

SENTENCING COMMISSION NEWS

March 1995 Issue 1

WELCOME TO THE NEWSLETTER

Welcome to the inaugural newsletter of the newly formed National Association of Sentencing Commissions. In the future, this newsletter will be published on a regular basis. It will provide updates on the progress of the organization, offer news from the states, and present feature articles on relevant issues in sentencing. As you can see, the newsletter is currently unnamed and suggestions are invited. Please submit your name suggestions for the newsletter to Rob Lubitz at 919-733-9543 (fax 919-733-2991) or direct them to the Bulletin Board (see article inside).

FORMATION OF ORGANIZATION

At our national meeting last summer in Seattle, an executive committee was formed to begin plans to formally establish a national association. The seven members of the executive committee included Sandra Shane-DuBow (Wisconsin Sentencing Commission), David Factor (Oregon Sentencing Guidelines Board), Jane Haggerty (Massachusetts Sentencing Commission), Rob Lubitz (North Carolina Sentencing and Policy Advisory Commission), Phyllis Newton (United States Sentencing Commission), John Steiger (Washington Sentencing Commission), and Elizabeth Sykes (Tennessee Sentencing Commission). Following are the executive committee's proposals concerning the formation of the organization:

Mission Statement: To educate and facilitate the exchange and sharing of information, ideas, data, expertise, and experiences on issues related to sentencing policies, sentencing guidelines, and sentencing commissions.

Membership:

Voting Membership: One designated representative from each state and the federal government that has a sentencing commission or similar governmental body charged with sentencing policy responsibilities. Each member will have one vote on all matters before the full membership.

Executive Committee: A seven-member board elected from among the voting membership. Membership on the Executive Committee will be two-year terms with members serving rotating terms. The Executive Committee will elect a chair and vice-chair to serve in a leadership capacity.

Individual Membership: Any individual, not among the voting members, who works or serves on a sentencing commission or similar government body charged with sentencing policy responsibilities, or works for any other government agency directly involved in the

development of state or federal sentencing policy; and any other academic, public or private employee, student, or other individual interested in sentencing. .

Meetings:

Full Membership Meetings. The National Organization shall meet annually at a location to be hosted by a state represented on the Executive Committee.

Executive Committee. This committee will meet twice a year; one meeting at the time of the National Association's annual meeting. The Chair of the executive committee may call additional meetings.

Standing Committees:

Executive Committee: The principal duties of the committee will be to manage the budget and finances of the organization, establish committees as needed and establish a program committee and determine a site for the annual meeting.

Program Committee. To be appointed annually by the Executive Committee with the chairperson representing the host site.

Ad hoc Committee. To be named by the Executive Committee as needed. Any individual member can make requests for ad hoc committees of the Executive Committee.

The Executive Committee is collecting examples of by-laws from other national organizations to serve as a model for the Association. . The Committee is also investigating the feasibility of establishing a national sentencing information clearinghouse and is searching for potential sources of outside funding.

SUMMARY OF FIRST NATIONAL CONFERENCE (submitted by John Steiger)

The first National Conference of Sentencing Commissions, organized by Washington State's commission was held in Seattle, Washington, July 28-29. The conference brought together over 70 commission members and staff from 17 state sentencing commissions and the U.S. Sentencing Commission. The aim was to facilitate the exchange of information and increase communication among those charged with developing and implementing structured sentencing in the United States.

One of the conference's strengths was the diversity of experience with structured sentencing. Staff from Washington and Minnesota shared more than a decade of experience with felony sentencing guidelines. North Carolina's director described final plans to implement its sentencing proposals in October. Participants from Massachusetts and Oklahoma arrived within days of being appointed to new state commissions.

Participants spent two days exchanging ideas, experiences, and approaches to the development and implementation of sentencing guidelines. Workshop panels discussed

the process of initiating reform, monitoring their impact, and preserving and fine-tuning reforms once implemented. Through the course of working sessions, the participants were able to compare and contrast experiences with peers from other states.

Those in attendance were unanimous in their appreciation of the opportunity to exchange information and experiences with professionals from other states. The conference resulted in an enhanced appreciation of the degree to which states with commissions share many of the same challenges (prison overcrowding, sentencing disparity, and maintenance of proportionality in the face of mandatory minimums and special sentencing enhancements).

Participants resolved to continue the process of collaboration and took the following actions:

Appointed an executive committee to select a 1995 conference site and develop recommendations for the creation of a national organization of sentencing commissions,

Authorized the executive committee to explore sources of outside funding for a national organization and an annual conference,

Supported the development of a sentencing commission computerized bulletin board to facilitate communication among those interested in sentencing reform, and

Supported the development of a clearinghouse to centralize information related to structured sentencing, sentencing guidelines, and sentencing commissions.

BULLETIN BOARD ESTABLISHED

Washington State's Sentencing Guidelines Commission is sponsoring a computer bulletin board for the exchange of information related to sentencing guidelines. In addition to E-mail, the boards will have four areas:

Mailing lists: Contacts for all state commission and the United States Sentencing Commission.

State summaries: Short summaries of (sentencing) systems in each state.

Research notes: Summaries of research reports and source for copies.

Calendar of events: Conferences and meetings of special interest, etc.

To access the Bulletin board you must have a modem and communications software. The telephone number for the Bulletin Board is 360-753-6997 and the communication parameters are as follows:

Modem speed: 300 to 9600 BPS

Stop bits: 1

Data bits: 8
Parity: None
Flow Control: XON/XOFF
Binary Transfer: XMODEM CRC
ZMODEM

If you have any questions about accessing or using the Bulletin Board, please give John Steiger a call at 360-753-6620. The Bulletin Board is now operational, so give it a try!

NEWS FROM THE STATES

ALASKA: A day-fines program was adopted for selected misdemeanors. The Supreme Court's planning committee, required by statute, designed the program and made its final report to the court in January. The committee recommended consideration of expansion of day-fines to other misdemeanor and felonies.

ARKANSAS: Arkansas' new sentencing guidelines went into effect January 1, 1994. The Sentencing Commission staff has traveled to every one of the state's seventy-five counties in order to collect data needed to monitor the guidelines. The data is necessary for developing impact studies needed by the State Legislature for planning correctional needs for the future.

MASSACHUSETTS: The Commission, created as part of "truth in sentencing" legislation, is in the process of developing a system of sentencing guidelines for all criminal cases in Massachusetts. The fifteen commission members include three judges, three prosecutors, three defense counsel, and representatives of the Probation Department, Department of Correction, the Parole Board, the Executive Office of Public Safety, Victim Witness Assistance Board and the Sheriffs Association. The Honorable Robert A. Mulligan, Chief Justice of the Superior Court, serves as chair and Francis J. Carney, Jr., Ph.D. was recently named as the Executive Director.

MICHIGAN: The Michigan Legislature has adopted legislation to form a Legislative Sentencing Guidelines Commission that would review and develop sentencing guidelines. The Commission will be appointed by the Legislature and the Governor. The Commission will be appointed this spring. The Commission will consider prison capacity when developing guidelines

MINNESOTA: Minnesota recently implemented significant changes in its juvenile system including an option, under certain circumstances, to prosecute a child as an "Extended Jurisdiction Juvenile." An EJJ prosecution on results in both juvenile sanctions and an adult stayed sentence which can be executed if the child violates the juvenile sanctions. The Commission has forwarded a major proposal to the state legislature this year designed to modify the guidelines to better ensure that state prison resources are reserved for violent offenders. This proposal is expected to receive serious consideration by the 1995 Legislature.

NORTH CAROLINA: The State's new sentencing law (called structured sentencing) went into effect on October 1, 1994, and applies to all felonies and misdemeanors committed on or after that date. The new law establishes truth in sentencing and balances sentencing policies with correctional resources. The Commission's chairman, Judge Thomas W. Ross, was named by *Governing Magazine* as one of ten "public officials of the year" in the United States for his work on the Commission. The Commission is proposing several revisions to the new law which will be considered by the General Assembly this session.

OKLAHOMA: The Oklahoma Truth in Sentencing Policy Advisory Commission was legislatively established in June 1994. A fifteen member Commission representing a cross-section of the criminal justice system was charged with 1) classifying all criminal offenses and developing a related sentencing structure; 2) modifying or recodifying the penal code; 3) developing a Truth in Sentencing Act; and 4) analyzing long range needs and impact of the criminal justice and corrections systems. The focus of the Commission is to present a completed product to the state legislature this session (Fall 1995) for passage. The executive director of the Commission is Paul O'Connell.

OREGON: Oregon voters passed an initiative measure in November 1994, effective April 1, 1995, which imposes mandatory minimum sentences for sixteen felony crimes. The measure requires the minimum sentence for any offender over the age of 15. It is estimated that an additional 1,033 prison beds will be required to fulfill the sentences required by the measure in the next 2 years, and over 6,000 additional prison beds by July 2001.

OHIO: The Commission's felony plan passed the House but ran out of time in the Senate last year. It was reintroduced in both houses in January. Hearings have begun. The plan should be enacted sometime this year. It will dovetail with the State's biennial budget. Meanwhile, the Commission continues to work on its overhaul of Ohio's misdemeanor sentencing.

PENNSYLVANIA: For the first time since the initial guidelines became law in 1982, the Commission conducted a comprehensive revision of the sentencing guidelines, which became effective August 12, 1994. The revised guidelines increase incarceration for violent offenders and expand community based alternative for nonviolent offenders. Judge Theodore McKee, who served as chair of the Commission during the last two of his eight years as a Commissioner, was appointed to the U.S. Court of Appeals for the Third Circuit in June of 1994.

SOUTH CAROLINA: The South Carolina Sentencing Guidelines Commission, working cooperatively with the Departments of Corrections and Probation, Parole, and Pardon Services, is developing a database for use in constructing sentencing guidelines to complement proposed truth in sentencing legislation. The truth in sentencing bill, sponsored by the Commission's Chairman, newly elected Speaker of the House David H. Wilkins, passed the House in the first week of session and is expected to pass the Senate in the next few months. Legislation effective on January 12, 1995 expanded the duties of

the Commission to conduct studies and to provide reports on the most efficient use of alternatives to incarceration. The Commission is pursuing a grant from the Edna McConnell Clark Foundation to aid in the development, implementation, and education of truth in sentencing, sentencing guidelines, and alternatives to incarceration.

TENNESSEE: The Tennessee Sentencing Commission has recently submitted its reports on "Truth in Sentencing" and "Durational and Recidivism Study" to the Tennessee General Assembly. The Commission's recommendations will be considered by the General Assembly this legislative session.

UTAH: The Utah Sentencing Commission has played a critical role in drafting and promoting legislation concerning habitual violent offenders, serious youth offenders, and a package bill remedying inconsistencies within the state penal code. Ed McConkie, an attorney, has replaced Heather Cooke as Director.

VIRGINIA: During a special legislative session called by Governor George Allen in September 1994, parole was abolished, inmates good-time earning were restructured, and the Virginia Criminal Sentencing Commission was established as a new judicial branch agency. Under new truth in sentencing legislation, those convicted of felonies which occur after January 1, 1995, will serve 85% of their incarceration sentence. The Commission must develop and administer a set of discretionary sentencing guidelines. In addition the commission must develop risk assessment instruments for incorporation into guidelines for use of intermediate sanctions. The 17 member Commission is chaired by retired Circuit Court Judge Ernest P. Gates. Dr. Richard P. Kern was recently hired as the Director of the Commission.

WASHINGTON STATE: The Commission is sponsoring a bill in the 1995 legislature to provide a sentencing alternative for first-time drug dealers. Current guidelines call for a 21-27 month sentence for the first offense. The proposal would allow judges' discretion to sentencing offenders to 12 months in prison followed by 12 months of community supervision. Offenders would receive substance abuse assessment and treatment while in prison and would be subject to drug screening while in the community and could be returned to prison for violations. Richard Van Wagenen is the new Executive Officer of the Commission. He is a graduate of Yale Law School and has extensive legislative experience in Washington State, where he was staff director to the Senate Ways and Means Committee and in Washington, D.C.

WISCONSIN: The state's most recent revision to the sentencing guidelines went into effect on July 1, 1994. This revision extends the incorporation of presumptive intensive sanction cells in the matrices for all nonviolent offenses and increases the most severe sentence recommendations for violent offense. In the upcoming legislative session, the Commission will propose changes to its enabling legislation. These changes would increase the Commission's responsibilities as a criminal justice information clearinghouse as well as provide for the commission to become a principal source of legislative impact assessment.

UNITED STATES: In October, the Senate confirmed U.S. District Court Judge Richard P. Conaboy of Scranton, Pennsylvania as new Chairman and Wayne A. Budd, Esq of Boston, Massachusetts; Professor Michael Goldsmith of Salt Lake City, Utah, and 10th Circuit Court of Appeals Judge Deanell R. Tacha of Lawrence Kansas as Commissioners. During debate on the 1994 crime bill, the Commission was called upon by members of Congress for extensive analysis and empirical information on various proposals. A special report to Congress on cocaine and federal sentencing policy is scheduled for submission March 1. Current research projects assess the operation of the guidelines' "substantial assistance" departure mechanism and public perceptions of "just punishment" for federal criminal offenses. Staff working groups are studying revisions to the drug trafficking guidelines and comprehensive guideline simplification.

OTHER NEWS

Legislation has been introduced in the Maryland Senate to create a sentencing commission to formulate sentencing structures for use by judges.

The American Bar Association has released its new sentencing standards. Major proposals included in the standards are:

Every jurisdiction should establish a permanent sentencing commission or similar agency. The commission (or agency) should create determinate sentencing provisions to guide the exercise of discretion by sentencing courts. The legislature and commission (or agency) should design the sentencing system so that aggregate resources are matched with correctional resources. The legislature and commission (or agency) should expand the use of sanctions other than imprisonment. The Jan/Feb 1995 issue of *Judicature* was devoted to Twenty years of Sentencing Reform and included articles on federal and state sentencing guidelines by Michael Tonry, Kevin and Curtis Reitz, Richard Frase, Marc Miller, David Boerner and Saul Pilchen.

NEXT ANNUAL MEETING OF SENTENCING COMMISSIONS

The next annual meeting of the National Association of Sentencing Commissions will be held in Boston Massachusetts on Thursday July 27 and Friday July 28. The hotel site for the conference will be announced later this month. The conference theme will be "Truth in Sentencing and State Sentencing Commissions". The conference program is still under development but current plans are to focus on the following four areas:

Sentencing Policy Issues (establishing truth in sentencing through guidelines, developing intermediate punishments, rethinking sentences for some drug offenses, etc.),

Research and Information Systems (creating and maintaining sentencing databases, effective presentation of data, developing correctional population impact projections, review of recent research, etc.),

Writing Sentencing Guidelines (developing legislation to establish a Commission, formulating sentencing guidelines or other sentencing policy, implementing recommendations, monitoring sentencing practices, etc.) and

Political Challenges (dealing with political pressures to increase sentence severity, responding to proposals for mandatory sentencing, and counteracting misinformation about sentencing and corrections, etc.)

At the meeting we also plan to have a presentation and discussion on the new federal crime bill. We are in the process of identifying possible speakers and we also hope to arrange for a professionally moderated round table discussion. Further information regarding the conference (costs, program and registration instructions), will be mailed to you shortly. In the meantime, if you have any specific suggestions or ideas for the programs, please contact John Kramer, at 814-863-2797.