforms in the last two decades involve the "structuring" of criminal sentencing. Sentencing guideline schemes (either voluntary or presumptive), the creation of sentencing commissions, the promulgation of mandatory minimum penalties, and the abolition of discretionary release mechanisms such as parole are some of the most prominent examples of "structured" sentencing reforms.

The state of Maryland has adopted several forms of structured sentencing. The centerpiece of structured sentencing reform in Maryland is the system of voluntary/advisory sentencing guidelines for circuit courts that has been in place statewide for approximately 15 years.<sup>1</sup> The legislature also enacted mandatory minimum sentences for select classes of crime and has increased the minimum parole eligibility standard for violent offenses, including burglary and daytime housebreaking).

A major goal of the existing voluntary/advisory sentencing guidelines is to reduce unwarranted sentencing disparity. Commission research raised questions about the

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<sup>1</sup>The voluntary/advisory sentencing guidelines provide circuit court sentencing judges with a recommended sentence range based on a defendant's criminal history and the seriousness of the instant offense. Because the sentencing guidelines are voluntary, judges may sentence outside of the recommended sentencing guidelines range.

effectiveness of the existing guidelines in reducing unwarranted sentencing disparity, however. Judicial compliance to the existing guidelines over the last 10 years, for example, is low (an average of 55%).

The Commission evaluated the existing voluntary/advisory sentencing guidelines and carefully weighed the apparent benefits and disadvantages of adopting a more presumptive form of sentencing guidelines. It also investigated whether a form of sentencing guidelines should be extended to the District Court.

After considerable study, the Commission concluded that the sentencing guidelines in Maryland should continue to be voluntary, but that steps should be taken to increase judicial compliance with those guidelines. The Commission recommends three means of increasing judicial compliance and recommends that a permanent sentencing commission oversee efforts intended to improve judicial compliance. A detailed examination of the factors that motivate judicial noncompliance is also recommended. The Commission further advises that the proposed strategy of reform (i.e., increasing judicial compliance) be reevaluated by the permanent sentencing commission at the end of one year.

***Recommendation 1:***                    ***The State of Maryland should maintain the existing framework of voluntary sentencing guidelines for circuit courts.***

***Recommendation 2:***                    ***The State of Maryland should increase judicial compliance with the guidelines to a target of 70% by means of the following: (a) judicial monitoring of judges at the individual and county level by the Chief Judge of the Court of Appeals through the Administrative Office of the Courts; (b) judicial education and encouragement; and (c) judicial requirement to record the reasons for departure (using a checklist and open-ended response).***

***Recommendation 3:***                    ***The State of Maryland should create a permanent sentencing commission to oversee a strategy of systematic***

*and incremental change to improve the effectiveness of the existing guidelines.*

***Recommendation 3a:*** *The permanent sentencing commission should examine reasons for judicial noncompliance.*

***Recommendation 3b:*** *The permanent sentencing commission should reassess the guidelines reform strategy at the end of one year.*

Additional recommendation related to the existing sentencing guidelines include revisions to the calculation of components of the Offense and Offender scores and sentencing guidelines worksheets (as well as revisions to the Offender score and drug offense matrix to be considered by the permanent sentencing commission).

***Recommendation 4:*** *The permanent sentencing commission should consider the adoption of the drug matrix revisions proposed by the Maryland Sentencing Guidelines Advisory Board of the Judicial Conference.*

***Recommendation 5:*** *The permanent sentencing commission should adopt revisions to the calculation of the Offense and Offender score and to the Sentencing Guidelines worksheet.*

***Recommendation 5a:*** *The Commission recommends that the permanent sentencing commission revise the sentencing guidelines to grant a one point reduction in the offender score for the entry of a guilty plea or an Alford plea.*

With regard to the viability of extending sentencing guidelines to the District Court, the Commission concluded that the use of sentencing guidelines should not be mandated in the District Court at this time. However, as the statewide correctional options program being recommended by the Commission is established and as the criminal jurisdiction of the District Court continues to expand, the question should be re-visited to determine whether a simplified guidelines system could be developed for effective and non-burdensome use in that court.

The Commission was concerned, however, about the number of cases in which District Court judges are currently being required to determine sentences without the aid of any information about the criminal history of the offender. Therefore, the Commission recommends that the Chief Judge of the District Court and the State's Attorneys of the counties work together with state support to ensure that criminal history information is available to all sentencing judges in the District Court.

**Recommendation 6:** *The Commission recommends that the Chief Judge of the District Court and the State's Attorney of the counties jointly pursue a solution to the problem of providing criminal history information to all sentencing judges in the District Court and that the State provide any additional resources necessary to attain that objective.*

Finally, the Commission recommends that a three-judge sentence review panel be empowered to reduce mandatory minimum sentences.

**Recommendation 7:** *The Commission recommends that the General Assembly add to the authority granted three judge sentence review panels pursuant to Article 27, §645JA-645JG the right to reduce a sentence below a statutorily mandated minimum when, in the opinion of the panel, the reduction is appropriate and necessary to prevent an injustice.*

#### Corrections Options Between Prison and Probation

Corrections options programs operate at both the State and County level in Maryland. These programs fall between the traditional sentencing alternatives of either probation or prison. Examples of corrections options include intensive probation supervision, electronic monitoring, house arrest, boot camp prison programs, or community service or restitution programs. Corrections options programs are intended to reduce prison and jail crowding and to create a more complete continuum of sanctions than the limiting choice of either probation or prison.

The Commission recommends that Maryland expand its state Corrections Options Program to allow offenders to sentenced to a new Corrections Options Authority at the time of sentencing, under recommendations promulgated by revised sentencing guidelines. The Commission's analysis reveals that more offenders can and probably should receive placement in the Corrections Options Program, and that the current program is geographically limited. The Commission recommends that the new Corrections Options Authority be created within the Department of Public Safety and Correctional Services, and that this Authority have as its primary task the assessment, placement, supervision, and interim sanctioning of offenders.

**Recommendation 8:** *The State of Maryland should expand Correctional Options statewide and plan the creation of a Corrections Options Authority within the Department of Public Safety and Correctional Services to implement assessment, placement, supervision, and sanctioning of offenders within the programs.*

**Recommendation 9:** *The Commission recommends the creation of a new sentencing option for judges statewide. Under this plan, judges would sentence offenders to the Corrections Options Authority within DPSCS. Further, the new unit within the DPSCS should provide support services, including assessment, and control the movement of offenders once judges sentence the offenders to the corrections options authority.*

**Recommendation 9a:** *The DPSCS and the permanent sentencing commission should return to the General Assembly by December 1, 1999 with a plan for formation of a corrections authority to work in concert with the judiciary and the sentencing commission.*

**Recommendation 9b:** *The DPSCS should prepare bench cards informing judges of corrections options programs and offender contracts along the lines of the Break-the-Cycle framework.*

**Recommendation 9c:** *The DPSCS should also report on the resources needed to staff probation offices to perform preliminary screening for eligibility prior to sentencing and conduct risk and needs assessment after sentencing.*

**Recommendation 9d:** *The DPSCS should report on plans to report assessment results and offender placement plans to the judge.*

**Recommendation 9e:** *The permanent sentencing commission should work with the Maryland Department of Public Safety and Correctional Services to refine its estimate the number of program slots necessary to provide judges appropriate levels of access statewide. The study should initially assume an average length of stay in corrections options of one year to allow significant improvements through reduced drug use and reduced criminal propensities.*

The Commission recommends development of a State and Local Partnership for Corrections Options. The purpose of the Partnership is to invite local treatment programs and detention centers to participate in a state-funded Corrections Options Program with local choice in daily operations. The Partnership is designed to find an economical means of building on the emerging infrastructure of drug testing, sanctions, and drug treatment activity.

**Recommendation 9f:** *The permanent sentencing commission should work with state and local corrections officials to develop a plan for a State and Local Partnership for Corrections Options.*

The Commission recommends that the permanent sentencing commission incorporate corrections options as a sentencing guideline recommendation to help guide selection of offenders and to help manage growth in the Corrections Options Program. The guideline framework also provides a means of keeping punishment proportional to the crime.

**Recommendation 10:** *The Commission recommends that the permanent sentencing commission incorporate sentence recommendations to the Corrections Options Authority using a zone of discretion in the guidelines matrix. A judge would be counted in compliance with the guidelines when an offender's score appears in the discretionary zone and the judge selects either the traditional sentence range or Corrections Options.*

**Recommendation 11:** *The Commission recommends the application of the Break-the-Cycle model into expanded Corrections Options Program under the authority of a newly established Corrections Options Authority within the DPSCS.*

**Recommendation 12:** *Risk and needs assessment should be reviewed for the new target population and with the goal of conducting reliable and valid risk and needs assessment for all offenders identified as candidates for corrections options by the judge or corrections authority.*

**Recommendation 13:** *The Commission recommends that the permanent sentencing commission develop a plan for inclusion of District Court in the Corrections Options Program.*

#### Offender Release from Incarceration

In Maryland, offenders sentenced to a term of incarceration of six months or greater are eligible for discretionary parole release and earn good conduct credits and other credits, also called diminution credits. Discretionary parole occurs when the Parole Commission – after reviewing the offender's suitability for parole during a hearing – grants the offender parole prior to the mandatory release date. Since 1994, offenders serving sentences for certain violent crimes are not eligible for discretionary parole consideration until 50 percent of the sentence has been served. An offender may have his or her time of incarceration reduced by diminution credits.

The Commission found evidence that Maryland offenders serve a greater percentage of their sentence prior to release than the national average. Nationally,

offenders served an average of 41 percent of their sentences in 1994. A study of Maryland offenders sentenced to between one and ten years during 1993 revealed that Maryland offenders served an average of 53 percent of their sentence.

The Commission therefore recommends that the existing framework of parole and diminution credits be maintained. The Commission also recommends the judicial announcement of a minimum and maximum sentence in order to promote more “truthful” sentencing practices.

***Recommendation 14:*** *The State of Maryland should maintain the existing framework of parole and good conduct credit.*

***Recommendation 14a:*** *The proposed permanent sentencing commission should study a means to simplify the allocation of diminution/good time credits.*

***Recommendation 15:*** *The State of Maryland should adopt a system of criminal sentencing whereby sentences are issued in terms of a sentence range. The judge selects a maximum sentence and derives a minimum sentence based on parole eligibility criteria established by law.*

***Recommendation 15a:*** *The State of Maryland should enact legislation to provide that a person convicted of a nonviolent crime is not eligible for parole release until the person has served one-quarter of the term or consecutive terms. A person selected for participation in the Correctional Options program (COP) is exempted from the one-quarter parole release requirement.*

***Recommendation 16:*** *The Commission recommends that the Governor give individual consideration to any recommendations for parole for persons serving life sentences.*

### Policy Alternatives

In addition to the above recommendations, this report discusses a variety of policy alternatives that the Commission considered but rejected. The Commission was instructed by the legislature to provide a bedspace neutral alternative if the Commission's

recommendations would “result in State and local inmate populations that would exceed the operating capacities of available facilities.” In order to achieve the recommended 70% judicial compliance to the guidelines *without* increasing the need for prison or jail bedspace, the Commission concluded that the existing sentencing guidelines ranges would have to be reduced. One proposal systematically reduced the sentencing guidelines ranges to reflect current judicial sentencing practice. This proposal was rejected in favor of increased compliance with guidelines at their present levels.

In addition, the Commission considered the viability of adopting several different forms of truth-in-sentencing policies, both bedspace neutral and increased bedspace versions. The bedspace neutral versions reduced the sentencing guidelines ranges to allow a *greater proportion of the sentence to be served* with no real increase in *time to serve*. The increased bedspace versions increased the proportion of sentence to be served without adjusting sentencing, resulting in a greater time to serve and greater capital and operating expenditures for prisons.

The increased bedspace versions were evaluated using the Structure Sentencing Simulation (SSS) model to estimate the prison bedspace impact of alternatives that increased prison bedspace needs. The SSS model is a computer simulation software program that tracks samples of sentenced offenders as they progress through the corrections system over time (see Appendix F). The SSS model is commonly employed in states that have implemented structured sentencing systems because it is well suited to model the impact of policies that target changes to the sentencing guidelines system. Commission staff will continue operating the model during the legislative session to

## CHAPTER 1

### INTRODUCTION

In the spring of 1996, the Maryland legislature created the Commission on Criminal Sentencing Policy and charged it with evaluating the state's sentencing and correctional laws and policies. Chapter 563 of the 1996 laws directed the Commission to make recommendations to the Governor and the General Assembly regarding key aspects of sanctioning policy. Specific directives to the Commission include the following:

- Recommend whether descriptive sentencing guidelines should be retained by the state as a sentencing structure, either in their current form or in a modified form;
- Recommend whether the state should adopt guided discretion sentencing guidelines and, if so, what type of guided discretion sentencing guidelines should be adopted;
- Recommend whether the state should retain parole as a correctional option or eliminate parole for all inmates or any particular category of inmates;
- Recommend whether the state should increase the minimum portion of a sentence that must be served by all inmates or any particular category of inmates;
- Recommend whether the state should eliminate good time credits or otherwise alter the manner in which an inmate may obtain release on mandatory supervision;
- Recommend whether the state needs to take action to ensure that there is a coordinated system of correctional option programs at the state and county levels and, if so, what action should be taken; and
- Recommend whether modifications to other matters relating to state and local laws and policies governing sentencing, parole, mandatory supervision, and correctional options programs should be taken, and, if so, what action should be taken.

1.1 Mission Statement. The Maryland Commission on Criminal Sentencing Policy reviewed the legislative charge, amending it by one additional task, and approved the following

mission statement. The mission statement of the Maryland Criminal Sentencing Policy

Commission is to:

1. Promote sentencing that more accurately reflects the time that an offender will actually be incarcerated;
2. Concentrate prison capacity on the incarceration of violent and career offenders;
3. Reduce any unwarranted disparity in sentences for offenders who have committed similar offenses and have similar criminal histories;
4. Preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences;
5. Ensure that sentencing judges in every jurisdiction in the State are able to impose the most appropriate criminal penalties, including correctional options programs for appropriate nonviolent offenders; and
6. Ensure that the Secretary of the Department of Public Safety and Correctional Services and local correctional administrators have the authority to place appropriate offenders under their jurisdiction into correctional options and to remove offenders from those options.

Commission work to further the goals of the mission statement reflects the testimony of leading scholars, legal experts, and researchers who have addressed the Commission on three principal areas. The three broad policy areas include: (1) sentencing policies and practice such as the use of voluntary/advisory guidelines for judges; (2) utilization of corrections programs such as home detention or boot camp; and (3) practices regarding release from correctional institutions, such as discretionary parole. This report summarizes the Commission's findings in these areas.

1.2 Final activities. With the submission of this final report, the Commission has completed its primary task. Nonetheless, the Commission has some remaining tasks. During the 1999 session of the General Assembly, the Commission will report its findings and recommendations.

The General Assembly directed the Commission to develop a correctional population simulation model to assist in determining the State and local correctional resources that are 1) required under current laws, policies, and practices relating to sentencing, parole, and mandatory supervision, and 2) would be required to implement the Commission's recommendations. In keeping with the legislative directive, the Commission is prepared to discuss the impact on correctional resources of Commission proposals and alternative scenarios in areas such as truth-in-sentencing policy and operation of judicial guidelines. Impact assessments were developed using a computer simulation of correctional populations. The computer simulation will allow legislators to see the impact of the Commission recommendations, alternative proposals that were ultimately rejected, and the impact of any changes the legislature is contemplating.

1.3 The Organization of the Commission. The Commission is composed of 19 members including: six legislators; three current or retired judges; the state's Secretary of Public Safety and Correctional Services; representatives of local law enforcement and corrections; representatives of victims of crime; and representatives of prosecuting and defense attorneys and other criminal justice interests. The Chairman, the Honorable John F. McAuliffe, was appointed by the Governor to lead the Maryland Commission on Criminal Sentencing Policy.

The following members participated during the course of the Commission. Some members served partial terms, therefore the numbers are greater than nineteen.

Governor's Appointments:

Judith R. Catterton, Esq.

Chief Walter E. Chase, Sr.

Mr. LaMonte E. Cooke

Ms. Roberta Roper

Andrew L. Sonner, Esq.

Dr. Charles F. Wellford

Marna McLendon, Esq.

Senate President Appointments:

Senator F. Vernon Boozer

Senator Delores G. Kelley

Senator Christopher J. McCabe

Senator Jennie Forehand

Appointed by House Speaker:

Delegate James M. Harkins

✓ Delegate Kenneth C. Montague, Jr.

Delegate Joseph F. Vallario, Jr.

Appointed by Chief Judge, Court of Appeals:

The Honorable Howard S. Chasnow

The Honorable Joseph H.H. Kaplan

The Honorable Alexander Wright, Jr.

The Honorable Timothy Doory

*Balt. City Circuit Court*  
*Balt. Co Circuit City Co*  
*Balt. City Circuit District Co*

Appointed by Virtue of Office:

The Honorable J. Joseph Curran, Jr.

Stephen E. Harris, Esq.

Secretary Bishop L. Robinson

Secretary Stuart O. Simms

Two full-time staff members assisted the Commission. Kim S. Hunt, Ph.D. is the Executive Director of the Maryland Commission on Criminal Sentencing Policy. Prior to joining the Maryland Commission, Dr. Hunt was Associate Director of the Virginia Commission on Criminal Sentencing and Adjunct Professor of Public Policy at Virginia Commonwealth University. Claire Souryal, Ph.D. is the Research Director of the Maryland Commission on Criminal Sentencing Policy. Dr. Souryal received her Ph.D. in Criminology from the University of Maryland in 1996.

The Commission received staff support from the Administrator of the Circuit Court for Montgomery County, the Office of the Lieutenant Governor, the Governor's Office of Crime Control & Prevention, the Department of Public Safety and Correctional Services Office of Research and Statistics, the Administrative Office of the Courts, and the University of Maryland Justice Analysis Center. The Commission received substantial cooperation from representatives of various local governments, as well as several federal and state agencies.

The Commission established a website to provide public access to information regarding the Commission's work. The website is located at [www.gov.state.us.md/sentencing/](http://www.gov.state.us.md/sentencing/) and contains the minutes of all Commission meetings and other useful information. The Commission wishes to thank the University of Maryland at College Park for providing expertise to establish the website, and Lynne MacAdam of the Maryland Archive for serving as the webmaster. A copy of the Commission's homepage appears on the following page.

1.4 Overview of the Final Report. The final report of the Commission on Criminal Sentencing Policy begins with an overview of the Commission's substantive activities (Chapter 2). The Commission convened to discuss the merits of policy choices and to hear testimony from criminal justice system and legal experts. In addition, the Commission collected data on



# Maryland Commission on Criminal Sentencing Policy

Room 2220, LeFrak Hall, University of Maryland, College Park, MD 20742-8235  
(301)405-2926 Fax (301)405-4626

Hon. John F. McAuliffe  
Chairman

Kim S. Hunt, Ph.D.  
Executive Director

Claire Souryal, Ph. D.  
Research Director

- 
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  - [Interim Report](#)
  - [An Examination of Time-To-Serve in the MD Correctional System](#)
  - [An Examination of Unwarranted Sentencing Disparity Under Maryland's Voluntary Sentencing](#)
  - [An Examination of Major Offense Sentencing in each County; 1987 - 96](#)
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sentencing systems implemented in other states and researched existing sentencing and release practices in Maryland. The *Commission Activities and Research* chapter reviews Commission meetings and speakers and provides an overview of the Commission's major research projects and methodology.

Each of the following chapters (Chapters 3 through 5) contains the Commission findings and recommendations related to a major topical area. Chapter 3 focuses on the first topical area: judicial sentencing. The *Judicial Sentencing* chapter reviews judicial decision-making in Maryland with special attention devoted to the voluntary/advisory sentencing guidelines. The chapter then assesses the extent to which the voluntary guidelines seem to have achieved their stated objectives. The Commission's recommendations with regard to judicial sentencing (and the supporting rationale) conclude the chapter.

In Chapter 4, the Commission turns its attention to correctional options programs. Correctional options programs are criminal justice sanctions that fall between probation and prison on a continuum of punishment severity. Examples of correctional options programs include home detention, intensive supervision probation, or military boot camp programs. The *Correctional Options* chapter reviews existing correctional options programs in Maryland, operating at both the county and state level. The chapter concludes with the Commission's recommendations (and supporting rationale) regarding the implementation of an expanded statewide system of correctional options.

Chapter 5 focuses on criminal justice system decision-making that affects offender release from incarceration (e.g., the allocation of good time and earned time credits as well as parole release decision-making). The *Offender Release from Incarceration* chapter reviews estimates of percentage of sentence served (or time served) in Maryland. The limitation of good

time and earned time credits or the restrictions of parole release are commonly viewed as means of achieving truth in sentencing. Truth-in-sentencing policies seek to improve public confidence in the criminal justice system by assuring a greater degree of correlation between the judicially imposed sentence and the actual time served in prison. The chapter concludes with the Commission's recommendations regarding existing release mechanisms as well as the recommended means of achieving more "truthful" sentencing and release practices. The chapter also contains a summary of alternative policies that the Commission considered, but did not adopt.

## CHAPTER 2

### COMMISSION ACTIVITIES AND RESEARCH

2.1 Commission Activities. The Commission held its initial meeting in July of 1996.

During the past two and one-half years, it has reviewed relevant research and policy initiatives from other states, and has researched Maryland's existing laws and policy related to sentencing and corrections. Hearing testimony from a variety of experts from Maryland and other jurisdictions, the commission held 20 full commission meetings, including three two-day meetings. The Commission's Sentencing Guideline subcommittee and Correctional Options subcommittee held numerous additional meetings, including one joint meeting.

The Commission planned and conducted research and policy reviews on a variety of sentencing and corrections topics. This final report reviews the work accomplished by the Commission to date. A special appendix includes several of the major studies completed by the Commission.

The Commission heard public comment on various topics relating to sentencing and corrections at three public meeting in Annapolis, Rockville, and Baltimore. The Commission heard testimony from national, state, and local leaders in the fields of sentencing and corrections.

Among the speakers who testified were:

- Lieutenant Governor Kathleen Kennedy Townsend
- George Weber, Maryland Administrative Office of the Court
- Dr. Sandra Shane-Dubow, Sentencing Researcher and former director of Maryland Commission on Criminal Sentencing Policy

- Professor Curtis Reitz, University of Pennsylvania
- Stephen Bocian, Chief, Criminal Justice Division, Alcohol and Drug Abuse Administration
- John Gorczyk, Vermont Department of Corrections
- George Keiser, Chief, Community Corrections Division, National Institute of Corrections
- Judy Greene, Senior Fellow, Institute on Criminal Justice, University of Minnesota Law School
- Judge Thomas Ross, Chairman, North Carolina Sentencing and Policy Advisory Commission
- Dr. Francis Carney, Director, Massachusetts Sentencing Commission
- Nancie Zane, facilitator
- Howard Relin, State's Attorney and Edward Nowak, Public Defender, The J.U.S.T. Initiative, Monroe County, NY
- Marc Mauer, Assistant Director, The Sentencing Project
- Jack O'Connell, Director, Delaware Statistical Analysis Center
- Kermit Humphries, Program Specialist, National Institute Of Corrections
- The Honorable J. Frederick Motz, Chief Judge of the United States District Court for the District of Maryland
- Sanford Newman, President, Fight Crime: Invest In Kids
- The Honorable Martha F. Raisin, Chief Judge of the District Court of Maryland
- The Honorable Dana M. Levitz, Circuit Court for Baltimore County
- Professor Michael Tonry, University of Minnesota Law School
- Judge Jamie Weitzman, Baltimore City Drug Treatment Court
- Patricia Cushwa, Chair, Maryland Parole Commission
- Richard Rosenblatt, Assistant Attorney General, Maryland
- Faye Taxman, Associate Research Professor, University Of Maryland
- Dr. Peter Luongo, Montgomery County DHHS, Clinical Director of Mental Health and Substance Abuse Services
- Paul Davis, former Chair, Maryland Parole Commission
- Robert C. Bonsip, Esq., Prince George's County
- Timothy F. Maloney, Esq., Prince George's County

2.2 Commission Research. The Commission's research focused primarily on the examination of sentencing and release patterns. Specific research projects included: (1) an assessment of judicial compliance to the voluntary/advisory sentencing guidelines; (2) an examination of sentencing disparity (i.e., the influence of legal and extralegal factors on the sentence outcome); (3) an examination of circuit court sentence outcome across counties, across crime types, across cells of the sentencing matrices; (4) a study of time-to-serve (percentage of

sentence served); and (5) a study of district court criminal convictions. In addition, the Commission sponsored a public opinion survey conducted by the Survey Research Center of the University of Maryland to assess public perceptions of crime and criminal justice system activities.

In pursuing its research agenda, the Commission collaborated with the Department of Public Safety and Correctional Services, Office of Research and Statistics (ORS). The ORS was vital to the Commission's examination of time-to-serve (or percentage of sentence served). The ORS also provided the Commission with tabulated data collected as part of an initial security classification (e.g., "history of violence" score), as well as with tabulated data regarding the percentage of prison admissions resulting from either district or circuit court sentences during fiscal year 1997 by sentence length.

2.2.1 Administrative Office of the Courts Database. The Commission relied on data collected by the Maryland Administrative Office of the Courts (AOC) to support many of its research efforts. The AOC compiled data from sentencing guidelines worksheets for a period of over 15 years.<sup>2</sup> The worksheets are routinely completed by court clerks at each circuit court. The database contains attributes of the offense and the offender, as well as case-processing characteristics.

Offender attributes include basic demographic characteristics such as sex, race/ethnicity, and age as well as an *Offender score* summarizing a defendant's prior record. Offense attributes include offense type and an *Offense score* summarizing the seriousness of the offense. The

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<sup>2</sup>Note that because the database consists of data collected from sentencing guidelines worksheets, it excludes circuit court cases to which the guidelines do not apply. Prayers for jury trials as well as appeals from District Court are excluded, for example. Among guidelines appropriate cases, if sentencing guidelines worksheets are not completed and forwarded to the AOC, they are not included in the database. The AOC estimated that approximately 85% of all guidelines appropriate cases are forwarded to the AOC and included in the database.

Offender and Offense summary measures are unique to the Maryland sentencing guidelines. Case processing characteristics include, for example, mode of disposition (e.g., plea agreement or jury trial), circuit court, and whether the sentence outcome complied with the sentencing guidelines.

2.2.2 Research Efforts Employing the AOC Database. The Commission queried the AOC database to examine judicial compliance to the sentencing guidelines. The Commission was able to study judicial compliance to the sentencing guidelines over time, across crime categories (e.g., person, property, drug), within individual cells of the sentencing matrices, and across jurisdictions (e.g., circuit or county). Similarly, sentence outcome<sup>3</sup> was assessed using the AOC database. The Commission studied the incarceration rate and average sentence length for many individual crimes throughout the state and within each county. The incarceration rate and average sentence length were additionally computed by cell of the sentencing matrices (person, property, drug).

The AOC database enabled the Commission to explore the relative influence of legal factors (e.g., defendant's prior record and offense seriousness) and selected extralegal factors<sup>4</sup> (age, gender, race/ethnicity) on sentence outcome. The Commission employed two measures of sentence outcome (whether a defendant was incarcerated and, if incarcerated, the sentence length). Regression models were estimated to assess the influence of legal and extralegal factors on both measures of sentence outcome.

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<sup>3</sup>The sentence outcome consists of two separate decisions: (1) the decision to incarcerate; and (2) given incarceration, the decision regarding sentence length.

<sup>4</sup>The examination of legal and extralegal factors was limited to variables contained in the AOC database. Extralegal factors of theoretical and practical interest such as employment history or socioeconomic status were unavailable.

Commission research on the percentage of sentence served also relied on the AOC database for purposes of sample selection. Samples of person, property, and drug offenders sentenced in circuit court during calendar year 1993 were selected at random from the AOC database. The Commission submitted identifying data (e.g., docket number, name, date of birth, county) to the ORS. The ORS then searched the Offender-based State Correctional database (OBSCIS I) for information related to time-to-serve. The number of months of the court imposed sentence an individual had been required to serve as well as the method of release (i.e., parole, mandatory release, or court release) were documented for each sample member.

2.2.3 Other Research. The Judicial Information System of the AOC provided the Commission with a data file containing all fiscal year 1997 district court criminal convictions.<sup>5</sup> The Commission queried the database to examine the range of criminal offenses handled at the district court level and the corresponding sentence outcomes. The ORS provided tabulated data summarizing the proportion of fiscal year 1997 prison admissions that resulted from either district or circuit court sentences by sentence length.

The Commission also sponsored a telephone survey of public opinion designed and conducted by the Survey Research Center at the University of Maryland. The Survey Research Center interviewed adult Maryland residents selected at random. The survey questioned respondents about the following crime and criminal justice system related issues: (1) crime rates; (2) the causes of crime; (3) effective responses to crime; (4) the effectiveness of criminal justice system components (police, courts, sentencing, corrections); (5) the viability of correctional options programs; and (6) corrections and sentencing policy changes.

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<sup>5</sup>Note that serious traffic violations were not included in the database.

Commission staff provided ad hoc reports to federal, state, and local officials and Maryland citizens on request.

2.3 Impact Analysis. The Commission employed the Structured Sentencing Simulation (SSS) microsimulation model to assess the impact of proposed policy changes on prison and jail bedspace needs (and by extension, correctional costs). The SSS model is currently being employed in at least two other states that have implemented sentencing guidelines systems, Minnesota and North Carolina. The model has been used successfully to forecast prison populations in these states for many years.

The Commission selected the model because it was specifically designed for use in states that have adopted sentencing guidelines systems. It is therefore well suited to model the impact of policies that target changes to the sentencing guidelines system. In addition to prison population forecasts, the SSS model possesses the capability to forecast jail, probation, and intermediate sanction populations (assuming the availability of requisite data) (see Appendix F).

The Commission used the SSS model to estimate the prison bedspace impact of a variety of policy changes, including: (1) the impact of truth in sentencing policies (e.g., variations in percentage of sentence served); (2) the impact of increasing judicial compliance to the sentencing guidelines; and (3) the impact of incorporating correctional options into the sentencing guidelines matrices. For example, the Commission explored the prison bedspace impact of adopting the 85% federal, truth-in-sentencing standard. To that end, the Commission compared a "baseline" prison population estimate to the expected prison population if offenders convicted of serious, violent crimes were required to serve 85% of the judicially imposed sentence. Since the SSS model permits the manipulation of percentage of sentence served by specific crime types, it was particularly well suited to the task. During the course of the study

period, the Commission examined the prison and jail bedspace implications of each major policy change it considered.

CHAPTER 3  
JUDICIAL SENTENCING

3.1 Introduction. Some of the most extensive penal reforms in the last two decades involve the "structuring" of criminal sentencing. Sentencing guideline schemes (either voluntary or presumptive) and the creation of sentencing commissions, the promulgation of mandatory minimum penalties, and the abolition of discretionary release mechanisms (i.e., determinate sentencing) are some of the most prominent examples of "structured" sentencing reforms.<sup>1</sup>

The state of Maryland has adopted several forms of structured sentencing. In the early 1980s, voluntary sentencing guidelines were instituted for use in circuit courts statewide. The legislature has also enacted mandatory minimum sentences for select classes of crime and has increased the minimum parole eligibility standard for violent offenses, including burglary and daytime housebreaking.

The Commission on Criminal Sentencing Policy was instructed by the legislature to study judicial sentencing and make recommendations guided primarily by the following objectives: (1) *Reduce unwarranted sentencing disparity in sentences for offenders who have committed similar offenses and have similar criminal histories;* and (2) *Preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences.*

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<sup>1</sup> Bureau of Justice Assistance (February, 1996). National Assessment of Structured Sentencing. Washington, D.C.: U.S. Department of Justice, Bureau of Justice Assistance.

This chapter will begin with a brief history of structured sentencing reforms nationwide. It will also provide a snapshot of sentencing structures as they exist to date across the nation. The chapter will then trace the development and impact of structured sentencing reforms in Maryland. The Commission on Criminal Sentencing Policy recommendations regarding judicial sentencing practice and supporting rationale will conclude the chapter.

3.2 Background. Judicial sentencing during much of the 20th Century (1900-1960) was largely indeterminate. Not only did the judiciary possess an enormous amount of discretion in fashioning sentences, but newly created parole authorities were granted a great deal of discretion in making release decisions. Indeterminate sentencing schemes were grounded in the faith of "Progressive" reformers in rehabilitation and the consequent need to individualize sentences (1900-1930).<sup>2</sup> A medical model of sentencing and corrections emerged whereby corrections practitioners were expected to "diagnose" the causes of criminal behavior and to "prescribe" the cure. Sentences were therefore expected to vary depending on the needs and characteristics of individual offenders (judges typically imposed minimum and maximum terms).<sup>3</sup>

The consensus surrounding the Progressive model grounded in rehabilitation began to dissolve by the 1970s.<sup>4</sup> Questions arose regarding the efficacy of rehabilitation programs as well as the utilitarian philosophy of punishment embodied in the rehabilitative ideal. The civil rights movement, prison riots, increasing crime rates, distrust in government officials and the desire to

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<sup>2</sup>Rothman, D. (1983) "Sentencing Reforms in Historical Perspective," Crime and Delinquency 29: 638.

<sup>3</sup>Notably, prison administrators were advocates of the new indeterminate sentencing schemes because such policy enhanced their authority over inmates by affording them the power to influence release dates (Rothman, 1983:639).

<sup>4</sup>Rothman, 1983:641; Blumstein, A., Cohen, J., Martin, S.E., & M. Tonry, eds. (1983) Research on Sentencing: The Search for Reform. 2 vols. Washington, D.C.: National Academy Press.

increase accountability, coupled with social science research suggesting substantial sentencing disparity, contributed to the call for a more equitable and effective system of sentencing.<sup>5</sup>

Liberal reformers called for determinate sentences with the goal of achieving a more equitable system based on "just deserts" or proportionality theories of punishment (which shifted the focus of sentencing from characteristics of the *offender* to characteristics of the *offense*).<sup>6</sup> Conservative commentators, motivated more by crime control concerns and the belief that indeterminate sentencing resulted in the early release of offenders, also called for determinate sentences.<sup>7</sup>

The call for reform resulted in swift action nationwide. As one commentator reports: "[B]etween 1975 and January 1982, 11 states abolished parole release for the majority of offenders, 17 states established administrative rules for release decisions (e.g., parole guidelines), more than 30 states passed mandatory minimum sentence laws, and, in almost every state, judges experimented with guidelines to structure their own sentencing decisions."<sup>8</sup> The movement towards structured sentencing has continued to the present day.

3.3 Snapshot of Structured Sentencing Nationwide. The Bureau of Justice Assistance (BJA) recently examined the prevalence of structured sentencing reforms across the nation. The study included a national survey of states completed in February, 1994 which documented

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<sup>5</sup>Blumstein et al., 1983:64-65.

<sup>6</sup>Daly, K. & Tonry, M. (1997). "Gender, Race, and Sentencing" in M. Tonry (ed.) Crime and Justice: A Review of Research (vol. 22) Chicago: The University of Chicago Press, p.204; Rothman, 1983:642.

<sup>7</sup>Rothman, D (1995 ). "More of the Same: American Criminal Justice Policies in the 1990s" in T.G. Blomberg & S. Cohen (Eds.) Punishment and Social Control: Essays in Honor of Sheldon L. Messinger. New York: Aldine De Gruyter, p. 33.

<sup>8</sup>Blumstein et al., 1983:61.

existing sentencing practices in each state and classified states by their *primary* sentencing structure.<sup>9</sup> BJA researchers distinguished 4 major forms of sentencing: (1) determinate; (2) indeterminate; (3) voluntary/advisory guidelines; and (4) presumptive guidelines. Each form of sentencing is defined below:

- ***Determinate:*** A fixed sentence is imposed by the judiciary. An inmate may earn good time or earned time credit to reduce the fixed sentence. There is no possibility of discretionary release by an administrative agency (e.g., parole board).
- ***Indeterminate:*** A maximum sentence (or both a minimum and maximum sentence) is imposed by the judiciary. An inmate may earn good time or earned time credit to reduce the imposed sentence. An inmate may be released by an administrative agency (e.g., parole board).
- ***Voluntary/Advisory Guidelines:*** A system of judicial guidelines is implemented to *guide* judicial decisionmaking. Guideline recommended sentences are not mandatory. Judges are generally required to submit reasons for departures, but departure sentences are not subject to appellate sentence review. Voluntary guidelines typically describe past judicial sentencing practice.
- ***Presumptive Guidelines:*** A system of presumptive guidelines is implemented and sentencing judges are expected to sentence within recommended sentencing ranges. The appropriate sentencing range is a function of offender criminal history and offense seriousness. Judges are required to submit reasons for guideline departures and departures are generally subject to appellate sentence review.

Since sentencing structure categories are not mutually exclusive, the BJA report classified each state according to its *primary* sentencing structure. If a state implemented elements of both determinate and indeterminate sentencing, for example, the sentencing structure that affected the greatest proportion of inmates was deemed the primary sentencing structure.

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<sup>9</sup>Bureau of Justice Assistance, 1996:21.

Similarly, if a state implemented either voluntary/advisory or presumptive guidelines, the guideline structure superseded other characteristics of the system (i.e., determinate, indeterminate). The BJA revealed the following about sentencing practice nationwide:

- Fifty states and the District of Columbia have enacted mandatory minimum sentences (most commonly for repeat/habitual offenders and for crimes committed while possessing a deadly weapon).
- Five states operate determinate sentencing systems.
- Six states have implemented voluntary/advisory sentencing guidelines.
- Ten states have implemented presumptive sentencing guidelines.

Although the remaining thirty states were classified as predominantly indeterminate, nine of these states also reported elements of a determinate structure.<sup>10</sup> Eighteen states (primarily those with sentencing guidelines) have created a sentencing commission.<sup>11</sup>

3.4 Structured Sentencing: The Maryland Experience. The centerpiece of sentencing reform in Maryland is the voluntary/advisory guidelines system that has been in place statewide for approximately 15 years. The concept of judicial sentencing guidelines was introduced in the late 1970s by the judiciary in response to judicial perceptions of unwarranted sentencing disparity.<sup>12</sup> A judicial Committee on Sentencing was formed by the Court of Appeals and a host of alternative sentencing systems were studied (e.g., determinate sentencing, mandatory sentencing, sentencing councils). In April 1979, the Committee approved a system of voluntary sentencing guidelines for use in circuit courts only. In determining the appropriate sentence

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<sup>10</sup>Bureau of Justice Assistance, 1996:20-23.

<sup>11</sup>Bureau of Justice Assistance, 1996:26-27.

<sup>12</sup>Levin, M. A. (1984). "Maryland's Sentencing Guidelines - A System By and For Judges." Judicature, 68(4-5):174.

range, the guidelines were designed to take both offender and offense characteristics into account.<sup>13</sup>

The National Institute of Justice (NIJ) sponsored the implementation and evaluation of a system of voluntary guidelines in four Maryland counties (Baltimore City, Harford, Montgomery, and Prince George's counties). A major objective of the NIJ sponsorship was to test the viability of a single system of guidelines that crossed rural, suburban, and urban boundaries. Although the guidelines were initially intended to be based on analysis of data collected on past sentencing practices (i.e., descriptive guidelines), missing data problems largely invalidated the analyses. A more normative approach was therefore adopted by the judicial board responsible for guidelines development. The board relied, for example, on the analysis of hypothetical cases as well as on policy input from criminal justice system actors (e.g., prosecutors, defense attorneys, parole board, etc.).<sup>14</sup>

Mandatory minimum sentences are another form of structured sentencing reforms in Maryland. Mandatory minimum penalties have been enacted to apply to certain handgun and drug distribution offenses as well as to repeat, violent offenders. A comprehensive list of legislatively mandated criminal penalties is contained in Appendix A. The Commission's review and recommendation related to mandatory minimum sentences is contained in Recommendation 7.

3.5 Existing Sentencing Guidelines in Maryland. The existing Maryland guidelines are displayed in three separate matrices, one for person offenses, one for property offenses, and one

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<sup>13</sup>Levin, 1984: 174-175.

<sup>14</sup>Levin, 1984:175-177; Carrow, D.M. (1984). "Judicial Sentencing Guidelines: Hazards of the Middle Ground." Judicature, 68(4-5):164.

for drug offenses (see Appendix B). The sentence recommendation is determined by the intersection of a defendant's criminal history score and offense seriousness score on each two-variable matrix. Sentence recommendations are wide, sometimes encompassing a range of 10 or more years. The average width of the recommended ranges on the person matrix, for example, is 8.85 years. The average width of the range for property offenses is 4.05 years and for drug offenses is 2.22 years.<sup>15 16</sup>

Maryland's existing guidelines were developed to eliminate inappropriate sentence disparities. Having statewide sentencing guidelines before them, it was expected that judges would be more likely to impose sentences in proportion to increased prior record and increased offense severity, both seen as appropriate legal factors related to differences in sentencing.

Specific goals of the sentencing guidelines as originally promulgated include:

- Increased equity in sentencing, i.e., the reduction of unwarranted variation between similar cases and defendants, while retaining judicial discretion to individualize sentences;
- Articulation of an explicit sentencing policy while providing a regular basis for policy review and change;
- Providing information for new or rotating judges;
- Promotion of increased visibility and understanding of the sentencing process.<sup>17</sup>

The original goals of the voluntary guidelines system are still in place today.<sup>18</sup>

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<sup>15</sup> Griffin, E.K. (1994). An Evaluation of Maryland's Sentencing Guidelines: Have they Reduced Disparity in Sentencing. Thesis (M.A.) College Park, MD: University of Maryland, p. 71.

<sup>16</sup>The guidelines apply to circuit court convictions only. Prayers for jury trials and appeals from District courts are excluded.

<sup>17</sup>Levin, 1984: 175.

<sup>18</sup>Administrative Office of the Courts (1993). Administrative Office of the Courts Maryland Sentencing Guidelines. Annapolis Maryland: Author.

### 3.5.1 Commission Consideration of the Extension of Sentencing Guidelines to the

District Court. The Commission considered the desirability and feasibility of extending the use of presumptive or voluntary guidelines into the District Court. Among the perceived potential benefits were increased uniformity, particularly in sentences for offenses over which the district courts and circuit courts exercise concurrent jurisdiction; greater predictability with respect to anticipated jail and prison bedspace requirements; and control over the utilization of corrections options dispositions to avoid exhaustion of resources by inclusion of persons who properly could be sentenced to less intensive sanctions.<sup>19</sup>

Balanced against the possible benefits were the serious problems created by adding another layer of paper work and disputes over the proper allocation of points, etc. to a court system already burdened by a huge volume of cases. The District Court judges expressed significant concern about their ability to effectively utilize sentencing guidelines within existing resources and time constraints, pointing out that most of the sentencing in that court was accomplished without the aid of pre-sentence investigations and therefore without the assistance of a probation officer to provide the necessary information and to complete a sentencing guidelines form. Moreover, the District Court judges pointed out that in a substantial number of cases, the commissioner routinely obtains criminal history information from a computer source and places that information under seal in the file. In all other cases, unless a pre-sentence investigation is requested the criminal history information ordinarily must be provided by the prosecutor. In some areas of the state the prosecutor does not routinely provide this information

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<sup>19</sup>Professor Michael Tonry strongly recommends the integration of Correctional Options programs into sentencing guidelines to avoid "net-widening" that can diminish or destroy the effectiveness of correctional options programs. See Tonry, (May, 1997).

because, they contend, the volume of cases exceeds their administrative capability to obtain this information through a computer search.

After careful study the Commission concluded that the use of sentencing guidelines should not be mandated in the District Court at this time, but that as the statewide Correctional Options Program being recommended by the Commission is established (See Chapter 4), and as the criminal jurisdiction of the District Court continues to expand, the question should be re-visited to determine whether a simplified guidelines system could be developed for effective and non-burdensome use in that court.

3.6 Judicial Compliance with Sentencing Guidelines. In order for a system of sentencing guidelines to reduce sentencing disparity, the judiciary must comply with the guidelines in the majority of cases. The guidelines were therefore drafted with the expectation that two-thirds of the sentences would fall within the recommended sentencing ranges. It was recognized at the outset that as sentencing practices changed, the sentencing guidelines would change. That is, whenever actual sentences disagreed with the guideline sentence recommendations in more than 33% of the cases, the guidelines were to be revised.<sup>20</sup>

The sentencing guidelines manual instructs judges to sentence within the recommended guideline range, absent "compelling" circumstances to depart. If judges choose to depart from the sentencing guidelines, the sentencing guidelines manual requires a written reason for departure, indicating "specifically why the sentence actually imposed is more appropriate, reasonable, or equitable than a sentence within the guidelines."<sup>21</sup> In practice, however, the

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<sup>20</sup> Attempts to revise the guidelines in 1993, however, met strong opposition from the public and the proposed revisions were suspended. The existing sentencing guidelines have not been revised since 1987, except to classify offenses.

<sup>21</sup> Administrative Office of the Courts, 1987:4.

judiciary generally neglects to provide a meaningful written explanation for departure. In approximately 75% of the departure sentences over a ten-year period, the departure reason had not been documented. Departure reasons captured in the Administrative Office of the Court (AOC) database tend to be vague. Examples of common departure reasons include, for example, "recommendation of office of the State's Attorney" or "recommendation of Division of Parole and Probation" or "plea bargain" without further reason.

Judicial compliance to the voluntary sentencing guidelines was first examined as part of the National Institute of Justice (NIJ) evaluation of the implementation of guidelines in four test jurisdictions in Maryland. The NIJ evaluation revealed that during a "test" year for the offense of burglary, guidelines worksheets were completed for 70% of the burglary convictions.<sup>22</sup> Sixty-eight percent (68%) of the sentenced burglary cases fell within the recommended guidelines range.<sup>23</sup> When judges departed from the guidelines, they were most likely to sentence below the recommended range.

Subsequent analyses have examined judicial compliance to the guidelines throughout the state of Maryland and for all crime categories. Generally speaking, judicial compliance with the guidelines is low. Although the judicial board expected a compliance rate of approximately two-thirds or 67%, the average compliance rate over the last 10 years is roughly 55%<sup>24</sup> (see Table 1). When judges depart from the guidelines, they are much more likely to sentence *below* the guidelines than above the guidelines. This persistent pattern of mitigation is evident across time,

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<sup>22</sup>Carrow, 1984:170.

<sup>23</sup>Carrow, 1984:170.

<sup>24</sup> The sample consists of N=80,607 individuals convicted of single counts in Maryland circuit courts between January, 1987 and September, 1996 (for whom a sentencing guidelines worksheet was completed).

guidelines than above the guidelines. This persistent pattern of mitigation is evident across time, across jurisdictions, and across crime categories. Low compliance rates are particularly notable given the wide range of many of the matrix cells.

Compliance varies by crime category as shown in Table 1. Judges are most likely to comply with the guidelines for property offenses and least likely to comply with the guidelines for drug offenses. Regardless of crime category, however, when judges depart from the guidelines they usually sentence below the recommended range. The percentage of cases where judges exceed the recommended range is relatively constant across crime categories (roughly 8%).

Table 1. Judicial Compliance with the Voluntary Sentencing Guidelines between January, 1987 and September, 1996 among Single Count Convictions.			
	Consistent with Guidelines	Below Guidelines	Above Guidelines
All Offenses	44,048 (54.6%)	30,283 (37.6%)	6,276 (7.8%)
Person Offenses	12,694 (57.2%)	7,748 (34.9%)	1,741 (7.8%)
Drug Offenses	20,666 (49.2%)	18,132 (43.2%)	3,171 (7.6%)
Property Offenses	10,687 (65.0%)	4,403 (26.8%)	1,364 (8.3%)

The Commission considered the effect of plea bargains on the judicial compliance rate, and noted that concessions given a defendant as part of a plea bargain may be moving many cases below the guidelines recommendation. The Commission concluded that plea bargained sentences should ordinarily fall within the guidelines, but that it would be appropriate to grant to

the defendant a one point reduction in the offender score for the entry of a guilty plea (see Recommendation 5a).

3.7 Impact of Sentencing Guidelines on Sentencing Disparity. Structured sentencing schemes such as voluntary or presumptive guidelines are explicitly crafted to take into account legal characteristics pertinent to the sentencing outcome (e.g., prior record, offense seriousness). Sentencing disparity that springs from such legal characteristics is considered *warranted* disparity. *Unwarranted* sentencing disparity arises when extralegal factors, such as race, class, or gender influence the sentence outcome.

While discussion of sentencing disparity tends to focus on individual level characteristics of the offense or the offender, sentencing disparity may also emerge at the court, county, or city level within a particular state. Courts located in rural jurisdictions, for example, may adopt more punitive sentencing practices than courts located in urban jurisdictions. Informal sentencing practices (e.g., the “going rate”) spring from differences in local crime rates and court volume, as well as from local culture and values.

Research on the effect of sentencing guidelines (particularly voluntary sentencing guidelines) on unwarranted sentencing disparity is sparse. Several state sentencing commissions (Minnesota, Washington, and Oregon) examined the impact of *presumptive* sentencing guidelines on unwarranted disparity with regard to race and gender.<sup>25</sup> By and large, the implementation of presumptive sentencing guidelines appeared to reduce, although not eliminate sentencing disparity.<sup>26</sup>

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<sup>25</sup> Tonry, M. (1993) "Sentencing Commissions." In M. Tonry (ED.) Crime and Justice: A Review of Research (vol. 17). Chicago: The University of Chicago Press, 168-171.

<sup>26</sup> Tonry (1993:168) summarizes the findings of the Minnesota sentencing commission as follows: "The Minnesota commission's three-year evaluation concluded that racial differences in sentencing declined under guidelines; nonetheless, minority defendants were likelier than whites to be imprisoned when the presumptive

Research assessing the impact of voluntary sentencing guidelines on unwarranted disparity is even less common.<sup>27</sup> The national evidence that is available suggests that voluntary sentencing guidelines do not appear to substantially reduce sentencing disparity. Commentators speculate that it is the voluntary nature of the guidelines which seems to limit their effectiveness.<sup>28</sup>

*Commission Research.* Research conducted for the Commission examined the relative influence of legal and extralegal factors on sentence outcome during the last 10 years with special emphasis placed on the effect of race/ethnicity on sentence outcome (see Appendix C). Since sentencing guidelines are expected to focus attention exclusively on legal factors (e.g., criminal history of the offender and severity of the offense), extralegal factors such as race/ethnicity or gender would not be expected to influence the sentence outcome. The Commission also explored geographical sentencing disparity at the county level in Maryland.

The research relied exclusively on data extracted from sentencing guidelines worksheets completed by court clerks at each circuit court. Measures of legal and case processing factors included a summary measure of a defendant's criminal history (i.e., offender score), a summary

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sentence prescribed non-state imprisonment, minority defendants received longer sentences than similarly categorized whites, and men received longer prison sentences than similarly categorized women." Similar findings emerged in Washington and Oregon. Despite a reduction in racial disparity in Washington, white defendants appeared to be more likely to benefit from the use of mitigating provisions (e.g., for first-time offenders). In Oregon, "whites were slightly less likely than minority defendants to receive upward dispositional departures, slightly more likely to receive downward dispositional departures, and much more likely to benefit from an 'optional probation' alternatives program." (Tonry, 1993:169).

<sup>27</sup>Tonry, M. (1988) "Structured Sentencing." In M. Tonry & N. Morris (eds.) Crime and Justice: A Review of Research (vol. 10). Chicago: The University of Chicago Press, 279.

<sup>28</sup>Tonry, M, 1988:282; Miethe, T.D. & C.A. Moore (1985) "Socioeconomic Disparities Under Determinate Sentencing Systems: A Comparison of Preguideline and Postguideline Practices in Minnesota." Criminology, 23(2):341.

measure of the seriousness of the offense (i.e., offense score), mode of disposition (e.g., plea agreement or trial), and circuit court. Extralegal factors included race/ethnicity, gender, and age.

It is important to note that the range of legal and extralegal factors available by way of the sentencing guidelines worksheets was limited. To the extent that relevant factors have been excluded (e.g., education, employment history, socio-economic status) or inadequately measured (e.g., offense seriousness), the effects of the included variables may be biased.

The research revealed that offense seriousness and prior record were the most powerful predictors of sentence outcome, as expected. However, after statistically adjusting for the influence of legal factors, extralegal factors (in particular race/ethnicity) was found to influence the incarceration decision.<sup>29 30</sup> For example, the predicted probability of incarceration for White individuals equaled 0.56, while the predicted probability of incarceration for Nonwhite individuals (Black, Hispanic, and individuals classified as Other Race) equaled 0.65.<sup>31</sup>

Sentence outcomes (e.g., incarceration rate and imposed sentence length) for select, violent offenses were also examined at the county level to assess sentence variation by county (see Appendix D). The Commission found some evidence of geographical sentencing disparity

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<sup>29</sup>The research also examined whether the effect of extralegal factors on sentence outcome varied by crime category (i.e., person, drug, property). While the effect of race/ethnicity was similar across crime categories for the incarceration decision, its effect on sentence length varied by crime category. Race/ethnicity did not appear to influence sentence length for person and property crimes. However, it did appear to influence sentence length for drug crimes.

<sup>30</sup> A comparison of unwarranted sentencing disparity in Maryland before and after the implementation of the sentencing guidelines revealed that while the guidelines appeared to reduce unwarranted sentencing disparity, it was not eliminated (Griffin, 1994).

<sup>31</sup>The logistic regression function was used to calculate the predicted probability of incarceration. The predicted probability of incarceration refers to a hypothetical individual characterized by average levels of all explanatory variables included in the model except race/ethnicity. See King, G (1989) Unifying Political Methodology: The Likelihood Theory of Statistical Inference. Cambridge: Cambridge University Press, 104-105.

(particularly when sentence outcomes in Baltimore City were compared to sentence outcomes in more rural counties). The Commission did not reach a consensus as to whether such disparity should be considered warranted or unwarranted disparity given the concern for local values and traditions.

In summary, the results of the research on sentencing disparity in Maryland suggest that while legal factors such as a defendant's criminal history and the seriousness of the offense have the most powerful influence on sentence outcome, extralegal factors appear to play a lesser role in determining the sentence outcome. Given the limited range of extralegal factors available in the data, it is not possible to conclusively identify the extralegal factors that influence the sentence outcome. For example, the observed effect of race/ethnicity on sentence outcome may proxy in part for the effect of excluded variables such as employment or socio-economic status on sentence outcome (to the extent that they are correlated with each other and to sentence outcome). Nevertheless, the research suggests that the sentence outcome is not simply a function of legal factors and that the adoption of sentencing guidelines has not entirely eliminated the consideration of extralegal factors.

3.8 Commission Survey of Public Perceptions. The Survey Research Center at the University of Maryland conducted a telephone interview for the Commission of adult Maryland residents selected at random (see Appendix E). The purpose of the survey was to measure citizens' attitudes and perceptions of a number of crime and criminal justice system related issues.<sup>32</sup>

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<sup>32</sup> The survey questioned respondents about the following issues: (1) crime rates; (2) the causes of crime; (3) effective responses to crime; (4) effectiveness of criminal justice system components (police, courts, sentencing, corrections); (5) the viability of correctional options programs; and (6) corrections and sentencing policy changes.

With regard to citizen perceptions of judicial sentencing practice, the survey revealed the following:

- More than one-half of the citizens surveyed believe that judicial leniency is a major cause of crime.
- Almost two-thirds of the respondents ranked Maryland's courts as either "good" or "fair."
- Nearly two-thirds of the citizens surveyed believe that rich people are treated better than poor people in court.
- Nearly 60% of the respondents believe that judges should maintain some judicial discretion in sentencing *nonviolent* offenders (as opposed to the law dictating the sentence).
- Less than one-half of the respondents believe that judges should maintain some discretion in sentencing *violent* offenders (as opposed to the law dictating the sentence).

In summary, citizens seem to express interest in limiting judicial discretion, particularly in the sentencing of violent offenders. Judicial leniency is perceived by slightly over one-half of the respondents to be a major cause of crime. Nearly two-thirds of the respondents also believe that rich people receive better treatment in court than poor people (a perception related to sentencing disparity).

It should be noted, however, that citizens perceptions do not necessarily mirror reality. For example, while approximately 66% of Maryland citizens surveyed believe that violent crime rates have increased in the last 5 years, the violent crime rate per 100,000 residents has actually decreased by 7.2% in Maryland. Similarly, while almost 60% of Maryland residents believe that violent offenders are sent to prison "half the time or less," the incarceration rate for serious, violent offenses<sup>33</sup> ranged from 85% for robbery to 100% for murder.

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<sup>33</sup> Serious, violent offenses include: (1) murder -- 1st or 2nd degree; (2) rape -- 1st or 2nd degree; (3) robbery (with or without a deadly weapon); and (4) assault with the intent to maim, murder, rape, or rob.

### 3.9 Commission Recommendations Regarding Judicial Sentencing

3.9.1 Statement of the Problem. The charge of the Commission on Criminal Sentencing Policy was to recommend judicial sentencing policy guided by the following primary objectives:

(1) *Reduce unwarranted sentencing disparity in sentences for offenders who have committed similar offenses and have similar criminal histories;* and (2) *Preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences.*

To that end, the Commission studied structured sentencing reforms in other states (particularly states that have implemented presumptive sentencing guidelines). The Commission heard testimony from experts in the field of sentencing and collected information on other state guidelines systems. The Commission also examined the impact of the existing voluntary sentencing guidelines on judicial sentencing in Maryland (i.e., judicial compliance and sentencing disparity). A subcommittee on Sentencing Guidelines Development was created to scrutinize components of the existing guidelines (e.g., measures of offense seriousness and criminal history).

A major goal of the existing sentencing guidelines is to “promote increased equity in sentencing” by reducing unwarranted sentencing disparity. Despite the stated objectives, however, Commission research raised questions about the effectiveness of the existing guidelines in reducing unwarranted sentencing disparity. Low judicial compliance is the most obvious indicator of the ineffectiveness of the existing guidelines system. Judicial compliance to the existing guidelines over the last 10 years averages 55%. While low compliance in and of itself may render the guidelines ineffective in reducing unwarranted sentencing disparity, additional

Commission research supplemented the finding of low compliance with evidence of unexplained sentencing variation (sentencing variation not explained by legal factors).

3.9.2 Overview of Recommended Strategy. The Commission voted to maintain the existing system of voluntary sentencing guidelines. After comparing certain apparent benefits of presumptive sentencing with the recognized and perceived problems inherent in such a system, a majority of the Commission members concluded that sentencing guidelines in Maryland should continue to be voluntary, but that steps should be taken to increase judicial compliance with those guidelines.

Increasing judicial compliance to the guidelines is obviously critical to the Commission objective of reducing sentencing disparity. The Commission recommends three means of increasing judicial compliance and recommends that a permanent sentencing commission oversee efforts intended to improve judicial compliance. A detailed examination of the factors that motivate judicial noncompliance is also recommended. The Commission further advises that the proposed strategy of reform (i.e., increasing judicial compliance) be reevaluated by the permanent sentencing commission at the end of one year. The evaluation would be informed by the results of the judicial noncompliance study and a reassessment of judicial compliance rates.

Additional recommendations related to the existing sentencing guidelines include revisions to the calculation of components of the Offense and Offender scores and sentencing guidelines worksheet (as well as revisions to the Offender score to be considered by the permanent sentencing commission). In addition, the Commission recommends that the permanent sentencing commission consider the adoption of revisions to the drug matrix proposed by the Maryland Sentencing Guidelines Advisory Board of the Judicial Conference.

In the event the recommended measures and other adjustments to the guidelines should prove ineffective, the advisability of instituting presumptive guidelines may again be studied in the future. The Commission decided very early in its deliberations, however, that it would not recommend a system so mandatory in its operation that a judge would be precluded from imposing a sentence that the judge felt was fair and appropriate in a particular case. The type of presumptive sentencing the Commission considered would have been more coercive than the present voluntary system by permitting either side to appeal from sentences that were outside the guidelines, and would have contemplated reversal on appeal only for a deviation that was clearly erroneous or constituted an abuse of discretion.

Finally, the Commission recommends that a three-judge sentence review panel be empowered to reduce mandatory minimum sentences. The Commission also recommends that the Chief Judge of the District Court and the State's Attorneys of the counties work together, with state support, to ensure that criminal history information is available to all sentencing judges in the District Court.

***Recommendation 1:           The State of Maryland should maintain the existing framework of voluntary sentencing guidelines for circuit courts.***

*Rationale.* The Commission recommends maintaining the existing sentencing structure of voluntary sentencing guidelines. The Commission decision balances the objectives of reducing sentencing disparity and preserving meaningful sentencing discretion.

In reaching the decision to maintain the system of voluntary sentencing guidelines, the Commission considered several alternative sentencing structures. Review of other state systems, for example, indicated that presumptive guidelines rather than voluntary guidelines appeared to more effectively reduce sentencing disparity -- a primary objective of the Commission. A

commonly voiced concern regarding presumptive sentencing guidelines systems, however, is the apparent shift of discretion from the judiciary to the prosecutor (although this view is not universal). Presumptive guidelines would also require appellate sentence review. Appellate sentencing authorities relayed concern over potentially high case loads.

Another alternative considered by the Commission was the adoption of a "hybrid" system of sentencing which combined elements of both voluntary and presumptive sentencing. The Commission envisioned a system whereby *serious* person offenders would be subject to a system of presumptive guidelines. Property, drug, and less serious person offenders would be sentenced under a system of voluntary guidelines. The "hybrid" system was intended to maximize the likelihood that serious, violent offenders would be sentenced in accordance to the guidelines. The hybrid model mirrors public sentiment that judicial discretion should be limited in the sentencing of violent offenders.

The Commission's vision of a hybrid system encountered structural and philosophical problems, however. For example, depending on where a defendant fell on the person offense matrix, the hybrid model created a distinction between two classes of "person" offenders (person offenders subject to presumptive guidelines and person offender subject to voluntary guidelines). Person offenders subject to presumptive guidelines would be granted the right to appellate sentence review, while person offenders subject to voluntary guidelines would not. Commission members therefore expressed concern over the Constitutional ramifications of such a system. In addition, the current guidelines apply only to circuit courts. In light of the concurrent jurisdiction between district and circuit courts for some crimes, the hybrid model raised the possibility that defendants would be subject to philosophically different punishment structures depending on where they were convicted and sentenced.

In short, after extensive review of alternative sentencing models (along with the estimated prison bedspace impact of such a system), the Commission opted to retain and improve the existing system of voluntary guidelines in the Circuit Courts.

**Recommendation 2:**        ***The State of Maryland should increase judicial compliance with the guidelines to a target of 70% by means of the following: (a) judicial monitoring of judges at the individual and county level by the Chief Judge of the Court of Appeals through the Administrative Office of the Courts; (b) judicial education and encouragement; and (c) judicial requirement to record the reasons for departure (using a checklist and open-ended response.)***

As an initial step in improving the effectiveness of the existing guidelines system, the Commission recommends increasing judicial compliance to the sentencing guidelines to a target of 70%. Increasing judicial compliance is essential to reducing sentencing disparity. While seventy percent (70%) compliance is an arbitrary standard, it is consistent with compliance rates in other states and with the 66.7% target of the original sentencing guidelines.

Guidelines departures may be either dispositional or durational. A dispositional departure refers to an imposed sentence that differs *in kind* from the recommended sentence (i.e., probation term rather than a jail or prison term). A durational departure refers to an imposed sentence that differs *in degree* from the recommended sentence (i.e., a jail or prison term that is either shorter or longer than the recommended range).

Commission research reveals that when judges depart from the guidelines, the overwhelming tendency is to sentence below the recommended sentencing range. Increasing judicial compliance to 70% will therefore increase the overall severity of criminal punishment. Some defendants who formerly received a sentence of probation, for example, would be required

to serve a jail or prison sentence. Similarly, some defendants sentenced to an incarceration term will likely be sentenced to a longer term.

The Commission recommends the following three means of increasing judicial compliance: (1) judicial monitoring of judges at the individual and county level by the Chief Judge of the Court of Appeals through the Administrative Office of the Courts; (2) judicial education and encouragement; and (3) judicial requirement to record the reasons for departure (using a checklist and open-ended response).

Monitoring judicial compliance with the guidelines may be achieved by compiling sentencing guidelines worksheets completed at the time of sentencing. The Administrative Office of the Courts (AOC) currently maintains a database containing data extracted from sentencing guidelines worksheets. Judicial identifiers may be included in the database. At present, individual judges are not identified. The AOC presently records the county of origin, however, so that compliance rates may be assessed by county and circuit.

Judicial education and encouragement is also expected to increase judicial compliance to the guidelines. Circuit court judges presently do not receive detailed instruction related to the technical application of the guidelines, or to their motivating philosophy.

The Commission recommends the revision of the current sentencing guidelines worksheet to include a checklist of mitigating and aggravating departure reasons (in addition to space for an open-ended response). This addition to the worksheet is expected to encourage judges to provide departure reasons.

Recommendation 2: Bedspace Impact. The Commission employed the Structure Sentencing Simulation (SSS) model to estimate the prison bedspace impact of an increase to 70% judicial compliance (see Appendix F for more detail about the SSS model). In order to

assess the impact of a hypothetical change to a target of 70% judicial compliance, the sentence disposition and sentence duration of individuals falling within each cell of each matrix were manipulated to approximate 70% compliance to the cell range. The predicted bedspace impact was estimated separately for the person, drug, and property matrices.

Assuming the Commission strategies to increase judicial compliance are successful, a target of 70% judicial compliance would require an estimate of 105 jail and prison beds by Year 1 of the policy and nearly 1,200 additional jail and prison beds by Year 5 of the policy.<sup>34</sup> At present it is not clear whether the Commission's efforts at increasing judicial compliance to the existing guidelines will be effective. The Commission's strategy will be reexamined at the end of one year.

Recommendation 2: Bedspace Neutral Alternative. The Commission was instructed by the legislature to provide a bedspace neutral alternative if the Commission's recommendations would "result in State and local inmate populations that would exceed the operating capacities of available facilities." In order to achieve 70% judicial compliance to the guidelines *without* increasing the need for prison or jail bedspace, the Commission concluded that the existing sentencing guidelines ranges would have to be reduced.

A reduction of the recommended sentencing ranges is necessary because the majority of sentence departures currently fall below the recommended sentencing ranges. Sentencing guidelines revised to reflect current judicial sentencing practice would by definition achieve a judicial compliance rate of roughly 70%, since the judiciary would simply be required to comply with their existing sentencing practice.

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<sup>34</sup>The total bedspace impact was estimated to equal 1,118 beds by Year 5 (523 for person offenders, 390 for drug offenders, and 205 for property offenders).

Revised sentencing matrices (person, drug, and property) were developed by the Commission to reflect current judicial sentencing practice. The revised sentencing ranges were based on past judicial sentencing practices statewide over a five-year period (1991-1995). The revised sentencing ranges were developed by examining the distribution or frequency of imposed sentences within each matrix cell over the five-year period. The “interquartile” range was used to create the new sentencing range (that is, the middle 50% of the imposed sentences within each cell). The revised matrices are shown in Appendix G.

In summary, in order to achieve 70% compliance without increasing the need for prison or jail bedspace (i.e., bedspace/cost neutral), the sentencing guidelines ranges would have to be systematically reduced to reflect current judicial sentencing practice.

- Recommendation 3:***                    ***The State of Maryland should create a permanent sentencing commission to oversee a strategy of systematic and incremental change to improve the effectiveness of the existing guidelines.***
- Recommendation 3a:***            ***The permanent sentencing commission should examine reasons for judicial noncompliance.***
- Recommendation 3b:***            ***The permanent sentencing commission should reassess the guidelines reform strategy at the end of one year.***

*Rationale.* Commission research clearly suggests that the existing guidelines do not function as originally intended. Rather than adopting an alternative sentencing structure (e.g, presumptive sentencing guidelines), the Commission prefers to reform the existing guidelines system. To that end, the Commission recommends the creation of a permanent sentencing commission to systematically implement and assess incremental changes to the system.

The Commission recommends several initial steps. As discussed in Recommendation 2, the Commission recommends increasing judicial compliance to the existing sentencing guidelines. The permanent sentencing commission would oversee this process by monitoring judicial compliance rates, implementing revisions to the guidelines worksheets, and facilitating judicial education and encouragement.

The Commission also recommends a detailed study of the factors that motivate judicial noncompliance to be conducted by the permanent commission (Recommendation 3a). The Commission was limited in their assessment of judicial noncompliance due to the general failure of judges to provide detailed reasons for departure sentences. Examination of judicial noncompliance through the use of judicial surveys, focus groups, and/or interviews is suggested. Additional insight into the reasons for departure is clearly invaluable in maximizing the effectiveness of the existing guidelines system.

A comprehensive reassessment of reform strategies (namely, increased judicial compliance) is suggested at the end of one year (Recommendation 3b). The permanent commission would be asked to assimilate new research findings with regard to judicial compliance rates and reasons for judicial noncompliance and determine whether reform strategies have been effective. Depending on the success of efforts to increase judicial compliance as well as the study of judicial noncompliance, alternative measures to increase judicial compliance may warrant consideration.

For example, if judicial compliance rates remain constant, it is possible that the existing guidelines simply do not provide a realistic or just measure of the appropriate punishment. Historically high levels of judicial noncompliance (despite the wide range) suggests that the existing guidelines may not in fact reflect current judicial sentencing practice, particularly since

the sentencing guidelines have not been revised since 1987. In order to increase judicial compliance with the guidelines, revision of the guideline ranges may therefore be necessary (see Recommendation 2: Bedspace Neutral Alternative).<sup>35</sup>

***Recommendation 4: The permanent sentencing commission should consider the adoption of the drug matrix revisions proposed by the Maryland Sentencing Guidelines Advisory Board of the Judicial Conference.***

Rationale. In 1994, the Maryland Sentencing Guidelines Advisory Board of the Judicial Conference proposed changes to the drug matrix. The Advisory Board proposal recommended creating a distinction between the distribution of drugs worth less than \$500 and the distribution of drugs worth greater than \$500. Drug distribution is classified as a seriousness category III offense. The modification of the matrix simply splits the seriousness category III row into two separate rows (Seriousness Category III Under \$500, and Seriousness Category III Over \$500).

The sentencing ranges for persons who distribute greater than \$500 are identical to the current sentencing ranges (which vary by Offender score). The sentencing ranges for persons who distribute less than \$500 are reduced (Appendix H contains the proposed matrix). Note that the sentencing ranges for Seriousness Category VII, V, IV, and II have been modified as well. Modifications generally reduce the recommended sentencing range. The modifications were deemed necessary by the Advisory Board to better reflect current sentencing practices. Although the modifications were intended to reflect current sentencing practice rather than modify actual sentencing practice, it is possible that the revisions may reduce the need for jail and prison beds.

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<sup>35</sup> The Commission seriously considered revising the guidelines matrices to better reflect current judicial practice. Rather than revise the guidelines, the Commission voted to recommend that the permanent sentencing commission review sentencing reform after one year.

***Recommendation 5:***            ***The permanent sentencing commission should adopt revisions to the calculation of the Offense and Offender score and to the Sentencing Guidelines worksheet.***

***Recommendation 5a:***        ***The Commission recommends that the permanent sentencing commission revise the sentencing guidelines to grant a one point reduction in the Offender score for the entry of a guilty plea or an Alford plea.***

*Rationale.* A Commission Subcommittee on Guidelines Development closely reviewed components of the guidelines system (e.g., three-matrix system, elements of the offense score, elements of offender score, etc.). The Subcommittee concluded the guideline structure was fundamentally sound. The Subcommittee suggested several slight revisions to the computation of the Offense and Offender scores. The revisions adopted by the full Commission are shown in Appendix I. The Commission Subcommittee also recommended that the Maryland Sentencing Guidelines Advisory Board of the Judicial Conference assign a seriousness category to offenses that have not yet been classified and consider the recategorization of offenses that may be misclassified.

The Commission additionally recommends modifications to the sentencing guidelines worksheet. The first set of modifications is discussed as part of Recommendation 2. The Commission suggests adding a list of mitigating and aggravating factors (in addition to an open-ended response) to be completed when judges depart from the recommended range.

In addition, the Commission recommends that the sentencing guidelines worksheet be used as a mechanism to collect data regarding the extent to which victims' rights provisions have been exercised (e.g., whether victim restitution was ordered; whether a victim impact statement was submitted; whether a victim was present in court, etc.).

Finally, the Commission considered the effect of plea bargains on the judicial compliance rate, and noted that concessions given a defendant as part of a plea bargain may be moving many cases below the guidelines recommendation. The Commission concluded that plea bargained sentences should ordinarily fall within the guidelines, but that it would be appropriate to grant to the defendant a one point reduction in the offender score for the entry of a guilty plea.

**Recommendation 6:**            *The Commission recommends that the Chief Judge of the District Court and the State's Attorneys of the counties jointly pursue a solution to the problem of providing criminal history information to all sentencing judges in the District Court and that the State provide any additional resources necessary to attain that objective.*

Rationale. The Commission was concerned about the number of cases in which District Court judges are currently being required to determine sentences without the aid of any information about the criminal history of the offender (see Section 2.5.1). In many instances what may appear on the surface to be a relatively minor matter may take on a very different appearance, and call for a significantly different sanction, when the criminal history of the offender is known. The Commission will recommend that the Chief Judge of the District Court and the State's Attorneys of the counties jointly pursue an early solution to the problem, and that the State cooperate by providing any needed resources.

**Recommendation 7:**            *The Commission recommends that the General Assembly add to the authority granted three judge sentence review panels pursuant to Article 27, §§ 645JA-645JG the right to reduce a sentence below a statutorily mandated minimum when, in the opinion of the panel, the reduction is appropriate and necessary to prevent an injustice.*

Rationale. Mandatory minimum penalties have been enacted to apply to certain handgun and drug distribution offenses as well as to repeat violent offenders. A comprehensive list of mandatory minimum penalties is contained in Appendix A.

The Commission reviewed existing mandatory minimum sentences in the state, and discussed the policy question of whether the value of mandatory minimum sentences outweighed the problems of unfairness that sometimes arose through their application, and the cost of implementation.<sup>36</sup> The Commission also considered whether some defendants were unfairly discouraged from seeking a trial on the merits by the inclusion of a "mandatory" offense in the charging document.

The Commission concluded that the advantages of having some mandatory minimum sentences could be retained by including a carefully structured "safety valve" into the mandatory sentencing system. Specifically, the Commission voted to recommend that the General Assembly empower three judge sentence review panels currently in existence by virtue of Article 27 §§ 645JA-645JG and Maryland Rule 4-344 to reduce a sentence below a prescribed statutory minimum. This procedure would allow a three judge review panel to address the occasional case in which an adjustment to the sentence below the statutory minimum is appropriate and necessary to prevent an injustice.

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<sup>36</sup>See Caulkins et al. (1997). Mandatory Drug Sentences - Throwing Away the Key or the Taxpayer's Money. RAND Corporation.

## CHAPTER 4

### CORRECTIONS OPTIONS BETWEEN PROBATION AND PRISON

4.1 Introduction. Intermediate sanctions in Maryland are funded at both the state and county levels. Intermediate sanctions such as the Department of Public Safety and Correctional Services' Corrections Options Program have gained national attention as a means of reducing prison and jail crowding and to create a more complete continuum of sanctions than the limiting choice of either probation or prison.

The Commission on Criminal Sentencing Policy was instructed by the legislature to study sentencing and corrections policy and make recommendations guided primarily by the following objectives: (1) *Concentrate prison capacity on the incarceration of violent and career offenders;* and (2) *Ensure that sentencing judges in every jurisdiction in the State are able to impose the most appropriate criminal penalties, including correctional options programs for appropriate nonviolent offenders.*

This chapter will begin with a brief discussion of the current state and local intermediate sanctions programs. It will also discuss the guiding philosophy of these programs, the break-the-cycle model. The Commission on Criminal Sentencing Policy recommendations regarding corrections options follow.

4.1.1 Background. Intermediate sanction programs are also called intermediate punishments or corrections options programs (as they are called in Maryland). Corrections options programs fall between the traditional sentencing alternatives of either probation or prison. They target offenders for intensive probation supervision, electronic monitoring, house arrest, boot camp prison programs, or community service programs.

Observers have identified a "panacea problem" in the area of corrections options: a problem characterized by an unrealistic expectation that corrections options will "fix" society's crime problems. Expectations for unrealistically large cost savings or unrealistically high rehabilitation levels are examples of the panaceas sometimes attributed to corrections options<sup>1</sup>.

The desire for corrections options to provide a panacea for correctional costs is driven by the high costs of traditional incarceration. Institutional overcrowding and its negative byproducts (e.g., violence, lack of programming) have been an almost omnipresent problem in American corrections since the mid-1880's. The staggering increase in institutional populations experienced in the United States since the early 1970's, however, has been largely unparalleled<sup>2</sup>. The influx of prison and jail inmates has forced state and local correctional systems to develop strategies to manage steadily increasing institutional populations. Front-end diversion programs, a form of intermediate sanctions, have been one of several strategies to alleviate institutional crowding<sup>3</sup>.

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<sup>1</sup>Dean-Myrda, Mark C. and Francis T. Cullen (1985) *The Panacea Pendulum: An Account of Community as a Response to Crime*. In Community Corrections: Probation, Parole, and Intermediate Sanctions, edited by Joan Petersilia. New York: Oxford University Press.

<sup>2</sup> The incarceration rate, for example, more than doubled from 313 individuals per 100,000 adult residents in 1985 to 645 individuals per 100,000 in 1997. Put differently, in 1985 approximately three-quarters of a million adults were incarcerated in the United States. By 1997, roughly one and three-quarter million adults were incarcerated -- an increase of approximately 1 *million* adults. The incarceration rate in Maryland as of December 31, 1995 was 404 sentenced prisoners (state or federal) per 100,000 Maryland residents. Note that this figure excludes local jail inmates (Macguire, Kathleen and Ann L. Pastore (eds.) (1997) Sourcebook of Criminal Justice Statistics 1997, U.S. Department of Justice, Bureau of Justice Statistics. Washington, DC:USGPO: 510-519).

<sup>3</sup>By and large, corrections officials choose from the following three strategies to alleviate institutional crowding: (1) expand prison capacity by constructing new prisons or renovating existing prisons to increase capacity; (2) reduce the length of stay or time-to-serve for current inmates by means of good time credits, parole policies, or back-end programs that permit early release; or (3) develop front-end alternatives to divert offenders from serving time in prison. (Austin, James and Barry Krisberg (1985) "The

The desire for corrections options to provide a panacea for recidivism problems is driven by the lack of programming in prisons or the perceived failure of the rehabilitative ideal. Corrections options programs are asked to perform the rehabilitation work that might be expected of prisons. However, evaluations of several corrections options programs have been disappointing in this regard.

Many corrections options programs have not reduced recidivism, and added surveillance enhances the effectiveness of capturing offenders in technical violations. Officials were faced with a dilemma. To punish violators means returning them to prison, possibly for longer periods of incarceration than the initial offense requires, thereby robbing the programs of their cost control rationale. To ignore violations or treat them too lightly, robs corrections options of deterrent value and possible leverage that may spur personal change and rehabilitation.

Some observers believe that the new generation of corrections options programs emphasize offender control and punishment rather than rehabilitation<sup>4</sup>. In fact, the goals of corrections options may mirror the general shift in correctional philosophy in the early 1970s from a focus on offender rehabilitation to a focus on crime control by means of incapacitation<sup>5</sup>.

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Unmet Promise of Alternatives to Incarceration," Crime and Delinquency 28:374-409).

<sup>4</sup> Methods of control include both "soft" technologies such as probation agent contacts, home visits, or record checks and "hard" technologies such as urine testing, electronic monitoring, or hair testing (Taxman, 1994:33; Clear T.R. & J.R. Byrne, (1992). "The Future of Intermediate Sanctions: Questions to Consider." In J.M. Byrne, A.J. Lurigio, and J. Petersilia (eds.) Smart Sentencing. Newbury Park, CA:Sage Publications: 325). Intensive supervision programs (ISP), for example, *intensify* traditional "soft" technologies (e.g., increased probation agent contacts) and supplement them with "hard" technologies (Lurigio, A.J. & J. Petersilia, (1992). "The Emergence of Intensive Probation Supervision Programs in the United States." In J.M. Byrne, A.J. Lurigio, and J. Petersilia (eds.) Smart Sentencing. Newbury Park, CA:Sage Publications: 6).

<sup>5</sup> Cullen, F.T., J.P. Wright, & B.K. Applegate (1996). "Control in the Community: The Limits of Reform?" In A. Harland (ed.) Choosing Correctional Options That Work: Defining the Demand and

Rather than viewed as a panacea for cost goals or crime reduction goals, corrections options may be viewed as a more balanced approach to a rational criminal justice system philosophy, one seeking both to control and to rehabilitate offenders at reasonable costs<sup>6</sup>. Under this balanced approach, the criminal justice system recognizes that many offenders deserve and require restraint in prison or surveillance in the community. The approach also recognizes a body of evidence that offenders can change their behavior in rehabilitation programs<sup>7</sup>.

4.2 State Options. Maryland has an array of state and local intermediate sanctions programs. In testimony before the Commission, representatives of the Maryland Department of Public Safety and Correctional Services (DPSCS) explained their Corrections Options Program (COP), a group of state-run intermediate sanctions programs. These programs include prison boot camp, regimented offender treatment center, home detention, day reporting, intensive supervision, and standard supervision. Also included under the DPSCS's COP is the Baltimore City Drug Treatment Court. Drug courts also operate locally in Anne Arundel and Harford counties.

In 1990 Congress authorized funding for a Correctional Options Program to encourage states to pursue the development and implementation of programs that are alternatives to traditional incarceration for selected offenders whose addiction to

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Evaluating the Supply. Thousand Oaks, CA: Sage: 71; Lurigio & Petersilia, 1992:9; Clear & Byrne, 1992: 326.

<sup>6</sup> Gendreau, Paul, Francis T. Cullen, & James Bonta (1994) Intensive Rehabilitation Supervision: The Next Generation in Community Corrections," Federal Probation 58:72-78; Petersilia, Joan (1995) "A Crime Control Rationale for Reinvesting in Community Corrections," Spectrum (Summer):16-27.

<sup>7</sup> Andrews, D.A., Ivan Zinger, Robert Hoge, James Bonta, Paul Gendreau, and Francis T. Cullen (1990) "Does Correctional Treatment Work? A Clinically Relevant and Psychologically Informed Meta-analysis," Criminology 28:374-409; Palmer, Ted (1992) The Re-emergence of Correctional Intervention. Newbury Park, CA: Sage; Prendergast, Michael L., M. Douglas Anglin, & Jean Wellisch (1995)

controlled and dangerous substances precipitates their criminal behavior and who are low public safety risks. The DPSCS's Correctional Options Program was initiated in March 1994. According to the DPSCS, the COP is structured to manage non-violent, substance abusing offenders in the community under strict control without compromising public safety. Also, the program intends to decrease the number of parole violators and to reduce recidivism among its participants.

Drug testing is used in combination with intermediate sanctions during community supervision. The COP works on a dual track of progressive incentives that reward good behavior and regressive sanctions that further restrict offenders who fail to comply with the terms of supervision. According to DPSCS, offenders placed in COP may begin their period of supervision in the intensive level, such as home detention. If they comply with the conditions of their supervision, the restrictions are gradually reduced. However, if offenders do not comply (e.g., a drug test indicates they have recently used drugs, or they are not in compliance with supervision requirements), a more severe punishment including a period of incarceration may result. In this way, offenders are accountable for their own behavior.

Options programs focus on sentenced, incarcerated, non-violent offenders who meet stringent program eligibility criteria, and on offenders having problems during assignment to traditional community supervision. Each month, the number of COP intakes ranges from 130 to 150 offenders. In fiscal year 1997, total participation is estimated to have been about 3,000. Participation is expected to increase in fiscal year 1998.

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"Treatment for Drug-abusing Offenders Under Community Supervision," Federal Probation 59:66-75.

In FY 1997, the State had approximately 1,000 offenders under intensive supervised probation through the Corrections Options Program. In addition, 400 offenders were in home detention, 360 in day reporting, 560 in boot camps, 90 in Regimented Offender Treatment Center, and 50 in Baltimore Pre-Release Unit for Women. During the same period, 540 offenders went through the Baltimore City Drug Treatment Court, according to the DPSCS.

As DPSCS has documented, the COP has helped control costs in Maryland. One strength of these programs is the ability to control costs through controlled growth. Controlled growth is achieved by restricting entry into the program under the authority of corrections officials. Assuming the current level of participation, the department estimates that the State will continue to avoid spending \$55 million to construct four 420-bed minimum security correctional facilities and \$15 million in annual operating expenses.

The statewide COP does not serve all jurisdictions, and mainly serves the urban corridor of counties in and around Washington, D.C. and Baltimore City. Preliminary evaluations of the DPSCS's COP and the Baltimore City Drug Treatment Court demonstrate that the programs have substantial promise.

4.3 Local Options. Many county-run corrections options exist, but typically on a small scale with no statewide coordination, limited funding, and no state technical support. The limits to local corrections options appear to be most pronounced in the rural jurisdictions. The University of Baltimore and the DPSCS conducted independent surveys of local options programs. Differences in survey results appear to be due to

differences in response rates and the time the survey was conducted. However, the results are generally consistent.

According to the University of Baltimore survey, community service was the most prevalent local option. Home detention, work release, and intensive probation are also in use by county jails. Community service programs included 16,572 participants in FY 1997. The DPSCS survey found slightly less, 15,600 participants.

Home detention operates largely through local jails in Maryland. In FY 1997, there were 1,315 offenders in 11 local electronic monitoring programs, according to the University of Baltimore survey. The DPSCS found a slightly larger number of home detention participants. Twelve counties report pre-trial release programs in FY 1997 involving 7,616 offenders, according to the University of Baltimore survey.

The Commission heard from representatives of the local correctional administrators. The administrators explained the diversity and growth of local corrections options programs, and the importance of retaining local voice in running these programs. The administrators also emphasized that any expansion of state initiatives into local corrections, or other major changes, should be accompanied by adequate funding to support the effort and sufficient time to make a smooth transition.

#### 4.4 Commission Recommendations Regarding Corrections Options

4.4.1 Statement of the Problem. The Commission on Criminal Sentencing Policy was directed by the General Assembly to recommend sentencing and corrections recommendations guided primarily by the following objectives: (1) *Concentrate prison capacity on the incarceration of violent and career offenders;* and (2) *Ensure that sentencing judges in every jurisdiction in the State are able to impose the most*

*appropriate criminal penalties, including correctional options programs for appropriate nonviolent offenders.*

The Commission studied intermediate sanctions programs in other states, and heard from national experts as well as representatives from other states such as Vermont and North Carolina. The Commission also examined Maryland's current methods of placing offenders in corrections options programs, and heard from representatives of the Maryland Department of Public Safety and Correctional Services and local correctional administrators. A subcommittee on Corrections Options was created to review components of Maryland's intermediate sanctions policies.

4.4.2 Overview of Recommended Strategy. The central recommendation of the Commission is that Maryland should expand its Corrections Options Program to allow offenders to be placed in the program through judicial sentencing to a new Corrections Options Authority, under recommendations promulgated by revised sentencing guidelines. The Commission's analysis reveals that more offenders can and probably should receive placement in the Corrections Options Program, and the current program is geographically limited. To accomplish this expansion, a number of preliminary steps are required.

First, the Commission recommends that a Corrections Options Authority be created within the DPSCS, and this Authority have as its primary task the assessment, placement, supervision, and interim sanctioning of offenders. The Commission seeks to provide judges with a means of sentencing offenders to a new Corrections Authority as an alternative to standard probation or traditional incarceration. It is contemplated that sentences would include imposition of a specific period of incarceration, with execution

of all or a portion of that sentence suspended on condition of referral to the Corrections Options Authority. This procedure would assure that in addition to the graduated sanctions that could be imposed in the COP there would be an additional sanction of significant imprisonment available for those who would not complete the program. The Commission further recommends that the State's Break-the-Cycle model be used to guide programming decisions (See Section 4.4.5).

Second, the Commission recommends that the DPSCS, the proposed permanent sentencing commission, and representatives of local government begin planning for the creation of a State and Local Partnership for Corrections Options. The purpose of the Partnership is to invite local treatment programs and detention centers to participate in a State-funded COP with local choice in daily operations. The Partnership is designed to find an economical means of building on the emerging infrastructure of drug testing, sanctions, and drug treatment activity.

Third, the Commission recommends that the permanent sentencing commission incorporate corrections options as a sentencing guideline recommendation to help guide selection of offenders and to help manage growth in the Corrections Options Program. The guideline framework provides a means of controlling costs as well as keeping punishment proportional to the crime.

***Recommendation 8: The State of Maryland should expand Correctional Options statewide and plan the creation of a Corrections Options Authority within the Department of Public Safety and Correctional Services to implement assessment, placement, supervision, and sanctioning of offenders within the programs.***

Rationale. Many of the eligible candidates for DPSCS's current Corrections Options Program are not placed into the program. Eligible candidates may have a prior

record, and most offenders have prior records that would be classified by the present sentencing guidelines as non-violent and minor to moderate in seriousness. The DPSCS performs an initial classification for prison inmates. According to this classification in 1997, 56.7 percent of all inmates had no history of violence, and another 15.5 percent had a minor violent offense over five years ago. Seventy-three percent of inmates with property offenses and seventy-seven percent of inmates with drug offenses had one of these two security classifications. In 1997, of the 10,400 inmates classified and admitted to prison, 4,329 had no history of violence and were admitted to prison for a non-violent crime. Further, the surveys of local options found geographical limitations to existing programs.

Based on this analysis, the Commission concludes that a new Corrections Options Authority can identify additional good candidates for placement in the COP without great additional risk to public safety. However, a thorough assessment of offender risk to the community and need for treatment is necessary before program placement.

The development of a new Corrections Options Authority is necessary. The current COP has a smaller scope and moves offenders from prison into its programs. The current Options Program is managed entirely by the State, and does not maintain a State and Local Partnership. As discussed in the next section, providing judge's with the option to sentence into COP requires cooperation with a new and empowered Corrections Options Authority.

4.4.3 Corrections Options Expansion with Judicial Input. Most corrections options programs can be operated as either front-end or back-end programs. Front-end programs admit offenders at time of sentencing, or in some cases prior to sentencing as a

form of pre-trial diversion. A judge typically controls initial access to a front-end program. Back-end programs admit offenders after sentencing and a preliminary period of incarceration. Corrections officials typically control access to a back-end program.

Currently, the Corrections Options Program is a back-end State program that moves selected offenders into corrections options after a period of incarceration. Local programs need better documentation, but also appear to be graduated release. The exceptions are drug courts, currently operating in Baltimore City, Anne Arundel County, and Harford County, which allow program entry prior to incarceration.

Judge Jamie Weitzman, a judge in the Baltimore City's District Court, explained to the Commission that the Baltimore City Drug Treatment Court emphasizes early assessment and treatment that is immediate, intensive and sustained. The judge assesses the defendant's progress every two weeks. Successful completion of the program takes approximately one year. Drug courts in Maryland as elsewhere are highly labor intensive, and involve a judge developing a close working relationship with defendants in his or her court. Not only is entry into the program granted through the judge, but the judge continues to monitor an offender's progress through the program. Drug courts are promising programs, but may not be a cost-effective alternative to the type of expanded front-end corrections options programs envisioned here.

***Recommendation 9: The Commission recommends the creation of a new sentencing option for judges statewide. Under this plan, judges would sentence offenders to the Corrections Options Authority within DPSCS. Further, the new unit within the DPSCS should provide support services, including assessment, and control the movement of offenders once judges sentence the offenders to the Corrections Options Authority.***

Rationale. The Commission has concluded that the DPSCS COP could include judicial sentencing, a front-end option to supplement the existing back-end options. An examination of inmate prior record information indicates that additional offenders may be eligible for Corrections Options, should judges have direct access to these programs. The DPSCS records indicate that many Maryland inmates have no history of violence, especially among drug and property offenders.

After careful screening and assessment, some offenders may be good candidates for front-end selection into corrections options programs. For example, the majority of offenders sentenced for distribution of cocaine receive incarceration (78%). It is estimated that at least half will serve their sentence in a local jail. Sixty-five percent of offenders sentenced for distribution of cocaine with no prior record received an incarcerative sentence. Similarly, the majority of offenders convicted of theft greater than \$300 receive incarceration (57.2%). Most will serve these sentences in local jails. Thirty-three percent of offenders convicted of theft greater than \$300 with no prior record received an incarcerative sentence.

Further, the Commission finds that judges currently have limited options when the judge believes an offender is too serious for standard probation, but may not need a prison term. Consequently, some offenders placed on standard probation or traditional incarceration may be better suited to intermediate sanctions. The Commission's proposed expansion of Corrections Options is expected to draw from offenders formerly sentenced to standard probation and from offenders formerly sentenced to a prison or jail sentence, thereby closing a gap in the current sanctioning system.

Tough front-end sanctions controlled by the judge at sentencing may offer promise of long-run public safety benefits including reduced recidivism. Early drug court evaluations and the initial Maryland Corrections Options evaluation are positive. Effectiveness will require (1) close collaboration between criminal justice and drug treatment and (2) early intervention for problem behaviors with the judiciary's support and Correction Authority's speed. Great cost savings may be unlikely, due to the costs of effective drug treatment and the inclusion of offenders formerly sentenced to standard probation.

The Commission finds that judicial sentencing options are unnecessarily limited in Maryland. However, extension of judicial options requires careful planning and cooperation between the courts and corrections authorities. Judges are not in a position to respond with the swift and certain incentives and punishments that are the hallmark of the Break-the-Cycle model (Section 4.4.5). The Corrections Authority can provide this response. For this reason, the Commission recommends that judges sentence offenders to a specific period of incarceration, with execution of the sentence suspended on condition of referral to the Corrections Options Program. While the offender serves the Corrections Options sentence, the Corrections Options Authority should have substantial latitude to move the offender within sanctions, after sentencing and the completion of a contract signed by the offender. More planning for the Authority is necessary to insure that the judiciary and the Corrections Options Authority can provide sufficient offender oversight to insure public safety.

***Recommendation 9a: The DPSCS and the permanent sentencing commission should return to the General Assembly by December 1, 1999 with a plan for formation of a corrections Authority to work in***

*concert with the judiciary and the permanent sentencing commission.*

*Recommendation 9b: The DPSCS should prepare bench cards informing judges of corrections options programs and offender contracts along the lines of the Break-the-Cycle framework.*

*Recommendation 9c: The DPSCS should also report on the resources needed to staff probation offices to perform preliminary screening for eligibility prior to sentencing and conduct risk and needs assessment after sentencing.*

*Recommendation 9d: The DPSCS should report on plans to report assessment results and offender placement plans to the judge.*

*Recommendation 9e: The permanent sentencing commission should work with the Maryland Department of Public Safety and Correctional Services to refine its estimate of the number of program slots necessary to provide judges appropriate levels of access statewide. The study should initially assume an average length of stay in corrections options of one year to allow significant improvements through reduced drug use and reduced criminal propensities.*

*Recommendation 9f: The permanent sentencing commission should work with state and local corrections officials to develop a plan for a state and local partnership.*

Rationale. Credible corrections options programs must exist in sufficient number to provide a viable tier in a statewide sentencing scheme. Judges may become discouraged from using corrections options if programs have few or no vacancies. If waiting periods are long, offenders facing short traditional sentences will opt for incarceration in plea agreements. For these reasons, and to remain cost effective, the State must maximize its use of existing intermediate sanctions programs, including any local programs that are willing to participate.

Corrections options state and local partnerships have been established in other states to expand corrections options. For example, the North Carolina General Assembly

established the State-County Criminal Justice Partnership Act in 1994. The Partnership Act provides state grants (approximately \$10 million per year) to counties to establish and expand community-based punishments for offenders. The North Carolina Department of Correction administers the partnership. Counties choosing to join create a local advisory board, which develops and implements a local corrections plan. The State-County Partnership funding reimburses participating counties. Eighty percent of the funding is awarded by formula based on population and probation caseload. The remaining twenty percent of state funding is distributed at the discretion of the Secretary of Correction to encourage innovation.

At the present time in Maryland, there is little coordination between the DPSCS COP and a number of promising local programs. Future growth in the Corrections Options Program, as well as growth in local programs, may depend on forging a state and local partnership to take advantage of economies-of-scale, sharing overhead expenses such as assessment and treatment costs.

The partnership should be voluntary and cost neutral to localities, drawing wherever possible on current State and local incarceration spending when offenders sentenced to corrections options would formerly have occupied a prison or jail bed. The State and Local Plan should review intermediate sanctions programs operated by localities, and report on a plan to provide incentives that draw local programs into the partnership that builds a statewide network of corrections options partially funded by the state.

The study should recommend standards for assessment, surveillance, sanctions, and treatment, and discuss local authority in these areas. The study should establish

quality control procedures implemented through State and County memoranda of understanding and State technical assistance. The memoranda of understanding will cover required services such as drug testing, treatment and sanctions; required offender selection criteria such as risk and needs assessment; and details of sanctioning authority and offender contracts. Local governments should be encouraged to make data-driven decisions. Data collection should include data on offenders and programs for program monitoring and evaluation. State coordination of information systems is critical to the monitoring and evaluation needed to insure efficiency and program effectiveness.

The Commission envisions County Correctional Options Advisory Boards that contain representatives of local government, law enforcement, corrections, judges, victims of crime, and citizen representatives. The advisory boards should submit initial community corrections plans to the Maryland Corrections Options Authority for approval.

The study should consider alternative partnership models, including a model with State assessment, local board supervision, and local services with State incentive funding. Finally, the study should conduct a preliminary needs assessment for testing, sanctions, and treatment components and recommend a timetable for implementation. The partnership plan should include consideration of the following state and local program components:

24-Hour Restriction	Boot Camp, Home detention/ Electronic monitoring, Halfway house
Daily Accountability Standard Supervision	Day Reporting Centers, Intensive Supervised Probation Standard Supervised Probation

Recommendation 9: Bedspace Impact. The expansion of the DPSCS Corrections Options Program will require gradual implementation. Utilization of corrections options in conjunction with the sentencing guidelines will require additional program resources and Corrections Options Authority staff. The Commission has prepared an initial estimate of the number of offenders that may be directed into the expanded programs under three broad scenarios over the first five years of operation.

Under the first scenario, judges refer and corrections accepts 25 percent of all offenders that fall within corrections options cells on the new guideline matrices. This scenario assumes that the program is used cautiously during its first five years of operation and most offenders are given traditional sentences. The second and third scenarios assume 50 and 75 percent utilization respectively. Under these assumptions, many more offenders are directed into corrections options as a result of direct judicial sentencing to the Authority. By the fifth year, 805 participants enter the program each year under scenario one, 1,610 participants under scenario two and 2,415 participants under scenario three.

The Maryland Commission on Criminal Sentencing Policy used a computer simulation program to estimate the number of prison beds affected by the conversion to an expanded corrections options program. A precise estimate is not possible until more details of the Corrections Options Authority are available, and the inclusion of corrections options in a new sentencing grid are formulated. Under the three initial scenarios, the Commission estimates a bed savings of 340, or 680, or 1,021 prison beds per year, depending on which of the three scenarios is used. This simulation was run on the assumption that the COP draws equally from probationers as well as inmates, since

judges that are presently electing probation for offenders in this range of offense severity may desire a stronger sanction. The prison beds savings<sup>9</sup> could effect operating costs of between \$6 million and \$18 million. However, much of this savings will be returned into the COP by the increased spending on offenders that would formerly have gone into probation and the increased costs of drug testing, sanctions, and treatment system-wide. The Corrections Options Authority will require additional staff for surveillance and sanctions, and drug treatment services will be purchased. Further, the initial investment in the Corrections Options Authority and the attending infrastructure is necessary to insure public safety and precedes prison bed savings. A calculation of the eventual savings awaits the details of the State and Local Partnership and the formation of the Corrections Options Authority.

Responsibility. Maryland Department of Public Safety and Correctional Services and the permanent sentencing commission.

4.4.4 Managing Entry into Front-End Programs. Front-end programs, including boot camps, electronic monitoring, and intensive supervised probation have been evaluated nationally<sup>10</sup>. The evaluations show evidence of “net widening” and high rates of offender violations. “Net widening” occurs when entry into programs exceeds program availability. Seeing the need for intermediate responses to crime with greater levels of surveillance and control than standard probation, judges may expand the original target population. Under these circumstances, judges may include more offenders than originally intended, straining program resources.

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<sup>9</sup> Estimated to be roughly \$19,000 per prison or jail bed per year.

<sup>10</sup> Tonry, Michael (1997) Intermediate Sanctions in Sentencing Guidelines. NIJ: Washington.

Back-end programs, including electronic monitoring and intensive probation, also result in high levels of violations, probably due to the higher surveillance used in these intermediate sanction programs. However, since State corrections officials control entry into back-end programs, these are regarded as more effective in achieving cost savings and controlling net widening and program over-crowding.

Therefore, one of the challenges of front-end corrections options programs is restricting net widening, while giving the judges access to a larger range of choices than standard probation and prison offer. The incorporation of corrections options beyond standard prison and probation may achieve greater judicial discretion while holding net-widening to a minimum, as discussed below.

***Recommendation 10: The Commission recommends that the permanent sentencing commission incorporate sentence recommendations to the Corrections Options Authority using a zone of discretion in the guidelines matrix. A sentence would be counted in compliance with the guidelines when an offender's score appears in the discretionary zone and the judge selects either the traditional sentence range or Corrections Options.***

Rationale. Integrating options into sentencing guidelines is believed to reduce net-widening, according to Michael Tonry<sup>11</sup>, an expert in sentencing policy who addressed the commission in 1997. That is, guidelines with relatively high compliance and judicial support may help resist judicial pressure to expand corrections options beyond the original target population. Several guidelines systems integrate intermediate sanctions into their guidelines.

Corrections options can be based on either a policy of categorical exceptions or zones of discretion. Categorical exceptions permits the judge to disregard the otherwise applicable sentencing range, providing the offender meets certain criteria such as drug

dependency that appears to be driving criminality. When using a categorical exception, the judge's sentence would not count as a departure. Zone of discretion permits or presumes corrections options within a given zone demarcated by offense and offender scores. Within the zone, either a corrections options sentence or a sentence to incarceration within the guidelines would count as compliance with the guidelines

Zones of discretion are used to identify corrections options as a punishment less severe than prison but more severe than standard probation, maintaining a system of proportional punishments. Integrating corrections options into a sentencing guideline framework may increase the proportionality of punishments for offenders more serious than the typical probationer, but less serious than the typical inmate. Correction options decision-making may result in unwarranted disparity as demonstrated in other jurisdictions<sup>12</sup> outside a sentencing guideline framework.

A zone of discretion system allows judges substantial discretion while helping to control the possibility of net-widening and the attending cost control problems that result from net-widening. The Commission recommends a zone of discretion that includes all cells of drug and property matrices with historical incarceration rates of 50 to 75 percent. The resulting drug and property matrix changes have three zones, with a middle zone on each matrix as areas recommended for corrections options or incarceration, based on the facts of the case. Either selection would count as compliance with the guideline recommendation. The COP zone would be shaded on the matrix for easy identification and bounded by *inferred* prison only and probation/jail cells. Prison only cells are inferred to deserve more punishment and control than the COP provides.

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<sup>11</sup> Tonry, M, 1997

<sup>12</sup> Tonry, M, 1997

Responsibility. The permanent sentencing commission.

4.4.5 Program Philosophy – Break-the-Cycle. The DPSCS Corrections Options Program has increased the number and types of sanctions available to community corrections since its inception in 1994. In addition to this expansion of sanctions, Maryland has embarked on a new program philosophy, the Break-the-Cycle model. Break-the-Cycle promises to integrate sanctions, focusing the sanctions on drug abuse and a method of combating drug abuse. The Commission heard testimony from a variety of experts, including Dr. Faye Taxman, of the University of Maryland and the High Intensity Drug Trafficking Area, and Dr. Peter Luongo, a Montgomery County public health official. According to these experts, the criminal justice system has too often been a revolving door for hard-core substance abusers. Left untreated on release from the criminal justice system, these offenders return to their communities and resume substance abuse and criminal activity.

There is a close connection between drug abuse and criminality. It has been estimated that 80% of illegal substances are consumed by 20% of hard core drug abusers<sup>13</sup>. Further, a high proportion of offenders, estimates range from 50-80%, are hard core substance abusers<sup>14</sup>. Successfully addressing the substance abuse problem among offenders promises to reduce illegal drug use and reduce criminality.

The Break-the-Cycle model features drug testing, sanctions, and drug treatment. It applies research demonstrating that keeping offenders in treatment longer increases the

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<sup>13</sup> Kleiman, Mark (1997) "Drug-Free or Unfree," Washington Post, February 2.

<sup>14</sup> Center for Addiction and Substance Abuse (1998) Behind Bars: Substance Abuse and America's Prison Population. New York:CASA.

odds that sobriety will be enhanced and criminality reduced. While under state supervision, offenders will be required to enroll in treatment programs, with sanctions awaiting those that fail to respond to treatment. Graduated sanctions and incentives apply steady leverage on offenders, encouraging a drug-free and crime-free lifestyle. Incentives offer reduced restrictions. Sanctions increase restrictions. Swift and immediate response to behavior is a hallmark of the program.

Maryland's Break-the-Cycle will be phased into Maryland statewide through the Division of Parole and Probation and the Alcohol and Drug Abuse Administration during the period from 1998 through 2000. The Break-the-Cycle model provides the basis for reduced risk to communities through close supervision. It offers offenders access to treatment services within the community. The services are offered as a cost-effective means of reducing drug abuse and crime in our communities.

***Recommendation 11: The Commission recommends the application of the Break-the-Cycle model into expanded Corrections Options Program under the authority of a newly-established Corrections Options Authority within the DPSCS.***

Rationale. The initiation of the DPSCS Corrections Options Program and the Break-the-Cycle model for programming provides a promising future for community corrections in Maryland. Break the cycle is designed to stop the revolving door for non-violent hard-core substance abusers within the criminal justice system.

Program effectiveness is a major concern in the area of intermediate sanctions. The efficacy of intermediate sanctions programs has been the subject of numerous

evaluation studies<sup>15</sup>. Generally, participation in an intermediate sanctions program does not appear to reduce the likelihood of criminal recidivism and increases the probability of detection of technical violations such as drug use. High rates of violations have occurred because offenders are often required to fulfill more than the average number of conditions for these strenuous programs and surveillance is tighter<sup>16</sup>. Tighter surveillance appears to lead to more violation opportunities and more violations.

However, an intermediate sanction coupled with drug treatment is a more promising program. According to Preventing Crime, a national review of what works in the area of crime prevention by a team of University of Maryland scholars, rehabilitation programs for adult offenders using treatments appropriate to their risk factors, such as drug treatment for hard-core substance abuse, reduces repeat offending<sup>17</sup>. Of course, the quality and availability of the programs will affect the outcome.

The public appears to support intermediate sanctions. As previously noted, the Maryland Justice Analysis Center randomly interviewed Maryland residents by telephone on behalf of the Commission. The survey found support for intermediate sanctions. Most Marylanders are in favor of intermediate sanctions for non-violent offenders. All forms of intermediate sanctions surveyed were acceptable to some degree. Intensive supervision and boot camps are favored alternatives to prison sentences.

Offenders are likely to view Break-the-Cycle model as a serious sanction. Not only are offenders deprived of liberty on either a continuous or intermittent basis, but

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<sup>15</sup> MacKenzie, D.M. (1997). "Criminal Justice and Crime Prevention." Preventing Crime: What Works, What Doesn't, What's Promising: A Report to the United States Congress. College Park, MD: University of Maryland, Department of Criminology; Clear & Byrne, 1992.

<sup>16</sup> Petersilia, Joan and Susan Turner (1993) "Intensive Probation and Parole," In Crime and Justice: A Review of Research, Vol. 17, edited by Michael Tonry. Chicago: University of Chicago Press.

recent research on offenders indicates that offenders find close supervision programs, such as those featured in Break-the-Cycle, to be more difficult than longer stays in incarceration. Surveys of offenders in Minnesota, Arizona, New Jersey, Oregon, and Texas indicate that when offenders are asked to equate sentences, they judge certain types of community punishment as more severe than prison<sup>18</sup>.

Responsibility. The Maryland Department of Public Safety and Correctional Services, the permanent sentencing commission, and local government and correction administrators.

4.4.6 Risk and Needs Assessment. Currently, the DPSCS Corrections Options Program includes risk and needs assessment. Assessment is a vital element in a successful intermediate sanctions program. Careful assessment matches candidates with good potential for successful program completion with programs that address their problem behaviors. Failure to conduct careful assessment may weaken even well-constructed programs.

Careful assessment can also occur in intermediate sanctions programs with direct judicial assignment to programs. However, careful coordination between the courts and corrections authorities is necessary. Before sentencing, eligibility screening is conducted and typically includes a set of formal criteria that excludes or includes certain classes of potential participants. At this point, the judge knows the offender is eligible, but may not know whether the offender is a good candidate. Assessment should occur after an initial eligibility screening and after the judge has sentenced the offender to the Corrections Options Program.

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<sup>17</sup> Andrews et.al. (1990).

<sup>18</sup> Petersilia, Joan (1995).

Assessment typically involves a more careful review of the individual risk to the community and need for services. Offender selection to the COP requires data on risk and need. Risk assessment helps identify offenders that are lower risks to public safety, and suitable for community programs. Risk assessment uses offender characteristics and criminal record to develop profiles, like actuarial profiles based on driver characteristics and traffic records. Offenders are placed in risk groups based on these profiles. Needs assessment, such as identification of drug addiction, provides valuable information for developing a program plan to reduce future recidivism. Especially important are criminogenic needs, such as substance abuse, that are associated with criminal behavior and, if not addressed, place offenders at high risk for further criminal behavior.

Current state risk and needs assessment is conducted for participation in the DPSCS Corrections Options Program. Risk assessment utilizes the revised Psychopathy Checklist (PCL-R) which is used in many states. The PCL-R is but one of many possible risk assessment instruments, and other instruments exist (e.g. Level of Service Inventory). Needs assessment is conducted utilizing the Addiction Severity Index (ASI). Research is necessary to insure that the instrument is well suited to the specific population. Review of program placement and outcomes should provide useful management information for specific offender groups, such as the risks and needs of female offenders and specific programs that address these risks and needs.

***Recommendation 12: Risk and needs assessment should be reviewed for the new target population and with the goal of conducting reliable and valid risk and needs assessment for all offenders identified as candidates for corrections options by the judge or Corrections Options Authority.***

Rationale. Attention to risk and needs assessment is a necessary condition for an effective corrections options program. Since the Commission is recommending an expanded program, the target population for corrections options requires careful review prior to program implementation. The DPSCS and the permanent sentencing commission should conduct a preliminary study of offender risks and needs assessment in Maryland. Existing instruments should be carefully studied for their reliability and validity with the target Maryland offender population. The study should report the staffing increase in Break-the-Cycle assessment staff necessary to serve the additional offenders.

Break-the-Cycle requires close collaboration and planning between criminal justice and drug treatment systems. Offenders are assessed with regard to their risk to the community, and also with regard to their need for substance abuse services. Assessments are the basis for individualized treatment plans. The assessment component helps insure that offenders are selected who are appropriate for community placement and who represent risks for recidivism based on substance abuse problems.

Responsibility. Maryland Department of Public Safety and Correctional Services and the permanent sentencing commission.

4.4.7 Future Issues. The expansion of the COP into the District Court is an important future issue. To the extent the COP appears successful, basic issues of fairness and proportionality oblige the State to consider such an extension.

**Recommendation 13:** *The Commission recommends that the permanent sentencing commission develop a plan for inclusion of District Court in the Corrections Options Program.*

Rationale. Based on the Commission's analysis of 1997 District Court records, Maryland District Courts hand down hundreds of incarcerative sentences per year. Additionally, since many of the offenders entering prison and jail from District Court are convicted of non-violent crimes, a large portion may be good candidates for Corrections Options. Proportional sentencing appears to require that judges in District Court considering a prison or jail sentence in a particular case also have access to direct sentencing to the Correctional Options Program, as judges in Circuit Court are expected to have.

The permanent sentencing commission needs to explore methods for bringing Corrections Options sentences into District Court. Guidelines do not operate in District Court and, as discussed in Chapter 3, access to offender prior record is limited in some District Courts. If the District Court is given access to Corrections Options sentencing, further study is needed to find an effective means of preventing net-widening. Without some safeguards, the fledgling programs could be overrun with District Court cases, defeating cost controls and the proportional punishment plan built into a guideline zone of discretion.

Responsibility. The permanent sentencing commission.

## CHAPTER 5

### OFFENDER RELEASE FROM INCARCERATION

5.1 Overview. Over the course of the past 25 years, structured sentencing reforms have been implemented throughout the nation (see Chapter 2). While many forms of structured sentencing relate to sentencing practice (i.e., sentencing guidelines, mandatory minimum penalties), another form of structured sentencing reform relates to the restriction or abolition of discretionary *release* mechanisms (i.e., parole release) and/or the restriction of good time or earned time credits.

When states move to limit or abolish discretionary release mechanisms, for example, they move toward a more determinate sentencing scheme. Determinate sentencing is distinguished from indeterminate sentencing primarily by the lack of review by an administrative agency such as a parole board.<sup>1</sup> A “fixed” sentence under a determinate scheme may be reduced by good time or earned time credits, however. According to the BJA survey of structured sentencing reforms nationwide, five states have adopted determinate sentencing as their *primary* sentencing structure (see Chapter 2).

The desire to achieve “truth in sentencing” also motivates structured sentencing reforms which attempt to limit discretionary release mechanisms and/or reduce good time or earned time credits. Generally speaking, truth in sentencing reforms seek to achieve a greater degree of correlation between the judicially imposed sentence and the actual

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<sup>1</sup> Bureau of Justice Assistance (1996) National Assessment of Structured Sentencing. Washington, D.C.:USGPO: 2.

time served in prison. Available data (aggregated at the national level) in fact suggests that individuals serve less than one-half of their imposed sentence on average (due to the accrual of good time and earned time credits as well as parole release mechanisms).<sup>2</sup> Truth in sentencing policies are intended to improve public confidence in the criminal justice system.

A prominent example of a truth in sentencing scheme is the Violent Offender Incarceration and Truth-in-Sentencing Incentive Formula Grant Program (VOI/TIS). VOI/TIS provides various levels of federal funding (primarily for prison construction) as an incentive for states to establish sentencing structures which ensure that serious, violent offenders serve a minimum of 85% of the court imposed sentence. The 1994 Crime Act established the VOI/TIS grants. To be eligible for full funding under the Truth-in-Sentencing portion, a state must enact laws that ensure that violent offenders (as defined in Part I of the federal Uniform Crime Report) serve not less than 85 percent of the sentence imposed. The 85 percent goal was apparently derived from the federal sentencing system, where parole was abolished in 1987 and offenders serve 85 percent of the imposed sentence.

While Maryland receives partial funding under VOI/TIS, violent offenders serve approximately 60 percent of the imposed sentence, and as a result the State does not qualify for full funding. The Maryland Commission on Criminal Sentencing Policy carefully examined options that would allow Maryland to receive full funding.

5.2 Release Practices: the Maryland Experience. The Commission was directed to review Maryland offender release policies. There are several methods of release from

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<sup>2</sup> Langan, P.A. (1997) "Felony Sentences in the United States, 1994." Bureau of Justice Statistics Bulletin. Washington, DC: U.S. Department of Justice, Office of Justice Programs: 9.

incarceration in Maryland. If the offender is serving a sentence of six months or more, the offender is eligible for parole release and the accrual of good conduct credits.

Offenders may also be released after serving their full sentence. Under this scenario, the offender has been denied discretionary release and any good conduct credits.

5.2.1 Parole Release. A prisoner may be released on mandatory parole. Under this scenario, the offender is released after serving the entire court imposed sentence less earned diminution credits. The purpose of mandatory parole is to leave some time to be served on the sentence, with the threat that the time will be imposed should infractions occur after release.

A prisoner may be released on discretionary parole. Discretionary parole occurs when the Parole Commission -- after reviewing the offender's suitability for parole during a hearing -- decides to grant the offender parole release prior to the mandatory release date. Some parole hearings are open. In an open parole hearing, victims and members of the general public may attend and observe the parole decision-making process.

Offenders that are convicted of certain crimes after October 1, 1994, including any crime of violence listed under Article 27, §643B of the Code of Maryland or first, second, or third degree burglary, are not eligible for their first parole hearing until 50 percent of the sentence is served.

The Parole Commission typically makes parole decisions. These decisions are aided by the use of decision tools such as parole guidelines, which are written forms that specify the factors to be evaluated in the decision. The current parole guidelines, under Policy 2-1 in effect since establishment of the sentencing guidelines, specify factors

viewed by the parole Commission as indicative of future success on parole. Factors include prior criminal convictions, prior similar offenses, juvenile crime, and probation and parole violations. The Maryland Parole Commission is currently revising its guidelines.

The higher the offender's base score on the parole guidelines, the more serious the record, and the higher the percentage of time the offender will serve. The Parole Commission departs from the parole guidelines in exceptional circumstances.

Since 1994, victims of violent crime have had the right to request an open parole hearing. As a result of the 1998 legislation, the definition of those eligible to request a hearing has broadened.

5.2.2 Judicial Reconsideration of Sentence. Offenders may receive a judicial reconsideration of sentence if a motion seeking that relief is filed within 90 days after the imposition of sentence (See Maryland Rule 4-345). The Commission identified court release as the means of release for 9% of all inmates in a sample of 1993 sentences. The court may not increase a sentence, but may reduce it. Currently, there is no time limit for the exercise of discretion by the judge if the motion is timely filed. The Commission was asked to recommend a change to the Rule that would limit the time for exercise of discretion to 12 months or 18 months, but the Commission did not approve this request.

5.2.3 Good Conduct Credit Process. An offender may have the sentence reduced by good conduct and other credits called diminution credits. Good conduct credits are deductions from the term of confinement allowed in advance, subject to the inmate's future good conduct. Offenders convicted of a crime of violence or drug distribution under Article 27, §286 are allowed five days per month from the first day of commitment

until the last day of the inmate's maximum term. Other offenders are awarded ten days per month, again subject to future good conduct.

Offenders are also eligible for another ten days per month, for satisfactory performance of work, for progress on vocational or other educational courses, or for special work or other programs providing diminution credits. Corrections officials argue that diminution credits are needed to manage prison populations. No scientifically accepted basis exists for determining exactly how much credit is necessary to serve as a motivation.

To illustrate the calculation of a release date, assume that an offender has been given a one-year sentence for one count of a non-violent offense. The inmate is initially credited with ten days for each of twelve months, totaling 120 days or 4 months. If the offender keeps all good conduct credits initially credited, the offender would serve a maximum eight months incarceration (12 months minus four months). The inmate can then earn a maximum additional ten days per month for education, work, or special projects. After serving six months of the original 12-month sentence, if the offender earns all 60 days of work or education credit, another two months would be deducted from the eight months to serve (Eight months minus two months). Therefore, after six months, the offender that earns all available credits will be released on mandatory parole, having served fifty percent of the sentence. Many offenders serving short sentences such as one year are in fact released on mandatory parole. Local jail credit cannot exceed five days per month, and is also credited in advance.

5.3 Time-to-Serve. Judicially imposed sentences and time served (or length of stay) are not synonymous due to parole release and the accrual of good and earned time

credits. At the national level, available data suggest that individuals serve less than one-half of their imposed sentence on average. The Bureau of Justice Statistics (BJS) calculated the actual amount of time that individuals *released* from State prisons during calendar year 1994 served. The BJS examination revealed that such individuals served 41% of their imposed sentence on average.<sup>4</sup> This percentage varied by crime category. Persons convicted of violent offenses (excluding life or death sentences) served 46% of their sentence on average, whereas persons convicted of property offenses served 41% of their sentence on average and persons convicted of drug offenses served 36% of their sentence on average.<sup>5</sup>

5.3.1. Time-to-Serve in Maryland. Two estimates of time-to-serve or length of stay are currently available in Maryland. The first estimated was computed by the Department of Public Safety and Correctional Services, Office of Research and Statistics (ORS). The ORS estimate applies to individuals convicted of 643B offenses only (i.e., serious, violent offenses).<sup>6</sup> The second estimate was generated by a Commission on Criminal Sentencing Policy study that randomly selected samples of person, property, and drug offenders from the Administrative Office of the Courts sentencing guidelines database (see Appendix J).

Office of Research and Statistics Study. The time-served estimate for serious, violent offenses (643B offenses) was completed in December, 1996. The study assessed time-to-serve among *all* persons convicted of 643B offenses who had been released in the

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<sup>4</sup> Langan, 1997:9

<sup>5</sup> Langan, 1997:9

<sup>6</sup> Violent (643B) offenses include murder, kidnaping, rape/sex offenses, robbery, assault with intent to rape, rob, or murder, and arson.

most recent year. The research revealed that 643B offenders served 60.3% of the imposed on average. The percentage of time served was slightly higher (67.8%) for those offenders convicted of rape or sex offenses.

Commission Study. In order to obtain estimates of time-to-serve in Maryland, samples of person, property, and drug offenders sentenced during calendar year 1993 were selected at random.<sup>7</sup> Calendar year 1993 was selected to ensure that a sufficient number of individuals would have completed their sentence by the time of data collection (September, 1997). While the selection of an earlier calendar year would have increased the likelihood that individuals would have completed their sentence by the time of data collection, a relatively recent year was selected to ensure that release practices in place during the course of the study would be similar to present-day release practices.

However, it should be noted that legislation modifying the parole eligibility of individuals convicted of violent offenses (as well as individuals convicted of burglary and daytime housebreaking) (Article 41, Section 4-516) took effect October 1, 1994 (*after* the samples were sentenced). The legislation requires such persons to serve at least 50% of their sentence before they are considered eligible for parole. Therefore, the results of the study may understate time-to-serve for these classes of individuals.

Data were collected by the Department of Public Safety and Correctional Services, Office of Research and Statistics (ORS). The ORS searched the Offender-

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<sup>7</sup> Due to the relatively short time frame of the study, sample selection was limited to individuals who had received sentences of greater than one year and less than ten years of incarceration. Individuals with sentences of 12 months or less were excluded from participation because it is likely that they would have served their sentence in a local jail, precluding the collection of Department of Public Safety and Correctional Services (DPSCS) data. Individuals with sentences of 120 months or more were excluded from the sample because it is likely that they would still have been incarcerated at the time of data collection. As a consequence, data collected as part of the present study will *not* generalize to persons who received short sentences to be served in local jails (i.e., 1 year or less) or to person who received sentences exceeding 10 years.

based State Correctional Informational System (OBSCIS I) to collect information regarding the target sentence. The number of months an individual was required to serve of their total sentence as well as the method of release (i.e., parole, mandatory release, or court release) were recorded.<sup>8</sup>

Time-served was defined as the percentage of the *total* imposed sentence that individuals had been required to serve in prison. The percentage of the total sentence actually served was calculated for each individual (e.g., 12 months served out of a total of 18 months=0.67 or 67%). The individual percentages were then averaged across each sample.

As shown in Table 1, both person offenders and property offenders served 55% of the imposed prison term on average. Drug offenders served a slightly smaller proportion of the imposed prison term -- an average of 50%. Due to the modification of parole eligibility legislation which requires person and select property offenders to serve 50% of their sentence before being considered eligible for parole, time-to-serve for person and select property offenders may increase in the future.

The release mechanism (parole, mandatory release, or court release) was a major determinant of time-served. Individuals released by the court served the smallest portion of their total sentence (roughly one-quarter of the sentence). Persons released on parole served between 40% (drug offenses) and 48% (person offenses) of their total sentence, whereas persons released via mandatory release served between 64% (person offenses) and 71% (drug offenses) of their total sentence.

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<sup>8</sup> Since time-served data for the target sentence may be confounded with time-served resulting from other convictions (e.g., prior or subsequent convictions or parole/probation revocations), the DPSCS also indicated whether individuals were required to serve additional time stemming from prior or subsequent convictions and/or parole or probation revocations.

	Person Sample <sup>9</sup>	Drug Sample	Property Sample
% Time Served	55%	50%	55%
% Time Served by Release Type:			
Parole Release:	48%	40%	42%
Mandatory Release:	64%	71%	65%
Court Release:	26%	19%	26%

In summary, the Commission study of time-served in Maryland revealed that offenders sentenced to between one and ten years served between 50% and 55% of the imposed sentence on average. The ORS study of time-to-serve for serious, violent offenders suggested that serious, violent offenders served approximately 60% of the imposed sentence on average. Together the results suggest that offenders in Maryland serve a greater proportion of the imposed sentence than the national average of 41%. Disaggregated by crime type, Maryland offenders convicted of person offenses served between 55% and 60% of the imposed sentence relative to the national average of 46%. Similarly, Maryland offenders convicted of drug offenses served an average of 50% relative to the national average of 36%.

5.3.2 Citizen Survey. The Commission's citizen survey revealed that nearly two-thirds of respondents believe that early release should be allowed for non-violent

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<sup>9</sup> A simple random sample of 20% of the individuals who fell within each cell of the person, drug, and property matrices was selected. The Person Offense sample consisted of N=182 individuals. Complete case information was available of 68% of the original person sample. The Drug Offense sample consisted of N=301 individuals. Complete case information was available for 70% of the original drug sample. The Property Offense sample consisted of N=102 individuals. Complete case information was available for 53% of the original property sample. Data unavailability stemmed from two primary sources: (1) sample members have been incarcerated in local jails rather than the state prison system; and (2) sample members were still incarcerated at the end of the data collection period.

offenders. Only one-third of respondents believe that early release should be used for violent offenders. As previously noted, serious violent offenders serve on average about 60 percent of the imposed sentence, and prison officials believe some incentives for early release are necessary to reward good behavior and punish bad behavior.

#### 5.4 Commission Recommendations Regarding Release Practices

5.4.1 Statement of the Problem. The charge of the Commission on Criminal Sentencing Policy was to recommend release practices guided by the following primary objective: *Promote sentencing that more accurately reflects the time that an offender will actually be incarcerated.* With this objective, the Commission studied determinate sentencing reforms, parole practices, and good conduct reforms. The Commission heard from state experts, including Parole Commission Chairperson Patricia Cushwa and Assistant Attorney General Richard Rosenblatt, and national experts including Michael Tonry and representatives of the National Institute of Corrections. The Commission studied the federal Violent Offender Incarceration Truth in Sentencing Act to learn about federal incentives to restrict or abolish parole. The Commission studied time served on sentences in Maryland.

5.4.2 Recommended Strategy. The Commission voted to recommend retention of the existing system of release practices for the present time. Maryland parole practices were found to be generally sound, Maryland inmates serve a higher proportion of sentences than the national average, and improvements are expected as new parole release guidelines are developed. The Commission found that the practice of providing good conduct, educational and work credits to inmates was generally sound, but

Maryland practice may be improved through simplification. Within the framework of the existing system, the Commission recommends further study of diminution credits by a permanent sentencing commission, with the goal of simplification.

To promote sentencing that more accurately reflects actual time served, the Commission recommends that criminal sentences be imposed in terms of a sentence range (i.e., a minimum and maximum sentence). Alternative means of achieving truth-in-sentencing were also considered but not adopted. For example, the Commission investigated the merits of abolishing parole and severely restricting time off sentence for good conduct. The Commission also investigated several scenarios that maintained parole, but further restricted parole eligibility for all offenders or violent offenders only.

***Recommendation 14:*** *The State of Maryland should maintain the existing framework of parole and good conduct credit.*

***Recommendation 14a:*** *The future permanent sentencing commission should study a means to simplify the allocation of diminution/good time credits.*

*Rationale.* The Commission's study of time served reveals that Maryland offenders served a greater percentage of their sentence than the national average. The study found that Maryland inmates served an average of 53% of the imposed sentence, for offenders sentenced to between one and ten years in 1993. The DPSCS study of violent offenders revealed that these offenders serve 60.3 % of their sentence. A United States Bureau of Justice Statistics study revealed that inmates released from state prisons in 1994 served an average of 41% of the imposed sentence.

The time served on imposed sentence is a result of Maryland's parole and good conduct credit practices, including the legislature's decision to restrict parole eligibility

for certain crimes. The Maryland Parole Commission uses parole release guidelines developed during the mid-1980's. The Parole Commission has received federal funding to revise its guidelines and identify the appropriate risk assessment instrument. The Parole Commission reports that it is making progress towards a revised instrument. Based on the progress of the Maryland Parole Commission and the relatively high percentage of the imposed sentence that offenders actually serve, the Maryland Commission on Criminal Sentencing Policy voted to maintain current release practices.

Good conduct credits are viewed by corrections professionals as an important part of prison management. The Maryland Department of Public Safety and Correctional Services has had an automated system in place since the early 1990's to track good conduct credit, and reports that significant changes to good conduct credit allowances would be costly to implement. The Commission recommends that the permanent sentencing commission study simplification of diminution credits.

***Recommendation 15:*** *The State of Maryland should adopt a system of criminal sentencing whereby sentences are issued in terms of a sentence range. The judge selects a maximum sentence and derives a minimum sentence based on parole eligibility criteria established by law.*

***Recommendation 15a:*** *The State of Maryland should enact legislation to require that a person convicted of a nonviolent crime is not eligible for parole release until the person has served one-quarter of the term or consecutive terms. A person selected for participation in the Correctional Options program (COP) is exempted from the one-quarter parole release requirement.*

*Rationale.* A primary objective of the Commission was to promote truth in sentencing. Truth-in-sentencing policies seek to address the incongruity between judicial sentences announced in court and sentences that are actually served. Some truth-in-

sentencing policies actually narrow the gap between the *announced* sentence and the sentence to be served by restricting the accrual of diminution credits or by restricting parole eligibility criteria. Others seek to provide a more accurate public statement of the actual sentence served by means of a judicial announcement. Both forms of truth in sentencing dispel public misperceptions of the expected percentage of sentence served.

Upon consideration of several forms of truth in sentencing policy (see Section 5.4.3), the Commission recommends that the State of Maryland institute a system whereby judges are required to issue a sentence in terms of a range, consisting of a maximum and a minimum sentence. The maximum sentence reflects the maximum amount of time that an offender would be required to serve. Sentencing judges would then derive the minimum sentence from existing law governing parole release. The minimum sentence would equal either 25% or 50% of the maximum sentence depending on the crime(s) of conviction.

Present law dictates that persons convicted of "violent" offenses serve one-half of the sentence prior to becoming eligible for parole. "Violent" offenses include Article 27, § 643B offenses<sup>10</sup> and burglary offenses. Although existing legislation does not restrict the parole eligibility of all offenders convicted of non-643B offenses, the Parole Commission as a matter of policy does not consider nonviolent offenders eligible for parole release until they have served a minimum of 25% of the judicially imposed

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<sup>10</sup> Article 27, §643B violent offenses include abduction; arson 1<sup>st</sup> degree; kidnapping; manslaughter, except involuntary manslaughter; mayhem & maiming; murder, rape, robbery; robbery with a deadly weapon; carjacking or armed carjacking; sexual offense 1<sup>st</sup> or 2<sup>nd</sup> degree; use of handgun in the commission of a felony or other crime of violence; an attempt to commit any of the aforesaid offenses; assault 1<sup>st</sup> degree; and assault with intent to murder, rape, rob, or commit a sexual offense, 1<sup>st</sup> degree or 2<sup>nd</sup> degree.

sentence (with the exception of persons selected for participation in the Correctional Options Program ).

The Commission recommends that the Parole Commission policy of requiring 25% of sentence served prior to parole eligibility for nonviolent offenses be written into law. It is further recommended that persons selected for participation in Correctional Options Program should be exempted from the one-quarter requirement because participation in the program is currently predicated upon parole release.

***Recommendation 16: The Commission recommends that the Governor give individual consideration to any recommendations for parole for persons serving life sentences.***

Rationale. The Commission considered the problem of continued housing of geriatric prisoners and those who by reason of age and “burn-out” pose little or no danger to society if released on parole. The Commission did not formulate a specific recommendation based on a combination of age of prisoner and percentage of time served to trigger parole consideration, but believes further study is warranted and that a review of similar provisions enacted in other states should be undertaken. Concerning parole for persons serving life (as opposed to life without parole) sentences, the Commission recommends that the Governor give individual consideration to each recommendation of the Parole Commission in such cases, and exercise independent discretion in each case.

5.4.3 Strategies Considered and Rejected. The Commission considered the viability of adopting several different forms of truth-in-sentencing policies. The Commission envisioned a system whereby the judicially imposed sentence more closely

mirrored the actual time-served. A system of truth-in-sentencing was expected to increase the public's confidence in the criminal justice system. Adopting a truth-in-sentencing policy raised two critical (and related) questions: (1) What percentage of the court imposed sentence would have to be served to constitute truth in sentencing; (2) Given the selection of a target percentage (e.g., 85%), should judicially imposed sentences be reduced to accommodate the increase in percentage of sentence served?

If currently imposed sentence lengths are maintained (and time-to-serve is increased), the severity of a given sentence will obviously increase. Increasing the severity of criminal sentences has enormous implications for jail and prison crowding and the need for additional prison/jail bedspace (at substantial cost). However, if currently imposed sentence lengths are reduced and the percentage of sentence served is increased the severity of a given sentence will, in theory, remain relatively constant over time. Jail and prison bedspace needs should therefore not be affected.

The Commission considered many variations of truth-in-sentencing policy. The primary variations included: (1) defendants convicted of federally defined violent crimes would be required to serve 85% of the judicially imposed sentence; and (2) defendants convicted of person, drug, property offenses would not be eligible for discretionary parole release until they served 50%, 60%, or 70% of the judicially imposed sentence (with or without a corresponding reduction in judicially imposed sentence length). The Commission evaluated the truth-in-sentencing policy according to the following criteria: (1) What would the impact of the proposed policy be on jail and prison bedspace needs (and the corresponding costs); and (2) What would the impact of the proposed policy be on prison management?

Federal 85% Truth in Sentencing. The Commission carefully evaluated the possibility of adopting a policy of 85% truth in sentencing for serious, violent offenses. The Commission mapped the federal definition of serious, violent crime to the corresponding serious, violent crimes in Maryland. An exploratory examination revealed that nearly 50% of the person offenses committed in Maryland during a particular year would fall under the federal definition of serious, violent crime. Since the majority of cells in the person offense matrix would contain at least some individuals who would have been subject to the 85% truth in sentencing, the policy would have disrupted the proportionality of the person offense matrix.

The impact of the 85% truth in sentencing policy on jail and prison bedspace needs was assessed by the Department of Public Safety and Correctional Services (DPSCS) as well as by the Commission. The DPSCS projected that the policy would require nearly 4,200 additional prison beds (See Table 1). They also noted that since all inmates affected by the policy would not be released at exactly 85%, additional beds would likely be required. The Commission employed a different methodology with shorter, projection time frame (i.e., five years), but reached largely the same conclusion. The 85% truth in sentencing policy would demand a substantial increase in prison/jail bedspace needs.

Bedspace Neutral: Federal 85% Truth in Sentencing. In order to offset the need for prison and jail bedspace assuming an increase in the percentage of sentence served to 85%, it would have been possible to reduce the judicially imposed sentence length for serious, violent crime. Substantial reductions in sentence length would have been required to achieve a prison neutral effect. The Commission estimated that judicially

imposed sentence lengths would have to be reduced by approximately 29.1%. The Commission opted not to recommend a systematic decrease of judicially imposed sentence lengths for serious, violent offenses.

50%, 60%, or 70% Increase for Person, Property, Drug Offenses. Rather than restricting truth-in-sentencing policy to a set of specific crimes (i.e., federally defined violent crimes), the Commission considered adopting an across-the-board increase in the percentage of sentence served. The Commission systematically assessed the prison and jail bedspace increase that would result from an increase to 50%, 60%, and 70% *minimum parole eligibility* for person, drug, and property offenses using the Structured Sentencing Simulation (SSS) model (see Appendix F). For example, the SSS model projected a need for 610 additional jail and prison beds by the fifth year of implementation if the minimum parole eligibility were increased to 50% of sentence served for all person, property, and drug offenses. If a 70% minimum-parole-eligibility policy were adopted for all person, property, and drug offenses, the model projected a need for 1,792 additional jail and prison beds by the fifth year of implementation (See Table 1).

Bedspace Neutral: 50%, 60%, or 70% Increase for Person, Property, Drug Offenses. The Commission also considered the possibility of reducing recommended sentencing guidelines ranges in order to offset the need for additional jail and prison bedspace. The Commission calculated the percentage by which the recommended sentencing range would have to be reduced to offset the increase in the percentage of the sentence served. Revised sentencing guidelines ranges were calculated to accommodate a 50%, 60%, and 70% increase. The revised sentencing guidelines are shown in

Appendix G. After serious consideration, the Commission decided against the reduction of recommended sentencing guidelines ranges.

**Table 1. Comparison of Truth-in-Sentencing Strategies Considered by the Commission.**

Truth-in-Sentencing Alternative	Annual Average Bedspace Increase*	<u>Bedspace Neutral Alternative</u>	
		<i>Sentence Reduction Necessary to Offset Increase in Percentage of Sentence Served</i>	<i>Examples of Sentence Reductions</i>
1. 85% Federally Defined, Violent Offenses Only	4,200 Beds by Year 2015**  Estimate of 570 Beds by Year 5***	29.1% Reduction in Imposed Sentence for Federally Defined, Violent Offenses	10 Year Sentence = 7 Years/ 1Month 5 Year Sentence = 3 Years/ 6 Months 2 Year Sentence = 1 Year/ 5 Months
2. 100% Federally Defined, Violent Offenses Only	6,700 Beds by Year 2015**  Estimate of 794 Beds by Year 5***	39.7% Reduction in Imposed Sentence for Federally Defined, Violent Offenses	10 Year Sentence = 6 Years 5 Year Sentence = 3 Years 2 Year Sentence = 1 Year/ 2 Months
3. 70% Federally Defined, Violent Offenses Only	Estimate of 245 Beds by Year 5***	13.9% Reduction in Imposed Sentence for Federally Defined, Violent Offenses	10 Year Sentence = 8 Years/ 7Months 5 Year Sentence = 4 Years/ 4 Months 2 Year Sentence = 1 Year/ 9 Months
4. 50% Minimum Parole Eligibility - All Offenses	Estimate of 610 Beds by Year 5	Person Offenses: 1.3% Drug Offenses: 11.6% Property Offenses: 3.3%	Person: 10 Years = 9 Years/ 10 Months Drug: 10 Years = 8 Years/ 10 Months Property: 10 Years = 9 Years/ 8 Months
5. 60% Minimum Parole Eligibility - All Offenses	Estimate of 1,009 Beds by Year 5	Person Offenses: 3.4% Drug Offenses: 18.3% Property Offenses: 5.5%	Person: 10 Years = 9 Years/ 8 Months Drug: 10 Years = 8 Years/ 2 Months Property: 10 Years = 9 Years/ 5 Months

Table 1. Comparison of Truth-in-Sentencing Strategies Considered by the Commission.			
Truth-in-Sentencing Alternative	Annual Average Bedspace Increase*	<u>Bedspace Neutral Alternative</u>	
		<i>Sentence Reduction Necessary to Offset Increase in Percentage of Sentence Served</i>	<i>Examples of Sentence Reductions</i>
6. 70% Minimum Parole Eligibility - All Offenses	Estimate of 1,792 Beds by Year 5 of Policy	Person Offenses: 12.6% Drug Offenses: 24.9% Property Offenses: 7.8%	Person: 10 Years = 8 Years/ 9 Months Drug: 10 Years = 7 Years/ 6 Months Property: 10 Years = 9 Years/ 3 Months
7. 60% Minimum Parole Eligibility for Person Offenses + 50% Minimum Parole Eligibility for Drug and Property Offenses Assuming 70% Judicial Compliance to Existing Guidelines	Estimate of 656 Beds by Year 5 of Policy	Person Offenses: 3.4% Drug Offenses: 11.6% Property Offenses: 3.3%	Person: 10 Years = 9 Years/ 8 Months Drug: 10 Years = 8 Years/ 10 Months Property: 10 Years = 9 Years/ 8 Months

\* Estimates of the impact on jail and prison bedspace are based on a sample of *circuit* court outcomes. Since persons sentenced to jail or prison from *district* courts are not included in the sample, estimates of jail and prison bedspace presented here likely underestimate the jail and prison bedspace impact.

\*\* Department of Public Safety and Correctional Services, Office of Research and Statistics estimate.

\*\*\* The bedspace estimate assumes that the current percentage of sentence served for federal defined, violent offenses equals 60.3%.

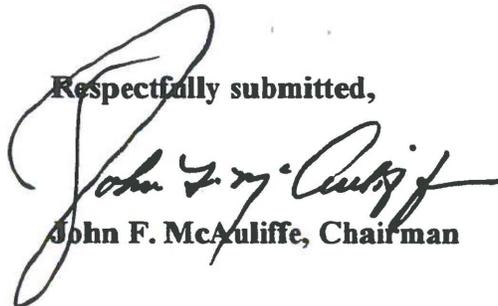
## ACKNOWLEDGEMENTS

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- ◆ **The Sentencing Commissions of the several states, who have provided information, materials, and advice.**
- ◆ **The consultants to the Commission, and those members of the public who have attended the meetings of the Commission and offered their advice and observations.**

Respectfully submitted,

A handwritten signature in black ink, appearing to read "John F. McAuliffe". The signature is stylized and cursive, with a large initial "J" and "M".

John F. McAuliffe, Chairman