

Maryland State Commission on Criminal Sentencing Policy
November 7, 1996

Commission Members in Attendance:

The Honorable John F. McAuliffe, Chairman
Mr. Andrew L. Sonner, Esq.
Ms. Judith R. Catterton, Esq.
Ms. Roberta Roper
Chief Walter E. Chase, Sr.
Dr. Charles F. Wellford
Mr. Adam Gelb
Senator Delores G. Kelley
Senator F. Vernon Boozer
Senator Christopher J. McCabe
Delegate Joseph F. Vallario, Jr.
Delegate James M. Harkins
The Honorable Howard S. Chasanow
The Honorable Joseph H.H. Kaplan
The Honorable Alexander Wright, Jr.
Mr. Stephen E. Harris, Esq.
Secretary Bishop L. Robinson
Mr. Lamonte Cooke

Staff Members in Attendance:

Sandra Shane-DuBow

Announcements

The Honorable John F. McAuliffe, Chairman of the Commission, opened the meeting by congratulating Andrew Sonner on his appointment to the Court of Special Appeals. Commission members joined in congratulating Judge Sonner through their applause.

Judge McAuliffe introduced Linda M. Schuett, an attorney in private practice in Annapolis. Ms. Schuett is a former Assistant Reporter to the Court of Appeals' Standing Committee on Rules of Practice and Procedure, a current member of that Committee, and its recently-appointed Vice Chair. She is also the co-author of a leading treatise known as the Maryland Rules Commentary. Ms. Schuett has agreed to act as Reporter for today's meeting.

The Chairman then proceeded to discuss the scheduling of meetings through June of 1997. The next meeting of the Commission will occur on December 12, 1996 at the Houghton House, part of the Wye River conference center at the Aspen Institute. The meeting will probably last from 10:00 a.m. through 4:30 p.m. The schedule for 1997 is a tentative schedule only because subcommittee work may necessitate the postponement or rescheduling of one or more meetings.

Tentative meeting schedule

1. January 23, 1997 - Public Hearing (Tentative Time: 6:00 p.m./Joint Committee Hearing Room)

2. February 17, 1997 - All day Commission meeting
3. March 3, 1997 - All day Commission meeting
4. April 17, 1997 - All day Commission meeting
5. May ?, 1997 - Public Hearing (tentative). Date to be announced
6. June 19, 1997 - All day Commission meeting

The Chairman expects to discuss subcommittee assignments with members of the Commission within the week following this meeting. As subcommittees are established, members will be notified.

Introduction To General Discussion

Judge McAuliffe stated that he wanted to start the meeting with a presentation containing an overview of the primary issues facing the Commission. He directed the attention of Commission members to the "Outline of Topics for Discussion" attached to the Agenda. The Chairman asked Commission members to discuss issues vigorously, but to stay open in terms of opinions. He requested members to step back from their own constituency and to take views based on the good of all.

The Chairman also stated that he will be looking for consensus views from members of the Commission today in some areas, but not in others. Certain areas need to be deferred pending further extensive study and review. Even if members join in a consensus today, that consensus is open to change later as additional information is gathered during the study and review process. Preliminary areas of consensus are needed, however, to let the public know the general direction of the Commission.

A. Allocation of Prison Resources

1. Concentrating prison capacity on incarceration of violent and career offenders
2. Identifying lesser offenses that may be addressed more effectively and economically by sentencing options other than incarceration

Judge McAuliffe pointed out that Maryland ranks seventh in terms of population per 1,000 in jail. In Maryland, it costs approximately \$18,000.00 per prisoner per year. Elsewhere, the cost is approximately \$22-25,000. Maryland can anticipate that these costs could rise as we may be required to provide treatment facilities not now available.

The solution to the allocation of prison resources needs to be something other than building more and more prisons. The idea here is to limit imprisonment to certain classes of offenders, but at the same time to satisfy the public need for safety.

B. Providing adequate state-wide correctional option programs for non-violent offenders

1. Identifying the universe of options
2. Assessing those options for utilization in diverse areas of this State
3. Cost analysis of providing individual programs
4. Projections of population needs
5. Recommendation re: State/local fiscal and implementation responsibilities

The Chairman stated his view that the public will not be receptive to grand social experiments. Rather, this Commission should look at what has been successful in other states - even other countries. Examples might be day reporting centers with substance abuse treatment programs, drug courts, boot camps, electronic monitoring, and intensive supervision. Incorporated within this structure could be the staircasing of options for probation violators, possibly without the need for judicial intervention but by a board or body with the authority to move the offender up or down the

continuum of sanctions. The Commission will also look at the potential for the creation of a Board to deal with offenders. Public safety should be first and foremost in the minds of the Commission. However, there is a certain permissible and valuable punitive aspect to this type of sentencing, such as the requirement to report or a limitation on liberty.

The cost of programs will need to be analyzed. One issue will be whether the bulk of funding will come from the State or from local municipalities. Judge McAuliffe's view is that it may well turn out to be more economical for the State to provide a majority of the funding.

C. Sentencing Guidelines

1. Evaluation of existing advisory guidelines
2. Rationale for change to more guided discretion
 - a. Reduction of unwarranted disparity
 - b. Increased ability to utilize prison resources for dangerous and repeat offenders
 - c. Increased predictability - development of accurate long-range prison population forecasts
ability to predict impact of proposed changes in sentencing legislation or guidelines
 - d. Establishment of permanent sentencing commission with responsibility for continuous monitoring and recommendations to the legislature and Governor
 - e. Other
3. Constructing the model of guided discretion guidelines
 - a. As a aid in the ultimate determination of feasibility/desirability
 - b. In response to apparent legislative request
4. If a model is constructed, what approach shall we take?
 - a. Consideration of various plans in use or recommended in other states and innovations best suited to Maryland
 - b. Consideration of data regarding sentences imposed, overlaid with policy considerations of what appropriate sentences should be
 - c. Establishment of relevant criteria, either for upward or downward movement from a target sentence but within established guidelines, or for departure from guidelines
 - d. Appellate review of departure from guidelines - recommendation concerning standard of appellate review

The Chairman praised the judiciary for an excellent job done years ago in drafting the voluntary sentencing guidelines. Those guidelines have served a useful purpose. The questions now presented are whether there is any justification for change; whether current guidelines should remain; or whether structured guidelines should be developed for Maryland. The rationale to develop more structured guidelines is to (1) reduce unwarranted disparity, whether racial, gender-based, ethnic, geographical or otherwise; (2) increase the ability to utilize prison resources appropriately; and (3) increase accuracy of prediction capabilities with respect to prison and option needs.

The Chairman stated that Commission members might question why the Commission should engage in all of the work of actually constructing model guided discretion guidelines if, at the end, the Commission were to decide that it does not believe such guidelines are useful or warranted. The Chairman stated that, first of all, the Legislature has requested the Commission to do so. In addition, the Commission is free to inform the Legislature at the end of extensive study that the Commission

does not believe in the guidelines. Finally, no Commission member can be sure of his or her current opinion about whether guided discretion guidelines will achieve the desired goals until extensive study is completed.

Sentencing guidelines serve an extremely useful purpose for new judges. Guidelines give the judges some parameters for appropriate sentences. However, the Chairman believes that guidelines should never be mandatory. In his view, the Legislature and all speakers who have addressed the commission have made it clear that mandatory guidelines are not what Maryland wants to adopt.

The Chairman stated that it is far too early in the process to reach consensus on such issues as the relevant criteria for movement within or departure from the guidelines, appellate review, the establishment of a Permanent Sentencing Commission, issues relating to truth in sentencing, issues relating to mandatory minimum sentences, or the development of population simulation technology, as noted on the Outline at 3d(3) through the end. The Commission will need to gather a significant amount of information prior to reaching consensus on these items. For example, the Commission will need to know the average sentences imposed for various offenses and the sentences actually served for those same offenses. This information will be overlaid by the judgment of the Commission and the public on what those sentences and prison terms should be. The Commission will need lots of input from the public in general, including perhaps a survey.

Some options for the structure of guided discretion guidelines include: 1) the ability for a judge to go into a "cell," with discretion to move up or down based on specified criteria, but always remaining within the cell, or 2) the ability for a judge to move outside the cell, with the requirement that the judge state specified reasons for doing so. Under guided discretion guidelines, the trial judge's discretion is compressed. Questions concerning the ability of each side's right to appeal arise when a judge's sentence is outside of the recommended range.

D. Permanent Sentencing Commission - If a permanent sentencing commission or similar unit is recommended, how will it be constituted?

1. Number of members and how appointed
2. Staff requirements
3. Fiscal impact
4. Limited delegated powers, or advisory only?

The Chairman stated that a Permanent Sentencing Commission could potentially be this Commission, but not necessarily. The establishment of a Commission is for further future review.

E. Truth in Sentencing

1. "Good Time" and similar credits
2. Parole
3. Perception problems if actual sentences are adjusted to effectuate a policy of truth in sentencing

The Chairman stated that the public has lost confidence in the sentencing aspect of the criminal justice system. The public does not have the sense that a sentence imposed after trial bears any reasonable relationship to what will actually happen. But, there are many tough issues associated with truth in sentencing. For example, one question is whether good time and similar credits should be reduced or eliminated.

Parole presents serious philosophical issues. Federal funds are available for the construction of prisons if a state has a system for requiring that offenders spend at least 85% of their sentence time in jail.

The federal funds are for construction only, not operation. If parole were eliminated altogether, some injustice would result. For example, parole might be appropriate when a very long sentence has been imposed on a young adult who committed a serious felony. If young adults are to spend long sentences in prison without the possibility of parole, Maryland will need to address how to deal with a geriatric prison population. If parole is abolished, statistics show that there are increased requests for clemency. The Chairman suggested that parole might perhaps be limited to particularly long sentences.

In any event, if parole is retained, changes to the process need to be considered. For example, perhaps guided discretion principles could be made applicable to the Parole Board as well. Computer programs and other mechanisms are necessary to provide the Parole Board with immediate access to accurate and complete information about each inmate. Perhaps the method of making appointments to the Parole Board needs to be changed, as well as the nature or qualifications of the persons being appointed. The Chairman suggested that the Commission not jettison the idea of parole.

F. Mandating Minimum Sentences

1. Identify and review existing mandatory minimum sentencing statutes
2. Recommendations regarding retention, modification, or repeal

The Chairman stated his view that mandatory minimum sentences are not good for the system. They tend to be a knee-jerk reaction to the "crime of the day." They permit no guided discretion of any nature. Federal court judges frequently discuss the problems they have with respect to mandatory minimum sentences.

G. Developing population simulation technology to show:

1. Impact if current system is continued
2. If commission recommends change from existing system:
 - a. Impact of commission recommendations
 - b. If impact of commission recommendations is in excess of existing prison resources, alternative recommendations that would fit within existing resources

The Chairman stated that the Commission will be involved in the development of the technology necessary to determine the impact of the current system, if continued, as well as the impact of recommended changes and the development of alternative recommendations if the impact of recommended changes exceeds existing capabilities.

General Discussion

The Chairman presented the Commission's proposed mission statement and six preliminary consensus statements for review by the Commission members. The mission statement and preliminary consensus statement number one provide:

A. Proposed Mission Statement

The mission statement of the Maryland Criminal Sentencing Policy Commission is to promote truth in sentencing by establishing consistent and sure sentencing standards, by ensuring that violent and career offenders are incarcerated and that adequate community based programs are available for

non-violent offenders with little or no prior record, and by establishing clear sentencing policies that are supported by adequate prison, jail, and community resources.

B. Proposed Consensus Statement Number One

There is at least a substantial possibility that a guided discretion system of sentencing can be developed in this state that will reduce unwarranted disparity, better allocate prison resources to increase public safety by ensuring appropriate terms of incarceration for violent and career offenders, renew public confidence in the accuracy and integrity of the criminal justice system, and provide the means for accurately assessing and predicting the need for future correctional and optional resources.

Mr. Harris questioned whether anything has been determined to be broken with respect to the guidelines already in place. Judge McAuliffe responded that there is an indication of disparity in sentencing, that he questions how effective our predictability abilities are under the current guidelines, and that he questions our ability to control prison resources carefully. Judge McAuliffe does not believe that the current guidelines are broken, but he does believe that they may be improved.

Senator Kelley stated that there has been a significant amount of outcry because it is perceived that the current guidelines have become less rigorous. The manner in which the guidelines are applied, changes based on changes in trends, changes in judges, etc. The current system makes it difficult to predict anything.

Secretary Robinson stated his uncertainty about the use of the term "disparity" in preliminary consensus statement No. 1. He questions what the term disparity means - whether it is intended to include all or a portion of such factors as race, gender, and type of crime. He also questioned how disparity is relevant.

Secretary Robinson noted that Maryland has already allocated prison resources for violent and career offenders. In Maryland, 60% of prison sentences are served, while 48% are served elsewhere. Maryland is already "ahead of the game" in most categories. One quarter of all prison inmates fall into the violent/career offender category. This is because of the increase in nonviolent crimes, together with other circumstances.

Secretary Robinson also questioned the term "little or no prior record," as used in the mission statement. He questions what that term means. The criteria used by the Department of Corrections for entry into various programs is "low-risk to public safety." Secretary Robinson believes that the mission statement needs to contain better definitions.

Professor Wellford stated that there is indeed evidence of sentencing disparity in the State of Maryland. Secretary Robinson responded that he would like to see data on this issue. Whether or not a sentence is disparate must always depend upon a case-by-case analysis to determine the underlying circumstances and reasons. Statistics alone are not enough.

Judge Kaplan stated his belief that there is disparity in sentencing in Maryland, but that the disparity grows out of the fact that our system is plea-agreement driven. He does not believe there is disparity in any particular jurisdiction based on race, gender, or the like. Rather, the disparity is between plea-bargained cases and cases that are tried. Judge Kaplan believes that the "little or no prior record" language in the mission statement should be deleted and that a public safety standard should be employed instead.

Judge Wright stated that, in District Court, if a defendant has a long record and is before the Court on

a nonviolent offense, the District Court has no alternative other than to sentence the defendant to jail time. If the defendant has no record, then the District Court has the option of probation before judgment or community service. Judge Wright stated that the Commission needs to determine the impact that the District Court has on the Department of Corrections and whether the guidelines will apply to the District Court.

Judge Chasanow stated that the current guidelines have not been subject to a great deal of criticism. During the process of constructing the guidelines, the committee felt that it was constitutionally unable to give credit for pleading guilty. Now, however, because the federal system gives such credit, Maryland can do so as well. Judge Chasanow also noted that there are currently no sentencing guidelines applicable to the District Court, and the District Court is responsible for sending a significant number of defendants to prison. Judge McAuliffe responded that any guidelines that this Commission prepares should apply to both the circuit courts and the District Court.

Judge Chasanow noted that Maryland has appealable sentences at the current time. The panels that review sentences change sentences on the rare occasion only, usually when the sentences are outside the guidelines and good reasons for being outside the guidelines are not articulated. Judge McAuliffe stated that this review is by a three judge panel of trial judges, not by an appellate court.

Ms. Catterton stated her concern that the first sentence of the first preliminary consensus statement contains a premise that there is in fact "unwarranted disparity" in sentencing in this State. She believes that we do not yet know whether that is true, for we have not yet studied sentencing on a case-by-case basis. Senator Kelley stated that studies in North Carolina, Vermont, and Massachusetts demonstrate disparity in sentencing, especially at the low end of the offenses. Although that model has not yet been conducted in Maryland, it is likely that the same finding of disparity will be reached in Maryland since Maryland has an unstructured sentencing system similar to the systems in those states. Professor Wellford noted that even states with structured systems show disparity in sentencing.

Senator McCabe stated his belief that our system can be improved, even if it is not broken. The public believes that our system is a mystery. It sees a defendant getting out of prison with only 50% of the imposed time served. The public does not report a fair amount of crimes; only 10% result in convictions. The Legislature does not intend to dictate any particular outcome here, but it is requesting that the Commission look at the system to improve it if possible.

To address Ms. Catterton's concern, the Chairman suggested that the word "any" be added before the phrase "unwarranted disparity" in the first preliminary consensus statement. The addition of the word "any" would eliminate the potentially implied premise that there is, in fact, unwarranted disparity at the present time. Commission members agreed with this suggestion.

Judge Sonner suggested that even though a particular crime is delineated as a "violent" crime, a particular offender may not himself or herself be violent. Senator Boozer suggested that the standard should be whether or not a particular offender presents a danger to the public. Judge Sonner suggested that a low risk of danger should not be the only consideration. For example, a 17 year old who is not sent to jail may end up creating a lower risk of danger to the public in the future. Professor Wellford noted that violent offenders must always be incarcerated and that community programs sometimes include incarceration.

Mr. Gelb noted that some of the statements in the mission statement are directly from the legislative statement. Mr. Gelb read Section 1, (f)(2), of House Bill No. 299, the portion that sets forth objectives for the sentencing and correctional process. A consensus was reached that the language of this portion of the legislation should be the Commission's mission statement, rather than the proposed language.

Secretary Robinson noted that the legislation implies that sentencing by a judge is the only way to get into an alternative sentencing program. He believes that the mission statement should include a reference to the fact that the administrators of the Department of Corrections have the ability to place inmates into alternative programs as well. Judge Sonner suggested the inclusion of a provision to this effect. The Chairman suggested that the provision be drafted over lunch.

The Commission took a lunch break.

After lunch, the Chairman presented a proposed addition to the legislative language that will form the Commission's mission statement. *(vi) Ensure that the Secretary of the Department of Public Safety and Correctional Services and local correctional administrators have the authority to place appropriate offenders under their jurisdiction in correctional options. Further, ensure that the Secretary and local administrators be authorized to remove offenders from those options.*

Senator Kelley questioned whether removal from a program is for cause. For example, if a judge gives a specific sentence to a particular program, can the wording of the proposed addition imply that the Department of Corrections may change that specific sentence immediately. Secretary Robinson suggested that some trust in the Department of Corrections is required. Furthermore, the statute permits the Department of Corrections to place and remove inmates for no reason.

Mr. Gelb suggested that the language of the proposal connotes that the Department of Corrections may either place an inmate into a program or remove that inmate from the program, but not switch into some other alternative program. The Chairman suggested that the ability to place and remove also allows the Department of Corrections to place and remove into another option.

The Commission's mission statement, as adopted by the Commission and as styled by the Reporter.

The mission statement of the Maryland Criminal Sentencing Policy Commission is to:

- (I) Promote sentencing that more accurately reflects the time that an offender will actually be incarcerated;
- (ii) Concentrate prison capacity on the incarceration of violent and career offenders;
- (iii) Reduce any unwarranted disparity in sentences for offenders who have committed similar offenses and have similar criminal histories;
- (iv) Preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences;
- (v) Ensure that sentencing judges in every jurisdiction in the State are able to impose the most appropriate criminal penalties, including correctional options programs for appropriate nonviolent offenders; and
- (vi) Ensure that the Secretary of the Department of Public Safety and Correctional Services and local correctional administrators have the authority to place appropriate offenders under their jurisdiction into correctional options and to remove offenders from those options.

The Chairman stated that he had received a suggestion during the lunch break that the word "recommending" be included in section (v) of the mission statement after the word "including" and before the phrase "correctional options programs for appropriate non-violent offenders." The purpose

of the proposed addition relates to the idea, already discussed, that a sentencing judge may recommend, but not impose, a particular sentencing option. Judge McAuliffe stated the view that, even under the current system, judges do in fact impose particular programs as part of a sentence by requiring that an offender complete a particular program as a condition of probation.

Senator Kelley reiterated her concern that whatever a judge does in terms of sentencing to a particular options program can immediately be undone by the Department of Corrections. Secretary Robinson noted that the current system works well. Senator Kelley stated her certainty that the Department of Corrections is doing an excellent job under the status quo. However, in a new environment, she believes that it is important to look at what the Department of Corrections is doing to see how it works with a new system and to be sure that both systems are integrated.

Secretary Robinson noted that the Department of Corrections, unlike the court system, is able to screen individuals to determine whether they are suited to a particular program. For violations of probation, under the current system, the Department must go back to court in each and every situation, and this does not work well. Secretary Robinson would not like to see a system like this instituted with respect to the options program.

Judge McAuliffe stated his belief that the Commission's mission is broad enough to look at everything, including how the authority of the Department of Corrections will work with a new environment that permits judges to impose particular alternative sentences. He said this might involve a three tiered system, including the Division of Corrections, Probation Department, and possibly a newly developed or restructured entity.

Judge Sonner reiterated his belief that use of the term "nonviolent" in section (v) is an inaccurate word to use in the mission statement. This is because some offenders who are violent may be convicted of less than a "violent" crime because of a plea agreement and vice versa. Ms. Catterton noted that the term "nonviolent" is not defined, and that it may be too specific and limiting.

Judge McAuliffe noted that the Commission is only dealing at the present time with a mission statement. The term "nonviolent" is the language of the law. If the Commission later believes that any particular term is inappropriate, the Commission can change that term when it gets to the specifics.

Senator McCabe noted that the legislature used the term "nonviolent" to mean that the offender is not a threat to the public. A consensus was reached to continue to use the legislative language in the Commission's mission statement, with the understanding that the legislative reference to "nonviolent offenders" means that the offender does not pose a present risk to society. Judge Sonner noted that the goal should be to match particular programs to particular offenders. Judge McAuliffe stated that a defendant should not be made part of a program if that defendant is a risk to society. Judge Kaplan suggested that Maryland would have a federal funding problem if violent offenders were allowed to be part of a correctional options program.

Judge Chasanow reiterated that judges cannot tell the Department of Corrections which option to use for a particular offender. Judge McAuliffe noted that, even if that is true at the present time, legislation may create options to be imposed immediately by the trial judge. Judge Sonner agreed, stating his understanding that the law is intended to allow judges to sentence offenders to particular programs.

Judge Kaplan stated that the judiciary is unable to decide or influence the State budget and, for this reason, judges may not designate particular inmates into particular prisons or programs. Judge McAuliffe reiterated that judges do that now when they make a particular program a condition of

probation.

A consensus was reached that the word "recommending" should not be added into section (v) of the mission statement.

Mr. Harris questioned what the term "guided discretion" means. Judge McAuliffe read the statutory definition of that term. In essence, it means "prescriptive" rather than "descriptive." Judge Chasanow questioned whether it includes a right to appeal, and Judge McAuliffe responded that it probably does. Senator McCabe noted that preliminary consensus statement number one merely suggests the possibility that a guided discretion system of sentencing will be an improvement, even if that system of sentencing is not recommended after study.

Ms. Catterton questioned whether consensus statement number one should refer to a renewal of public confidence in the accuracy and integrity of the criminal justice system as whole, or whether it should refer to a renewal of public confidence in the sentencing process only. Any attempt to renew the public confidence in the accuracy and integrity of the entire criminal justice system may be biting off more than this Commission is able to handle. After discussion, the Commission reached a consensus to employ the phrase "engender public confidence in the criminal justice system."

The Commission preliminary approved consensus statement number one, although the approval was not unanimous. Preliminary consensus statement number one now reads as follows:

There is at least a substantial possibility that a guided discretion system of sentencing can be developed in this State that will reduce any unwarranted disparity, better allocate prison resources to increase public safety by ensuring appropriate terms of incarceration for violent and career offenders, engender public confidence in the accuracy and integrity of the criminal justice system, and provide the means for accurately assessing and predicting the need for correctional and optional resources.

C. Proposed Consensus Statement Number Two

There is a need for further development throughout the state of correctional options programs suitable for appropriate nonviolent offenders, and greater utilization of such options in appropriate cases can result in a more efficient use of public funds and a reduction in recidivism while still protecting society and ensuring the imposition of appropriate punitive measures.

Secretary Robinson suggested that proposed preliminary consensus statement number two should not refer to a reduction in recidivism. The Chairman questioned whether the Secretary was suggesting that the sentence end with the phrase "utilization of such options in appropriate cases." Mr. Gelb noted that if the remainder of the sentence is deleted the purpose of preliminary consensus statement number two is likewise eliminated. Mr. Gelb stated his belief that the public needs to know that the Commission's goal is to reduce crime while at the same time saving money. Judge Sonner stated the opinion that one goal of the Commission is to reduce crime, so that should not be deleted from the consensus statement.

Senator Kelley questioned what the term "recidivism" means. For example, she questioned whether it includes the person convicted of writing a bad check who is later engaged in a brawl. Furthermore, Senator Kelley noted that the Commission has not agreed that rehabilitation is one of its goals. When it was noted that it is difficult to prove whether particular programs reduce crime, Judge Sonner noted that there are programs in place which have a proven record of reducing the rate of recidivism. These programs include programs that require juveniles to finish high school and drug court programs.

A consensus was reached to include the phrase "restorative and" before the phrase "punitive measures" in preliminary consensus statement number two.

The Chairman called for a vote on whether or not to retain or delete the notion of recidivism in preliminary consensus statement number two. Eleven members voted in favor of deletion. Five voted in favor of retention.

Preliminary consensus statement number two, as revised by the Commission, now reads as follows:

There is a need for further development throughout the State of correctional options programs suitable for appropriate non-violent offenders, and greater utilization of such options in appropriate cases can result in a more efficient use of public funds while still protecting society and ensuring the imposition of appropriate restorative and punitive measures.

D. Proposed Consensus Statement Number Three

We do not favor the rigidity and complexity of the federal sentencing guidelines.

Delegate Harkins stated a concern that an outright rejection by the Commission of the federal sentencing guidelines could create federal funding problems. He suggested that preliminary consensus statement number three be revised to delete the phrase "do not favor the" and to insert the phrase "are concerned by." Ms. Catterton questioned whether or not the law already rejects the federal guidelines and, if so, why the Commission should do anything less than that.

Professor Wellford noted that preliminary consensus statement number three may not be completely accurate. For example, although the federal sentencing guidelines are complex, they are not, in his view, "rigid." Professor Wellford stated his belief that the Commission should study the federal sentencing guidelines, and he expressed his support for Delegate Harkins' suggested language change. Senator McCabe also agreed that Delegate Harkins' suggestion was a good one because he himself has not thoroughly studied the federal sentencing guidelines. Mr. Gelb noted that the statute refers to the "mechanical" application of the federal sentencing guidelines and that it contains no reference to "rigidity."

Judge Kaplan suggested that preliminary consensus statement number three provide that "we do not favor guidelines that are overly rigid or complex." Ms. Catterton submitted that if the Commission does not commit to an outright rejection of the federal sentencing guidelines, the Commission will spin its wheels in public hearings with lengthy testimony concerning the ills of the federal sentencing guidelines.

By consensus, the Commission approved preliminary consensus statement number three, as follows:

We are concerned by the mechanical nature and complexity of the federal sentencing guidelines.

The Chair recognized George Keiser, from the National Institute of Corrections, who commented that the Commission's approval or disapproval of the federal sentencing guidelines is irrelevant for federal funding purposes. The only issue in terms of federal funding is the amount of time served.

E. Proposed Consensus Statement Number Four

We believe that, consistent with the goals and objectives above expressed, a guided discretion system can and should be structured so as to preserve meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit appropriate individualized sentences.

Professor Wellford suggested that the word "appropriate" be inserted before the phrase "individualized sentences." A consensus was reached to include the term "appropriate" as suggested.

F. Proposed Consensus Statement Number Five

To ensure truth in sentencing, credits that prisoners may earn should be reduced, possibly to not more than 15% of the sentence imposed.

Secretary Robinson stated that he has a significant problem with preliminary consensus statement number five in its entirety. Senator McCabe suggested that it is far too early to reach consensus on a statement of this nature. In Senator McCabe's view, further study is needed in this area.

The Commission agreed that it would be premature to consider preliminary consensus statement number five.

G. Proposed Consensus Statement Number Six

Senator Kelley suggested that the phrase "by the Commission" be inserted at the end of the second sentence. A consensus was reached to include that phrase as suggested and, with that one addition, preliminary consensus statement number six was approved, as follows: Post-release supervision should be retained. The question of whether to retain some form of discretionary release, through a parole board or otherwise, will be the subject of further study by the Commission.

Open Discussion

The Chairman opened the floor to a discussion of any subject that Commission members might wish to discuss.

Senator McCabe noted that the Commission should work towards the creation of a permanent sentencing board, but that the Commission should go very slowly in that regard. Senator Kelley stated that the Commission should make it clear that we do not necessarily mean that this Commission would become the permanent sentencing board. She further noted that the American Bar Association Standards recommend the creation of such a board.

Judge Sonner questioned whether his appointment to the Court of Special Appeals makes it no longer appropriate for him to serve on the Commission. The legislation mandates that the Commission's membership include "one state's attorney who is recommended by the President of the Maryland State's Attorneys Association, appointed by the Governor." The Chairman agreed that a replacement may be necessary, but he hoped that Judge Sonner could remain as a consultant so as not to lose his expertise.

Ms. Roper questioned when and how subcommittees will be constituted and how to prepare for public meetings. The Chairman stated that subcommittees will be finalized within the next week or so and that Senator Kelley has graciously agreed to chair the committee responsible for public hearings. With respect to the first public hearing, specific groups will be invited to attend. Later hearings may

be held in various locations throughout the State.

Adjournment

There being no further topics presented for discussion, the meeting was adjourned.