

Maryland State Commission on Criminal Sentencing Policy
October 17, 1996

Commission Members in Attendance:

Judge John F. McAuliffe
Sen. Vernon. F. Boozer
Judith R. Catterton
Walter E. Chase
Judge Howard S. Chasanow
William Kelley for LaMonte Cooke
Del. Harkins
Stephen E. Harris
Judge Joseph H.H. Kaplan
Sen. Delores G. Kelley
Sen. Christopher McCabe
Del. Kenneth C. Montague
Roberta Roper
Andrew L. Sonner
Del. Joseph F. Vallario, Jr.
Dr. Charles Wellford
Judge Alexander Wright
John Lang for Bishop Robinson

Staff Members in Attendance:

Sandra Shane-DuBow

General Business

The next meeting will be held at the Commerce and Government Matters Hearing Room, House Office Building 140 on Thursday, November 7. A meeting notice and agenda will be mailed to members. Please come prepared for a working session.

Judge McAuliffe gave an update of recent Commission activities.

Meetings with Outside Groups. Judge McAuliffe, Sandra Shane-DuBow, Adam Gelb and Pamela Quirk met with George Keiser, National Institute of Corrections, and Larry Meachum, Office of Justice Programs, to determine what kind of federal assistance might be available to the Commission. Judge McAuliffe stated that both federal agencies had a significant interest in the Commission and its activities. Judge McAuliffe plans to submit a grant application to both agencies as soon as possible.

Judge McAuliffe appeared with the Lt. Governor and Adam Gelb before the Criminal Law Section of the Maryland State Bar Association. This meeting marked the beginning of greater involvement and communication between the members of the Commission and the Criminal Law Section. Judge McAuliffe noted that some members of the Commission were also members of the Criminal Law Section.

The November 7th and December 12th, Commission meetings will be devoted to discussion of the major issues. Commission members will be invited to share their views. Judge McAuliffe said that he would make

a brief opening presentation and then allow for full discussion of the issues.

Public Hearings

The first public meeting planned for November has been changed. It may be more prudent to first do some groundwork to determine strategies for gaining public involvement and input into the Commission's work. Judge McAuliffe suggested forming a committee on public involvement to formulate a plan. He also stated that the Commission should spend time clarifying its goals and identifying major issues in order to set an appropriate agenda for public debate. The first public hearing will be held no earlier than January 1997.

Committees

Judge McAuliffe suggested that four subcommittees be formed:

1. Research and Statistical Modeling
2. Community Corrections and Options
3. Public Outreach
4. Guideline Development

He asked Commission members to consider their particular interests and whether there were additional areas of interest or concern that should be explored. Lastly, Judge McAuliffe stated that the committees should feel free to take advantage of volunteers and community members with expertise in particular areas. Committee assignments, once established, will be announced at the December meeting.

Howard Relin, *State's Attorney & Edward Nowak, *Public Defender The J.U.S.T. Initiative, Monroe County, NY**

The Commission was provided with and viewed a video tape from Monroe County, New York.

Howard Relin has been the State's Attorney for 14 years and a member of the State's Attorney's Office for 30 years. Edward Nowak has been the Monroe County Public Defender for 18 years.

In Monroe County, an effort to improve the criminal justice system was initiated. (Monroe County has a population of approximately 750,000.) A criminal justice panel was formed to identify problems and form solutions. Monroe County public officials believed it was important to show the community that they, as public officials, could work together to improve the criminal justice system. Monroe County took a systemic approach; that is, each component of the criminal justice system was represented on the panel. To begin, panel members participated in Total Quality Management (TQM) training.

The panel identified jail overcrowding as a large problem for the County and began collecting data and information that could help them answer their many questions about why they had a jail overcrowding problem. (The total capacity of the two Monroe County jails is 900.) As a result of their efforts:

- 200 fewer misdemeanants are currently housed in the jail;
- a backlog of 755 cases has been reduced to less than 300; and
- cases are now going to trial in about four weeks.

As a result of collecting data and developing adequate information systems, they are making better sentencing decisions than in the past.

As there has been a significant increase in the number of female drug offenders and related crimes, Monroe County has provided a number of diversion and pretrial services programs specifically designed for women

that have won statewide recognition and the Catholic Services Program has a residential drug treatment program; children are allowed to stay with their mothers throughout the process.

Q: Are sentencing guidelines mandatory?

A: There are no mandatory sentences for misdemeanors. Prison is mandatory for violent offenses like rape, robbery, and assault. Multiple offenders are also eligible for mandatory life sentences. New York does not have presumptive sentencing in the same way as Minnesota or North Carolina. There is also a new parole board in New York; but because of the sentencing laws and the Governor's stance on locking offenders up for longer periods of time, many offenders don't get paroled.

Q: How can you sell an initiative like this to the public in times of budget deficits?

A: In Monroe County, the Panel's recommendations were more cost effective, i.e. it was cheaper than spending \$18 million for another new jail. The cost differences were: \$25,000 per year to house one person in jail versus \$2,000 per year for one person in drug treatment. In Monroe County, the panel also presented a united front to the community and spent the time that was necessary to develop consensus about what they should do. In the end, speaking as one voice was what really sold it.

Q: How have the new sentencing laws in New York effected the prison population?

A: The prison population has increased. The Governor increased sentence lengths for more violent offenders and, at the same time, reduced the number of prison admissions by creating drug treatment programs for nonviolent offenders.

Q: How much discretion do judges have in sentencing felonies?

A: Judges have a lot of discretion -- more than the federal system.

Q: Is it fair to say that if you didn't have a county manager with a vision, that this initiative would not have happened?

A: I believe it wouldn't have happened.

Q: Is the state a viable source of assistance for counties in New York who want to take on an initiative like this?

A: We did not have state help, however, we are currently looking at the number of parole violators in the jail. I think the state would be supportive of the process we have introduced to streamline parole case management.

Q: Have there been increases in probation resources as well?

A: Yes, and they have made a difference. We now provide intensive probation; it became part of the whole graduated system of sanctions.

Q: How do agencies share information? Do they have access to the same resources? Are there any confidentiality restrictions?

A: Pretrial sends its information to probation. They are located in the same building. Pretrial Services can walk clients down the hall and introduce them to their probation officers. They share a lot of information. Everyone in the system respects confidentiality. Information gathered by Pretrial Services would not be used in any harmful way.

Q: Is there good time credit?

A: Yes, good time is given up to one-third of the sentence. In New York the minimum sentence must be served. If the sentence is 5-15 years, the offender must serve 5 years. They earn good time off the maximum sentence up to one-third of the sentence. You could earn up to 5 years good time on a 5-15 year sentence. Thus, your 15 year maximum sentence becomes a ten year maximum sentence if you earn all your good

time and have not lost any due to disciplinary procedures. You must then be released or conditionally released at the service of ten years.

Q: Who is required to serve 85% of their sentence now?

A: If you are a violent offender you must service 6/7th's of your sentence (85%). If you get a 14 year sentence, you must serve 12 years. As a result, there has been a steady increase in the state prison population. There is no doubt that, in the long run, the prison population will go up.

Q: Are there educational or work credits in addition to good time?

A: No, there are programs available after service of so much of your time, but not for any violent offenders. If you are a violent felony serving 85% of the sentence, you are not eligible for work release.

Q: What commonalties exist among jurisdictions who have tried this kind of initiative?

A:

- A strong leader. There is somebody within the community with the statutory responsibility or perceived status in the system that can serve as the convener. In Morn County, it was the county manager. Judges are a group who can often play this role. It must be someone who has leadership skills and the personality to bring people to the table.
- Agreement on the process. Set out the rules of the game so that everyone can agree to them and be willing to abide by them.
- Joint venture and ownership. It is important to understand what the stakes are for each individual sitting around the table.
- Perception. It is important to have players who have reputations for being tough on crime. They make good spokespeople for the effort and can win the public's confidence more easily.
- Focus on outcomes. Identify the real problems and look at information to understand the dimensions of the problem.
- Manage through the process. It is important to stick with the process even after implementing new initiatives to assure that programs continue to meet goals and objectives. Monitoring is an important role to be played by a criminal justice policy group.

Q: As a statewide sentencing commission, how can we mandate this type of cooperative venture?

A: You obviously can't mandate it, but you can bring people to the table. You can talk to people who are responsible public officials. You can work with people who have credibility in the community. You need public officials who are responsible and willing to work together. For us in Morn County, it has been a good fiscal decision and a good community decision.

Q: Does the plea agreement prior to indictment include any input from the victim?

A: Yes, we have a victim-witness coordinator in our office. We notify victims on every felony case. In many cases, the victim wants treatment for the offender or restitution. Victims also come to court at the time of arraignment. All victims in felony cases have the right to address the court.

Q: How many cases are plea bargained?

A: Plea bargains have increased; trials have decreased. For those cases we can resolve, we find we are resolving them faster. We are probably arriving at the same decisions, just earlier on in the process. The judge also agrees to participate in the process and so it is now a formal court procedure.

**Marco Mauler, Assistant Director - The Sentencing Project
Racial Disparity In The Criminal Justice System**

Support documentation distributed:

- The Sentencing Project - *Events, Services and Publications List*
- Mauler, Marco and Malcolm C. Young. (October 1996) - *Truths, Half-Truths, and Lies: Myths and Realities about Crime and Punishment*.
- Mauer, Marc. (October 16, 1995) - *Disparate Justice Imperils a Community*. Legal Times.

Q: Why talk about racial disparity with a sentencing commission?

A: In the past 20-25 years, there have been significant sentencing changes across the country which have had a profound impact on racial disparity within the criminal justice system. Therefore, it is critical to consider the potential impact on racial disparity when considering sentencing changes. A study conducted last year by the Sentencing Project looked at 20-29 year olds to see what degree they were enmeshed in the criminal justice system on any given day. One in three African Americans is in prison, jail, on probation or parole on any given day. One in eight Hispanics and one in fifteen whites is in prison, jail, on probation or parole on any given day. There has been a substantial rise in the number of African Americans under correctional control from 1 in 4 in 1989 to 1 in 3 in 1994-95. There are more black males incarcerated in prison or jail than enrolled in higher education. In regard to women, from 1989 to 1994 there was an 8% increase in the number of African American women involved in the criminal justice system.

Q: Why are so many African Americans under some form of correctional supervision?

A: From 1976 to 1996, African Americans were arrested for about 45% of all violent crimes and for about 30% of all property crimes. This is disproportionate to the percentage of African Americans in the population (about 13%). There is virtually no change in these rates over the twenty year period.

From 1980 to 1992 there was a dramatic rise in prison population -- an increase of about 200,000 offenders in twelve years. 16% (1 in 6) of the additional offenders were violent offenders and almost half (46%) were drug offenders. Overall, 84% were nonviolent, property and drug offenses. The vast majority of offenders being sentenced to prison over the past several years are drug offenders. In 1983, 1 in 11 offenders was serving time or awaiting trial for a drug offense. Ten years later that number had increased to 1 in 4 offenders, or 300,000 additional drug offenders being incarcerated.

Q: Who is being arrested on drug offenses?

A: In 1981, African Americans comprised 22% of the drug posse arrests nationally. By 1990, it had climbed to 37%.

Q: Who is using drugs?

A: The National Institute on Mental Health reports that African Americans represent 13% of all drug users, Hispanics are 10% and whites are 77% of all drug users. There appears to be a wide gap between who is using drugs and who is being incarcerated for using drugs.

Q: What is the difference between the usage of crack cocaine and powder cocaine?

A: The majority of crack cocaine users are white, about 52%. 38% of crack users are African American, yet, 88% of the crack cocaine convictions are African Americans. In the federal sentencing system, possession of 500 grams of powder cocaine carries a mandatory five year prison sentence. For possession of 5 grams of crack cocaine (1/100th the amount), there is a mandatory five year prison sentence.

Q: Do people feel safer today than twenty years ago?

A: Given the number of offenders being incarcerated -- five times as many people are being incarcerated today than twenty years ago -- there should be some impact in terms of public safety.

Q: How does the United States compare with other countries?

A: The United States is second only to Russia in the number of people incarcerated per 100,000 of the population. The incarceration rate in the United States is five to ten times higher than Canada or any other

western country.

Q: Who is committing crimes?

A: Young men in their late teens and early twenties are the peak years for committing crimes. Crime rates drop dramatically for age groups older than that. For many young men today, there are fewer opportunities to work your way out of crime. Unless we are willing to deal with the problem of crime, there will always be someone to replace the criminal we take off the streets.

Q: What is the relationship between child well-being and incarceration rates among the fifty states?

A: (The child well-being is a composite rate of the percentage of children living in poverty, birth rates, number of single parent homes, etc.) In states with low child well-being rates, there are high incarceration rates. In states with high child well-being rates, there are lower incarceration rates. It is possible that high child well-being states are less likely to produce children who commit crimes. It is also true that those states who spend a lot of money on incarceration generally have less money to spend on children. There are always going to be tradeoffs.

Q: What should sentencing policy look like?

A: There are always conflicting goals and outcomes. Often, there is a priority to incarcerate more violent offenders. This could result in more African Americans in prison especially if they are committing a larger portion of the violent crimes. It is important to have some structure in sentencing, but at the same time, sentencing policy must allow for sufficient flexibility to consider each case individually so that issues other than race can also be reviewed.

Q: When Judge Ross was here, he stated that they found that most of North Carolina's racial disparity was in lower level property crimes. They showed a steady decrease in racial disparity with the severity of the crime.

A: Other studies have shown the same thing. If you commit a violent crime you are going to go to prison, it doesn't really matter what race or class you are. There is more discretion with less serious offenders, so a sentencing decision could include prison or it could include a community sanction.

Q: Do you have any statistics that show the effect on rehabilitation of education versus prison?

A: There are some studies that show that more education is correlated with lower recidivism rates. Generally speaking, if people get the skills they need, they will do better.

Q: Are you questioning whether structuring sentencing is useful?

A: No, there have been many good things done with structured sentencing, but we still need to deal with individuals as well.

Q: Are there studies that show that violent offenders cease their criminal activities sooner than nonviolent offenders?

A: Yes, but I don't know the research off the top of my head. For example, the 35 year old robber who committed the crime when he was 18 years old is a great guy! Many supervisors suggest that these offenders are much easier to deal with.

**Jack O'Connell, Director, Delaware Statistical Analysis Center
Prison Population Projections**

Support documentation provided:

- O'Connell, Jack (October 17, 1996). *Three State's Notes Relating to Sentencing Guidelines and Population Projections: Delaware, South Carolina, Washington State*. Prepared by the Delaware Statistical Analysis Center.

The development of sentencing guidelines is not a one time event, it is a commitment that every policy body and community should make for the long term. The development and implementation of sentencing policy requires constant vigilance. When we construct population projections in Delaware, they are routinely disseminated with explanations. No projections are ever entirely accurate. We like to be in a position to review on an ongoing basis what actually did happen compared to what we thought would happen. In this way, we act as arbitrators of the information to help others understand what the projections really mean. My purpose today is to talk with you about how I have used statistics and information to in places where I have worked.

In Delaware, sentencing guidelines provide for extensive intermediate punishments. The guidelines in Delaware are voluntary. Advisory guidelines can work if they are enforced. In Delaware, the Chief Justice asked all the judges to comply with the guidelines. On the sentencing grid, the severity of the crime is what dictates whether it is a violent offender. A Felony A requires a minimum 15 year sentence. A Felony B requires a minimum two year sentence. A Felony C is a presumptive sentence where an offender can be sentenced to either jail or prison. In Delaware, violent felonies do serve about 85% of their sentences.

Guidelines were developed in two steps in Delaware. The first step was to develop the sentencing structure; this was called SENTAC. The second step was to develop truth in sentencing; 90% of good time was abolished. Currently, about 1/4th of all sex offenders incarcerated are there for life. Imposition of prison time greater than a year has increased. In addition, the jail population has increased.

In South Carolina, a truth in sentencing bill was passed in 1996. It has a \$2 billion price tag and nobody wants to pay for it. The Sentencing Commission was created essentially to reduce the sentencing bill's impact on the prison. Depending on the type of structured sentencing developed, the prison population could be anywhere between 19,000 and 38,000 offenders. In South Carolina, violent offenders will serve longer periods of time in prison and nonviolent offenders will likely serve more community sentences. A projection model was very important to South Carolina in helping them understand how various sentencing schemes could impact their criminal justice system.

Q: Has there been a difference in recidivism rates for those who have served the longer sentences?

A: Not yet. There is a study currently underway that suggests that the recidivism rates of those serving longer sentences has declined a bit.

Q: How many of the probation and parole violations are minor or technical violations?

A: Many of the violations involve a new crime. Guidelines were also developed for violators in order to achieve more consistency in sentencing.

Q: Typically, what is the judge's response to violations?

A: The presumption is that the judge will respond by sentencing the offender to a sanction in the next highest level on the sentencing grid. When you develop sentencing policy, you must also determine what you are going to do with violations. In addition, you need to look at parole, Delaware abolished parole.

Q: Were there overarching principles or a framework in which sentencing decisions were made? How effective have you been in staving off attempts by the legislature to tinker with particular crimes?

A: Each policy body I worked with has faced this issue, but the fact is that each of these groups is still working today because they took on a Leadership role with respect to sentencing. You will have to deal with political realities.

Q: What is judicial compliance with sentencing guidelines?

A: About 80%.

Q: Do offenders serve 85% of their sentence?

A: In Delaware only violent felonies serve 85%; in South Carolina, all offenders serve 85% of their sentences. In Delaware, overall, offenders serve 75% of their sentence. Offenders can earn good time and earned time. The average violent offender in Delaware is actually serving about 88% of the sentence.

Q: How are sentences served?

A: In Delaware, a burglar sentenced to ten years will serve two of those years in prison according to the guidelines. After that, the offender will spend six months in a halfway house, then spend a year on intensive supervision and at a day reporting center, and then will be supervised on standard probation for about two years. The offender will actually serve two years x .88 in prison.

Q: Are software packages available with projections models?

A: All states are different so you have to create your own model. There is a lot of software out there and I would be willing to consult with you on this.

Kermit Humphries, Program Specialist - National Institute Of Corrections Status Report On Parole

Support documentation:

- National Institute of Corrections (November 1995). *Status Report on Parole, 1995: Results of an NIC Survey*.
- Humphries, Kermit (October 17, 1996). *Overhead slide presentation: Summary Information about Parole*. Prepared for the Commission.

Parole looks dramatically different in every jurisdiction around the country. The National Institute of Corrections conducted a survey of paroling authorities around the country in 1995. The following presentation is taken largely from the survey results. The presentation will revolve around three questions:

1. Why is it important to be clear about the distinction between parole and discretionary release?
2. Why haven't paroling authorities gone away?
3. Where discretionary release continues to exist; what are major recent trends?

Nationally, 1/3rd (17) of paroling authorities have full release discretion (there are no offenses which are not parole eligible); about 1/3rd (16) of paroling authorities have no discretion for offenses that are committed now; and about 1/3rd (19) of paroling authorities have limited discretion. Maine is the only state in the country without a parole board. A primary reason why boards still exist is to deal with cases sentenced prior to sentencing guidelines or truth in sentencing type legislation. Parole boards will be needed for some time to come. The federal board will operate for another five years.

Q: How many parolees are there?

A: There were 700,000 parolees in 1995. Even though there is continual discussion about abolishing parole, there are still more and more parolees every year.

Q: How do offenders become parolees?

A: In 1977 88% of offenders who were released from prison were released via a parole board decision. In that same year, only about 7% were released because of the force of law, i.e. sentence expiration. In 1994, for the first time, more offenders were released from prison due to sentence expiration rather than being paroled. The number of mandatory releases has increased from 18,000 in 1977 to over 52,000 in 1994. This is 52,000 offenders who are released from prison with no community control.

Q: How do paroling authorities respond to violations?

A: In Maryland, the parole revocation rate is one of the lowest in the country. In some states, revocations represent more than 50% of the admissions to prison.

Q: What are the recent trends in parole?

A: The decision making process used by paroling authorities is more open. Many more people now understand how parole decisions are made. This wasn't true in the past. Victims are more involved in the process. There is now public notification -- a significant change in the past few years. Paroling authorities are also structuring their decisions in order to make more fair and consistent release decisions. Paroling authorities are also looking at how to structure violations responses and revocation decisions and other policy related decisions.

Q: What happened when Colorado abolished their parole board?

A: Connecticut did the same thing. There, they abolished discretionary release -- they were one of the first to do so. Then they became overcrowded so the Department of Corrections was given full discretion to institute a mandatory release program. They decided that the release discretion needed to be managed so they decided to reinstate a parole board. In Colorado, the board was reinstated once and then abolished in order to fire all the board members. When they were reconstituted the second time, they created a commission to create release decision making guidelines. They developed excellent release guidelines. When the boards in Connecticut and Colorado were reinstated, it was with the understanding that they become explicit in their decision making.

Q: Is there any truth to the perception that parole boards operate like loose cannons with little or no information?

A: Virginia has a marvelous system that they developed. Of course, in Virginia, discretionary release was abolished when Governor Allen was elected. In Virginia, they have developed an excellent information system drawn from all of the criminal justice data systems. They now know at any given time how much time an offender has served, when his eligibility date is, etc. They also built in an ongoing vehicle so that each year they can go back and see what impact their policies have had.

The meeting was adjourned at 4:00 p.m.