

**Maryland State Commission on Criminal Sentencing Policy**  
**House Judiciary Committee Room**  
**Low Office Building, Room 121**  
**Annapolis, Maryland**  
**December 11, 1998**

**Commission Members in Attendance:**

Hon. John F. McAuliffe, Chair  
Judith R. Catterton, Esq.  
Chief Walter Chase  
Hon. Howard S. Chasanow  
Hon. Timothy Doory  
Mr. Robert Gibson  
Del. James Harkins  
Stephen Harris, Esq.  
Hon. Joseph Kaplan  
Sen. Delores Kelley  
Sen. Christopher McCabe  
Marna McLendon, Esq.  
Carolyn Quattrochi, Esq.  
Ms. Roberta Roper  
Del. Joseph Vallario

**Staff Members in Attendance:**

Mr. Adam Gelb  
Ms. Sally Marker  
Hon. Andrew Sonner  
Hon. Alexander Wright  
Kim Hunt, Executive Director  
Claire Souryal, Research Director

The Chairman, the Honorable John F. McAuliffe, called the meeting to order. He stated that the Commission would discuss the following issues: (1) mandatory minimum sentences as proposed by Chairman Vallario (see attached letter); (2) truth-in-sentencing as proposed by Mrs. Roper (see attached letter); and (3) diminution credits as proposed by Secretary Simms (see attached letter). The Commission would then consider a draft of the Commission's final report to the General Assembly.

Judge McAuliffe reiterated that the report is in draft form and incomplete at this point. Findings related to district courts, for example, still need to be incorporated.

Discussion then turned to the minutes of the previous Sentencing Commission meeting that took place on November 16-17, 1998. Two corrections were noted.

The letter submitted by Mrs. Roper and the issue of truth-in-sentencing were discussed next.

Mrs. Roper stated that the Commission failed to address a primary objective of the Commission, namely

truth-in-sentencing. Mrs. Roper noted the Commission considered announcing a criminal sentence in terms of range during the two-day Commission meeting in June (June 26-27, 1998). She asserted that stating a criminal sentence in terms of a range achieves truth-in-sentencing without fiscal impact.

Judge McAuliffe questioned whether such a judicial announcement would also entail changes to the sentencing ranges in the sentencing guidelines.

Senator Kelley moved to adopt a 50% across-the-board, minimum parole eligibility requirement in combination with a downward adjustment to the sentencing matrixes. She asserted that we need to tell people the truth.

Judge McAuliffe noted that we would have to extend to all crimes the law requiring persons convicted of violent crimes to serve 50% prior to parole eligibility.

Mrs. Roper seconded Senator Kelley's motion.

Senator McCabe contended that a goal of the Commission was to focus on violent offenses. He noted that the imprisonment of individuals convicted of nonviolent contributes to prison crowding. Correctional options programs were intended to rectify by providing sentence alternatives. While the motion achieves the goal of truth-in-sentencing, he stated that there are resource questions.

Ms. Catterton asserted that the Commission had dropped the ball on truth-in-sentencing even though we appeared to be unanimous in the belief to explain in court what the sentence meant. If the sentencing system is too confusing, we should simplify. She further asserted that the impact of Senator Kelley's motion is far-reaching.

Judge McAuliffe explained that there are two concepts at issue: (1) judicial announcement of a minimum and maximum sentence addressed in Mrs. Roper's letter; and (2) Senator Kelley's motion which would mandate that all sentenced offenders must serve a minimum of 50% of their court-imposed sentence prior to parole eligibility. In order to minimize or avoid fiscal impact, the sentencing guidelines matrices would have to be adjusted.

Ms. Quattrocki questioned whether truth-in-sentencing would be achieved if sentences were expressed in ranges.

Judge Chasanow cautioned that it might not be easy to state that 50% across-the-board be served since parole is sometimes used as a safety valve. He also noted that most drug and property crimes are on the threshold of going to the Department of Public Safety. If the sentencing guidelines were reduced, there would likely be a shift from the Department of Public Safety to local correctional facilities.

Judge Sonner noted that as a prosecutor, he did not believe that sentences were driven by the sentencing guidelines. Therefore changes in the guidelines may not have an affect at all.

Ms. McClendon asserted that the discussion might be too intellectual. She stated that serving 25% of a sentence simply does not make sense. Raising the minimum to 50%, reduces the uncertainty from 25% to 50%.

Judge Doory noted that the net effect would be to virtually cut the sentencing guidelines in half. As a consequence, we would be penalizing the people with whom we have the least concern.

Ms. Catterton stated that Judge Doory's point was well taken in that individuals at the low-end will be affected. At the low-end, individuals would be least likely to benefit from reductions in the sentencing

guidelines since judicial sentencing practices would likely not change. Therefore, they would serve more time, resulting in a greater bedspace impact.

Judge McAuliffe questioned whether judges would in fact sentence at the same levels given knowledge of the reduction in the sentencing matrixes and knowledge that the minimum parole eligibility has increased from 25% to 50%.

Judge McAuliffe called for a vote on Senator Kelley's motion. Three (3) members voted in favor of the motion and 9 members voted in opposition of the motion.

Mrs. Roper proposed a motion to mandate the judicial announcement of the minimum and maximum sentence at the time of sentencing.

Senator McCabe seconded the motion.

Judge McAuliffe explained that the judge would select the maximum sentence. The law would then dictate the minimum sentence.

Mr. Harris questioned whether we would maintain the present regulations regarding time-to-serve.

Judge Chasanow responded that legislation specifies that time-served cannot be less than 50% for violent offenses.

Mr. Gelb noted that for non-643B offenses, offenders are eligible for a hearing at 25%. He questioned whether judicial announcement would therefore be possible under the current system.

Mr. Gibson noted that individuals not convicted of crimes of violence may be paroled at Day One, but those individuals are typically not reviewed for parole release until they have served 25%. He stated that individuals may be released below 25% for purposes of participation in a correctional options program (COP). Therefore there is no legal restriction barring release below 25%.

Judge Kaplan stated that as a practical matter, most individuals serve a minimum of 25%. He suggested adopting the 25% minimum time-served requirement prior to parole eligibility for nonviolent offenses with an exception for participation in COP.

Judge McAuliffe stated that he had spoken with the chair of the Parole Commission who stated that individuals are virtually never released prior to serving 25%.

Mr. Harris questioned whether the language would be able to make an exception for COP participation.

Mr. Gibson noted that the main area of exception would be for participation in the boot camp program (which is 6 months).

Judge McAuliffe summarized the motion as follows: the Commission recommends that legislation require a minimum of 25% time-served for non-violent offenses (offenses not covered by the 50% requirement) subject to a COP exception.

Ms. Quattrocki asked for clarification regarding the judicial announcement of life sentences.

The Commission voted on the motion. The motion was approved unanimously.

Judge McAuliffe then moved that the Commission turn its attention to Chairman Vallario's letter.

Chairman Vallario referred Commission members to a copy of a bill that would permit a three-judge sentence review panel to reduce a mandatory minimum sentence. He suggested that the Commission ask the legislature to review the bill.

Senator Kelley seconded Chairman Vallario's motion.

Judge McAuliffe interpreted the motion to mean that a three-judge sentence review panel may decrease or increase a mandatory minimum sentence. He questioned whether it would apply to all mandatory minimum sentences.

Chairman Vallario responded that it would.

Senator McCabe asserted that the Commission had just adopted a recommendation intended to describe the minimum sentence imposed and that he is not in favor of the bill.

Ms. McLendon stated that while she recognizes that there are abuses with mandatory minimum punishments, she feels that the bill undermines the current system.

Ms. Catterton pointed out the unintended consequences of mandatory minimum punishments. She noted that individuals who should go to trial sometimes plead guilty instead because of the possibility of a mandatory minimum punishment.

Judge Sonner asserted that as a prosecutor he would not apply a mandatory minimum punishment if he believed it to be unjust. However, if two other judges were willing to overturn a trial judge, it would afford a great deal more justice.

Mr. Harris spoke in favor of an escape valve for mandatory minimum punishments.

Mr. Gelb raised the question of court workload. How many such cases would be heard?

Judge Wright responded that he did not think it would be that many.

Judge Kaplan concurred with Judge Wright.

Judge McAuliffe stated a hearing would be required only if a sentence is changed.

Ms. Catterton noted that one reason there may be few appeals of mandatory minimum sentences is the possibility that the sentence could be increased.

Delegate Harkins asserted that mandatory minimum penalties have relevance. Mandatory minimum penalties are based in law for good reason - they serve as a deterrent. Allowing mandatory minimum penalties to be reduced sends the wrong message about the Commission. It represents a sharp break from existing law.

Judge McAuliffe responded that the motion is intended to provide an escape valve. The Commission would provide it to the legislature who would have to approve it.

Chairman Vallario explained the motions as follows: Does a three-judge sentence review panel think the outcome is so egregious that they would overturn it? It provides an opportunity for review.

Judge McAuliffe called a vote on the motion. The motion received 9 votes in favor and 4 votes in opposition.

Judge McAuliffe then called attention to the draft version of the Commission's final report. Commission members commented on draft sections of the report.

While reviewing the report, Senator Kelley requested the inclusion of a recommendation stating that the State of Maryland should provide technical assistance to insure that District courts have criminal history information available at the time of sentencing.

Judge McAuliffe suggested that the Commission recommend the following: District courts should work with the State's Attorneys to ensure that criminal history records are available, with state support.

The motion was seconded and approved unanimously.

Judge Chasanow suggested a motion to reduce the sentencing guidelines offender score by one point for offenders who admit their guilt and save the state the cost of trial.

Chairman Vallario suggested that the Commission make such a recommendation to a permanent commission.

Judge McAuliffe summarized the motion to read: The Commission recommends to a permanent commission that the offender score be reduced by one point for a guilty plea or an Alford plea.

The Commission passed the motion unanimously.

Judge McAuliffe summarized the Commission's recommendations with regard to correctional release practices. The Commission does not recommend the abolition of discretionary parole release. The Commission rejected imposing a time limit for judicial reconsideration. The Commission recommends that a permanent sentencing commission study the allocation of diminution credits (noting the issues raised in the letter by Secretary Simms).

The meeting was then adjourned.