

Maryland State Commission on Criminal Sentencing Policy
March 24, 1997

Commission Members in Attendance:

The Honorable John F. McAuliffe, Chairperson
Judith R. Catterton, Esq.
Ms. Roberta Roper
Dr. Charles Wellford
LaMonte E. Cooke
Senator Delores G. Kelley
Senator Christopher J. McCabe
Delegate Joseph F. Vallario, Jr.
Delegate James M. Harkins
The Honorable Howard S. Chasanow
The Honorable Joseph H.H. Kaplan
The Honorable Alexander Wright, Jr.
Carolyn Quattrocki, Esq.
Stephen E. Harris, Esq.
Leonard Sipes for Secretary Bishop L. Robinson
Adam Gelb
Marna McLendon, Esq.
The Honorable Andrew L. Sonner, Consultant

Staff Members in Attendance:

Linda M. Schuett

Announcements

The Honorable John F. McAuliffe, Chairman, called the meeting to order. He noted that Commission members had several handouts before them, including an excerpt from a book authored by Professor Michael Tonry. Professor Tonry is currently unavailable to speak to the Commission, as he is teaching in the Netherlands. The entire book is available if anyone wishes to read other portions of it.

The Chairman stated that he has attended meetings with various groups since the date of the last Commission meeting. On January 24, 1997, he met with the Administrative Judges of the District Court. The Administrative Judges are concerned about the use of guidelines in the District Court, at least in part because they question whether it is mechanically feasible in the District Court and whether they have sufficient support. As an outgrowth of that meeting, the Chief Judge of the District Court will be a speaker today.

On February 21, 1997, Judge McAuliffe met, over several sessions, with the circuit court judges. Partially as an outgrowth of that meeting, Judge Dana M. Levitz is a speaker today. Judge Levitz is a former Chair of the Sentencing Guidelines Revision Committee.

On March 5, 1997, Judge McAuliffe appeared before the House Judiciary Committee concerning House Bill 1353, which proposes to extend the life of the Commission through December 31, 1998. Given the scope of

this Commission's charge, that much time will be needed to complete the various tasks. Delegate Vallario is a co-sponsor of the bill, which came out of Committee at 11:00 p.m. Friday night.

Judge McAuliffe participated in a conference call with the chairs of the various subcommittees in order to discuss the public opinion poll. Dr. Wellford had obtained some information on the cost of the poll, and those cost estimates were discussed during the call. Dr. Wellford told Commission members that the content of the poll will be very similar to the survey done in North Carolina. It will be conducted by the Survey Research Center located at the University of Maryland, College Park. The poll should be completed by the end of May.

Judge McAuliffe stated that he will be attending several upcoming meetings with various groups: (1) On March 27, 1997, he will be meeting with the Justice Coordinating Committee of Montgomery County; (2) On April 3, he will be meeting with a small church group; (3) On April 9, he will be meeting with the Prince George's County Planning Council, chaired by Judge Platt; (4) On April 24, he will be meeting with a Howard County group that is chaired by Judge Rupp and which is particularly interested in substance abuse issues; and (5) On May 13, he, Judge Sonner, and others will be attending a National Institute of Justice breakfast where Professor Norris, who taught Professor Tonry, will be speaking. Judge McAuliffe stated his willingness to meet with any groups interested in criminal sentencing policy.

The Chairman then turned to the issue of an Executive Director. As all members know, the Commission lost its Executive Director at the end of last year. The Chairman recognizes the need to fill that position and to have adequate staff, including a person to do research. Judge McAuliffe has been conducting interviews, and he believes he may have found the person to fill the Executive Director position. That person will possibly be available in early May.

The Chairman asked all members to keep the April 17, 1997 meeting on their calendars. However, that meeting could possibly become a public hearing in Baltimore City. Senator Kelley has informed the Chairman that there are many people interested in attending a public hearing in that location. The Chairman noted that there will be at least one more public hearing in the Prince George's or Montgomery County area.

The Chairman called for additions or corrections to the minutes of the meeting of January 23, 1997. Hearing none, the minutes were approved as distributed.

The Chairman asked whether Commission members had any announcements. Mr. Sipes, the representative for Secretary Robinson, stated that a new study has been published that reflects positively on correctional options. This particular study shows a 50% reduction in the recidivism rate for prisoners moved from boot camps into options programs. Copies of the study will be furnished to the Chairman.

Mr. Gelb stated that the second installment of a grant from the Justice Department to the State of Maryland has been received. The installment is in the amount of \$600,000.

Senator Kelley expressed her concern about the trend in the legislature for more mandatory minimum sentences and waiving juvenile offenders out of the jurisdiction of the juvenile court so they can be tried as adults. Judge McAuliffe stated that he was asked about the legislation relating to mandatory minimum sentences at a recent meeting. He responded that, although he could not speak for the Commission, his personal view was that further legislation of this nature should be deferred pending additional study by the Commission.

The Chairman introduced the first speaker, Mr. Sanford Newman. Mr. Newman is the President of an organization called Fight Crime: Invest in Kids. His topic is crime prevention.

Sanford Newman, President, Fight Crime: Invest In Kids

Mr. Newman stated that the organization called "Fight Crime: Invest in Kids" was launched in July of 1996. It is led by police, prosecutors, and crime survivors. He and his family are themselves the victims of a crime. An intruder entered their home at 2:00 A.M. and, luckily, ran upon being discovered. The organization believes, certainly, that dangerous criminals need to be locked up. However, focusing on the "back end" of crime is too little too late. Dealing with the "front end" is the more powerful and effective.

Mr. Sanford presented findings from various studies, addressed in the handout provided. In the first study, called the Perry Pre-School Study, a head start program coupled with weekly home visits were provided to three and four years olds. Twenty-two years later, researchers located those particular children and studied their arrest records. One in 14 of those provided with the pre-school services had been arrested. Without the services, the percentage of arrests was one-third. The researchers concluded that the preschool and weekly home visits resulted in an 80% drop in the number of chronic offenders.

In another study conducted by the Syracuse Family Development Research Program, services had been provided from the pre-natal stage through age five. The services included childcare classes and the headstart model. Ten years later, one in five without the services had been arrested, compared to slightly over 1% in the group that had the services.

The National Institute of Justice has demonstrated a nexus between the crime rate and abuse and neglect. Specifically, delinquency among abused and neglected children increases by about 60%. Furthermore, the rate of those arrested more than five times nearly doubles among the abused and neglected.

The University of Rochester studied the effect of providing home visits to low income mothers and first-time teen mothers. They concluded that the rate of abuse was one in 25 where the services had been provided and five in 25 without the services. Hawaii instituted a program that offered services to high-risk mothers. Ninety-five percent of the mothers accepted the services, and the services resulted in a 50 to 60% reduction in the rate of abuse. Mr. Newman remarked that these studies make it apparent that it makes sense to start early.

In another study conducted in Salt Lake County, a juvenile court assigned a particular test group to receive behavioral counseling. With the services, one in four ended up back in juvenile court. Without the services, two in four came back. Providing the services also resulted in a 50% reduction in the likelihood that siblings would end up in juvenile court.

Mr. Newman believes that the use of funds to provide after-school and other services to children would result in a significant reduction in crime, perhaps as much as 50 to 75% and that many lives and much agony could be avoided.

The organization for which he serves as President actively sought to involve only those people who agreed with the organization's agendas relating to health care, after-school programs, head start programs, and the like. But a poll of police chiefs generally showed that 92% believed in those same agendas. About 90% of the police chiefs believed it was important to make additional investments of money in those areas. When asked specifically where money should be invested to best prevent crime as among such choices as (1) trying juveniles as adults and sentencing them as such, (2) increasing investment in head start programs, (3) hiring more police officers, and (4) making parents responsible for the crimes of their children, 63% chose increasing the investment in head start programs - chosen four times more often than any other choice. Senator Kelley asked whether Mr. Sanford could provide the specific language of this question for possible inclusion within the poll to be conducted by the Commission. Mr. Sanford agreed and provided Commission staff with the information.

Mr. Newman questioned the Commission -- So why are we not making the investment? Many say we

cannot afford it. Are services of this nature a budget buster or a budget saver?

The Perry Pre-School Study looked at cost issues. It found that the cost per participant with respect to providing the services was \$12,000 and that the cost savings in terms of crime prevention per participant was \$148,000, a dramatic savings. Some have attacked these numbers in various ways - e.g., the \$12,000 figure is too high because it includes the cost of monitoring, the \$148,000 figure is too high because it should be reduced to present value. Even when the most conservative figures are used, each dollar invested in early prevention services results in a later crime cost savings of \$7.16. It also results in savings with respect to abuse and neglect, for each case of abuse in Social Services for two years costs approximately \$30,000. Without doubt, Mr. Newman said, these programs save money over the long haul.

Mr. Sanford stated that when we have a problem with our roads, we sell bonds and amortize over time the cost of fixing the roads. Investing in our children is no less of a capital expenditure. With that, Mr. Sanford introduced Gene Arlick, an eighth grader from the District of Columbia who accompanied him to this meeting. Mr. Sanford then asked Commission members whether they had any questions.

Delegate Harkins asked whether Mr. Sanford knew the cost of the services provided in the Salt Lake County program and whether it was an urban or suburban setting. Mr. Sanford said that he did not know specifically, but the program provided about eight hours of counseling, not an unlimited amount. Delegate Harkins also questioned what the age was of the children in the Lansing, Michigan study. Mr. Sanford responded that they were all school-age children - second to third grade through high school.

Mr. Harris stated that the Commission's focus is on crime committed by those age 18 and above, and he questioned whether Mr. Sanford could discuss any programs in that age range. Mr. Sanford responded that the focus of his organization is up front, not later down the road. Judge McAuliffe stated that part of the charge of the Commission is to recommend how to devote scarce resources. A recommendation that funds be devoted to programs for children is one consideration.

Ms. Quattrocki asked the speaker whether he is aware of the Peter Greenwood Study, which compared the cost and effectiveness of early, intermediate, and late teen programs. Mr. Sanford responded that he is aware of that Study and that it has many valuable aspects. However, it assumes that the impact or value of programs will diminish over time. That assumption affects the assumed value of early childhood programs in a very negative way.

Senator Kelley questioned whether there are studies on the rate of recidivism if juveniles are waived into adult jurisdiction. Mr. Sanford responded that there are. In particular, he is aware of one study out of Florida, which he will attempt to locate for the Commission. Mr. Sanford noted that most imprisoned juveniles and adults get out of prison at some point. The question is whether they will be more or less dangerous when they emerge. Prison may in fact minimize our chances for success, while other types of programs may maximize the potential for fewer dangerous individuals.

Judge McAuliffe thanked Mr. Sanford for an excellent presentation. He asked the speaker to send copies of any overheads used during the presentation that are not already included within the materials.

The Chairman introduced the next speaker, the Honorable Martha F. Raisin, Chief Judge of the District Court of Maryland. Judge Raisin's topic is the District Court perspective on Sentencing Guidelines.

The Honorable Martha F. Raisin, Chief Judge of the District Court of Maryland

Chief Judge Raisin stated that she collected comments from District Court judges throughout the State concerning the proposal that sentencing guidelines be applicable in the District Court. Those comments are presented in the handout. The comments fall into a few major categories.

Most judges do not want guidelines to be applicable in the District Court. If guidelines are to be used, the judges want the guidelines to be voluntary. The District Court judges believe that non-incarceration options are important, and these options are strongly endorsed. District Court judges have some significant concerns about the logistics of using guidelines in the District Court. They believe that probation officers are effective, but that they should not be given the power, without a prior court hearing, to imprison those who violate the terms of their probation. District Court judges are sensitive to "truth in sentencing" issues and the public perception that insufficient time is served by offenders.

Judge Raisin believes that many judges feel "beaten up" by the public for not imposing sufficiently stiff sentences on offenders. If the guidelines result in reduced sentences or in a greater number of cases with no incarceration, she believes that the public's perception will become even worse. She believes in alternatives to prison, but she also believes that the public wants more jail time.

Judge Raisin stated that disparity in sentencing can occur in the District Court when charges are reduced in some counties - but not others - by the time the Court reaches the sentencing phase. For example, in urban areas, a charge of child abuse may be reduced to battery while, in a rural setting, the charge remains as child abuse. Disparity in sentencing can also occur through the use of diversionary programs. For example, in some counties, the first time drug offender never appears in court. In Anne Arundel County, the first time offender ends up in a diversionary program. Upon a second offense, the offender may be convicted. That person becomes a "repeat offender," then, only upon a third conviction. If a County lacks a diversionary program, differences in sentencing result.

In District Court, the judges often lack criminal records at the time of sentencing. When that is true, Judge Raisin questioned how sentencing guidelines could be used. She stated that postponements may become necessary to obtain the records. District Court judges rarely have the benefit of pre-sentence investigation reports - she orders only about three PSI's per year.

All District Court judges believe that more pre-jail programs are needed. She strongly believes that programs relating to vocational training, drug counseling, and alcohol abuse or that allow and encourage offenders to obtain high school diplomas successfully prevent repeat offenders. If these programs were available, District Court judges would use them day in and day out. Programs of this nature help offenders to find some self confidence. These programs should be created and funded.

Judge Raisin also believes that it is important to better fund the probation officers. With better funding, violations of probation would get to court earlier.

Judge McAuliffe raised the issue of delegating authority to probation officers to staircase offenders between various options programs. Judge Raisin was not in favor of allowing this.

Senator Kelley questioned whether District Court judges would be more comfortable if the guidelines for District Court included a single matrix with lots of discretion, together with adequate computer resources to tap into criminal records. Judge Raisin said she felt unable to address the question because of her lack of familiarity with the use of guidelines and matrices. She noted that, as it stands, it is the State's Attorney's burden to produce criminal records.

Judge Chasanow questioned how disruptive it would be for District Court judges to fill out the forms and worksheets that accompany the use of guidelines. Judge Raisin responded that the District Court is already form intensive. However, these forms could not be filled out ahead of time, and she anticipates that obtaining the required information and filling out the forms could take anywhere from 1/2 to 3/4 of an hour. Judge Wright noted that their current caseloads include about 25 cases in the morning and 18 in the afternoon. If more needs to be done in connection with each case, then the caseload would need to be

decreased and the backlog would increase.

Judge Chasanow stated his impression that the most difficult question in District Court is whether to incarcerate, whereas the question in circuit court more often relates to whether the sentence should be five years or ten years. Judge Raisin stated that the District Court makes good use of weekend jail, and that this has an impact on the defendant. She believes that guidelines which impose mandatory no-jail time may have a negative impact on all of the people waiting in the courtroom for their cases to be called.

Judge McAuliffe suggested that Judge Raisin might wish to pick several District Court judges to call District Court judges in North Carolina, to inquire concerning their use of guidelines in District Court.

Mr. Harris asked Judge Raisin whether the wheel is broken - whether District Court judges need help in how to sentence defendants. Judge Raisin responded that judges do not need help in sentencing. However, guidelines could possibly help make those judges who travel around the State more comfortable in sentencing.

Mr. Gelb questioned whether it would help or hurt the judges' comfort level with sentencing if the guidelines were to say that this particular type of offender should be sentenced to this particular type of intermediate program. Judge Raisin responded that it would neither help nor hurt, for judges are very willing to take responsibility for their sentences.

Senator McCabe questioned what the most serious crimes are for which a defendant in District Court is sentenced to the Detention Center. Judge Raisin stated that assault is probably the most serious offense.

Senator Kelley questioned whether the District Court has annual statistics concerning its sentencing practices. Judge Raisin said that she did not know, but she will contact the Chief Clerk to find out. Statistics may be kept through Parole and Probation.

Mr. Sipes stated that Maryland judges should not be feeling that their sentences are too lenient. Statistics show that Maryland is one of the most conservative states in terms of length of sentences - our sentences are significantly longer than the average. Judge Raisin questioned whether prison terms served in local prisons are included within those statistics. Mr. Sipes responded that they are not.

The Chairman thanked Chief Judge Raisin for her informative presentation, then introduced the next speaker, the Honorable Dana M. Levitz, Circuit Court for Baltimore County. Judge Levitz will address the current sentencing guidelines.

The Honorable Dana M. Levitz, Circuit Court for Baltimore County

Judge Levitz stated that he spent 12 years as a prosecutor prior to becoming a judge. He has been a judge for 11 years. He teaches sentencing at the University of Baltimore School of Law. He also teaches sentencing to new judges.

From 1991 through 1994, he chaired the Committee to revise the sentencing guidelines. That Committee issued its report in 1994, as reflected by the handout. During that time frame, the Committee was very active, meeting almost on a monthly basis.

The philosophy of the guidelines was to describe how judges as a whole were sentencing certain people concerning certain crimes. The guidelines were sold to the judiciary on this basis - that the guidelines were a way to see what other judges were doing. The guidelines were never intended to be prescriptive, except to the extent that the legislature had already prescribed a particular sentence by statute. Variations from the guidelines are allowed, but the judge must fill out a form to say why the sentence differs from the

guidelines.

The guidelines are helpful, even to him after 12 years of prosecuting and 11 years on the bench. For new judges with no experience in the field of criminal law, the guidelines are extremely helpful. The guidelines also serve a useful purpose for prosecutors and defense attorneys.

Having said that, Judge Levitz stated that the guidelines in use today are not at all descriptive. They simply do not describe actual sentencing practices. This has been true since at least 1987, and the guidelines are probably less descriptive today than they were in the early 1990's. Over the 3 1/2 years that he chaired the Committee, they tried every conceivable permutation of the data. Nonetheless, they found that the guidelines were not followed a significant percentage of the time. For certain crimes, the guidelines were followed about 50% of the time. The highest percentage for following the guidelines was in the low 60's.

Judge Levitz has never talked to anyone in any State or in the federal system who favors the use of prescriptive guidelines. Prescriptive guidelines result in unfair sentences. All favor descriptive guidelines, but the Maryland guidelines are not descriptive.

Judge Chasanow stated that he chaired the Committee until Judge Levitz took over. The fallacy contained within the guidelines is that the sentence cannot be lowered if the defendant pleads guilty. For example, the sentence in every drug case in Baltimore City is below the guidelines in order to give the defendant an incentive to plead guilty. Although the Committee believed that it would be unconstitutional to provide for a lower sentence in the event of a guilty plea, the Committee was incorrect. He suspects that one would find compliance with the guidelines if the statistics concerning those cases that go to trial were separated from those cases that are disposed of through a plea.

Judge Levitz disagreed. He stated that trials are only about 15% of the cases. Furthermore, despite popular belief, Baltimore City is not the reason for non-compliance with the current guidelines. Anne Arundel County is the County most often outside the guidelines. Judge McAuliffe questioned whether the guidelines are to be used whether a case is resolved through trial or a plea. Judge Levitz responded in the affirmative.

Judge Kaplan stated that the proposed revisions in 1987 raised the sentencing guidelines for manslaughter because judges were in fact giving higher sentences for that offense. For non-violent offenses, the guidelines were proposed to be lowered to conform to actual practice. About 18 cells were to be lowered, and about 14 cells were to be raised. Judge Levitz stated that the revisions were approved by the Sentencing Guidelines Committee and by the Judicial Conference. Then, as a result of publicity, some of which was inaccurate, the proposed revisions died.

Mr. Gelb questioned what compliance with the guidelines means, or how meaningful it is, when the range of the cell is huge. Judge Levitz stated that the size of the cells needs to be changed. The Committee determined that to obtain 67% compliance for some offenses, an eight year range was needed. Even for some offenses that already had a huge range within the cell, actual practice was outside the guideline.

Judge McAuliffe questioned whether the cells need to be that broad or whether, given the built-in factors, they could be narrowed. Judge Levitz stated that it would be helpful to narrow the cells, but the issue then becomes whether the guidelines are descriptive or prescriptive. Judges are currently comfortable using the guidelines. The guidelines are always consulted during the sentencing phase. Judge Levitz likes the guidelines, but he would prefer that they be more accurate in terms of describing actual practice.

Judge McAuliffe questioned how helpful the explanation is that judges give when they vary from the guidelines. Judge Levitz stated that it is not very helpful.

Ms. Quattrocki questioned whether compliance with the guidelines is a desirable end. Judge Levitz stated

that he is not concerned about compliance with the guidelines. Rather, he wants the guidelines to be reflective of actual sentencing practices.

Ms. McLendon questioned whether the guidelines can also be descriptive of community expectation. Judge Levitz responded that they would then be prescriptive guidelines.

Judge McAuliffe stated that semantic problems arise with the use of these terms. Prescriptive guidelines, which include the public policy element, can still be voluntary.

Mr. Harris questioned whether there are current abuses of discretion in sentencing - whether sentencing occurs with no rhyme or reason. Judge Levitz responded that there is no widespread or generalized abuse. He himself can read about or hear of a sentence with which he disagrees. Still, he believes that all judges try very hard to do what they believe is fair under the circumstances.

The Chairman thanked Judge Levitz for his informative presentation. There being no further questions or comments, the meeting was adjourned.