

Maryland State Commission on Criminal Sentencing Policy
November 25, 1997

Commission Members in Attendance:

The Honorable John F. McAuliffe, Chairperson
Ms. Roberta Roper
The Honorable Joseph H.H. Kaplan
The Honorable Alexander Wright, Jr.
Del. Joseph Vallario
Dr. Charles Wellford
Secretary Stuart Simms
Marna McLendon, Esq.
Carolyn Quattrocki, Esq.
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 public hearing to order. He announced that this is the third public hearing, the first two having been held in Annapolis and Baltimore. He asked speakers to hold their comments to approximately five minutes, and he encouraged all speakers to submit written testimony.

The Chairman informed those in attendance that the Commission has a WEB site, and he provided the address for the site. He further stated that new studies will soon be available through the WEB site, including a study on racial/ethnic disparity and, with respect to disparity on a geographical basis, a Table of Sentencing Outcomes for certain targeted offenses analyzed on a county-by-county basis.

The Chairman introduced the new Executive Director for the Commission, Dr. Kim Hunt. Dr. Hunt holds a doctorate from the University of Kansas in political science. He is currently the Associate Director of the Virginia Sentencing Commission, an adjunct professor at the Virginia Commonwealth University, and a member of the Governor's Task Force on Violent Crime. He has received numerous awards, including the Philip Polk award for analysis and the Governor's award for anti-drug efforts. The Chairman stated that Dr. Hunt will assume his new position on January 1, 1998.

The Chairman also welcomed Secretary Stuart Simms, the new Secretary of the Department of Corrections and Public Safety. Secretary Simms replaces Secretary Robinson, who recently retired.

The Chairman then asked the various speakers to come forward with their testimony.

Bob Dean, State's Attorney For Montgomery County

Mr. Dean stated that he would like to address an issue relating to finality in sentencing. He pointed out that, under Maryland Rule 4-345, the court may take a motion to revise a sentence under advisement for an

indefinite period of time. There is no limit on the length of time that the motion may remain pending. The effect of this is to keep the sentence under the court's control when, at some point, issues relating to sentencing should be determined by the Parole Commission. He suggested that the effect of this is to blend the executive and judicial functions. Mr. Dean pointed out that there is a time limit for decision when a sentence is reviewed by a three-judge panel.

Judge McAuliffe asked whether Mr. Dean had a particular time limit to recommend. Mr. Dean responded that he did not. Judge McAuliffe asked whether the States Attorneys' Association has taken a position on the issue. Mr. Dean responded that the Association agrees that a time limit should be imposed. Judge Kaplan asked whether Mr. Dean would agree with a time limit of, for example, 90 days. Mr. Dean stated that 90 days would be fine, as would 180 days or even a year. The primary point is to have some definite limit. Judge Sonner asked whether Mr. Dean knew what other jurisdictions do in this regard. Mr. Dean stated that he has not researched the issue, but he believes, for example, that the District of Columbia has a time limit concerning the pendency of a motion to revise a sentence.

Devon Brown, Criminal Justice Coordinating Committee

Letter testimony from the Criminal Justice Coordinating Committee was read into the record. The Committee believes that there should be truth in sentencing, and that sentencing policy should take punishment, retribution, and rehabilitation into account. It was pointed out that Montgomery County already has an assortment of alternatives to incarceration.

Linda M. Plummer, President, Montgomery County Chapter, NAACP

Ms. Plummer read letter testimony into the record and provided a copy of the letter to Commission members. The testimony emphasized the disparate numbers of African Americans in prison and that the cause of that is racism. Judge McAuliffe asked the speaker where, in her view, the disparity in the system exists. The speaker responded that it begins with arrests and continues thereafter.

Darryl L. Longest, Esquire

Mr. Longest encouraged the Commission to look seriously at electronic alternatives to incarceration, particularly the ignition interlock system pursuant to which a driver must take a breathalyzer test prior to being able to drive his or her car. He referred to a study that was published in April, 1997 by Dr. Kenneth Beck which found a 65% success rate in terms of recidivism when the interlock system is used. A Canadian study recently came to an almost identical conclusion. Mr. Longest recommended: (1) clear assessments and the resources to do that, (2) careful monitoring of all types, and (3) early and swift disposition. In his view, if these things are not done, there will be a continued upward trend in alcohol abuse. Furthermore, judges need to be educated in the use of technology as an alternative to incarceration.

Ms. McLendon questioned whether the speaker was recommending the use of assessments beyond DWI cases. Mr. Longest responded that he was. For example, in his experience as a prosecutor and defense attorney, alcohol is usually involved in serious drug cases. Assessments should be used in any type of case where alcohol use is even suspected. Approximately 15% of alcohol-related deaths are caused by repeat offenders. Judge Sonner asked whether the speaker had a citation for that statistic. The speaker responded that he would provide the specific citation, but that it comes from a report authored by Catherine Prescott that was published in USA Today.

Charles S. Lazar, Esquire

Mr. Lazar stated his dislike for the federal sentencing system because it ties judges' hands. He is opposed to mandatory guidelines because judges need the ability to weigh all of the circumstances of the case.

Delegate Vallario asked for the speaker's view on presumptive guidelines, whereby the judge would ordinarily sentence within the guidelines but could deviate from them, with reasons, in which event either side could appeal. Mr. Lazar stated that judges must currently state reasons if their sentences fall outside the guidelines and that an ability to appeal would add unnecessary costs into the system.

Richard Finci, MD. Criminal Defense Attorneys' Assn., And Joseph Adkins, Montgomery County Public Defender's Office

Mr. Finci stated that the Maryland Criminal Defense Attorneys' Association is opposed to mandatory guidelines. In the federal system, there is a cottage industry of lawyers who "specialize" in obtaining departures from the guidelines. Furthermore, the federal system shifts the balance of power to prosecutors because sentences are based on those charges presented by prosecutors to the grand jury. Even many federal judges oppose the mandatory federal guideline system.

In the District of Columbia, defendants are unable to make intelligent decisions about issues like entering into plea agreements or going to trial because the courts have total discretion in imposing sentences. Defendants have no idea in advance what the range of sentence may be.

In the speaker's view, the current Maryland system is an "enlightened" one. Defendants can make intelligent decisions about their course of action. Judges are given the discretion to do what they are supposed to do - impose appropriate sentences.

Judge McAuliffe asked whether members of the Association had spoken with any of the prosecutors or defense attorneys in those jurisdictions that function under a guided discretion sentencing guideline system. Mr. Finci responded that he had not, but that he would be concerned about the State's ability to appeal from a sentence. The Chairman asked the Association to communicate with people in those jurisdictions because they initially opposed the idea but now seem to see value in it.

Mr. Adkins stated that he is concerned by the ballooning number of appeals in the federal system. In his view, the mandatory federal guidelines carry with them the statement that judges are not good at judging. Furthermore, with respect to the notion of guidelines in the District Court, Mr. Adkins stated that, even though the District Court is being given more and more jurisdiction to hear felonies, the top range of sentences in District Court is two to three years. Given the low range of the sentences imposed, he does not believe that guidelines in the District Court are needed.

Betty Ann Krahnke, Chair, Public Safety Committee, Montgomery County Council

Ms. Krahnke read a written statement into the record, and she provided a copy of the statement to Commission members. The testimony focused on risk assessment; funding; good conduct credits; and collection of fines, restitution, bail, and bailbonds. A copy of Ms. Krahnke's statement is attached hereto.

Mr. David Cunningham

Mr. David Cunningham stated that, on December 10, 1995, his mother was brutally tortured, raped, and murdered. The perpetrator, whose name was Mr. Jones, was later caught.

Judge McAuliffe interrupted Mr. Cunningham to state his belief that an appeal is pending in the Court of Special Appeals relating to Mr. Jones. As a result of that appeal, he needs to recuse himself from hearing Mr. Cunningham's testimony. After stating his hope that the speaker understood his need to leave, Judge McAuliffe left the room.

Mr. Cunningham testified that many criminals start making their choices at a very young age. If they continue to make the wrong choices, they become career criminals. The signs are there. Mr. Jones, for example, started at age 13. He had just been paroled when he committed the murder. Although the Parole Board told him that there was no way for them to predict that Mr. Jones would commit this violent crime, Mr. Cunningham believes that the Parole Board failed him and his mother. He wants the Commission and the system as a whole to use common sense.

Mr. Cunningham does not believe that good time credits should be eliminated. However, the credits should not be granted automatically. Prisoners should be required to earn the credits.

Mr. Cunningham questioned why victims are not permitted to obtain a copy of the defendant's complete criminal record. He also stated that he and his family were very much disturbed by the fact that their victim impact statement was edited. In response to a question from Judge Sonner, the speaker noted that statements about the kind of person his mother was, how she affected the lives of others, and how the family wanted justice were examples of the kinds of things deleted. Furthermore, he felt like the editing was part of a bargaining process among the judge, the prosecution, and the defense.

Ms. McLendon thanked Mr. Cunningham for sharing his personal tragedy with the Commission and for his willingness to testify. Judge McAuliffe returned to the hearing room.

Mr. Don McCandless

Mr. McCandless stated that he is part of the Society of Friends that is active in prison work. He testified about the public's perception that the rules are on the side of the offender and that sentencing leniency is part of what encourages crime. He noted that the Justice Analysis Center has revealed a disparity between the public's perception and reality. Mr. McCandless testified that descriptive guidelines and parole should be retained; that time served should not be increased; that trials should be held more quickly and that we should have more judges to do that; and that prison programs should be retained.

Mr. Ralph Blankfield

Mr. Blankfield testified that he is a Quaker volunteer in prisons. He believes that there are two types of prisoners: the conventional ones and those locked in their homes for fear of crime. Both need healing. Mr. Blankfield testified that discretionary guidelines should be retained, as should parole. He stated that a judge should have discretion with respect to the imposition of minimum sentences and that swift justice is better than long sentences. Good time credits should be broadened, not eliminated. He noted that no other country in the world incarcerates its people at the rate that the United States is incarcerating its citizens. He asked the Commission to question where we are headed and what kind of society we are creating.

Mr. Rich Ulrich

Mr. Ulrich stated that he is part of the Sandy Springs ministry that works as volunteers in the prison system. He testified to the belief of author Charles Campbell that rehabilitation only works if there are negative consequences for not rehabilitating. He further stated that juveniles learn at an early age to con social workers and the system. To avoid that, juvenile justice must be swift and sure. In response to a question from the Chair, Mr. Ulrich stated that he has seen some (though not many) individuals in prison who instead could be on the streets, but even those few would need to receive adequate support while on the outside.

Mr. William Gooden

Mr. Gooden stated that he is not in favor of mandatory sentencing and that he believes there should be the opportunity for parole. He testified that whites in America use more drugs than do African Americans, yet

there are significantly more blacks in jail for drugs than there are whites. Although Baltimore is predominantly black, the police are predominantly white. The poor do not receive the same treatment as the rich. A major question is how to eliminate drugs within our communities.

Ms. Francine Jones

Ms. Jones testified that she works for Labor, Licensing, and Regulation. Her husband is serving a life sentence. Her 15-year-old son has been committed to the Department of Juvenile Justice. Ms. Jones stated that the guidelines are fair, but that they are not carried out fairly. She believes that people who commit certain types of crimes or crimes against certain classes of people have a "depraved heart." These people should not be permitted to earn good time credits. Otherwise, she believes in allowing the credits. Ms. Jones further testified that prisoners should be allowed to earn money so they can pay restitution and support their families.

The Chairman asked whether he had missed anyone on the sign-up sheet or whether anyone else wished to testify. Hearing no response, the public hearing was adjourned.