

**Maryland State Commission on Criminal Sentencing Policy**  
**September 26, 1997**

**Commission Members in Attendance:**

The Honorable John F. McAuliffe, Chairperson  
Judith R. Catterton, Esq.  
Ms. Roberta Roper  
Walter E. Chase, Sr.  
Dr. Charles Wellford  
LaMonte E. Cooke  
Senator Delores G. Kelley  
Senator F. Vernon Boozer  
Sen. Christopher J. McCabe  
Delegate James M. Harkins  
Delegate Kenneth C. Montague, Jr.  
The Honorable Joseph H.H. Kaplan  
The Honorable Alexander Wright, Jr.  
Carolyn Quattrocki, Esq.  
Stephen E. Harris, Esq.  
Dep. Sec. David N. Bezanson for Secretary Bishop L. Robinson  
Dario Broccolino, Esq. for Marna McLendon, Esq.  
Mr. Adam Gelb  
Andrea Leahy-Fuchek, 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 asked for any additions or corrections to the minutes of the meeting held on June 19, 1997. Hearing none, the minutes were approved as submitted.

The Chairman updated the members on some recent events. He announced that some Commission members, including Mr. Harris, Senator Kelley, Judge Wright, Delegate Montague, Ms. McLendon, and the Chair, attended a conference of the National Association of Sentencing Commissions at the Breakers Hotel in Palm Beach, Florida. The seminars, which were excellent, included a presentation on the future of structured sentencing; a panel on public relations and effective communication with the public, government, and inmates; a presentation on ongoing research issues; and a roundtable discussion on race and sentencing.

In addition, Mr. Cooke, Delegate Montague, and the Chair participated in a panel presentation in Ocean City about the work of the Commission. Finally, the Chairman will be addressing various groups in October and November.

The Chairman stated that he currently has two persons under consideration for the position of Executive

Director. The Commission has also hired a staff person, Ms. Claire Souryal, for purposes of data collection and analysis, as well as computer population simulation technology. Ms. Souryal has a B.A. in psychology, an M.S., and a doctorate in criminology. She is the co-author of numerous articles. Judge McAuliffe welcomed her as a fine addition to the staff of the Commission.

The Chairman announced that the Commission now has a WEB site, and he offered his "kudos" to Dr. Wellford and the University of Maryland for the fine job that was done in building the site. The site will soon include a hotlink to the United States Sentencing Commission page. The site may be reached at

The Chairman has gathered packages of materials from most of the States, and he intends to present in the near future a summary of the sentencing approaches taken by those States.

Deputy Secretary David N. Bezanson, attending for Secretary Bishop L. Robinson, gave an update on prison construction. He stated that Western Correctional housing units one, two, three, and four are open and occupied. Unit five is funded 90% with federal funds under the Crime Bill, and the State may receive additional funds. The funding is approximately \$12,000,000. Units one through five have a capacity of 1,680 beds. Secretary Robinson has proposed that unit six be modified into a separate freestanding compound.

Senator Kelley asked about any escalation in operating staff costs. The Deputy Secretary responded that the administrative/operating cost is \$19,000 per inmate per year. Delegate Harkins asked about the nature of unit six. The Deputy Secretary responded that it is proposed to be a 192 cell housing unit of double bunks, providing 384 beds, with a guard in the middle of two tiers.

Judge McAuliffe questioned whether it costs about \$100,000 to build a bed. The Deputy Secretary responded that the entire facility will cost about \$126,000,000, so the per bed cost is approximately \$75,000 to \$80,000.

Senator Kelley asked what kind of population is housed at the facility in terms of the degree of violence. The Deputy Secretary responded that the population is becoming more and more violent all the time. The State received federal funding, in part, because of the fact that the violent population in Maryland is being housed longer than in other States. Senator Kelley asked how many non-violent offenders there are. The Deputy Secretary stated that he did not bring those statistics with him. However, they do employ options concerning non-violent offenders.

### **Patricia Cushwa - Chair, Maryland Parole Commission**

The Chairman introduced Patricia Cushwa, Chair of the Maryland Parole Commission. Ms. Cushwa has served on the Parole Board since 1992 and was appointed as the Chair in 1997. She has a B.A. in history and an M.A. in political science. She is accompanied by Ms. Patricia Ray, a former hearing officer.

Ms. Cushwa thanked the Commission for the invitation to speak. She stated that the Parole Board is currently reviewing its policies and procedures on risk evaluation and how prisoners are released from jail. She has handed out a booklet containing facts and figures relating to parole.

Ms. Cushwa lauded the Commission's ability to look at the entire criminal sentencing process and to suggest policy changes throughout the system. She noted that one of the issues to be addressed by the Commission is whether to retain discretionary release, through the Parole Board or otherwise. She is here to urge the importance of retaining some form of parole.

Ms. Cushwa noted that the Parole Board regularly receives letters from judges that recommend certain action or inaction for particular prisoners. The Board knows that most correctional officers favor parole, both because of the incentive that it provides to inmates and because of the important role that parole plays

with respect to safety within prison institutions.

The Parole Board does not release violent offenders. Ms. Cushwa noted that drug offenders constitute a very large percentage of the prison population. The population also includes older prisoners, those in need of medical care, the mentally ill, and alcoholics.

Although Ms. Cushwa is not opposed to mandatory sentences, the logical consequence of mandatory sentences is the need to build more prisons. Build - and they shall come. She favors discretionary parole - decided by those trained in risk management. She urged that parole should be retained because it creates a safer way to integrate prisoners back into the general population. She noted that victims, who can sometimes be the most compassionate of all, generally favor parole. In Ms. Cushwa's view, truth in sentencing and parole are two different concepts. She understands that parole carries with it some difficult public perception issues. Nonetheless, the people on the Board are skilled and they care.

Senator Kelley thanked Ms. Cushwa for a particularly excellent presentation. Senator Kelley noted that many states are reviewing their risk assessment tools, both in terms of what judges consider prior to sentencing and in terms of what parole boards consider afterwards. Ms. Cushwa stated that both the institutional risk and the public risk need to be evaluated. If prisoners are consistently released before the time set forth in the guidelines, then the guidelines need to be revisited.

Senator Kelley asked Ms. Cushwa to keep the Commission informed as to the time for completion of the revision of the Parole Board's policies and procedures. Ms. Cushwa stated that she expects the process to last approximately 15 months, but she will keep the Commission updated.

Ms. Roper initiated a discussion about the base to which diminution credits apply when a defendant receives a life sentence in a non-capital proceeding versus the defendant who receives a life sentence after having been tried in a capital proceeding. Ms. Cushwa stated her understanding that a "non-capital proceeding" lifer comes up for parole after 15 years and that a "capital proceeding" lifer is heard at 25 years. Credits are computed by the Department of Corrections, however, not the Parole Board.

Ms. Catterton asked Ms. Cushwa about any geographical disparity that the Parole Board encounters. Ms. Cushwa stated that there is great disparity. And, she believes that geography is the single greatest cause of disparity in sentencing, more than any other factor. The Parole Board does look at the fact that a particular defendant may have received a 25-year sentence because he or she came out of Ocean City, for example, and that a defendant coming out of Baltimore City might, on the average, receive a five year sentence. The differences between urban and rural sentencing are particularly evident in drug cases. However, the Parole Board views it to be the role of the courts, not the Parole Board, to correct issues relating to disparity.

Dr. Wellford seconded Senator Kelley's comments about Ms. Cushwa's excellent presentation. Dr. Wellford questioned what factors or issues are considered once a good risk management plan is in place. Ms. Cushwa responded the Board considers observable behavior changes, any additional schooling, where the defendant will live, what employment opportunities are available, what community support services are available, age, and the like. She noted that additional education greatly reduces the rate of recidivism.

Judge Sonner acknowledged Ms. Cushwa for her excellent remarks. He noted that he favors the continuation of intelligent parole.

Senator Boozer also gave his compliments to the speaker. He noted that he had reviewed portions of the Parole Board's handout, particularly the statistics at pages four and five. He stated that the real test of the criminal justice system relates to the number of prisoners returning to prison. He said it would be interesting to see the statistics broken down between violent and non-violent offenders. Ms. Cushwa stated that she

would obtain those figures.

Ms. Cushwa noted that the statistics at page five relating to sex offenders show that very few sex offenders are paroled. This is because 95% of the sex offenders repeat the offense. Ms. Cushwa stated that more programs, such as boot camps and drug programs, are needed all over the State.

Senator McCabe offered that perhaps the concepts surrounding truth in sentencing are best used in connection with the violent offender. Ms. Cushwa responded that, for example, requiring violent offenders to serve 75% of their sentence is already a practice that is in effect. However, requiring that 100% of the sentence be served could seriously affect safety within the prison system. Furthermore, if an inmate is required to serve all of a 25-year sentence, without the potential for participating in programs, boot camp, or work release, she questions how safe the release of that inmate is after the expiration of the 25-year period.

Ms. Catterton asked how many inmates have mental illness problems. Ms. Cushwa responded that the percentage is increasing all the time and that prisons are ill equipped to provide services to that sector of the population. How to deal with the mentally ill, particularly when they have been convicted of a petty offense, presents a difficult issue.

Delegate Montague questioned whether Ms. Cushwa has any idea of the percentage of the population within the Department of Corrections who might be better served elsewhere. Ms. Cushwa stated that perhaps as many as 65% would be better served in a different kind of facility. They could be housed in a less restrictive environment without presenting public safety issues.

The Chairman thanked Ms. Cushwa for an excellent and informative presentation.

### **Dr. Charles Wellford - Results and Analysis of Public Survey**

Dr. Wellford stated that the subcommittee, consisting of himself, Judge McAuliffe, Senator Kelley, and Senator McCabe, adapted and developed North Carolina's public opinion survey for use in Maryland. Daniel R. Lee assisted in running the project. Eight hundred adults were surveyed. The margin of error is 3-5%. The first part of the survey relates to the public's perception of crime. The results show that people believe crime to be a serious problem, with 85% of those surveyed believing that crime is a serious problem on the national level, 66% believing that crime is a serious problem on the state level, and only 11% believing that crime is a serious problem within their own neighborhoods. Most believe that there has been an increase in crime over the past five years. Twenty-eight percent of the households surveyed reported that someone in their household had been the victim of a crime and, of that group, more than one in four reported the crime to be violent in nature.

The second part of the survey relates to the perceived causes of crime. The results show that the people of Maryland believe that crime is caused by social/moral issues and by drug abuse. The lack of sufficient prison space is less important. When asked how to reduce crime, the majority of those surveyed believed that investing in children's programs is most likely to reduce crime. Delegate Harkins asked about the kind of programs that the public prefers. Dr. Wellford responded that the survey did not produce an answer to that question, but that the Commission can certainly develop and identify other areas to be included within a follow-up survey.

The next section of the survey deals with the public's perception of the effectiveness of our courts, prisons, and police officers. Unlike the past, this survey shows that only 2% of the Maryland public believes that the courts and the prison system are doing an excellent job. This is an area that needs to be studied because it has to do with sentencing. The public believes that violent offenders are not being sent to prison and that, when they are, they are not serving their full sentences. Actual findings from an analysis of sentencing data

for violent offenders in Maryland, however, show that violent offenders are indeed being incarcerated.

A majority of those surveyed believe that the rich are treated better than the poor, both in court and by the police. A majority of those surveyed are willing to pay higher taxes to cover the cost of supervising inmates who work at a productive job. A majority of those surveyed believe that juveniles should receive the same sentence as adults for violent crimes once they reach the age of sixteen.

The majority of Marylanders favor only the use of boot camps and intensive supervision for violent offenders. Their rates of approval for various forms of alternative sentencing increase significantly with respect to non-violent offenders, at least in the abstract. When presented with particular case scenarios, however, the majority of those surveyed in the majority of the case scenarios prefer prison to alternative sentences. Marylanders do not expect successful rehabilitation of drug offenders.

Dr. Wellford stated that the study reveals a need for substantial public education. The public believes, despite actual evidence to the contrary, that crime is increasing and that those convicted of crime are not going to prison. The study likewise reveals that our public officials need to be educated about the actual views of our citizens because they appear to be gathering a different view of public beliefs as they go door to door.

The public perceives that our courts are lenient and that courts help to cause crime. They want violent offenders to be locked up for a long time, but they may need some education on what constitutes a non-violent crime. The public does not want our system to focus exclusively on the current offense, particularly where the offender has been involved in a violent offense in the past.

Ms. Catterton questioned whether those surveyed requested additional information about any of the offenders when they were given the particular case scenarios. Mr. Lee responded that all responses and questions were recorded and are included within the poll.

Mr. Harris questioned whether the public's opinion concerning the courts is caused by the O.J. Simpson trial. Dr. Wellford stated the view that public opinion is probably influenced by that trial, but that the perception of the courts has been going down for the past nine to ten years. Judge McAuliffe stated the view that the press' coverage of the courts does alter the public's perception of the court system because the coverage includes only the aberrations. There are hundreds of cases handled per day that go unnoticed.

Delegate Montague questioned what factors contribute to the decline of the public's perception of the court system. Dr. Wellford responded that a person's own experience in court and the media affect the public's perception. He noted that offenders are very dissatisfied with the system, and that victims follow closely in their level of dissatisfaction. Witnesses have a somewhat better perception of the system. Judge McAuliffe noted that Montgomery County conducts an exit questionnaire of jurors and that their perception of the system is usually better after the experience than before. He also called the attention of the Commission members to a handout showing dispositions of cases in 1996. Maryland is the fifth toughest state in the country with respect to the disposition of violent crimes.

The Commission took a lunch break.

## **General Discussion**

The Commission began a general discussion of good time credits. It was noted that Marna McLendon had forwarded a letter in which she stated the view that the Commission needs to have a thorough understanding of good time credits. The Chairman stated that Richard Rosenblatt, an attorney in the Attorney General's Office who is the advisor to the Department of Corrections and who is very knowledgeable about good time credits, will be a speaker at the next meeting of the Commission.

Since 1992, those convicted of a crime of violence or drug distribution are able to earn good time credits of up to five days per month. Others may earn up to ten days per month. The credits may be taken away for improper conduct. A certain level of due process is included in the good time credit procedure - for example, inmates may be represented by other inmates and there are certain appeal rights. The norm is approximately 10-30 credits per offense, although theoretically it could be as high as 180 per offense. The average for violent offenders is ten days; the average for non-violent offenders is 20 days.

In addition to credits for good behavior, inmates earn credits (up to five per month) for participating in programs relating to jobs, education, and special projects. They may earn credits for jobs or education, but not both. Some jobs earn double credits. If the inmate is a non-violent offender and must doublebunk, the inmate earns five credits for that.

Inmates must be released from prison once they have served their sentence minus the credits. They are released, however, under supervision, and the supervision continues until their full sentence has been served. If a problem occurs, they may return to prison. Those prisoners released by the Parole Board after October of 1996 who return to prison for a violation of probation are subject to losing their accrued credits.

Mr. Rosenblatt believes that taking away all good time credits would produce a very bad result. Idleness within the prison system is not a good thing. Incentives to participate in programs should not be taken away.

The discussion then turned to issues raised by Ms. Roper in her letter dated April 22, 1997. Ms. Roper stated that the Commission should be ready to identify a legislative agenda because, in her view, it would not be effective to dump a large package of proposed legislation on the legislature all at one time. The public believes that the Commission is working towards truth in sentencing and restorative justice. It is important to everyone, including the offender, the victim, and the public, to know the truthful range of sentences. Restitution is seldom ordered, even though most offenders are eventually released from prison and are then in a position to provide restitution of some sort. The guidelines could allow for the withholding of wages.

Senator McCabe agreed that the Commission certainly needs to do more than issue a bound report and that the Commission needs to put together the steps needed for change, so as to effect real change. Senator Kelley stated that it could be a mistake to do it in a piecemeal fashion, however, for then we could end up in the position of the tail wagging the dog. Delegate Montague promoted a logical and comprehensive approach - one that promotes public safety and is cost effective. A piecemeal approach may cultivate the view within the legislature that the Commission has finished its work. The Commission would disservice its goals and mission to present any portion of a package without having a completed rationale to back it up.

Ms. Catterton reflected her agreement with the discussion, but questioned what the downside would be, for example and as Ms. Roper's letter points, to require that a judge who now would impose a sentence of four years for theft to instead state that the sentence is one to four years. Judge McAuliffe questioned whether that would create a mandatory minimum sentence.

Delegate Harkins stated that the House Judiciary Committee has been deferring votes on certain kinds of bills because the Committee wants to see the work product of this Commission. A proposed partial bill, when answers to various questions are not yet there, is too soon, too fast.

The Chair stated that he has been hearing two things from the discussion: (1) that the Commission members believe that enough information has been gathered for now; and (2) that proposals should be formulated by the subcommittees for review by the Commission. Senator Kelley stated her belief that additional information is still needed with respect to Maryland. Judge McAuliffe stated that information from the outside world should not be precluded because this is such a dynamic area.

Senator Boozer agreed that subcommittees should deal first with the various issues, then the Commission should discuss and vote upon them. Delegate Montague stated his concern about the public's perception of the courts, and he questioned how that concern fits into the subcommittees' work.

Dr. Wellford stated that his view was somewhere in between. He offered that numerous areas are inter-related and that a consensus of the Commission may be needed in certain areas prior to subcommittee review. For example, does the Commission favor structured sentencing? What about use of a matrix? What factors are to be included? How much truth in sentencing does the Commission want? How does the Commission view the issue of parole?

Senator Kelley questioned whether there are any issues that can be eliminated - for example, structured sentencing in the District Court. Judge McAuliffe questioned how the District Court could be eliminated from an overall scheme. Senator Kelley offered that issues like the size of the District Court caseload and the lack of computers seem huge.

Mr. Gelb stated that most issues boil down to money. The budget right now is primarily directed at education and the prison system. If options are created, then the options programs will be flooded with use. Judge McAuliffe noted that intermediate options programs fail when everybody is sent into the options. Perhaps those options need to be incorporated into a matrix.

Ms. Quattrocki stated the view that five or so questions should be formulated, then the subcommittees could be built around those questions.

Senator Kelley stated that the District Court lacks good risk assessment abilities, primarily because of the lack of computers. Dr. Wellford pointed out that, for the cost of ten prison cells, the District Court could have computers. Senator Kelley certainly agreed that the District Court should have access to the history of offender status, no matter what this Commission does. Delegate Montague stated that the cost of ten prison cells is a small investment. Judge Wright noted that the circuit courts and the District Court have concurrent jurisdiction in some areas. That being true, disparity might result if the District Court is not included in any overall scheme.

Chief Chase stated that the police currently provide the courts with information relating to the defendant's prior record. Ms. Catterton and Judge Wright stated that this depends on the type of offense involved and on the particular county involved. Judge McAuliffe noted that it might be cheaper to provide the State's Attorney's Offices with this information.

Mr. Gelb stated his awareness that significant numbers of defendants go through the District Court. However, he is unaware of the split between the two courts. Judge Kaplan noted that a legislative change will grant exclusive jurisdiction to the District Court with respect to certain kinds of drug cases and that this will eliminate a large number of cases in the circuit courts. Judge Kaplan stated that the potential for guidelines in the District Court cannot be "written off," if for no reason other than the size of the District Court caseload.

Senator McCabe stated that everyone appears to agree that violent offenders should go to prison and stay there for the length of their sentences, subject to good time credits. It also appears that many defendants are sent to prison when they could be effectively treated elsewhere. An idea that he has been formulating just today revolves around the notion that perhaps structured guidelines might be made applicable to violent crimes only, retaining the current wholly discretionary guidelines for non-violent offenses.

Delegate Montague stated that he is most interested in the lower end of the crimes committed, where there is the potential for less recidivism and where prison space could be effectively freed up. Judge Sonner stated

his concern about the division between violent and non-violent. Violence is often a characteristic of youth. Under Senator McCabe's suggestion, a nineteen year old could be kept in prison until the age of 35, for example. He questioned whether a system that divides the violent from the non-violent might result in inner city youth being put away, with suburban youth going free.

The Chair stated that five questions or so will be developed and circulated prior to the next meeting. Ms. Catterton stated that she would like to see a transcription of Ms. Cushwa's comments.

There being no further discussion or comments, the meeting was adjourned.