



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
**Public Comments Hearing**  
House Office Building  
Annapolis, MD 21041  
November 26, 2007

### Commission Members in Attendance:

Honorable Howard S. Chasanow, Chair  
James V. Anthenelli, Esquire  
Shannon E. Avery, *representing Secretary Gary D. Maynard*  
Chief Marcus L. Brown  
Leonard C. Collins, Jr., Esquire  
Paul Enzinna, Esquire  
Richard A. Finci, Esquire  
Major Bernard Foster  
Senator Lisa Gladden  
Senator Delores G. Kelley  
Patrick Kent, Esquire, *representing Nancy S. Forster, Esquire*  
Laura Martin, Esquire  
Honorable John P. Morrissey  
Kate O'Donnell, Esquire, *representing Attorney General Douglas Gansler*

### Staff Members in Attendance:

Kira Antell, Esquire  
Stacy Skroban Najaka, Ph.D.  
David Soulé, Ph.D.

### Visitors:

William Lipsky, University of Maryland intern

The Public Comments Hearing began when Judge Chasanow called the Commission to order. Each of the Commissioners in attendance introduced themselves. Judge Chasanow then welcomed the speakers and asked that they keep their comments to five minutes exclusive of any questions from the Commissioners.

### Speakers at Public Hearing

1. [REDACTED] provided copies of his comments to the Commissioners. He first addressed his background and experience in education. He noted that he became concerned by what he views as excessively long sentences of some prisoners during his volunteer



work with the [REDACTED] at the [REDACTED]. [REDACTED] is concerned that these men, many of whom have personally displayed leadership and other skills while in prison but will never be released into the community and will continue to age in prison.

[REDACTED] then addressed his second primary concern, namely disparity. [REDACTED] noted that African Americans and minorities appear to be overrepresented among inmates. He referred to two studies on race in sentencing, both of which showed disparities in incarceration and length of incarceration. He urged the Commission to produce updated work on this issue.

[REDACTED] also noted that the inmate population seems to be growing very quickly in the United States. He posited some suggestions as to why racial disparity exists in Maryland correctional institutions, but primarily asked the Commission to continue looking into these issues.

Finally, [REDACTED] called on members of the Commission to champion the causes of rehabilitation, substance abuse treatment, and prisoner reentry services. He stated that incarceration has been relied upon as an expedient resolution without concern for long-term consequences and that harsh sentences for low level drug offenders are counter-productive in the long-run. He asked the Commissioners to be courageous in their efforts and take the lead in a new approach to the war on drugs.

Judge Chasanow opened the floor for questions. Senator Kelley commented that she appreciated [REDACTED] taking the time to come before the Commission and for sharing the research he highlighted in his comments. She referred [REDACTED] to the purpose of the Commission which includes a charge to reduce unwarranted disparity in sentencing. She noted that the Commission is struggling with the work to be done in this area. Senator Gladden asked [REDACTED] to lend his time and efforts to produce a new study on disparity in sentencing in Maryland. [REDACTED] agreed that he does have time to pursue other efforts, including assisting with new additional research.

Judge Chasanow thanked [REDACTED].

2. *Laura Chase, Deputy State's Attorney, Montgomery County State's Attorney's Office*  
*Donna Fenton, Deputy Chief, Family Violence Division, Montgomery County State's Attorney's Office*

Ms. Chase and Ms. Fenton discussed issues related to White Collar crimes and child violence cases in Montgomery County.

Ms. Chase suggested that the sentencing guidelines for White Collar crimes are not necessarily adequate in some areas. For example, if a person without a prior record takes over a million dollars by violating an employer's trust through repeated acts, the guidelines range would only be probation to six months. This same range would apply if the individual had taken a lesser amount of money through one act. She also noted



that while the Maryland Sentencing Guidelines Manual does suggest that White Collar offenses are one reason to go outside the guidelines, it puts a heavy burden on the State to argue that an upward departure is appropriate. Ms. Chase suggested that the Guidelines should factor in the amount of economic loss and length of time over which the money was taken.

Ms. Fenton stated that the Family Violence Unit in Montgomery County handles all crimes associated with domestic violence including all physical and sexual child abuse cases. She also mentioned that the unit is focusing on vulnerable adult victims and elder abuse cases. She stated that she planned to speak about child sexual abuse cases and the age based sexual offenses which represent 90% of the cases her unit handles.

Ms. Fenton began with the age based sexual offenses. She stated that sometimes these cases involve a defendant, who is charged with second degree rape for what may be termed a “consensual” relationship with a boyfriend or other adult male. Under the guidelines, these offenses are treated the same as a situation in which an eleven year old is raped by her step-father in her home. The guidelines for either of these situations (where the offender has no prior record) would be 4Y-9Y. She suggested that the guidelines do not adequately reflect the seriousness of the second crime where the offender was a family member and that the Guidelines should be raised for the second type of crime.

Ms. Fenton also suggested that the same situation would be true for a third-degree sexual offense and requested that the guidelines for these cases be raised to differentiate between a consensual relationship with an under-age child and a non-consensual violation. The guidelines are not adequate because in many situations they would call for only a sentence of probation for the offender. She noted that these are the most vulnerable of victims and the ASA’s office needs to have stricter guidelines in order to develop decent plea agreements to avoid forcing these victims to testify at trial.

While the Commission has raised the seriousness category for child sexual abuse and the Montgomery County State’s Attorney’s office is thankful for that change, they would respectfully request that the guidelines be raised for other analogous child sexual abuse cases as well. She asked that special consideration be given to the non-age based offenses so that there can be effective differentiation between cases in which the child purports to consent and cases in which the child was abused by an adult in a position of trust.

Ms. Fenton asked the Commission to reexamine the age of vulnerability for which an additional point may be awarded. She posited that there is no genuine difference between a ten year old who is molested by a family member and an eleven year old who is molested by a family member. She suggested that any child molested by a family member is vulnerable and should be eligible to have the Special Victim Vulnerability point awarded. She questioned why the age of eleven was chosen as a cut off age and noted that the age of eleven is not present in any statutory materials and thus appears arbitrary.



Finally, she asked the Commission to reexamine and further elaborate on how victim injury points are awarded for temporary versus permanent injury and physical versus psychological injury. She stated that all research shows that victims of sexual abuse suffer psychological injury but that often victims are unable to afford the diagnosis of psychological injury which is required in order to have the point assessed. With respect to physical injury, she asked that the definition for injury be elaborated to include STDs and pregnancy in order to give more guidance about how to assess points.

Judge Chasanow thanked Ms. Chase and Ms. Fenton for their testimony. He then responded to Ms. Fenton's question about the age of eleven having been selected as the cutoff for Special Victim Vulnerability. Judge Chasanow explained that the Guidelines are intended to be descriptive. He noted that the initial committee tasked with setting up the guidelines analyzed thousands of offenses, and the cutoff ages selected for Special Victim Vulnerability appeared to be empirically descriptive of how judges were sentencing. He did suggest that this analysis was done many years ago and it may be time to reexamine these ages of vulnerability.

Senator Kelley commented that because the Guidelines are descriptive that sometimes they accurately reflect the system back in a manner that is less than positive. She noted that she was particularly struck regarding the requirement that a victim obtain a psychological diagnosis before having an extra point awarded for Victim Injury and suggested that this is likely a class barrier and possibly a race barrier.

Mr. Finci complimented the speakers on an effective presentation and asked if there is an age that Ms. Fenton would suggest is a better age for Special Victim Vulnerability. Ms. Fenton stated that the age based vulnerability should mirror the statute under which the offender is prosecuted because the crimes are so fact specific.

One of the presenters in this group [unclear based on audio] added that she wanted to make sure that the Commissioners understand that the designation of White Collar offenses does not relate only to those who steal from corporations but also to those who steal from elderly victims. She has found that these felony theft schemes with an elderly victim often correspond to a low guidelines range and this is because the crime is a property crime for which no Victim Injury or Special Victim Vulnerability are assessed.

Judge Chasanow asked the speakers to submit any additional suggestions as to how to calculate White Collar crimes. Senator Kelley invited the group to testify before members of the General Assembly about White Collar crimes and discuss the impact on elderly individuals.

3. [REDACTED] introduced herself and noted that she is the wife of an inmate. Her husband is serving 25 years without the possibility of parole under the subsequent offender crimes of violence, Maryland Annotated Code, Criminal Law Art. § 14-101. While she acknowledged that she could speak to the difficulties of being married to one



-serving a long period of incarceration, instead she chose to speak about illegal sentences. She noted that her husband and many others in Maryland are currently incarcerated due to illegal sentences.

██████████ husband was sentenced as a third time offender which requires that prior predicate periods of incarceration be served separately. When one has been convicted and sentenced to predicate offenses but the periods of incarceration were served concurrently, these should not count for sentence enhancement purposes. She cited numerous Maryland cases that support her position.

██████████ noted that despite the existence of clearly favorable precedent to suggest that her husband's sentence is illegal, it is very challenging to get an illegal sentence corrected. One must be aware that the sentence was illegally imposed and must have access to an attorney or legal resources. She noted that there are many who are likely serving illegal sentences unaware of the remedies and stated that it took eight months following her husband's conviction before a motion was filed to correct the illegal sentence. She stated that another burden is that even once a motion to correct a sentence has been filed, the judge does not have to consider such a motion until any appeals have been exhausted. In her husband's case, that will be at least a year.

She called on the Commission to develop a system to prevent the imposition of illegal sentences for subsequent offenders that would require confirmation that predicate sentences were served separately. She also pointed out that the sentencing judge should be responsible for checking the legality of any proposed sentence. She again spoke about the danger that there are likely many offenders who have been sentenced to unnecessarily long sentences and are unaware of their remedies.

Judge Chasanow asked whether ██████████ husband was represented by counsel at trial and ██████████ confirmed that he was, although she noted that her husband had received ineffective assistance.

4. *Jason Ziedenberg, Executive Director, Justice Policy Institute (JPI)*

Mr. Ziedenberg provided prepared materials to the Commission and began by introducing the JPI. He noted that JPI is dedicated to examining sentencing issues in Maryland. He referred the Commissioners to his prepared materials from which his testimony was drawn. He referred to a September 2005 report on sentencing in Maryland which presented how to maximize the benefits obtained through alternatives to incarceration. He noted that there has been an increase in the awareness of alternatives to incarceration. He cited statistics to identify the fact that the Maryland Sentencing Guidelines continue to recommend incarceration more frequently for less serious drug offense cases than for more serious violent or property offense cases. He also noted that substance abusers are sentenced to incarceration at roughly the same rate as violent offenders and often receive lengthier and harsher sentences.

The 2005 report recommends, and the JPI continues to recommend, that low-level drug offenses should be re-categorized as level IV offenses and the longest recommended



sentences should be reserved for violent and sex offenses, and not eligible to be applied against non-person offenders.

He concluded by stating that people around the country are beginning to re-examine the use of prison and that in Maryland, prison is the least effective, most expensive way to achieve any public safety goal. He also echoed what he has heard from corrections professionals, that there is no more room to incarcerate offenders who do not pose a threat to public safety. He extended an offer on behalf of the JPI to work with the state of Maryland in any efforts.

Senator Kelley asked if Mr. Ziedenberg is aware that one of the mandates of the MSCCSP is to advise the state as to the fiscal impact of changes in statutes. She noted that the MSCCSP is developing a simulation model which will assist in this process but stated that MSCCSP does not currently advise on a bill by bill basis. She asked if Mr. Ziedenberg is aware of how other states' address this issue. Mr. Ziedenberg referred to California which does not have a Sentencing Commission but the legislative office prepares a thorough fiscal analysis for each piece of proposed legislation. He suggested that while the MSCCSP may not have the ability to produce specific fiscal information, it could certainly comment on the cost-effectiveness of alternatives to incarceration in contrast with incarceration.

Senator Kelley asked about the problem of aging prisoners in Maryland and the cost of continued incarceration of these inmates who require expensive medical services. Mr. Ziedenberg commented on two pieces of evidence that support releasing older inmates. First, it is far more expensive to serve someone's medical needs inside a correctional institution. Many of these individuals may qualify for federally funded medical care such as Medicaid. Therefore, the state is shouldering costs which could partially be shared with the federal system. Second, elderly inmates have a significantly reduced recidivism rate. He reiterated that incarceration is the least effective and most expensive way to implement public safety goals.

Judge Chasanow thanked Mr. Ziedenberg and mentioned that Delegate Anderson chairs an MSCCSP subcommittee dedicated to examining options for sentencing drug offenders. Mr. Ziedenberg stated that he has worked and will continue to work with Delegate Anderson.

5. [REDACTED] was called for testimony but she was not present.
6. [REDACTED], *Families Against Injustice*  
[REDACTED], *Families Against Injustice*  
introduced herself as the wife of a prisoner serving a life sentence in Maryland's prison system. She noted that due to changes under past administrations, individuals serving life sentences are no longer eligible for parole despite the continued existence of the Maryland Parole Commission. She stated that it is difficult to determine how many individuals are serving life sentences but there are over 200 who



have served in excess of 25 years. She is struggling with understanding why these individuals, many of whom were previously recommended for parole, are still awaiting final confirmation from the Governor when recommendation for parole would seem to be the responsibility of the Parole Commission. Under Governor Ehrlich's administration, five individuals were released. There are a great number of aging prisoners who are dying in Maryland correctional institutions without hope. [REDACTED] appealed to humanitarian concerns that despite the crimes these prisoners may have committed they still deserve a second chance. She reiterated that she wants to know that the Parole Commission is still doing its job and is still relevant.

[REDACTED] introduced herself as the mother of a prisoner serving a life sentence in Maryland's prison system. She asked the Commission three questions: (1) Does this Commission have a position on former Governor Glendening's policy on "lifers"?; (2) does the Commission recognize the negative impact the Glendening policy has had on correctional institutions as a whole?; and (3) can the Commission recommend any solution or any help to the families of lifers who have no hope?

Judge Chasanow responded that [REDACTED] questions are difficult given that she remarked on executive or gubernatorial policies and the Commission has not taken a position in advising the Governor with regard to parole. He noted that advising the Governor is something the Commission may consider doing.

Senator Kelley remarked that she is aware of the cases of several lifers who were negatively impacted by executive policies. She noted that the questions raised by the speakers are outside of the scope of the Commission's capacity, but lauded the speakers for coming before the Commission to share their thoughts and raise consciousness.

Judge Chasanow thanked [REDACTED] and [REDACTED] for testifying.

7. *Lopez Matthews, Alpha Phi Alpha Fraternity, Delta Lambda Chapter*

Mr. Matthews prepared a written statement for the Commission and stated that he wished to address the mandatory minimum sentencing laws in Maryland. He began by introducing the history and efforts of the Alpha Phi Alpha fraternity, a Greek letter fraternity established by Black men with a commitment to academics and public service. The organization counts many distinguished individuals among its current and former members.

Mr. Matthews noted that the Commission has a clear mandate to reduce unwarranted disparity, including racial disparity. He noted that while the Commission has in the past examined racial disparity, it had not reexamined the issue in recent years. He then referenced a more recent report of the Justice Policy Institute (JPI) which found that mandatory minimums in Maryland may contribute to disparity in sentencing for Black offenders. He noted that the JPI report found that Blacks overwhelmingly received mandatory minimum sentences. He suggested that this should not be the case given that Whites and Blacks report similar rates of drug dependence.



He restated the fact that the Commission has a statutory charge not to ignore such disparity. While Mr. Matthews acknowledged that some sentencing variation will no doubt be due to judicial discretion, such extreme variance across racial lines reveals disparity. Mr. Matthews stated that he is aware that the Commission cannot change the mandatory minimum sentencing laws, but called on the Commission to raise such issues in its Annual Report, given its duty to advise the public and encourage utilization of resources for violent offenders rather than non-violent drug dependent offenders. He stated that it is the responsibility of the General Assembly to change mandatory minimum laws, but he called on the Commission to raise consciousness on this issue using data and analysis.

Judge Chasanow thanked Mr. Matthews. Senator Kelley commented that she reminds her colleagues of the mission of the Commission and tries to always be mindful of the impact of sentencing practices. She stated that she will review previous Annual Reports with this issue in mind.

8. [REDACTED] *[phonetic spelling]*  
[REDACTED], *Maryland's Outside Connection*  
[REDACTED] began by stating that she appreciates the opportunity to address the Commission. She believes that we should be working towards a more perfect Union by addressing the issue of racism in certain policies in Maryland. She stated that there are many Black men, women, and children serving life sentences because they are Black. She stated that race was the key issue in their incarceration. [REDACTED] referred back to the numerous speakers that evening who addressed racial disparity in sentencing at the Public Comments Hearing. She stated that she was personally aware of instances of racial disparity where Black men were given life sentences for "consensual" rape. She reiterated that while she does not support a violent offender being released from prison, she believes the sentencing disparities are egregious.

She then stated that statistics would bear it out, including the fact that 23,000 people are serving life sentences and 90% of those people are African Americans -- the equivalent to de facto slavery. She also addressed the fact that the Commission and other agencies should address drug trade on the border as opposed to incarcerating its citizens engaged in petty crimes. She wondered why those engaged in street drug crime are being sentenced as harshly as members of drug cartels. [REDACTED] concluded by stating that prison should provide more services to inmates to teach them how to act when they are released, especially given the difficulties prisoners face on reentry.

[REDACTED] stated that as the number of people being incarcerated continues to rise that organizations like hers will grow in political strength and numbers by organizing these disenfranchised families. She noted that the current method of incarceration is racist. She believes that Maryland has a high rate of incarceration and she hopes to organize families in Maryland to vote as a unit for policy changes. One such change would be to abolish mandatory minimums to permit case by case sentencing. She also noted there is disparity in the Department of Public Safety and Correctional Services in the way that Black offenders serve time versus White offenders.





She noted that churches are also sick of the incarceration binge and that her movement will continue to grow and be able to vote like-minded politicians into key positions. She lauded the use of thoughtful case management in prisoner release.

Judge Chasanow thanked the speakers.

Judge Chasanow concluded by thanking all of the members of the public for speaking and noted that it is very important for the Commission to be educated by the public. There being no more speakers present and no further business, the meeting was adjourned.