

**Maryland State Commission on Criminal Sentencing Policy
March 9, 1998**

Commission Members in Attendance:

The Honorable John F. McAuliffe, Chairperson
Ms. Roberta Roper
Walter E. Chase, Sr.
Dr. Charles Wellford
LaMonte E. Cooke
Senator Delores G. Kelley
Delegate Joseph F. Vallario, Jr.
Senator Christopher McCabe
The Honorable Joseph H.H. Kaplan
The Honorable Alexander Wright, Jr.
Stephen E. Harris, Esq.
Secretary Stuart Simms
Adam Gelb
The Honorable Andrew L. Sonner, Consultant
The Honorable Howard S. Chasanow

Staff Members in Attendance:

Kim Hunt, Executive Director
Claire Souryal, Research Director
Pam Quirk Harris

Announcements

The Honorable John F. McAuliffe, Chairman, called the meeting to order. He began the announcements by describing a study that was recently completed in North Carolina. The study examined whether individuals sentenced under their truth in sentencing policy (legislation that abolished parole and eliminated good time in North Carolina) were more likely to have disciplinary or conduct problems while incarcerated than do individuals sentenced under the Fair Sentencing policy. The study was distributed to members as a handout.

Judge McAuliffe stated that he and Mr. Gelb attended a National Institute of Justice lecture series on alcohol and drug abuse. The NIJ speaker, Dr. David Musto, provided an historical perspective of the American experience with opiates. The theme of the talk was that alcohol and drug abuse in the United States appeared to be cyclical. At present, the United States is on the downward side of the cycle. In addition, drug problems may obscure other deep-seated societal problems.

Judge McAuliffe also stated that House and Senate bills to extend the life of the Maryland Commission on Criminal Sentencing Policy to July 1st of 1999 have been proposed. The extension would not affect the Commission's final report of December 31, 1998, rather it would enable staff to present any proposed legislation of Commission findings to the Legislature and to produce prison population projections.

Judge McAuliffe stated that most of the Commission work from this time forward will take place in subcommittees. The entire Commission will then meet to vote on subcommittee findings. The Corrections Options subcommittee is scheduled to meet on March 16th. Dr. Wellford will canvass the Sentencing Guidelines subcommittee to schedule a date for their next meeting.

Judge McAuliffe announced that data on district court convictions has been obtained by the Commission with the assistance of Judge Rasin and James Vaseleck.

Two two-day meetings have been scheduled. The first meeting is scheduled to take place on June 25th and June 26th. The dates of the second meeting have not yet been finalized. The meeting has been tentatively scheduled for October 26th and 27th. Acknowledging that those dates may interfere with the November elections, Judge McAuliffe suggested that possibly the meeting could be scheduled after the November election.

Truth-in-Sentencing Update

Dr. Hunt provided a follow-up report on truth-in-sentencing federal incentive grants. First, he addressed the Utah exception. Next, he noted the federal definition of violent crime.

Utah qualifies for full federal funding under the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grants (VOI/TIS). However, Utah has not abolished parole and offenders do not serve 85% of statutory maximum.

Utah Sentencing and Release Guidelines (SRG) are voluntary, and are unusual in being used by both the judiciary and the Parole Board. Utah has indeterminate sentencing. The judge consults voluntary guidelines, then imposes a sentence within statutory range ("Not less than minimum and not to exceed maximum"). Utah State Board of Pardons and Parole also consults guidelines before release.

For example: For other 1st degree offense (Aggravated Robbery or Rape) with a range of 5 years to Life, the Guidelines call for the following time served on sentence:

if "Poor" Criminal History: 84 months

if "Excellent" Criminal History: 60 months

Ordinarily, to qualify for full federal funding under VOI/TIS, Utah would need to show that offenders serve 85 percent of the statutory maximum, on average. However, under the Utah exception, if offender serves on average 85 % of time called for by SRG then they qualify. Using the above example, if offenders actually served the following:

if Poor Criminal History: 71 months

if Excellent Criminal History: 51 months

Then Utah qualifies for VOI/TIS funding. Utah's sentencing commission reports that Utah has qualified for full VOI/TIS funding.

Dr. Hunt turned to the definition of violent crime under the VOI/TIS program. Incentive grant funds depend on time served in prison for violent crime. Federal definition of violent crime differs from definitions in Maryland statutes.

The VOI/TIS definition is consistent with Uniform Crime Reporting definition, and includes:

Murder and Non-negligent Manslaughter

Rape

Robbery

Aggravated Assault

Using Maryland's crime definitions, aggravated assault would include assault with intent to maim but not assault and battery. To qualify for full federal funding, Maryland offenders would need to serve 85 percent of their sentences for assault with intent to maim but not for assault and battery. If Maryland wishes to qualify for full federal funding, the Executive Director said that the Guidelines Committee will need to look closely at such definitions.

Senator Kelley questioned why the Commission is even looking at the Utah system. She stated that decisions regarding truth-in-sentencing should be based on Maryland's system. She also strongly cautioned against adopting a truth-in-sentencing scheme in order to qualify for federal funding. Senator Kelley warned that the availability of federal funds may drive up correctional costs in the long run since such funding would not cover operational costs.

Judge McAuliffe responded that if the Commission decides to adopt a truth-in-sentencing scheme independent of the availability of federal funds, the Commission should know whether federal funds would be available and whether the state of Maryland would qualify.

Judge Wright inquired whether other states have qualified using Utah's scheme. The Executive Director, Dr. Hunt, responded that they had not. Judge Wright also questioned whether Utah's sentencing and release practices had been in place prior to receiving federal 85% truth-in-sentencing funds. Dr. Hunt answered that they had.

Ms. Schuett questioned whether we wouldn't want an 85% truth-in-sentencing scheme to apply to all offenses. Dr. Hunt answered that was one alternative. However, he stated that in order to qualify for the federal funds, we would only need to establish an 85% truth-in-sentencing scheme for 5 serious, violent offenses.

Senator Kelley stated that we need more information on the costs and benefits of an 85% truth-in-sentencing policy. Judge McAuliffe responded that we will be able to model prison bed space needs. He also noted that the Department of Public Safety and Correctional Services produced a report that estimated additional prison bed space needs if 85% truth-in-sentencing were adopted for 643B violent offenses.

Judge McAuliffe also reminded the Commission that adopting an 85% truth-in-sentencing scheme does not necessarily mean increasing the time-to-serve. He stated that the sentencing guidelines matrices may be adjusted to reflect an increase in time-to-serve (e.g., from 60% to 85%). In other words, recommended sentence lengths could be reduced to offset the increase in time-to-serve.

Senator Kelley stated that such manipulations strike her as if we are playing a numbers game.

Judge McAuliffe responded that the Legislature mandated that the Commission recommendations fit within the existing facilities of the criminal justice system. The Commission will have the numbers available to determine the impact of recommended policies on bed space needs. He also stated that the Commission's decisions will not be driven by the availability or incentive of federal funding, exclusively. He additionally noted that federal money would be available to apply to something that the state of Maryland is already committed to building; i.e., accepting federal funds does not mean that we would be forced into building prisons that the state of Maryland cannot maintain.

Sentencing Guidelines Committee Report

Dr. Wellford reported that he had circulated a memo summarizing the work of the Sentencing Guidelines subcommittee to date. The guidelines subcommittee had examined the existing sentencing guidelines system. The members concluded that the present system involving the offense score, offender score, and 3 crime category sentencing grids (person, drug, and property) provided a sound framework. Within the existing framework, however, the individual elements could be fine-tuned. For example, the offender score could be fine-tuned to take into account additional aggravating factors.

Senator Kelley observed that her review of sentencing matrices used in other states revealed substantial variation in the breadth of the recommended sentencing range.

Judge McAuliffe responded that while the basic structure was sound, the sentencing range within each cell may not be appropriate. He asked the Commission whether anyone had thoughts on the sentencing range. Did they believe the ranges were too broad or too narrow?

Judge Sonner believed that it would be useful to go to constituent groups such as state's attorneys to obtain their views.

Dr. Wellford noted that a reduction in the range may be called for to reduce disparity. He also noted that most sentences fell outside the recommended range.

With reference to a memorandum on judicial compliance distributed to the Commission, Senator McCabe asked Dr. Hunt whether judicial compliance with the guidelines was greater on the lower end. Dr. Hunt responded that when probation served as the lower bound, compliance rates were high. Where a sentence to incarceration served as the lower bound, compliance rates were low.

Secretary Stuart Simms observed that is important to take into account correctional resources and to receive correctional input.

Judge McAuliffe responded that potential system changes will be run through the computer simulation model. He also reiterated that the enabling legislation mandated that Commission recommendations fit within the framework of current resources. If additional resources are required, the Commission would have to provide a report on the fiscal impact. The enabling legislation also mandated that the Commission take correctional input into account.

Senator Kelley stated the need for focus groups to obtain views of prosecutors, defense attorneys, and the judiciary. She also observed that whether to include District Courts in the guidelines system has not yet been addressed for offenses with concurrent jurisdiction.

Judge McAuliffe responded that descriptive statistics on the types of cases handles by District Court will help to assess their impact on corrections. It would also be possible to improve sentencing within District Court (short of including them in the guidelines system) by assuring access to criminal history records, by computer for example.

Dr. Wellford scheduled the Guidelines Subcommittee meeting on March 27th at 4:30.

Senator McCabe commented that there were many bills related to sentencing floating around. Judge McAuliffe responded that several bills came up last year. He stated that the Commission will ultimately have a position on the proposed bills.

Senator McCabe asked whether the Commission had a summary of sentencing-related bills floated in the last 4 to 5 years. Judge McAuliffe responded that the Commission did not, but that it would be very helpful.

District Court Convictions, 1997

Dr. Hunt introduced the discussion by previewing some upcoming work from the Corrections Options Committee. The Committee will consider the pool of offenders for corrections options under the Sentencing Commission's proposals. The activities include:

- Identify and profile offenders

- Define standards of eligibility

- Apply standards to current and future offender pool

- Identify resource needs in light of number of offenders and standards of eligibility

Dr. Hunt explained that the Commission has received data on all 1997 convictions in District Court, with the help of the Chief Judge Rasin, and Judicial Information Systems. In 1997, there were 43,907 convictions in District Court, with 2,679 felony sentencing cases (6 percent) and 29,245 misdemeanor sentencing cases (67 percent). The remaining 27 percent of cases are still being investigated, but do not appear to involve felonies.

For the 2,679 felony sentencing cases, offenders were incarcerated in 1,481 cases (55 percent). The median sentence length was nine months. Almost all of these cases (97.6 percent) involved a property crime as the most serious offense at sentencing.

In 1997, according to the Department of Public Safety and Correctional services data on prison admissions, District Courts sent well over 900 offenders to prison. The difficulty in separating Baltimore City cases that involved a sentence to prison as opposed to a sentence to detention center led staff to exclude these cases for the time being. Also, many more offenders were sentenced to jail and detention centers, statewide and in Baltimore City.

Dr. Hunt concluded that the District Courts send enough offenders to prison and alternatives such as detention centers, that their numbers must be included when attempting to estimate the impact of a restructuring of correctional options in Maryland.

Senator Kelley commented that the issue whether to include the District Court under the sentencing guidelines system is very important to the guidelines subcommittee, with possible Constitutional ramifications.

Judge Kaplan observed that it would be possible to have a sentencing guidelines system at the District Court level to deal only with crimes that carry longer sentences.

Ms. Schuett inquired about the possibility of multiple charges -- for instance, a property offense and a drug offense. Dr. Hunt replied that only the most serious charge would appear for a single conviction.

Judge Kaplan asked whether prayers for jury trial are included. Prayers for jury trial are not included.

Judge Wright will meet with the staff to provide greater detail on the District Court data.

Prisoners And The DPSCS History Of Violence Score

Dr. Hunt began this presentation by stating that the Corrections Options Committee will need to review the proportion of offenders with prior records that include violent crimes. The Commission will need to determine its standards of eligibility for correctional options, and a history of violence is one factor to review.

The Maryland Department of Public Safety maintains a history of violence score, which includes the seriousness of past violent convictions and the recency of violent convictions. The Department provided information to the Commission for inmates confined in 1997 and new admissions to prison, 1996 and 1997.

The higher the history of violence score, the greater and more recent the prior record.

This score is especially important for limiting community risk.

For prisoners confined in 1997 in a DPSCR facility, the history of Violence Classification Scores were as follows:

55 % of offenders have no violent crimes in their official record

6 % of offenders have a major violent crime within the past ten years

19 % have a minor violent crime recently or a major violent crime over 10 years ago

20 % have a minor violent crime over 5 years ago

Dr. Hunt also produced charts that showed scores by type of offense. In general, offenders entering prison with violent or weapons crimes were slightly more likely to have a violent crime in their past than those offenders entering prison for a property or drug crime. However, these figures demonstrate that one cannot

predict which offenders have a history of violence simply by knowing that their instant offense does not include a violent crime. The committees will be looking closely at offender prior record.

Senator Kelley observed that the Commission will need a copy of the risk assessment instrument that the Parole Commission is currently using. The Commission will likely not have time to wait for the revised risk assessment instrument that the Parole Commission is currently working on.

Judge McAuliffe responded that the Parole Commission received a federal grant to revise the risk assessment instrument and that they are not very far along in the process. The Commission should be able to get a copy of the instrument that they are currently using. Judge McAuliffe also noted that the Break the Cycle program, as well as the Probation department, use risk assessment instruments and the Commission will be able to obtain copies.

Senator Kelley observed that the Commission will need to investigate whether to continue to exclude juvenile adjudication for persons who are greater than 26 years old.

Discussion ensued about the nature of the History of Violence score. Judge McAuliffe clarified that it is used by Department of Public Safety and Correctional Services to determine the security classification. Dr. Wellford inquired whether incarceration time was discounted in calculating the History of Violence score. Incarceration time does not appear to be discounted. Senator Kelley questioned whether some drug offenses are considered violent.

Commission members observed that it was fascinating to see the high percentage of the standing population and the 1997 intake population who did not have a history of violence. Judge McAuliffe responded that many persons who commit homicide do not have a record.

Discussion ensued about the impact of truth-in-sentencing schemes on prison discipline/infractions.

Judge McAuliffe discussed the North Carolina study announced at the outset of the meeting. He raised the possibility that the study may be flawed to the extent that it doesn't take into account inmate maturation in prison. Recently incarcerated inmates may be more disruptive by their very nature, irrespective of the sentencing scheme. Since the inmates sentenced under the truth in sentencing scheme in North Carolina were more recently incarcerated than those sentenced under the Fair Sentencing scheme, it may be difficult to disentangle the effect of inmate maturation from the effect of Structured Sentencing.

Secretary Simms countered that both Parole Commissioner, Patricia Cushwa and Secretary Robinson agree with the findings of the study.

Ms. Schuett pointed out that North Carolina eliminated both parole and good time credits.

Delegate Vallario observed that the best thing you can do for the system is to maintain hope for earlier release. Even when parole eligibility legislation raised parole eligibility to 50% of the imposed sentence, inmates still had hope.

Judge McAuliffe asked Lamonte Cooke whether there is a difference between recently incarcerated inmates and longer term inmates. Mr. Cooke stated that it depends on the inmates situations, particularly whether they are facing a lot of time.

Senator Kelley mentioned the need for psychological profiles. She raised the example of young kids who expect to die young and therefore operate under a different behavioral paradigm. Judge McAuliffe responded that some psychological profiles are available. Mr. Harris noted that they may be available from diagnostic classification.

Discussion ensued about the meaning of truth-in-sentencing. Judge McAuliffe stated that truth-in-sentencing does not necessarily mean 85%. Judge McAuliffe asked for Ms. Ropers opinion. Ms. Roper responded that although she couldn't speak for all victims rights advocates, she believed that basically people just wanted to be told the truth.

Guest Speaker-Faye Taxman, Associate Research Professor, University Of Maryland

Dr. Taxman is Associate Research Professor at the University of Maryland, College Park. She noted that much is now known about what works in treatment programs for offenders. She noted that evaluations of many alternative sanctions return the same general recommendations, that what is needed is a "reinvention" of processes that do not exist in corrections. These processes were summarized under seven principles: 1) conduct accurate assessment based on treatment and criminal justice factors; 2) match clients to treatment services; 3) adequate duration of treatment is critical to success; 4) strive for a continuum of care; 5) behavioral change is achieved with leverage or sanctions; 6) emphasize treatment integrity; and 7) provide linkages with other services.

Dr. Taxman noted that modalities that were most successful emphasized behavioral change, and were treatment oriented rather than simply control oriented.

Senator Kelley asked about Intensive Supervision Probation (ISP) programs. Dr. Taxman explained that the label ISP means different things in different programs. The ISP programs that offered no drug testing or treatment, and no counseling were less successful than those that did emphasize these modalities.

Judge Sonner asked what constitutes success. Dr. Taxman that in these "meta-evaluation" studies, a ten percentage point improvement for the treatment group as compared to a control group was considered successful.

Mr. Gelb noted that the Break the Cycle program differs from most ISP, as Break the Cycle is a behavioral change program, and every violation requires a response. ISP programs often allow repeated violations with no response, then ultimately a final violation returns the offender to prison (an all-or-nothing response).

Dr. Taxman reviewed the Break the Cycle model in her remaining time. She noted that this program is patterned in keeping with evaluation findings that demonstrate that treatment programs work. The offenders are screened and tested, then placed in treatment as appropriate. Treatment responses throughout the course of the treatment emphasize offender accountability, and violations are immediately addressed with a graduated response. Dr. Taxman emphasized that time in treatment was a key variable in offender success.

Guest Speaker-Dr. Peter Luongo, Montgomery County DHHS

Dr. Luongo is Clinical Director of Mental Health and Substance Abuse Services, DHHS in Montgomery County. He explained that his office is designed to turn no client away, and constructs ways to get the treatment services to clients with quick access, a managed care system in the best sense of the term. Whether the clients are coming out of the criminal justice system, the juvenile child welfare system, or the homeless population, DHHS acts as a gatekeeper, referring clients to treatment services.

Dr. Luongo noted that the advent of the Washington-Baltimore High Intensity Drug Trafficking Area Treatment Tracking System (HIDTA) allows his office to exchange information electronically with probation and parole offices throughout the area. This information allows fast utilization review more accurately.

The HIDTA system allows for what Dr. Luongo called the "Big Sort." The Big Sort allows referrals to be sorted using the same criteria, and sensitive to the level of need.

The DHHS takes a graduated sanctions approach. After a judge directs an offender to treatment, a contract is offered to the offender. The contract specifies the consequences of the first failure, the second failure, etc.

Judge McAuliffe noted that some observers claim that coerced treatment does not work, claiming that offenders must hit bottom and volunteer for treatment before it can be successful. Dr. Luongo disagrees, saying the research is absolutely conclusive: coerced treatment works. Dr. Luongo said that coercion works because the longer an offender stays in treatment, the better the outcome. Dr. Taxman cited National Council of Drug Abuse studies over the past three decades in support of this point. Coercion helps keep

offenders in treatment longer. Therefore, coercion to remain in treatment shows better outcomes. Dr. Luongo said he expects clients to come into the system angry, but this is not unique to the offender population.

Dr. Luongo said 51 % of their clientele are from the criminal justice system, but there is much overlap with child welfare, homeless, and indigent populations.

Judge McAuliffe asked if there is adequate treatment statewide to meet demand, if this Commission recommends statewide implementation of such graduated sanctions. Dr. Luongo said that there needs to be a unified understanding of addiction and tough statewide standards for services. Dr. Taxman said special certification programs for addiction counselors are available at programs such as Johns Hopkins University. Florida has used this approach. Dr. Luongo proposed a contract that included the level of education required to provide services, the treatment protocols to be used, and the outcomes expected.

The meeting was then adjourned.