

**Maryland State Commission on Criminal Sentencing Policy**  
**October 2, 1998**

**Commission Members in Attendance:**

Hon. John F. McAuliffe, Chairperson  
Judith R. Catterton, Esq.  
Ms. Roberta Roper  
LaMonte E. Cooke  
Senator Christopher McCabe  
Hon. Joseph H.H. Kaplan  
Hon. Alexander Wright, Jr.  
Stephen E. Harris, Esq.  
Robert Gibson for Secretary Stuart Simms  
Adam Gelb  
Hon. Timothy Doory  
Sally Marker  
Carolyn Quattrocki

**Staff Members in Attendance:**

Kim Hunt, Executive Director  
Claire Souryal, Research Director

Judge McAuliffe opened the meeting with several announcements:

- Judge McAuliffe, Secretary Simms, and Adam Gelb attended the general membership meeting of the Maryland Correctional Administrators Association. With regard to the implementation of statewide correctional options programs (front-end and back-end), Association members were most concerned with the funding of such programs. They were also concerned with implications of truth-in-sentencing policies on prison and jail bedspace needs and the associated construction/operations costs.
- The next Sentencing Commission meeting is scheduled for November 16th and 17th at the Wye River conference center. Judge McAuliffe anticipates that it will be a very important meeting.
- The purpose of today's meeting is to stimulate thought and discussion with regard to the following issues: (1) the adoption of voluntary or presumptive sentencing guidelines (or some combination, i.e., a "hybrid" system); (2) truth in sentencing policies (requiring various percentages of time-served); and (3) judicial compliance with the sentencing guidelines.
- Judge McAuliffe alerted the commission to the publication of a book titled Mandatory Minimum Drug Sentences which describes the findings of a RAND corporation study. Judge McAuliffe will distribute the first two chapters of the book if he can obtain copyright permission.
- Status Report on Goals, Findings, and Recommendations Relating to Guidelines

Dr. Hunt asked that the Commission consider the status report that was distributed earlier in the week. He reviewed the legislation that created the commission and some proposed findings. He then discussed the recommendations. As noted in the legislative charge to the commission, recommended directions should include a prison neutral option that leaves prison bed space at current projected levels, and a non-prison neutral option that is not so restrained.

Dr. Hunt presented three options, to be adjusted or mixed as the Commission chooses. Option 1 and Option 2 support the current guidelines with minimal changes and the addition of a Corrections Options zone on the drug and property matrices. Option 2 includes a limited form of truth-in-sentencing. Option 3 reworks the cells in property and person matrices, reducing the ranges to accommodate truth in sentencing and presumptive sentencing at affordable levels. All three options incorporate a revised drug matrix. None of these options is prison neutral.

He outlined the options as follows:

**Option 1: Diagnosis indicates that only minimal change is necessary.**

Use New Drug Matrix (judiciary's recommended matrix)

- 70% compliance (achieved through additional training and judicial monitoring)
- Corrections Options cells, not to include offender score seven or more
- No change to time served
- In and Out cells clearly marked on matrix

Property Matrix

- No change to matrix
- 70% compliance
- Corrections Options cells, not to include offender score seven or more
- No change to time served
- In cells clearly marked on matrix

Person Matrix

- 70% compliance
- No Corrections Options cells
- No change to time served
- In and Out cells clearly marked on matrix

**Option 2: Diagnosis indicates citizen doubts require limited truth-in-sentencing changes.**

Use New Drug Matrix (judiciary's recommended matrix)

- Increase minimum parole eligibility to 50%
- Expect 70% or greater compliance
- Corrections Options cells, not to include offender score seven or more
- In and Out cells clearly marked on matrix

Property Matrix

- Increase minimum parole eligibility to 50%
- Expect 70% or greater compliance
- Corrections Options cells, not to include offender score seven or more
- In cells clearly marked on matrix

Person Matrix

- Increase minimum parole eligibility to 60%

- Expect 70% compliance
- No Corrections Options cells
- In and Out cells clearly marked on matrix

**Option 3: Diagnosis indicates citizen doubts require truth-in-sentencing changes and presumptive sentencing for certainty.**

Use New Drug Matrix (judiciary's recommended matrix)

- Presumptive sentencing with appellate review for all sentences. Expect 90 % compliance
- Increase minimum parole eligibility to 50%
- Corrections Options cells, not to include offender score seven or more
- In and Out cells clearly marked on matrix

Develop a New Property Matrix Reflecting Current Time Served

- Presumptive sentencing with appellate review for all sentences. Expect 90 % compliance
- Increase minimum parole eligibility to 50%
- Adjust guidelines to reflect actual sentencing and time served practice
- Corrections Options cells, not to include offender score seven or more
- In cells clearly marked on matrix

Develop a New Person Matrix Reflecting Current Time Served

- Presumptive sentencing with appellate review for all sentences. Expect 90 % compliance
- Increase minimum parole eligibility to 75% (or 85%), but only selectively increase punishments
- Adjust guidelines to reflect actual sentencing and time served practice, then raise punishments for selected offenses
- In and Out cells clearly marked on matrix

**Commission discussion points:**

1. Sentencing Disparity

Ms. Catterton voiced concern with regard to the Commission finding of "unwarranted sentencing disparity" in Maryland. She stated that the phrase "unwarranted sentencing disparity" was too strong and seemed to overstate the amount of sentencing disparity found in Maryland. She contended that the Commission did not investigate all the possible sources of such disparity and that the Commission study failed to control for economic and educational factors. She asserted that it was a dangerous and powerful statement and suggested that the word "unwarranted" be removed. It was also suggested that the Commission be more specific about the findings in the final report.

2. "70% Compliance"

Delegate Vallario questioned whether it would be possible to ensure 70% compliance when the behavior of persons who fall into the same guideline cell may be drastically different (e.g., a drug seller and a drug conspirator). On the other hand, Mr. Harris raised the possibility that the education and persuasion strategy intended to increase judicial compliance may result in compliance that exceeds 70%. If the education/persuasion strategy campaign resulted in 90% compliance it would come at additional correctional expense.

Mr. Harris questioned whether the lack of judicial compliance statewide occurs predominantly in

Baltimore City due to the volume of cases and the need to plea bargain. Commission analysis of judicial compliance by county revealed that it occurred throughout the state.

Ms. Catterton raised the possibility that downward departures in drug cases may be due to credit defendants receive for law enforcement cooperation.

### 3. Content of Final Report

Senator McCabe stated that it may be unrealistic to expect the General Assembly to pass legislation in response to the Commission recommendations in the next year since they will require time for study. He suggested that the Commission specify a range of options for the General Assembly to consider since it may be unwise to exclude prematurely certain options. Ms. Quattrocki suggested that the Commission specify its best model, but provide information about alternative scenarios (including the bedspace impact of the alternatives). Mr. Gelb countered that it was the responsibility of the Commission to do the cutting and pasting and to provide the General Assembly with the preferred option.

### 4. Voluntary versus Presumptive Sentencing Guidelines

Judge McAuliffe introduced the topic of voluntary versus presumptive guidelines. Judge Kaplan questioned whether presumptive sentencing for 643B offenses in combination with a truth in sentencing policy of 70% would increase bedspace needs. Judge McAuliffe answered that it would increase bedspace needs.

To demonstrate the point, Dr. Hunt presented an overhead depicting the mid-range of the person grid (rows 7 through 10). The most common offenses in rows 7 through 10 include robbery with deadly weapon, assault with intent to maim, rape (2nd degree), and sex offense (2nd degree). Each cell on the grid contained the percentage of downward departures and percentage of cases that received a non-incarcerative sentence over approximately a 10-year period. The table revealed that considerable percentages of cases within each cell were downward departures (ranging from 33% to 78%). In addition, a non-trivial percentage of persons received a non-incarcerative sentence (most commonly within the first column of the matrix where individuals do not have a prior adult record).

Ms. Catterton noted that armed robbery includes a wide range of behavior and includes weapons other than firearms (e.g., knife, butter knife).

Senator McCabe suggested that in order to implement presumptive sentencing and truth in sentencing without an enormous bedspace impact, the recommended sentences in each cell would have to be adjusted downward. However, Senator McCabe noted that the public is not as concerned with judicial compliance to the sentencing guidelines. The public is more concerned about a realistic connection between what is stated in the courtroom and what actually happens.

Ms. Catterton noted that after two years, the Commission still does not know why there is noncompliance. She asserted that the Commission is skipping a step and that it should not jump to the conclusion that there is a problem without study. She suggested that the Commission ought to presume that there is a reason for departures. Judge McAuliffe explained that judges are required to state their reasons for departure on the sentencing guideline worksheet. However, some judicial explanations have deteriorated over time to superficial responses such as "plea bargain."

Judge Kaplan suggested that the sentencing guidelines remain voluntary, but that judiciary be required to state the reason(s) for departure using a list of mitigating and aggravating factors. Judge Kaplan moved to keep the sentencing guidelines voluntary and to implement a new and on-going sentencing

commission.

The Commission voted to maintain a voluntary system and require the judiciary to list reasons for departure using an enumerated list of aggravating and mitigating factors with room for "other" departures that require a narrative description. Seven members voted in favor of the motion and 4 members voted against the motion.

## 5. Truth in Sentencing Policies

Judge McAuliffe suggested two potential forms of truth in sentencing: (1) adoption of 85% truth in sentencing coupled with a major revision of cell ranges; and (2) adoption of a standard of 50% or 60% minimum parole eligibility (50% for drug and property offenses and 60% for person offenses) without revising the cell ranges.

Judge Wright questioned the impact of such policy on District court sentences and on persons who serve time in local jails.

Mr. Gibson (Department of Public Safety, Office of Research and Statistics) explained that persons with sentences of 1 year or less are most likely released on mandatory release. The adoption of a 50% truth in sentencing policy would therefore not affect this sub-population because they are rarely released on parole. Persons released on mandatory release served approximately 55% to 60% of their sentence. Persons who serve between 1 year and 18 months are more likely to be looked at for parole. Under a new truth in sentencing scheme, those who are presently paroled would have to serve a greater proportion of their sentence.

Senator McCabe questioned whether truth in sentencing policies should apply to drug and property offenders since the enabling legislation directed the Commission to focus on dangerous offenders. He proposed that truth in sentencing legislation apply to person offenses only. Since parole eligibility is already restricted to a minimum of 50% for 643B offenders and offenders convicted of burglary (1st and 2nd degree), he suggested increasing the parole eligibility minimum to 70%.

Ms. Quattrocki suggested that increasing the minimum parole eligibility requirement to 70% may increase judicial noncompliance since judges may take the parole restrictions (and hence the increase in time-served) into account in fashioning their sentences.

Mr. Gibson stated that the sentencing guideline ranges were in fact created when parole release practices were more liberal.

Ms. Catterton noted that it is problematic philosophically to restrict truth in sentencing policies to person, but not drug and property offenses.

Mr. Harris asserted that we need some form of discretionary release in order to facilitate prison management and control. Mr. Gelb noted that the extant literature does not establish a minimum percentage of time that inmates must be able to earn off their sentence in order to ensure good conduct. Therefore, even the possibility of a 15% reduction from 100% to 85% may be enough of an incentive to control prison misconduct.

Chairman Vallario noted that the incarceration rate in Maryland is very high. He suggested further that the Commission has not spent enough time examining the guidelines themselves, for example, the changes to Assault 1st and 2nd degree. He also noted that the judicial noncompliance (i.e., downward departures) at the higher end of the person matrix results from plea bargains (state's attorneys and defense attorneys will agree to cap rather than a guidelines range that is very severe).

Ms. Catterton noted that she would like to see a more concrete discussion of proposed changes, including examples of the impact of potential policy choices on the time served and sentence lengths of hypothetical individuals. Ms. Catterton reiterated the possibility of implementing a process whereby judges announce a sentence range in open court. She also suggested that the Commission investigate the possibility of implementing "bad time" -- a concept currently in place in Ohio.

Chairman Vallario asserted that state legislation is the answer to truth in sentencing using the current 50% minimum parole eligibility requirement for 643B offenders and burglary (1st and 2nd degree) offenders as an example.

Senator McCabe questioned whether 50% was appropriate.

Mr. Gibson noted that the legislation prohibiting release of 643B offenders (as well as burglary 1st and 2nd degree), has impacted on persons who were sentenced prior to the imposition of the legislation because of parole policies.

Mrs. Roper suggested that is hard to justify a truth in sentencing policy that only applies to one category of offenders and not another. Everyone should be entitled to know the truth.

Ms. Quattrochi stated that there does not seem to be a great deal of support to increase the actual amount of time individuals serve, but rather to increase the proportion of the imposed sentence that is served. She suggested figuring out what the correct percentage ought to be and then adjusting the matrices accordingly. The guideline ranges would be adjusted such that the actual amount of time served does not change.

The meeting adjourned.