

**Maryland State Commission on Criminal Sentencing Policy**  
**January 23, 1997**

**Commission Members in Attendance:**

The Honorable John F. McAuliffe, Chairperson  
Judith R. Catterton, Esq.  
Ms. Roberta Roper  
Chief Walter E. Chase, Sr.  
LaMonte E. Cooke  
Senator Delores G. Kelley  
Senator Christopher J. McCabe  
Delegate Joseph F. Vallario, Jr.  
The Honorable Howard S. Chasanow  
The Honorable Joseph H.H. Kaplan  
The Honorable Alexander Wright, Jr.  
Carolyn Quattrochi, Esq.  
Stephen E. Harris, Esq.  
Secretary Bishop L. Robinson  
Adam Gelb  
Marna McLendon, Esq.  
Dr. Charles F. Wellford  
Senator F. Vernon Boozer  
Delegate Kenneth C. Montague, Jr.  
The Honorable Andrew L. Sonner, Consultant

**Staff Members in Attendance:**

Linda M. Schuett

**Announcements and Preliminary Matters**

The Honorable John F. McAuliffe, Chairman, called the hearing to order at approximately 5:35 p.m. He announced that this was the first public hearing of the Governor's Commission on Criminal Sentencing Policy, and that the public was invited to respond to and comment upon the questions set forth in the handout available on the table outside the hearing room. He asked speakers to limit their testimony to three to five minutes and encouraged that testimony also be submitted in written form if possible. In addition, if anyone wished to submit written testimony after the hearing, that testimony would be circulated to Commission members as well.

The Chairman announced that the various subcommittees have started their work and that the meeting scheduled for February, 1997 should be cancelled to give the subcommittees additional meeting time. At the March meeting, the Commission will then receive input from the subcommittees. The Chairman also noted that a public opinion poll is expected to be commissioned shortly. There was no objection to cancellation of the February meeting.

The Chairman requested that Commission members check their calendars to see whether the March 3 meeting date could be changed to the afternoon of March 24. Senator Kelley suggested that a morning

meeting might better accommodate legislators. It was agreed that the next meeting would be held on the morning of March 24, 1997.

The Chairman stated that the minutes from the December, 1996 meeting of the Commission had been circulated, and he called for any additions or corrections to the minutes. Senator Kelley made a motion to approve the minutes as written, there was a second to the motion, and the motion carried. The Chairman noted that the former Executive Director had requested several modifications to the minutes concerning her presentation, and that, with those modifications, the minutes were approved.

The Chairman welcomed all persons in attendance to the Commission's first public hearing. He called everyone's attention to the dome overhead, which was created by Tiffany in the 1901-1902 time frame for the original Court of Appeals' building that stood on this site. When that building was torn down in the 1970's and moved to its current location, the legislature received the benefit of both the beautiful dome and the stained glass windows at the back of the room.

### **Testimony**

The Chairman asked those who had signed up to testify to do so, as follows:

#### **Neil Dorsey, Maryland Alternative Sanctions Network**

Mr. Dorsey, President of the Maryland Criminal Justice Association and a representative of the Maryland Alternative Sanctions Network, testified that he wanted Commission members to know about some of the excellent plans and programs in place and ready to be utilized if there is to be a change in the criminal sentencing procedure. Mr. Dorsey distributed written materials that address, among other things, the management of inmates and the public's perception of community-based correctional options.

Mr. Dorsey stated the belief that there is disparity in sentencing. He testified that some of the public's perception of the system in general is founded on a lack of knowledge as to how it works. Correctional options work very well, particularly when well funded.

Mr. Dorsey pointed out that the local jails have many programs in place, including programs relating to mental illness, acquired immune deficiency, and tuberculosis. Youth programs have also been devised and can be implemented. The Department of Corrections is not expected to have all the answers in this area, for crime is a local problem. There should be a particular emphasis and focus on the District Court level, where programs and funding are needed.

Mr. Dorsey stated that the National Institute of Corrections did a local assessment to determine local desires and needs. Few said that more jail beds were needed, although some believed in the need for more mental health beds. The majority said that more correctional options are needed.

Correctional options need the support of the courts and prosecutors. Otherwise, the programs fail for lack of use. The programs are best operated by the communities themselves.

#### **Barry Stanton, Vice-President, Maryland Correctional Administrators' Association**

Mr. Stanton, Vice-President of the Maryland Correctional Administrators' Association and Director of the Frederick County Detention Center, testified that there are 23 local facilities around the State. All are concerned about how sentences affect the facilities. However, they are more concerned about public safety. If a particular offender raises questions about public safety, then that offender should be locked up. Alternative sentences, such as home detention, work release, and community service, should be considered for non-violent offenders.

Mr. Stanton testified that the Association fully supports the work of the Commission. Commission members should understand, however, the financial impact of recommendations that it makes. Correctional administrators have tough jobs. It falls to them to decide which alternative is appropriate for a particular offender. The Association believes that state and local corrections administrators should be provided with a full range of community-based correction options (question 8), but give them the help they need to administer the programs.

### **Russell P. Butler, Esquire, The Stephanie Roper Committee**

Mr. Butler presented written materials for the consideration of the Commission. He testified that the Stephanie Roper Committee supports truth in sentencing. There is, currently, a public perception problem with the criminal justice system. The public's perception of the system would improve, and its confidence in the system would be higher, if the sentences imposed more closely reflected the sentences to be served. For example, in sentencing a violent offender, the court should say that the sentence is five to ten years, rather than saying that the sentence is ten years when the defendant will be released in five. The Committee takes no position concerning parole, earned credits, or supervised release.

The Stephanie Roper Committee also believes that Maryland should make every effort to obtain federal funding. Since the actual time served in Maryland exceeds the national average, Maryland complies with the so-called "Utah provision" of the law. In any event, Maryland should comply with federal law to obtain as much "return on our money" as possible.

The Committee believes that our current guidelines are beneficial, but the guidelines should be made presumptive. Presumptive guidelines would help to ensure non-disparate treatment. The Committee opposes the federal sentencing guidelines because judges need discretion to vary from the guidelines in an appropriate case.

The Committee believes in the victim's impact statement and in the victim's right to be heard in the criminal sentencing process. Victims should be compensated, at a minimum, for out-of-pocket expenses. All too often, courts do not enter an order for restitution, perhaps in the belief that it will not be paid anyway. But when a defendant is released from prison, the defendant should be required to pay the victim, not the State, and the system needs the computer resources necessary to track restitution payments.

Delegate Montague asked for the Committee's position on descriptive versus prescriptive guidelines. Mr. Butler responded that the Committee favors prescriptive guidelines. The sentence contained in the guideline should be the sentence imposed, except that the judge should have discretion to deviate from the guideline for good cause.

Senator Kelley asked what the Utah policy is to which the speaker had referred. Mr. Butler responded that the general rule is that offenders must serve 85% of the sentences imposed in order to obtain construction funds, even if the sentences imposed vary greatly from state to state. The Utah provision is that offenders must serve 85% of the average sentence imposed nationally for the particular offense. The Committee's point, however, is that Maryland should look at all ways to qualify for funds.

Secretary Robinson noted that Maryland has already qualified for federal funds to assist with the construction of prisons. Indeed, Maryland has already received its first funding from the federal government on a particular project. Senator Kelley stated her hope that Maryland will not have a need for this incentive in the long run. She would anticipate that we can keep the prison population down so there is no need to keep building more prisons. Mr. Butler noted that even if that occurs, there is always the need to repair or replace existing structures.

**Rebecca Goode, League Of Women Voters Of Maryland, Inc.**

Ms. Goode presented testimony in written form. She testified that the League of Women Voters studied the criminal sentencing process over a two-year period in the mid 1980's. The written testimony represents a consensus of the League. Senator Kelley asked Ms. Goode to confirm that the League believes in constant re-evaluation of the guidelines, and Ms. Goode confirmed the accuracy of that statement.

**Hanley J. Norman, President, Maryland State NAACP**

Mr. Norman said that the question he had come to ask had already been answered. He had wanted to know whether the NAACP could submit written testimony at a later date. He indicated that this would be done in the week following the hearing. The Chairman pointed out that there will also be additional public hearings throughout the State over the ensuing months.

**Alan Friedman, Anne Arundel County Criminal Justice Coordinating Council, Office Of The Public Defender**

Mr. Friedman testified that the Anne Arundel County Criminal Justice Coordinating Council, which was created four years ago, is concerned about the impact that any change may have on the local criminal justice system. While developing State policy, he asked Commission members to bear in mind that implementation is by local officials - e.g., circuit court judges, prosecutors, and the Public Defender. Each county has differing views on the various issues. It can be difficult, therefore, to implement State policy at the local level.

Mr. Friedman testified that money is needed for treatment options for non-violent drug offenders. Drug offenders should be placed into a separate sentencing guideline matrix. Violent offenders should be incarcerated. The problem lies primarily with drug abusers and the lack of funds to assist those abusers. As a result, they are sent to jail.

Incentives are needed to encourage local criminal justice systems to "buy into" alternatives. Mr. Friedman suggested a scenario under which State and federal grant money is used to create and implement drug treatment programs. If a county can show that its programs have reduced recidivism, then that county would be awarded a re-investment bonus for the purpose of creating more programs. The State would not participate in funding local prisons unless the County could show that it was reducing the rate of recidivism.

Senator McCabe questioned how drug abusers are classified in Anne Arundel County. Mr. Friedman responded that there is a distinction between users and sellers. He offered that a matrix can provide for a certain number of days in jail, coupled with a certain number of days in an in-patient program and then a certain number of days in an out-patient program.

Judge Sonner asked whether the scenario suggested by the speaker would encourage prosecutors to put cases into the system when they might otherwise not do so for the sole purpose of having those cases be included in the statistics that could help the county to qualify for the re-investment bonus. Mr. Friedman responded that the statistics relating to the bonus should include both.

Delegate Montague asked how to deal with the drug kingpin or the high level dealer who is not an addict and does not need treatment. Mr. Friedman responded that there is a need to differentiate. Right now, the guidelines do not differentiate between the offender who has sold \$10 worth of crack and the offender who has sold \$100,000 worth of crack. Judge Wright questioned how to deal with the offense of theft where the theft was committed in order to support a drug habit. Mr. Friedman suggested that the answer to the question depends on the level of available resources.

Judge McAuliffe suggested that the Council study the funding aspect of the North Carolina model. North Carolina has created a partnership between the State and the local jurisdictions whereby the local jurisdictions receive no funding if they refuse to participate. Mr. Friedman reiterated that the issue is how to encourage participation.

**Arthur Tate, Forensic Chairperson, Alliance For The Mentally Ill**

Mr. Tate testified that prescriptive guidelines will harm and be detrimental to the mentally ill. At the present, although mental illness can be considered by the court in connection with sentencing, in practice it is not. Prescriptive guidelines will make it worse. Mentally ill juveniles would really suffer. Sentences need to be discretionary.

Judge McAuliffe questioned whether Mr. Tate had a definition for "mentally ill," since it did not appear that he was discussing those cases where the mental illness rises to the level of making the offender incompetent to stand trial. Mr. Tate stated that mental illness is more than schizophrenia or bipolar disease. A personality disorder constitutes a mental illness when it deprives the person of his or her rationality.

Mr. Tate stated that prison safety for the mentally ill is an issue. The mentally ill are preyed upon in prisons, and they often unfairly lose time off for good behavior.

Senator Kelley questioned what correctional options should be considered for the mentally ill. Mr. Tate responded that the only options available at the present time for violent offenders are Patuxent and Clifton T. Perkins Hospital. These should be continued and expanded. For non-violent offenders, half-way houses that also provide treatment are needed.

**Charles F. Shilling, The Stephanie Roper Committee, Inc., BCHA**

Mr. Shilling testified in support of prescriptive guidelines and in support of truth in sentencing. The offender, the State, and the victim should all know the real sentence - e.g., a sentence of no less than "x" nor more than "y". They should also know what all of the correctional options are and their possibility of use.

**James N. Rollins, Director, Howard County Department Of Correction**

Mr. Rollins submitted written materials. He testified that all systems need to be reviewed, but he is concerned about the impact that change may have on the system. He testified in support of the continuation of the various forms of sentence diminution referred to in question nine, such as discretionary parole release, good time credits, work credits, and credits for participation in various prison programs. Mr. Rollins also testified that reform is necessary in the juvenile system that feeds the various facilities. Further, the public needs to be educated on what happens in prison. A hotline to answer basic questions that many parents have would be helpful.

Judge McAuliffe questioned how the system would be affected if good time credits, for example, were eliminated. Mr. Rollins responded that it would probably be acceptable to cap the number of credits earned, but the credits should not be eliminated altogether because they affect behavior within the prison in a positive manner. The impact of a cap, however, should be studied.

**Debra A. Tall**

Ms. Tall submitted written materials. She testified that she has worked in the juvenile justice system for 19 years and in the victim field for the last 14 years. Ms. Tall lauded the North Carolina system, where prison space is reserved for violent offenders and the sentences imposed closely match the sentences served. Non-violent offenders are not sentenced to prison. Rather, they are closely monitored on probation, with

community service and house arrest. The people of North Carolina seem pleased with how their system is working.

Ms. Tall believes that prescriptive guidelines are more effective, and that truth in sentencing is important. She believes that the public would support limited ranges for sentences and that it is good for offenders to serve minimum sentences. Inmates should continue to be permitted to earn credits, but the credits should not reduce the sentences by a significant amount. Programs should be monitored and evaluated to determine their effect on recidivism.

Senator Kelley expressed her appreciation for the comment in the written materials relating to disparity. Delegate Montague questioned whether Ms. Tall can obtain statistics on the number of juveniles tried as adults but waived back to the jurisdiction of the juvenile court. Ms. Tall indicated that she could.

### **Frank Cavallero**

Mr. Cavallero presented written materials to the Commission, which he read, in part, to the members.

### **John D. Fogerty**

Mr. Fogerty, who is part of the Quaker prison ministry, presented written materials. He testified that sentencing guidelines are essential, but judges should continue to be able to exercise judgment, giving written reasons why they might choose to go outside the guidelines in a particular case. Violent and career criminals should be jailed, but non-violent offenders should be subject to alternative means of restraint. Even "lifers" should be entitled to be considered for parole. Mr. Fogerty stated the belief that victims and offenders should be encouraged to meet, whenever possible, to let the victim know that the offender is a person too.

Ms. Roper commented that ways to bring victims and offenders into dialogue are being explored. Although difficult and elusive, it is being pursued.

### **Timothy W. Williams**

Mr. Williams testified that there is disparity in sentencing between black and white, rich and poor. Sentences should be imposed based on the crime committed, not based on race or social status. The public should have input. There should be beds for violent offenders, and alternatives for non-violent offenders. Every effort should be made to keep people out of prison. Mr. Williams supports the continuation of parole, good time credits, and work release. If inmates are kept in prison for 30 or 50 years, the State may need to deal with burials. Prisons should include job training and other programs to assist inmates if and when they get out.

Judge McAuliffe noted that, if the speaker is interested, there is a report available relating to disparity in capital punishment cases.

### **Ralph Blankfield**

Mr. Blankfield stated that he has been involved in Quaker prison ministry for 10 years. He testified that he is concerned about what happens to prisoners after they get out. They need more than \$50 and a handshake. They need education.

Guidelines should definitely reflect public opinion, because public opinion changes. Prison beds should be reserved for violent offenders only. Swift justice would do the best good, say the prisoners to whom he has talked. Mr. Blankfield supports the current forms of sentence diminution, but believes that employment opportunities should also be considered.

Secretary Robinson thanked Mr. Blankfield for the most important question yet raised - what happens to the prisoner when he or she gets out.

**Laura Kelsey Rhodes, Esquire, The Maryland Hispanic Bar Association**

Ms. Rhodes, who is on the Board of Directors of the Maryland Hispanic Bar Association, presented written materials relating to sentencing disparity and community-based correctional options. She testified to the existence of significant sentencing disparity with respect to Hispanics. Language and the lack of adequate interpreters create real problems in the courtroom. There are also cultural misunderstandings, like perceiving the line of jurors as a firing squad. Language and cultural differences lead to disparity in sentencing.

Outright discrimination also exists. For example, she is aware of one judge who routinely imposes fines on Hispanics that are double the amount of fines imposed on non-Hispanics. This leads to the need to demand a jury trial each time that judge is to hear a case involving an Hispanic defendant.

A variety of local correction options should be available, and these programs should accommodate cultural differences and be available with Spanish-speaking services when necessary. Montgomery County already has some programs of this nature in place.

Judge Wright encouraged Ms. Rhodes to report the judge about whom she spoke, even if she does so anonymously.

Delegate Montague questioned how to deal with such cultural differences as a fear of the jury. Ms. Rhodes responded that these are best dealt with through education and experience within the criminal justice system.

Ms. Catterton questioned how sentencing guidelines could take cultural differences into account in such a way as to justify a variation from the guideline. Ms. Rhodes responded that cultural differences would be difficult to quantify for purposes of the guidelines.

**Louise Beauregard, Washington Vatican's Affairs, Christian Service USA**

Ms. Beauregard testified to the importance of justice. She proposed that an administrative lower court be created that would function below the trial court and help with the workload. In this court, psychologists and other such professionals would play a role in the disposition of cases.