

SENTENCING COMMISSION NEWS

MAY 1997: ISSUE 5

THE 1997 NATIONAL ASSOCIATION OF SENTENCING COMMISSIONS CONFERENCE

THE BREAKERS HOTEL
PALM BEACH, FLORIDA

JULY 20-22, 1997

The goal of the 1997 National Association of Sentencing Commissions conference is to provide criminal justice officials and researchers an in-depth review of the issues surrounding the application and implications of structured sentencing policy. The agenda spans both theoretical and practical concerns, and is an opportunity to discover and discuss the current issues, trends, research, practice, and technology relating to sentencing guidelines.

(Continued on page 4; complete program on pages 5-6)

NIJ INTENSIFIES FOCUS ON SENTENCING by Jeremy Travis

The ongoing sentencing research initiative of the National Institute of Justice (NIJ) encompasses a spectrum of issues ranging from sentencing legislation to the links between sentencing and management of prisons, jails, probation, and parole.

In developing its heightened support of research and evaluation on sentencing and the consequences of sentencing decisions (especially on corrections), NIJ has worked very closely with the Corrections Program Office (CPO), U.S. Department of Justice, and consulted extensively with practitioners and researchers at the state and local levels.

(Continued on page 3)

*** JOB ANNOUNCEMENTS *** (See page 2)

Robin Lubitz Leaves North Carolina Commission for a New Challenge

After nearly six- and one-half years as Director of the North Carolina Sentencing and Policy Advisory Commission and almost twenty years in the field of criminal sentencing, Rob Lubitz has accepted a new position as Director of the Governor's Crime Commission. Rob has indicated a desire to learn more about the causes of crime and to help develop new and innovative prevention programs and feels the Governor's Crime Commission will give him these opportunities. The North Carolina Sentencing Commission has been extraordinarily fortunate to have Rob Lubitz as its director and his presence will be sorely missed.

When Rob Lubitz came to North Carolina in 1990, he already had significant experience in the field of sentencing guidelines and sentencing reform, having served for ten years as the Associate Director and Director of Research for the Pennsylvania Commission on Sentencing. He came to a newly created commission with no staff and to criminal justice and correction systems in chaos. Rob promptly put together an excellent staff and detailed work plan designed to allow the Sentencing Commission to accomplish its legislative directives.

With the expertise and wisdom of Rob Lubitz leading the way, North Carolina, in 1993, adopted comprehensive community corrections legislation and rational sentencing guidelines that link policy with available resources. The Structured Sentencing Act and its companion legislation became effective on October 1, 1994. In the ensuing two and a half years North Carolina's prison and correction system has been brought into balance and the state's criminal justice system is no longer in crisis. Rob has established credibility both for the Commission and its work with the General Assembly, other state agencies, criminal justice professionals and, most importantly, with the citizens of North Carolina. Because of Rob's work North Carolina is viewed by many as a national model for truth in sentencing and rational, balanced criminal justice policy.

(Continued on page 2)

Lubitz (continued)

Rob Lubitz is one of the founding members of the National Association of Sentencing Commissions and serves on its executive board. He has given freely of his time and energy to help make the Association a valuable resource for states seeking information on sentencing guidelines and reform.

It has been a rare opportunity to work with a man of such vision, experience and expertise. His strength of character, integrity, and dedication to what is right is truly unique. We are all indebted to Rob for his outstanding contributions to sentencing reform in America. To Rob Lubitz, we say thanks for a job well done and best wishes for every success in your new endeavor.

Submitted by Hon. Thomas W. Ross, Chairman, North Carolina Sentencing and Policy Advisory Commission.

NASC ON THE INTERNET

The NASC has an active Internet site. The NASC's Web site is included under the home page of the United States Sentencing Commission. The internet address is:

<http://www.ussc.gov>

The NASC information is found under the "State Sentencing Commissions" folder. Included are copies of the NASC newsletters (including previous editions), copies of the NASC bylaws, and other items of interest.

NASC continues to solicit information from the states to add to the site. For more details and submission instructions, please contact the United States Sentencing Commission webmaster at 202-273-4604.

***** JOB ANNOUNCEMENT *****

RESEARCH ASSOCIATE VIRGINIA CRIMINAL SENTENCING COMMISSION

The Criminal Sentencing Commission, an agency of the Supreme Court of Virginia, seeks a Research Associate. The Research Associate will participate in a wide variety of empirical research studies focusing on criminal sentencing decisions and their impacts. This position will work with Commission project teams to develop statistical models of judicial sentencing practices, to identify risk factors associated with the likelihood of offender recidivism, to conduct impact analysis of proposed policy changes, and on other justice system topics. The primary requirement for this position is demonstrated proficiency in social science research methods and multi variate statistical analysis of data. Professional work experience using both descriptive and multi variate statistical techniques and working with large data sets is highly desirable. Ability to effectively communicate complex information to lay audiences is also highly desirable. An advanced degree in a social science discipline is desirable. Experience with statistical software such as SPSS or SAS is required. This position includes a full and excellent benefits package. Compensation is very competitive and will be commensurate with training and experience. To apply send a detailed resume and a salary history to the Recruitment Committee, Virginia Criminal Sentencing Commission, 100 North Ninth Street, 5th Floor, Richmond, VA 23219. Applications will be accepted until the position is filled.

AN EQUAL OPPORTUNITY EMPLOYER

NIJ (Continued)

Important Crime Act initiative

Substantial funding for NIJ's intensified sentencing-related activity emanates from a significant Crime Act initiative administered by CPO: the Violent Offender Incarceration and Truth-in-Sentencing Incentive Grant Program (VOI/TIS). It provides funding to states as formula grants to build or expand correctional facilities and jails to increase secure confinement space for adult and juvenile violent offenders.

Fifty percent of the almost \$10 billion authorized for the program through fiscal year 2000 is available through violent offender-incarceration grants and half through truth-in-sentencing incentive grants (states may apply for both types of grants). To obtain truth-in-sentencing incentive grants, a state

must demonstrate that persons convicted of Part I crimes serve not less than 85 percent of the sentence imposed.

The VOI/TIS legislation also authorized the Department of Justice, through NIJ, to fund evaluations of the impact of this significant federal initiative upon the sentencing and corrections policies of state and local jurisdiction. This research and evaluation activity, supported by NIJ with funds transferred from CPO, will permit the Institute to gather information on the macro-level effects of the legislation, determine the results of state and local sentencing initiatives, and help improve the evaluation capability of states and local jurisdictions by supporting the creation of partnerships between research organizations and operational agencies.

Funds awarded in 1996

In 1996 NIJ joined with CPO, headed by Director Larry Meachum, to allocate approximately \$3 million in VOI/TIS funds to such research and evaluation projects as the following:

- National evaluation of the legislation's implementations and impacts.
- Local impact of the legislation.
- Consequences of two- and three-strikes laws.
- Repercussion of sentencing reforms on corrections.
- Multi-site evaluation of "second generation" sentencing commissions.
- Identification of the unintended impacts of sentencing reforms and incarceration, such as destabilization of families and disruption of neighborhoods.
- Promotion of collaboration between local researchers and court and corrections practitioners to assess, and enhance understanding of, the implementation and consequences of sentencing policies under the Crime Act.

The overall aim of such research is to highlight the lessons learned from projects established under the Crime Act and to provide timely feedback so that effectiveness of future funding is maximized.

In 1996 NIJ also provided support for research on incorporation of intermediate sanctions into comprehensive sentencing guidelines; results of that research are detailed in a forthcoming Institute publication. Policy makers in many states have begun to realize that intermediate sanctions and sentencing guidelines are necessary complements if either is to achieve its primary purposes.

Looking ahead: 1997 and beyond

In early 1997, NIJ disseminated a series of four publications on criminal justice issues identified by state legislators and policy makers as the most important items on their legislative agendas. This Research in Action series reviews key research

and evaluation findings in four areas: *The Impact of Sentencing Guidelines, Intermediate Sanctions, Mandatory Sentencing, and Transferring Serious Juvenile Offenders to Adult Courts*. (Those publications are available from the National Criminal Justice Reference Service, Box 6000, Rockville, Maryland 20849-6000.)

Plans for 1997 include more NIJ awards related to VOI/TIS, including funding for the development of an operations oriented manual to help prisons implement drug testing of inmates. Such testing is among Federal prerequisites for receiving funds under that Crime Act provision.

This year, in partnership with the National Institute of Corrections (NIC), NIJ will sponsor an evaluation of NIC technical assistance to facilitate development of a community-based restorative justice model.

Also upcoming, NIJ will, in cooperation with CPO, award funds to support a series of executive seminars on sentencing and corrections --- five sessions over three years. Examining the interrelated issues of sentencing and correctional practice, the seminars will host high-level participants with expertise in sentencing, corrections, public policy analysis, and research. The seminars will seek to encourage a new dialog among practitioners and scholars, with a view to redefining and proposing new solutions to substantive policy issues.

As we approach the 21st century, the challenges related to sentencing and its impact on corrections loom large. The need is compelling for sound research and evaluation that can guide public policy. In partnership with sentencing policy makers and an expanding research community, NIJ is committed to addressing that need.

Jeremy Travis is Director of the National Institute of Justice, the research and development arm of the U. S. Department of Justice. Competitive solicitations pertaining to sentencing and other areas are widely distributed, announced in the Federal Register, and Commerce Business Daily, and available at the Justice Information Center on the World Wide Web (<http://www.ncjrs.org>).

NASC Conference (Continued)

This year's NASC conference is scheduled to be held at The Breakers Hotel in Palm Beach, Florida from July 20 through July 22, 1997. The title of the conference is "Sentencing Guidelines: Implications and Applications." Frank Zimring is confirmed and Michael Tonry is tentatively scheduled as this year's plenary speakers. The Plenary theme is "Structured Sentencing Policy Implications: The Future of Sentencing Guidelines."

Conference attendees will have the opportunity to participate in sessions and workshops designed to both inform and evoke discussion of agenda items, learn about the nature and

structure of sentencing guidelines and sentencing research in other jurisdictions, and discover innovations in the areas of annual reporting, data analysis, guidelines applications, and automation.

For additional information, contact Ms. Kristine Leninger, phone (904) 488-1801

NEWS FROM THE STATES

ALASKA

Sentencing Developments in Alaska: 1996-1997

Alaska's sentencing law has developed gradually during the 1990s, rather than in large increments resulting from major legislative or resource changes. Trends have followed those nationally, with consideration of three strikes legislation, repeated introduction of death penalty bills, waiver of more serious offenders under the age of 18 to adult court increasing pressure on the Department of Corrections to find more beds for incarceration, and increasing pressure to privatize many aspects of the Department of Corrections responsibilities. New domestic violence legislation in 1996 also affected prison populations.

In 1997, the *Cleary* case, in which the superior court ordered the Department of Corrections to follow a 1990 agreement between inmates and the department or pay substantial fines, continued to structure correctional politics. Fines ordered by the court in 1994 after a judicial finding of noncompliance with the *Cleary* agreement now total over \$2,000,000 and continue to accumulate. The department is exploring alternative punishments, increasing use of community restitution centers rather than institutional incarceration, and other ways of reducing prison populations. The National Institute of Corrections will provide technical assistance to the department in the next year to encourage inter-agency cooperation in this process.

Alaska's Supreme Court is encouraging minority groups and other interested organizations to comment on disparities that might affect ethnic and cultural groups throughout the justice system. The court's Advisory Committee on Fairness and Access is reviewing all aspects of criminal law, and is looking at recommendations ranging from permitting tribal or village courts (Alaska has over 220 recognized tribes) to handle some offenses, to ideas for using circuit-riding judges, telephonic or video-conferenced hearings, and increasing the use of interpreters or cultural navigators for the Alaska Native,

Filipino, Hispanic and Asian populations that appear regularly in the courts. The committee will make a final report on findings and recommendations in October.

For further information, contact Teri Carns, Alaska Judicial Council, 1029 W. 3rd Ave., Ste. 201, Anchorage, AK 99501; phone (907)279-2526, or e-mail, teri@ajc.state.ak.us

KANSAS

Kansas Sentencing Commission

During the 1996 legislative session, the Juvenile Justice Reform Act was passed into law and the Kansas Youth Authority was established. The Juvenile Justice Reform Act transfers custody and responsibility for the state's juvenile offenders from Social and Rehabilitative Services to the Youth Authority. In addition, the Act establishes an "extended juvenile jurisdiction" provision which permits the imposition of both an adult and juvenile sentence simultaneously for specific categories of crimes. As part of the implementation of the Juvenile Justice Reform Act, the Sentencing Commission conducted a needs assessment which included trend analysis and youth center population projections based upon a placement matrix. The Commission is currently in the process of developing a juvenile journal entry form to track and monitor juvenile sentences.

The Commission's adult prison population projections indicate that the state's prison population will exceed current capacity within two years. A Select Committee of the House of Representatives was formed during the 1997 legislative session to examine specific offender populations that are contributing to prison overcrowding. The Commission will work with the Select Committee in analyzing sentencing practices and in exploring alternatives to incarceration.

During the previous year, the Sentencing Commission expanded its Guideline Sentencing database to include probation sentences, in addition to prison sentences. The expansion the database will enable the Commission to evaluate more concisely the impact of proposed legislation, specifically the legislation that increases penalties from presumptive probation to presumptive incarcerations on the sentencing grids.

Barbara Tombs, Executive Director, (913) 296-0923

NASC CONFERENCE DRAFT PROGRAM

**The Breakers Hotel
Palm Beach, Florida
July 20-22, 1997**

SENTENCING GUIDELINES: IMPLICATIONS AND APPLICATIONS

Sunday July 20

3:30 - 6:00 Conference Registration
5:00 - 6:00 Business Meeting
6:00 - 7:00 Welcome/Happy Hour

Monday July 21

9:00 - 9:10 Introduction NASC President
9:10 - 9:25 Welcome
9:25 - 9:30 Introduction of Plenary Speakers (Harry Dodd)
9:30 - 10:30 Plenary-The Political and Practical Future of Structured Sentencing Policy
Featured speakers: Frank Zimring and Michael Tonry
10:30-10:45 Break
10:45-12:15 Political Realities and Hot Buttons Issues: What They Are and How To Handle Them In
Creating and Maintaining a Sentencing Commission
Chair: Sandra Shane-DuBow, NC, MN, FL, WA, MI, and AR
12:15- 1:30 Lunch (Provided)

IMPLICATIONS TRACK The Broader Issues

1:30 - 3:00 How the Media sees Sentencing and
Media's Influences on Sentencing
Chair: Brian Berkowitz
Panel: Media People

3:00 - 3:15 Break

3:15 - 4:45 Issues of Public Safety, Equity
and Predictability: What are
the Purpose of Guidelines?
Chair: John Steiger

5:30 - 7:30 Reception

APPLICATIONS TRACK Making Guidelines Work

The Public Relations Challenge:
Annual Reports and Other Methods
Chair: Rob Lubitz

Automation Application Issues
Data Collection and Compliance
Chair: JoAnne Leznoff

Tuesday July 22

8:30 - 10:00 Reports on On-going Research
(*e.g.*, NIJ funded studies)
Chair: Rick Kern

Review of Application Procedures
and Sources of Research Funding
Chair: Phyllis Newton

Panel: NIJ

10:00-10:15	Break	
10:15-11:45	Roundtable on Issues of Race & Sentencing Chair: Bill Bales	New ideas in Corrections and Comparison of Benefit of Structured Sentencing Chair: John Kramer
11:45-1:00	Lunch (on your own)	
1:00 - 2:30	Key Policy Issues vs. Practitioner's Realities: Plea Negotiations, Case-load Pressures, and Mandatory Minimums Chair: Debra Dailey	
2:30 - 3:00	Closing	

NASC Registration Form

The National Association of Sentencing Commissions Conference --- July 20-22, 1997

REGISTRANT INFORMATION --- Membership and Conference Registration \$140.00*	
Name _____	
Title _____	
Agency/Organization _____	

Address _____ Business Phone _____
(location where confirmation should be sent)

City _____ State _____ Zip _____

**Conference registration includes one year NASC membership.*

Payment:
____ Check _____ Government purchase order

Mail Conference Registration Forms to:

Harry T. Dodd
Assistant Secretary for Executive Services
FLORIDA DEPARTMENT OF CORRECTIONS
2601 Blair Stone Road
Tallahassee, FL 32399-2500

OR

FAX to:
Harry T. Dodd
Assistant Secretary for Executive Services
(904) 488-4534

MASSACHUSETTS

Massachusetts Sentencing Commission.

Legislation

Legislation required to formally enact proposed sentencing guidelines legislation was filed in both the Massachusetts House and Senate on December 4, 1996. The Senate version (Senate 135) exactly mirrors the recommendations of the sentencing commission. The House version (House 2634) substantially mirrors the recommendations of the Commission with additional language regarding intermediate sanctions. Legislative hearings are scheduled for April 9, 1997. A final vote on guidelines legislation may occur by summer. Copies of the legislation are available by request to the Massachusetts Sentencing Commission.

District Court Pilot Project

The Sentencing Commission has been conducting a pilot project of the guidelines at district court locations, including a very busy district court in the city of Lynn. Two factors have contributed to the success of the pilot project to date: establishing a court-based working group and conducting a series of guidelines orientation sessions. The working group includes two representatives from each of the following groups: judges, prosecutors, defense attorneys, and probation staff. A primary concern of the working group was to ensure that guidelines would not impede the flow of cases through the busy court. The group decided to have the defense attorney and prosecutor determine the sentencing grid cell. Any discrepancies between the parties are resolved by the judge. To date this method has worked very effectively, with no noticeable impact on the length of time it takes to process a case. Orientation sessions were held with participation from many members of the court community.

Guidelines on Diskette

Sentencing Commission staff developed a floppy diskette that contains all of the essential materials needed to use the sentencing guidelines: Benchbook or Judges Guide; Sentencing Grid; Master Crime List; and sentencing forms. This has proved to be a popular method of training new users of sentencing guidelines and an easy way for accessing guidelines materials. The materials are maintained in very basic word processing and spreadsheet formats that can be used by most users with access to a computer. This is particularly true for judges, many of whom have access to lap-top computers. Copies of the diskette are available by request to the Massachusetts Sentencing Commission.

MICHIGAN

Michigan Sentencing Commission

The Commission has continued to meet regularly since May 1995 to formulate new sentencing to the Michigan legislature. The Commission has tentatively adopted a grid structure as well as sentence ranges appropriate for each of the ten (10) grids. The Commission has also developed offense and prior record variables to be used when determining an appropriate sentence range for an offender.

The Commission will submit its report to the legislature later this year. Presently, the members are focusing on the projected impact that the recommended guidelines will have on state and local resources. One of the issues that they have been struggling with is the impact of Michigan's truth-in-sentencing legislation which will take effect upon enactment of the guidelines. Since it does away with "good-time" and exposes the inmate to "bad-time" while incarcerated, this package of legislation may have a significant impact on the length of stay for a large portion of Michigan's prison population. The Commission is currently working with the National Council on Crime and Delinquency and Dr. Charles Ostrom from Michigan State University to help us determine the impact of the guidelines and truth-in-sentencing.

The Commission is also developing a plan to oversee guidelines once enacted. This oversight will consist of monitoring the guidelines for compliance, and evaluating the process for necessary modifications and amendments. We are also developing a plan to facilitate and coordinate the training and continued education of judges, probation officers, prosecutors and the defense bar.

Carlo P. Ginotti, Attorney/Administrator, Michigan Sentencing Commission, P O Box 3006, Lansing, MI 48909-7536. Phone: (517) 373-7676, Fax: (517) 373-7668, E-mail: Cginotti@lsb.state.mi.us

MONTANA

Montana Sentencing Commission

The 55th Montana Legislature has elected not to continue the Montana Sentencing Commission. The Sentencing Commission was established two years ago by the 54th Legislature for the purpose of considering the use of sentencing guidelines in Montana. The Commission was comprised of professionals in the criminal justice field, legislators, and public representatives, including crime victims. Public Forums were held where the Commission received public opinion regarding sentencing practices. One of the final recommendations of the Commission was that

sentencing guidelines be implemented on an experimental basis for use by willing district court judges to test the viability of guidelines for Montana.

Members of the Commission desired funding for an additional two years so they could continue their research, conduct an education program, and evaluate the suitability of guidelines for Montana. Additionally, the Commission planned to evaluate the current sentencing statutes to determine if revision was necessary so the statutes could be more easily understood. Under the current Legislation, the Commission will terminate on May 31, 1997.

Chris Christensen, Executive Officer, (406) 444-3910.

NORTH CAROLINA

North Carolina Sentencing and Policy Advisory Commission

The Sentencing Commission made 18 recommendations to the General Assembly to improve sentencing in North Carolina. These recommendations were introduced in 27 separate bills and are now moving through the legislature. Most of the recommendations made minor changes to sentencing laws based on suggestions received as part of the Commission's ongoing training and monitoring programs.

In January, the Commission released its *Structured Sentencing Monitoring System Report* for Fiscal Year 1995/96. This report provides detailed information on statewide sentencing practices. The Commission also publishes a quarterly newsletter and a semi-annual statistical bulletin. The Commission continues to maintain and update its web site (<http://www.nclaw.com/sentencing>).

In late January, North Carolina's sentencing reform was featured on *ABC World News Tonight* as part of the network's "Solutions" series. The segment focused on the principles and policies underlying North Carolina's achievement of "truth in sentencing." The segment included brief interviews with the chair and executive director of the Commission.

The Commission's long-time Executive Director, Robin Lubitz, left the Commission at the end of March to become the new director of the Governor's Crime Commission. The Sentencing Commission's associate director and staff attorney, John Madler, was named acting director.

PENNSYLVANIA

Pennsylvania Sentencing Commission

On March 15, 1997 the Pennsylvania Sentencing

Commission published proposed revisions to the sentencing guidelines for legislative approval. If the legislature does not reject the proposed changes, they will become effective June 13, 1997.

These changes were prompted several factors. First, there had been considerable concern expressed to the Commission that the current guidelines [which were revised in 1994] did not provide harsh enough sentences for violent offenders and serious repeat offenders. After evaluating this concern the Commission agreed that the recommendations for violent and serious repeat offenders warranted harsher sentence recommendations,

A second reason prompting revisions was that in 1995, Governor Tom Ridge called for a Special Session on Crime that, along with the regular 1995-1996 legislative session, resulted in the passage of several new laws. One of the most notable was the adoption of the "3 strikes" legislation that revised the mandatory sentences for violent offenders. The Commission is proposing changes that provide some consistency between the "3 strikes" legislation and the guidelines. The legislature also doubled the maximum penalty for murder 3 and attempted murder and revised the sexual assault statute. The Commission correspondingly provided for harsher recommendations for these offenses. The third impetus for these changes was to provide better consistency in how offenses are viewed with respect to the offense ranking and prior record calculations.

In the 1994 guideline revisions, the Commission refined and expanded the recommendations for intermediate punishment [IP]. The proposed 1997 revisions expand the recommendations for IP further by allowing certain "state" offenders [*i.e.*, those who could receive a minimum sentence up to 30 months] to receive certain types of IP [primarily drug treatment]. Linked to the adoption of this proposal was the inclusion in the Governor's budget of \$10 million for IP drug and alcohol treatment. This is in addition to the \$5.3 million for IP funding that was achieved with the 1994 guideline revisions.

The Commission has also been undertaking a county audit to determine the extent of guideline sentences that may be under-reported. The Commission data is not only useful for tracking statewide sentencing practices, but is also utilized in correctional population projections and in the determination of IP funding distribution. Thus far, preliminary information from the audit indicates some under-reporting in some counties. The Commission plans to follow-up in these counties to encourage the adoption of procedures to insure the reporting of all sentences to the Commission.

TEXAS

"After the Building Boom"

The Texas Punishment Standards Commission, our version of a sentencing commission, was formed in 1991 to make recommendations to the legislature. This occurred in 1993, leading to wholesale revision of the state's Penal Code and sentencing provisions; the Commission went out of existence according to its statutory mandate in September of 1993. The reforms created a new fourth degree "state jail" felony category, comprised of property and drug offenses (1993).¹ This confinement category diverted half of the felons formerly bound for prison, mandated suspended sentences for all of them (a mandate which has since been amended), and created a new class of facilities (state jails) to hold them for short periods of time (by Texas standards-up to two years). Meanwhile, the centerpiece of Texas activity has been construction. From 1988 to 1995, well over 90,000 state beds were funded and built, at a construction cost of approximately \$2,300,000,000; this cost will basically double over the 20 years of paying debt service. So, in the midst of massive expansion nationwide, Texas overshadowed its peer jurisdictions. In Fiscal Years 1994-1995, Texas was building 43 of the 75 new institutions under construction in all states and the Federal Bureau of Prisons. Of the 137,000 beds added nationwide during this period. Texas again accounted for more than half, at 71,864.² Currently, five state facilities stand empty, awaiting the growth of demand.

The phenomenon of excess capacity may be short-lived. but if so, it will be due primarily to state-level actors rather than to local sentencing discretion. Parole release rates continue to decline into the 15 percent approval range, and good conduct time practices have tightened dramatically. As a result, violent offenders are now projected to serve 80 percent of their sentence. This state of affairs, ironically, seems to encourage lawmakers to make the laws ever stricter, to match the reality of current practices.

Dr. Tony Fabelo, arguably the most influential expert on state criminal justice policy in Texas, has pointed out the strength and limitations to the Texas approach of large-scale incarceration. He notes that the crime rate in Texas declined by 19 percent from 1989 and 1993, as the incarceration rate increased by 75 percent, leading in 1996 to the leading incarceration rate in the Western world, 694 offenders per 100,000 population. Citing the state's statutory commitment to take all prison-sentenced felons, and the assumption that the 1996 incarceration rate continues, he projects the need for at least 1,000 new prison beds every year into the foreseeable future. In addition to the huge costs summarized at the outset of this article, Fabelo estimates the projected growth scenario will cost \$1 billion for construction and more than \$1 billion each year for operations, by the year 2025.³

¹ See "Texas Commission Proposes Corrections Overhaul." Carl Reynolds, *Overcrowded Times*, April, 1993; "Giving Guidelines the Boot: The Texas Experience with Sentencing Reform," by Michele Deitch, *6 Federal Sentencing Reporter* 138 (November/December 1993).

² "Prison Construction Part One: DOCs Make Room for the Largest One-Year Population Increase in History." *21 Corrections Compendium* 9 (January 1996).

³ Fabelo, "Whatever Happens Next After the Prison-Building Boom will Happen in Texas." *The Prison Journal*, v. 76 (Dec. 1996), pp. 475-483.

Submitted by Carl Reynolds, currently General Counsel to the Texas Board of Criminal Justice, the governing board for the state's corrections system. He was director of the Texas Punishment Standards Commission from 1990 to 1993.

UTAH

Utah Sentencing Commission

The Utah Sentencing Commission has developed and recommended a revolutionary approach to the sentencing of juvenile offenders. Recently, Utah has funded the \$20 million Juvenile Sentencing Guidelines which provide for much earlier intervention than the current system. The new Juvenile Sentencing Guidelines involve a matrix format. They provide a system that will hopefully change youth behavior, but one that can lock-up youth offenders that refuse to change.

Utah has just repealed the last vestiges of its mandatory minimum sentences. In 1996, Utah repealed its mandatory minimums for sex offenders. In 1997, the Sentencing Commission successfully sponsored a bill repealing mandatory minimum sentences for drug offense. Utah has therefore further entrenched its indeterminate sentencing system with parole. Lifetime parole for first degree felony sex offenders has also been developed and implemented.

The Sentencing Commission is currently revising the 1985 Sentencing & Release Guidelines for adult offenders. It is anticipated these new adult guidelines will be adopted in 1997. While still providing the benefits of the 1985 version, the revised guidelines will better reflect current sentencing practice. Two separate matrices are being considered, one specifically for sex offenders and one for all other offenders. The Commission is studying other revisions to the criminal history assessment and the crime severity continuum. A major educational effort will be made throughout the state when the revised version is adopted.

The Sentencing Commission is in the midst of an extensive study concerning intermediate sanctions. In order to help alleviate the increasing burden on Utah prisons, the Commission is analyzing the various community based

punishments and other alternatives to imprisonment. During 1997, the Commission will begin to recommend expanding and improving specific alternatives to prison and possibly developing new ones.

VIRGINIA

Virginia Criminal Sentencing Commission

In December, 1996, the Virginia Criminal Sentencing Commission issued its second Annual Report. Included within the Annual Report was detailed analysis of judicial compliance with file sentencing guidelines, preliminary results of the Commission's recidivism risk assessment study, final results of a study of the impact of mandatory minimum sentencing, and an update on several ongoing Commission studies and activities.

The Commission also included in the Annual Report its first recommendations for revisions to the sentencing guidelines. Virginia law requires that the Commission make its recommendations to the legislature, Governor, and Chief Justice by December of each year and, unless the suggested revision is rejected by the legislature or requires a change in statutory law, the changes go into effect the following July 1. During the 1997 session of the Virginia General Assembly action was taken to approve the Commission's recommendations that required legislation. Included among these legislative revisions was a change in law that will allow judges to suspend the imposition of a mandatory minimum one year sentence for those convicted of driving while declared a habitual traffic offender. The Commission's study found that this particular sanction is the most frequently applied felony-level mandatory minimum sentence. The new law allows a judge to suspend the formerly mandated prison term on condition that the offender successfully complete a term in one of the new intermediate punishment programs that provide mandatory substance abuse treatment.

With regards to the Commission's other recommendations, no action was taken to override the suggested revisions. Accordingly, on July 1, 1997, the revised guidelines will provide for significant sentence enhancements for those who sell cocaine (crack or powder) in the amounts of one ounce up to one-half pound, and even greater enhancements for those selling one-half pound or more of cocaine. However, the revised guidelines will also include a recommendation for a new intermediate sanction program (detention center) for those who sell one gram or less of cocaine and who also have no prior felony record. The concurrent implementation of these guidelines revisions for cocaine sellers is projected to not significantly alter the existing prison bed space forecast. The revised guidelines will also provide for new sentence enhancements for those who are convicted of certain sex offenses committed against children.

The Annual Report also provided a first look at the impact of Virginia's new sentencing system in addressing the goal of ensuring that violent offenders spend more time incarcerated than in the past. A comparison of minimum time to be served for those sentenced under the new truth in sentencing system (85%) to actual time served for those under the old parole system illustrated strong evidence that the new guidelines system is achieving significantly longer prison stays for violent criminals.

In coming months, the Commission hopes to begin pilot testing integration of an offender risk assessment instrument in the guidelines system.

WASHINGTON

Sentencing Guidelines Commission

Washington is the only state using a determinate sentencing grid for juvenile offenders. Last year's Legislature directed the Sentencing Guidelines Commission to recommend ways to simplify the grid and expand judicial discretion. Some of the Commission's recommendations are included in a bill moving through the Legislature at this writing, but the bill's future is uncertain because it also requires adult prosecution of all 16- and 17-year-olds charged with violent offenses.

The Commission's first annual report on the sentencing practices of individual judges for serious, armed felonies was published in December 1996. Copies are available from Commission staff. The next report, to be published in September, will cover sentences during 1996 and include more detailed information about standard-range sentences than the first report.

The Commission has published a preliminary report on implementation of a new, treatment-oriented sentencing alternative for first-time narcotics sellers, enacted in 1995 at the Commission's urging. The new alternative was used in only about 15% of eligible cases in the first ten months. Reasons it was not used more often include lack of awareness, availability of other options involving less confinement time, narrow eligibility criteria, and prosecutorial opposition in some counties. The Commission will publish a follow-up report on recidivism next winter. Copies are available from Commission staff.

The Washington Senate has passed a bill restoring indeterminate sentencing for sex offenses commuted after June 1997. The sentence determined under current law would become the minimum, and the statutory maximum (from five years to life depending on felony class) would become the maximum sentence. Release dates and conditions would be determined by the Indeterminate Sentence Review Board, which now handles cases from Washington's pre-1984

indeterminate system. The bill, which makes the most significant sentencing policy change in 16 years, is not expected to pass the House this session but will be considered next year.

*Be sure to visit the Washington State SGC Web Site at:
<http://www.sgc.wa.gov/>*

Dick Van Wagenen, Executive Officer, (360) 956-2130

WISCONSIN

Wisconsin Issues

The Wisconsin Sentencing Commission and its guidelines were abolished in the summer of 1995 with the adoption of the Governor's budget eliminating most non revenue producing commissions and councils. The advisory guidelines (with presumptive probation and intensive sanction cells) had been in use for over 10 years. The state has returned to an indeterminate sentencing structure without any guidelines. In the past few years the state adopted a three-strikes law, but only used it twice. Maximum penalties for certain serious crimes have been increased, and presumptive mandatory minimum sentencing for some drug offenses instituted. Reported crime rates have been even or have fallen for the past several years.

Prison populations have continued to rise. The Federal Bureau of Justice Statistics reports a Wisconsin prison population increase of almost 14% from June of 1995 to June of 1996. Prison populations at the end of fiscal 1996 (6/30/96) were at an all time high of over twelve thousand inmates. In the fall of 1996, to encourage new strategies for dealing with the increase, the Governor convened the Task Force on Sentencing and Corrections and charged it with developing recommendations on prison overcrowding, public safety, and the rising cost of corrections.

The Task Force was composed of business leaders, legislators, corrections officials, and academicians and chaired by former Corrections Commissioner Professor Walter Dickey of the University of Wisconsin Law School. Task Force recommendations, released in December of 1996, centered around an entirely new model for corrections premised on the concept that public safety should be the main goal of the correctional system. Minimizing the risk of harm to persons and property was seen as critical by the Task Force which operationalized this principle by recommending an increase in individualized discretion by corrections officials, intensified supervision of offenders, the building of only 2,250 local detention beds, and new corrections options. Specifically, the Task Force recommended the following:

- Felony probation for adult offenders should be eliminated.
- A new sanction would be developed called community confinement and control. CCC would provide a range of supervision, detention, and monitoring of offender functions.
- Parole eligibility would be increased from one-fourth of the sentence to one-third of the sentence. All paroled offenders would serve some time in CCC.
- A new sentence of conditional supervision would be created for low risk offenders.

In January of 1997 the Governor released his biennial budget which largely ignored the Task Force recommendations--many of the recommendations would be implemented, but only in one jurisdiction. Funding for a super-max prison has already been allocated, and pending legislation involves the plan to contract for 1700 prison beds in another state.

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UNITED STATES (FEDERAL COURTS)

U.S. Sentencing Commission

1996 saw an increase of more than ten percent in the number of cases sentenced under the guidelines as data from about 42,500 cases were processed by the Commission. These data provide the empirical bases for the Commission's annual report, reviews and revisions to the guidelines, research studies on sentencing issues, and responses to specific requests from Congress, the courts, and other criminal justice professionals.

In October 1996, the terms of Vice Chairman A. David Mazzone and Commissioner Julie E. Carnes expired. Both Judge Mazzone, a U.S. District Judge in Massachusetts and Judge Carnes, a U.S. District Judge in the Northern District of Georgia, had served the Commission since July 1990. The terms of three additional commissioners expire in October 1997.

Commission staff in November presented several papers at the 48th Annual Meeting of the American Society of Criminology. Topics included: just punishment, substantial assistance to authorities, disparity and sentence dispersion under the guidelines, drug cases and the safety valve, and a comparison of state and federal guidelines.

Two Commission-staffed "hotlines" that provide guideline application assistance continued to do booming business, together averaging 154 calls per month. In January 1997, the

two hotlines merged into the USSC HelpLine (202-273-4545), which is open to callers Monday through Friday between 8:30 a.m. and 5:30 p.m., EST.

This year's amendment process focused on responding to congressional directives to increase sentences for immigration and drug offenses involving precursor chemicals. The amendments stemming from these directives are scheduled to go into effect May 1 on an emergency basis. The Commission's annual public hearing on guideline amendments was held March 18.

The Commission in March released the initial findings from its national survey of public attitudes towards federal sentences. In this just punishment study, more than 1,700 citizens throughout the United States provided their opinions on punishment and crime seriousness issues. The project compared public perceptions with the corresponding federal sentencing guideline ranges for drug trafficking, bank robbery, immigration offenses, and fraud. While previous studies had examined public perceptions of crime seriousness, to this point none had looked exclusively at federal offenses.

The Commission continued work on its pilot program of public service announcements to inform at-risk youth of the severity of sentences for federal drug-related crimes. The Commission has filmed two such announcements which are soon to be distributed.

If you have questions about these or other issues, please contact Michael Courlander, Public Information Specialist at (202) 273-4590.

FEATURED STATES: FLORIDA AND NEVADA

FLORIDA

The Florida Sentencing Guidelines Report

The Florida Department of Corrections has published a report focusing on felony sentencing practices under Florida's most recent versions of sentencing policy. The report evaluates Florida sentencing with respect to the degree by which the legislative intent and principles of the sentencing guidelines were achieved. These principles include: sentencing is neutral with respect to race, gender, and social and economic status; the penalty imposed is commensurate with the severity of the primary offense; the severity of the sentence increases with an increase in the length and nature of the prior record; the sentence imposed reflects the actual time served as effected only by the application of incentive and meritorious gain time; the use of incarcerative sanctions is prioritized towards serious and repeat offenders in order to

best utilize finite correctional.

The report is based on the study of 96,131 sentencing guidelines score sheets received by the Department of Corrections with sentence dates in fiscal year 1995/96, wherein defendants were scored under the 1994 or subsequent versions of Florida's sentencing law. The major findings of the report indicate:

- Sentencing is neutral with respect to race. It was noted, however, that black offenders were more likely to go to prison and received longer prison sentences than white offenders. This is attributable to other factors present at sentencing such as the seriousness of the current crime, prior record, and prior commitments to state prison.
- Serious offenders and offenders with long prior records represent a larger portion of state prison admissions under current guidelines than under the guidelines in effect prior to January 1, 1994.
- As the severity of the primary offense increases the proportion of offenders going to state prison and the length of incarceration increases. The report finds that those offenses deemed by state policy to be the least severe have an incarceration rate of 3.1% and those deemed most severe have a rate of 91.2%. As severity of offenses increases, so does the incarceration rate for the offense.
- As the number of prior felony convictions increases the percentage of offenders sentenced to prison increases, as does the average length of incarceration.
- Actual time served in Florida prison has increased since the repeal of basic gain time and the implementation of the 1994 and subsequent versions of the guidelines. The average percent of sentence served has increased from 34% in 1989 to 65.4% in 1996. The actual number of years served has increased as well.

For more information or a copy of the report, please contact Kristine Leininger at the Florida Department of Corrections, (904) 488-1801 or E-mail at leininger.kristine@mail.dc.state.fl.us

Proposed Legislation

There is pending legislation in which essentially eliminates the prescriptive nature of Florida's sentencing guidelines. The bills (Committee Substitute for House Bill 241 and Committee Substitute for Senate Bill 716) retain the current guidelines structure and require its use, but also provide that any offender can be sentenced up to the statutory maximum penalty provided for the offense or offenses pending sentencing. The statutory maximum penalties in Florida are

broad and provide for up to 5, 15, or 30 years or life imprisonment for 3rd, 2nd, 1st and life felonies, respectively. Additionally, the bills abolish the Sentencing Commission on October 1, 1998, though there are technical problems with the language of the commission repeal.

The bills specify that downward departures remain appealable and still require written reason for departure. However, there would be no such thing as an upward departure. The effective date of the companion bills is October 1, 1998. The bills contain a provision that, effective July 1, 1997 through October 1, 1998, a 22 month period of incarceration is permitted for any felony sentencing wherein the defendant has a prior felony conviction.

*JoAnne Leznoff, Correctional Programs Administrator
Florida Department of Corrections.*

NEVADA

Introduction And Background

The 1995 Nevada Legislature adopted AB 317 (sections 17 and 18) which created the Governor's Advisory Commission on Sentencing and charged the Commission to identify and study the various elements of the state's criminal justice system which affect the sentences imposed for felonies and gross misdemeanors. Specifically the Commission is to evaluate the effectiveness and fiscal impact of various policies and practices including, but not limited to use of:

- plea bargaining
- probation
- intensive supervision
- regimental discipline
- imprisonment
- mandatory and minimum sentencing
- structured or tiered sentencing
- enhanced penalties for habitual criminals
- parole
- credits against sentences
- residential confinement
- alternatives to incarceration

AB 317 also charged the Commission to recommend practical changes in Nevada's sentencing structure, while considering their fiscal impact. Any changes recommended must consider:

- increased penalties to match severity of the crime
- sentences are adequately severe to protect the public from violent or predatory criminals
- sentences for lightweight and nonviolent crimes should consider conservation of scarce economic resources
- offenders with similar criminal histories committing

similar crimes should receive similar sentences

- sentences must not confuse or mislead the public as to the actual time offenders must serve
- no disparate sentences based on factors such as race, gender or economic status
- sentences must be based on the specific natures and facts of the offense

Governor's Advisory Commission on Sentencing

The Commission was to compile and develop statistics and information on Nevada sentencing. Finally, the Commission was to submit a report to the Legislature, no later than ten days after the start of session, recommending changes in sentencing structure and proposing legislation.

AB 317 specified the commission composition include: a district judge, a district attorney, a criminal defense attorney, a law enforcement agency, the Division of Parole and Probation, a victims of crime representative, a county commissioner, two senators and two assemblymen. The members of the Governor's Advisory Commission on Sentencing are:

- Sheriff Jerry, Clark County, Chairman
- Senator Ernest E Adler
- Senator Mark A. James
- Assemblyman Richard D. Perkins
- Assemblyman Brian Sandoval
- Dan Albregts, Esquire, Defense Counsel representative
- Judge David Gamble, III Judicial District
- District Attorney Richard Gammick, Washoe County
- Kathy Jacobsen, Victims Rights representative
- Myrna Williams, Clark County Commissioner, Local government representative
- Richard Wyatt, Chief, Division of Parole and Probation
- Department of Administration staff services were provided by Mike Nolan, Principal Budget Analyst, Teresa Wastun, MA HI and Deputy Attorney General Don Haight. Additional assistance was provided by the Legislative Counsel Bureau staff including Senior Research Analyst Allison Combs, Deputy Fiscal Analyst Gary Ghiggeri and Principal Deputy Legislative Counsel Brad Wilkinson.

The Commission held three meetings in Las Vegas and two in Reno with the last meeting video conferenced jointly between Las Vegas and Carson City. Testimony from citizens, state agencies, law enforcement entities, a member of the judiciary, public prosecutors and representatives focused on recommendations to evaluate the existing sentencing structure and alternatives.

The Commission wishes to recognize and thank the individuals and agency representatives who attended and

participated in the meetings for their cooperation and the wealth of information that was provided to the Commission in its effort to examine and evaluate sentencing structure in Nevada.

improving collections of assessments and fines for felonies; imposing community service in lieu of fines; and enhancing penalties for habitual criminals to protect society.

The Commission adopted a total of ten recommendations addressing issues in the following subject areas that would require legislative action:

- Alternatives to sentencing
- Truth in sentencing
- Staff and budget for the Commission
- Governor's Advisory Commission on Sentencing

The five findings adopted by the Commission on procedural or policy issues not requiring legislative action include:

- Changes in Parole and Probation Sentencing Scale to ensure that parole officers utilize maximum recommendations available without the need for additional justification when making sentence recommendations for the more serious offenders.
- Continuation of support for use of intermediate sanctions currently in use by the Division of Parole and Probation prior to initiation of revocation proceedings.
- Support for the establishment of standard data collection and reporting systems for the district courts and accompanying automation which would be required.
- Terms of service to be staggered for commissioners to insure continuity and consistency on the Commission.
- Meeting schedule for the Commission: quarterly in non-legislative years and tri-annually during legislative years.

This report addresses, in encapsulated fashion, the activities, information and topics covered in the Commission's six meetings. In section II of the report, the recommendations adopted by the Commission are discussed in detail.

Supporting documentation and information not included as an appendix and minutes of all the meetings are available from the Department of Administration's Budget office.

First Meeting

The first meeting of the Commission occurred on December 6, 1996, at the Las Vegas Metropolitan Police Training Facility on Mojave and Washington Streets in Las Vegas. Commission Chairman Sheriff Jerry Keller initiated the meeting with member introductions and then reviewed for the Commission the tasks assigned to the Commission. Member discussion centered on the appropriate scope of work for the Commission. Suggestions included tracking and monitoring the impacts of SB 416, Truth in Sentencing, from the 1995 Legislative session; more specifically defining SB 416 for consistency in fraud and theft; examining how the 40% rule restricts judges' discretion in lower end crimes; reviewing the mandatory provision for category E felonies; reviewing the entire criminal code; examining alternatives to incarceration;

The Commission decided during this meeting they would concentrate on felonies excluding gross misdemeanors. The Commission identified the elements of the criminal justice system they felt affected or impacted sentencing which included:

- plea bargaining and the role of the prosecutor and defense attorney.
- system resources versus system demands on the courts, prosecution, prison system, defense counsel, parole and probation and the parole board.
- location and population density of the particular jurisdiction.
- nature of crime - violent versus nonviolent.

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