

**Maryland State Commission on Criminal Sentencing Policy
September 12, 1996**

Commission Members in Attendance:

Judge John McAuliffe
Andrew Sonner
Judith Catterton
Roberta Roper
Walter Chase, Sr.
Dr. Charles Wellford
William H. Kelly for LaMonte Cooke
Sen. Delores Kelley
Sen. Christopher McCabe
Del. Joseph Vallario, Jr.
Del. Kenneth Montague, Jr.
Judge Howard Chasanow
Judge Alexander Wright
Cathy Quattrocki for J. Joseph Curran, Jr.
Stephen Harris
John Lang for Bishop Robinson

Staff Members in Attendance:

Sandra Shane-DuBow

Announcements

The National Institute of Corrections has agreed to assist the commission with financial and technical support. NIC has contracted with Nancie Zane to facilitate the October 3 and 4 meeting in Chestertown, Maryland.

Members should turn in their travel vouchers to Dr. Wellford at the University of Maryland at Room 2220 Lefrak Hall, College Park, MD 20742.

Agenda Topics For This Meeting:

- Standards on Sentencing, Professor Curtis Reitz
- Legislative History, Sen. Christopher McCabe
- Alternatives to Incarceration, Stephen Bocian
- Victim's Rights, Roberta Roper
- American Bar Association Committee On Standards

Professor Curtis Reitz, University of Pennsylvania

The ABA standards on criminal sentencing project was started in the mid 1960s. The standards are not adaptable and do not propose a model, but offer principles and a way of thinking about guidelines. The standards went through four levels before becoming adopted:

1. **Task Force** - Seven or eight lawyers proposed standards. Kay Knapp, an expert in sentencing, raised several questions that had not been discussed, emphasizing the need for more diversity on sentencing commissions.
2. **Standards Committee** - a larger group of individuals within the ABA who discussed the recommendations
3. **Council of Criminal Law** - a section within the ABA which received their recommendations and passed them to the next level.
4. **House of Delegates** - made changes and then agreed to adopt recommendations.

The ABA has released a third edition of the guidelines. The first two editions were not as effective because aspirations were lacking. Edition three observed sentencing on a "large picture" level. Professor Reitz warned that the project would not be a smooth and easy task. Andrew Sonner and Chief Justice Jim Exum from North Carolina rescued the ABA project on several occasions. Reitz also suggested that the committee not think about September 1997 as the end of the commission because ongoing modifications will be necessary.

Guards Against Self-Defeat

- Break out of your professional role and title.
- Consider more than yourself and your immediate constituency; think about the state of Maryland.
- Do not act like the aggregate of parts but as one body.

ABA Premises

- I. Remarks concerning the rationale behind the newest edition of ABA standards on criminal law and sentencing are premised on two principles: the work of sentencing commissions is on going and significant.
 - A. The current edition emerged out of some turbulence amongst the members of the authorizing committee. The lesson is that members of sentencing commissions need to represent their own perspective but also to break out of a narrow representation to work toward the common good of the system.
 - B. Generally speaking, the subject of the standards (and eventually of sentencing commissions) is not sentencing - it is criminal justice. Sentencing is the crux, it is the point in the system where the rules of the sovereign are translated into sanctions against the offender, but the entire system must be considered when developing sentencing policy. If the sentencing system fails, the entire criminal justice system fails.
 - C. The ABA standards presume that sentencing is too important not to have the development of a body of law. Sentencing must involve more than just what judges have done in the past, or else it simply reflects aggregated decisions and does not present a cohesive, defensible policy. We must regard sentencing as only a piece of the entire process of criminal justice. The standards address the key actors and assign roles relative to how the criminal justice system should be acting.
 - D. The judicial and legislative system need to be linked by an intermediate function to develop broad policies and a framework where broad policies can be translated into specific policy.
 - E. The standards describe sentencing commissions as an intermediate function group.
 - F. There are two large categories of objectives of a criminal justice system. just deserts or

punishment on the one hand and controlling the crime rate by deterrence and incapacitation on the other hand. We need to be clear about what the goals of the criminal justice system are, and we need to understand that the emphasis will shift between punishment and crime control, that it will not be fixed for all time.

G. We need to identify objectives for Maryland. We also need to make the criminal justice system more cost effective. The social and philosophical goals and the economic goals must be dealt with in a systemic way.

II. Advisory guidelines cannot succeed in meeting social, philosophical and economic goals. They cannot produce a systemic response to the issues confronting the criminal justice system. The ABA standards endorse bounded discretion. That is, the standards do not endorse no discretion, but rather, how much discretion remains in what part of the system. The standards require that the sentencing court know key things about a defendant, and that these key things are presented in a standardized and rational way that is also cost effective.

Warnings/Controversial Issues

- Avoid incorporating the death sentence into the guidelines, it complicates the process and it is not likely to succeed.
- The system must be constructed "where the clarity of the objective is blurred". The objective will change with trends and the political current.
- Basing the proposed system on the past system will continue trends that were deemed undesirable. Create completely new guidelines.
- Avoid inflexibility, especially in the form of mandatory sentences and cells.
- Do not look at rehabilitation as a primary objective. It will produce guaranteed failure.

Does Anything Work?

Although the data is discouraging, there are sanctions that work and the system should continue to try alternatives to incarceration. Rehabilitation, however, should not be the primary focus.

Meeting a Goal vs. Financial Constraint

Reducing the prison population is the main goal. It is too expensive to keep building prisons and funds could be used for law-abiding citizens. For example, it costs \$18,000 to incarcerate an offender, money which be used for higher education. And the Glen Mills School, which works with incorrigible repeat juvenile offenders, operates on a large budget with highly trained staff and personnel. These resources could be used for other youth.

Probation, with varying degrees of supervision, is the widely-used alternative to incarceration. More alternatives are needed but these also require funding to begin. Since there is so little funding, there are few program to use as models. Without models of success, most programs will not get funded.

Sanctions must be cost-effective projects and be carefully created. Judges and legislators will be natural enemies because of budget issues. Judges and workers in the system will ask for larger budgets and legislators will attempt to reduce spending.

Guided vs. Advisory

The advisory system will not work if the goal is to have uniform sentencing. Disparities in sentencing will continue and there will not be a systematic response to larger criminal justice questions.

Suggested Structure

- "Average Offender" - Some judges have adopted a system where a standard is set for the "average" offender (no aggravating or mitigating circumstances) for various crimes. Judges hand down sentences either higher or lower depending on the facts surrounding the case.
- Judges who impose extremely harsh or lenient sentences should be asked to explain why they made decisions different from the "presumptive" sentences.
- Do not base sentencing guidelines on past trends. This will not create change, which is the purpose of the commission, but accelerate the rate of the trend.
- Establish a process of thinking, not just a worksheet.

Multiple Charges and the Prosecution

Prosecutors must be able to focus on the most important charges.

- Tabulating the sentences for each conviction is one way of looking at the issues but prosecutors should have discretion in determining which offenses to use in a case.
- Prosecuting each charge would drain the system.

Q: *What happens to dropped charges?*

A: Prosecutors must be allowed to exercise their discretion in plea bargains and offenses they are able to prosecute.

Statutes and Legislation

- Need to consider whether the guidelines can be vetoed or if it requires legislation to take effect. How much independence does the committee have?
- Stay away from mandatory sentences by statute; it causes inflexibility.

Exceptions/Special Cases

Guidelines are sometimes questioned in special cases. The ABA structure feels it is appropriate to show leniency for a guilty plea or for cooperating with police. But these exceptions will also create problems that guidelines were designed to eliminate:

- continued racial bias in sentencing
- defining mitigating factors and determining who gets the break. Example: should the ghetto youth who steals or the well-to-do middle class youth who steals get the break? What is aggravating, what is mitigating?

Victims of Crime

- A task force was convened to address victims rights. The task force chair prepared a report which ABA incorporated into standards
- victims are involved in the court procedure during the sentencing process (impact statement)
- there should be direct use of reparations, particularly in conjunction with probation
- use economic sanctions because it prevents another lawsuit for recovery
- victims must be cross-examined

Legislative History On The Commission

Senator McCabe

Reason for Creating the Commission

- to ensure public safety
- to spend tax dollars efficiently
- to correct bad public perception

There are 6 legislators on the committee, 3 from the House and 3 from the Senate, in addition to lawyers and judges. McCabe felt the system was closed to non-lawyers but taxpayers should have representation. His initial plan was to base the guidelines on North Carolina's model. It would include truth in sentencing and matrices. The current commission, however, has fewer people serving than North Carolina and will develop its own guidelines instead of adopting North Carolina's.

McCabe drafted and introduced a bill in 1995 which would have established a sentencing commission comprised of practitioners, researchers and legislators to discuss issues of sentencing. It was passed in the Senate but defeated in the House committee by one vote. Later, the Lieutenant Governor began a task force to investigate juvenile justice and criminal justice. McCabe teamed up with them, resubmitted his bill during session, and it passed.

Alternative To Incarceration Task Force

Stephen Bocian

Governor William Donald Schaeffer created the task force in 1991 to draft recommendations. From their report, Gov. Schaeffer planned to create bills for the spring session. The rate of incarceration and supervision had dramatically increased, showing alternatives to incarceration as an quickly approaching necessity to ease overcrowding.

From 1987 to 1990 the following increases occurred:

- **Parole:** 6,000 to 9,700
- **Jail:** 3,100 to 8,800
- **Probation:** 43,800 to 91,500
- **DOC & Patuxent:** 8,300 to 17,100

Committee's Sentencing Options

- Build more prisons. Michigan built more prisons and then became even more overcrowded.
- Alternative/intermediate sanctions
 - gives judges more choices
 - shock incarceration
 - community corrections
- Court ordered community service and probation
 - governor and legislature has implemented a grant for locals to strengthen these programs
 - Howard County qualified and ran a successful program; others are aware of the funding and are

now competing for the grant

- Day fines
 - European cities often use day fines
 - Maryland has not utilized these

Results from the Task Force

Mr. Bocian said that there had been a wide-range of sanctions implemented since they worked on the task force, especially drug courts. More court-ordered community service has been handed down by judges.

Mr. Bocian handed out a packet that included several pages from the task force's final report. Several recommendations were given, including the financial impact, agencies responsible for overseeing these programs and if legislation was needed.

Victims' Rights

Roberta Roper, Stephanie Roper Foundation

Roberta Roper, Director , Stephanie Roper Committee and Foundation, Inc., Co-Chairperson, National Victims' Constitutional Amendment Network; Chair, Maryland State Board of Victim Services.

Extraordinary efforts in Maryland and across the nation have resulted in much progress for crime victims' rights and services. The impetus for that progress came from the President's Task Force on Victims of Crime in 1982. Calling our nation's treatment of crime victims a "national disgrace," the Task Force offered 63 recommendations. The final recommendation was an amendment to the United States Constitution to establish and protect victims' rights.

There is a National Victims' Constitutional Amendment Network lobbying for a federal amendment that would establish basic standards across the country, to provide for victims' rights. Essentially, these core rights are to notify victims of their rights, and to allow victims to be present and heard at appropriate criminal justice proceedings. Limited participation by crime victims restores a balance that is necessary in the search for truth and justice.

Maryland has a state constitutional amendment for crime victims' rights passed by the legislature and approved by 92.5% popular vote in 1994.

Purpose of victims' rights

- To provide restorative justice to crime victims
- To bring the role of the crime victim, to the extent possible, into the criminal justice system.
- To establish accountability within the system.
- To establish truth in sentencing
- To provide the means to document the application of victims' rights in the "guidelines," especially in regard to the court's consideration of victim impact statements and restitution
- To provide for the documentation that court fines have been collected. There is a Maryland Victims of Crime Fund whose resources are generated by fines from convicted offenders in district and circuit courts. Unfortunately, the fund is often confused with restitution or the Criminal Injuries Compensation Board, and fines are not collected.

Outreach with Offenders

Victims of crime have participated in pilot programs in Hagerstown and the Charles Hickey School. Among the purposes of these programs is to create awareness of crime's consequences to victims and to alter the criminal behavior of offenders, especially young male offenders.

Q (Kelley): *Are white collar criminals included in this? What about proxies for those who may not be articulate?*

A (Roper): Maryland laws includes white collar crimes, and when there is a problem with large numbers, a spokesperson may speak for a group. Some courts allow for a proxy to speak for a victim.

Q (McAuliffe): *Does the victim want closure or restitution? Can there be both?*

A (Roper): I believe that victims want both. Maryland law allows, but does not require restitution to be ordered. As with all crime victims' rights, victims have the following options:

- To request a right
- To withdraw a right

Maryland's notification of rights process will be easier as of October 1, 1996, when the law goes into effect.