

SENTENCING COMMISSION NEWS

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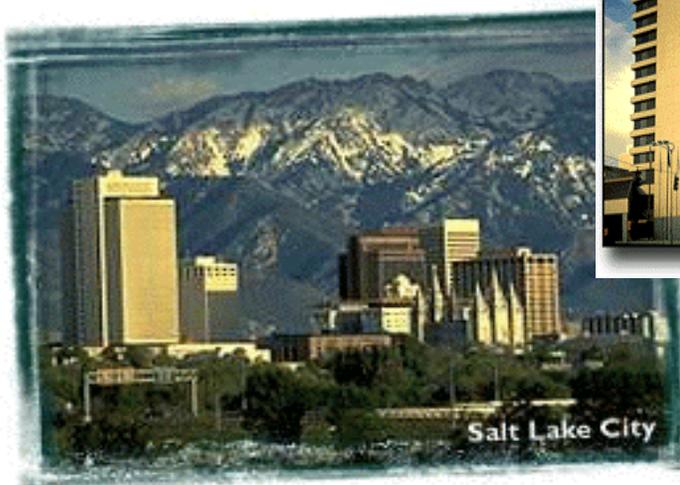
THE 1999 NATIONAL ASSOCIATION OF SENTENCING COMMISSIONS ANNUAL CONFERENCE

**MARRIOTT HOTEL
SALT LAKE CITY, UTAH**

AUGUST 8-10, 1999

The 1999 NASC Annual Conference will be held AUGUST 8-10, 1999, in downtown Salt Lake City, Utah at the Salt Lake City Marriott Hotel. The conference provides a unique opportunity to share ideas, concerns, and experiences with people from around the country who have similar interests in sentencing policy. Details of the conference will be distributed in March 1999.

Conference room rate: \$83.00 (single/double) – call 1-800-345-4754 for Marriott Hotel reservations
Conference registration and NASC membership: \$165.00



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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:

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.

This edition of the NASC Newsletter was edited by John C. Steiger, Ph.D., Washington Caseload Forecast Council, (360) 902-0085, email: john.steiger@cfc.wa.gov NASC welcomes comments, letters, job announcements, articles and suggestions.



John Kramer and Kay Knapp receive special awards at the 1998 NASC Conference in Minneapolis. Seated are Deb Dailey, NASC President and John Steiger, NASC Treasurer.

Back to Basics: Fundamental Issues in Sentence Reform Revisited

Kay A. Knapp

Keynote Address, National Association of Sentencing Commissions
July 20, 1998

Kay Knapp was Staff Director, Minnesota Sentencing Guideline Commission, 1982-86, and Staff Director, United States Sentencing Commission, 1986-87.

It was twenty years ago that the first legislatively established Sentencing Commission was formed here in Minnesota. One measure of that idea's success is that there are now enough Sentencing Commissions to warrant a robust National Association.

A population of Sentencing Commissions sufficient for a national organization is not the only testimony to the idea's success. State Sentencing Commissions and the legislation that established them have changed the face of sentencing in at least four important ways:

1. Predictable sentencing, or, without putting too fine a point on it, truth in sentencing;
2. The availability of on-going, detailed information on sentencing practices;
3. Coordination between sentencing practices and correctional resources, or at least the ability to coordinate them;
4. Substantive appellate review of sentencing.

This is a remarkable legacy and one of which we can all be proud. These accomplishments are all dependent upon balancing discretion in new ways, so it is fitting that the theme of this meeting is "Balancing Discretion." In looking back over the past twenty years of Sentencing Commission history, the allocation of discretion is *the* fundamental issue which has impacted all major facets of Commission activity and accomplishments. These four accomplishments of Sentencing Commissions and their legislative partners, and the reallocation of sentencing discretion that supports these accomplishments, is the focus of this keynote address.

I will disclose at the outset that I favor sentencing discretion in the hands of judges, in a structured manner, of course. I favor that distribution of discretion not only because I admire and respect judges, which I do, but because it makes for a better sentencing system than other distributions.

Before I begin the celebration of accomplishments, there are two things that I want you to note. First, Kevin Reitz from the University of Colorado Law School has designed a visual illustration of the distribution of sentencing discretion.¹ That illustration displays two levels:

- The systematic or policy level, showing the legislature and the sentencing commission; and
- The case level, showing the prosecutor, judge, corrections, and parole.

It is a useful tool for discussing the allocation and balance of sentencing discretion. After my remarks, Kevin will introduce the tool more thoroughly. I am particularly pleased to share this time with Kevin because he hosted what came to be the first national meeting of sentencing commissions in 1993.

Second, I want to articulate what we all know, but what bears repeating regularly: Sentencing involves fundamental and complex issues. It is fundamental because it involves the state's ability to deprive citizens of their liberty and, in some states, their lives. It does not get any more fundamental than that.

It is complex with respect to governance. All three branches of government—legislature, executive and judicial—are equally, consistently and deeply involved with the issue of sentencing. There is not another public policy issue similarly situated. The complexity of this policy issue makes the sentencing commissions' accomplishments over the past twenty years all the more remarkable.

I. Predictable Sentences

The first accomplishment I want to talk about is predictability in sentencing, or, without getting too specific, truth in sentencing. In 1978 the Minnesota legislature established the first legislatively authorized commission. The most fundamental aspect of that legislation was the abolishment of the parole board, moving the discretion to set sentencing durations to judges. In addition, the legislature determined that the sentence imposed would be served, minus good time. With that stroke and its implementation, sentences became predictable, at the point of sentence imposition.

Predictability of sentencing has become the hallmark of most Sentencing Commissions. The amount of good time, post-supervision release, and other details about time served varies, but in almost all systems, a judge, prosecutor, corrections official or citizen can accurately estimate what a sentence means in terms of time served.

We can contrast that with what happened prior to structured sentencing. Releasing practices, policies and procedures tended to be extremely complex. Releasing practices were incomprehensible to criminal justice practitioners and citizens alike.

- During South Carolina's first sentencing guidelines effort in the 1980's, the Commission identified 25 different statutory release provisions.
- In Arizona, prior to their most recent revision of the sentencing code, there were nine different release mechanisms apart from sentence expiration. Five of those mechanisms were exercised by the Department of Corrections, four by the Parole Board. The release rules were said to be understood by only one person, who was employed by the Department of Corrections.
- Earlier this decade in Texas, inmates served an unpredictable average of 13% of their imposed sentence.

It was not only the public who lacked confidence in a system that was incomprehensible and unpredictable. Criminal justice professionals shared that feeling.

Contrast that with the work of Sentencing Commissioners and their legislative partners. The rules regarding release tend to be (1) simple; (2) comprehensible; (3) predictable and truthful; and (4) well-publicized and accessible.

The simplicity and comprehensibility supports the second of the major accomplishments—providing detailed information on sentencing practices.

II. Information on Sentencing Practices

Policy-making by anecdote was the rule in most states prior to Sentencing Commissions. Sentencing Commissions collected and analyzed detailed information on the offender population and sentencing practices for use during guideline development. More importantly, sentencing commissions monitor sentencing practices at the point of sentencing on an on-going basis.

Having current, accurate and *relevant* data on sentencing practices is unprecedented in our history. I stress relevance because a primary reason sentencing practices are so difficult to monitor credibly without structured sentencing is that there is no agreement on what factors are relevant to sentencing. Sentencing commissions went through a process to define relevance, thus making it possible to monitor sentencing practices.

In addition to knowing the relevant factors, monitoring is aided by two other sentencing features. Effective monitoring requires that sentencing discretion be *focused*. It is too difficult to accurately monitor sentencing practices when substantial discretion is dispersed across many actors. The locus of that focus is best placed with *the judge*, in order to achieve effective monitoring. Judicial behavior and practices are easier to monitor accurately because judicial practices are public. Judicial proceedings are recorded. Judges give reasons for actions.

In contrast, prosecutorial practices are much more difficult to monitor. Evidentiary issues and concerns are always present and tend not to be publicly articulated or recorded. As advocates, prosecutors generally do not publicly explain their practices or reasons, such as having a weak case, a shaky witness, or a reluctant victim. When sentencing discretion effectively resides with prosecutors, information gathering on sentencing practices suffers. Location of discretion must be balanced with the need for good information.

Success in gathering good information in conjunction with predictable sentences can lead to the third accomplishment—coordinating sentencing practices with correctional resources. This is the way to ensure that the sentences imposed can be served.

III. Coordination Between Sentencing Practices and Correctional Resources

The perniciousness of sentencing practices that exceed correctional capacity can hardly be overstated. It almost invariably leads to back-door releasing practices like those discussed earlier—numerous, incomprehensible, complex rules and procedures. It strips judges and prosecutors of their discretion. It ultimately undermines public confidence as well as criminal justice confidence in the system.

The corrections population will be managed, either by court order or otherwise. A member of the Arkansas Board of Corrections noted during one of their Commission deliberations that he knew what the prison population would be in a year. He could guarantee that the prisons would not be overcrowded. The prison system would simply quit admitting inmates or would release inmates to maintain a population that could be handled safely. That method of management is at the expense of judicial and prosecutorial discretion.

Having accurate information on sentencing practices at the time sentences are imposed allows Commissions to determine the correctional resources that will be needed in the future. Resource needs can be identified with sufficient notice that policy makers have the maximum number of options with which to respond. A full range of options includes increasing the number of beds as well as modifying future sentencing practices as necessary.

Impact assessment, that is, determining the impact of proposed legislation on correctional resources and other criminal justice resources has become routine—indeed required—in many states. While reason in light of that information does not always prevail, it often does.

Providing analysis of resource needs with sufficient notice allows policy makers to respond in a way that maintains front-end discretion, which in turn provides on-going predictability, good information, and the ability to coordinate sentencing practices with correctional resources. It all comes back to the allocation of discretion at a point where these things can occur.

IV. Substantive Appellate Review

A final accomplishment is the development of substantive appellate review of sentences. In twenty years we have become accustomed to widespread substantive review of sentences. But substantive sentence review is a recent jurisprudential function in this country. Given the fundamental nature of sentencing, with life and liberty at stake, substantive appellate review ought to be available to those that desire it.

To the extent that appellate review of sentences existed prior to Sentencing Commissions, it tended to be a procedural review. It would be stretching it to say that we have developed a common law of sentencing. Still the appellate review has provided additional guidance to courts and has enhanced the overall role of the judiciary in sentencing practices.

Appellate review is more effective when the locus of discretion lies with judges rather than with prosecutors, for the same reasons that effective monitoring relies on the locus of discretion with judges: judicial practices are public, their proceedings are recorded, and judges give reasons for their actions.

Concluding Comments

These four accomplishments—predictability, monitoring sentencing practices, coordinating sentencing practices with correctional resources, and meaningful substantive review of sentences—are a remarkable legacy. They were hard accomplishments to obtain and they are difficult to maintain. And they are always vulnerable. They are vulnerable to sentencing practices that exceed correctional resources. This is the quickest way to upset the balance of discretion and to diminish judicial and prosecutorial discretion. They are also vulnerable to mandatory sentences, which moves discretion to prosecutors. That vulnerability makes sentences more difficult to monitor, and evidence suggests it also results in substantial disparity in sentencing. Both vulnerabilities—sentencing policies that exceed resources and mandatory sentences—are fueled by the desire for tougher sentences. Mandatory sentences are additionally fueled by the desire for more uniform sentences, which is ironic given the tremendous disparity that they foster.

I am not going to suggest how you might manage the public and political desire for tougher sentences—I do not know how to do that. However, I do believe that it is helpful to discuss the locus of discretion when these issues arise. It is helpful to remind policy makers that predictability of sentences, good information on sentencing practices, ability to coordinate sentencing practices with correctional resources, and meaningful appellate review of sentences are related to—and indeed depend upon—a particular balance of discretion. If you say it often enough, you might prevail, at least part of the time.

In closing, I want you to know that it is immensely gratifying for me, as an advocate of sentencing commissions, to follow your work. I know how hard that work is. I also know how much of your time, especially staff time, must be spent on details, albeit important ones. There are details related to implementation, details related to monitoring, and details related to administration, both in running an office and staffing the commission. This meeting and its theme “Balancing Discretion” provide the opportunity to leave the details back home for two days and the opportunity to reflect upon basic issues that are fundamental to the work and accomplishments of sentencing commissions.

Note

¹ “Modeling Discretion in American Sentencing Systems” 10-5-97 Draft.

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1998 NASC Conference a Success!

1998 NASC Conference in Minneapolis was a great success. Over one hundred commission members, staff, and interested academics from around the country attended. Special thanks to the staff of the Minnesota Sentencing Commission for hosting the conference! We look forward to seeing everyone again in Salt Lake City this summer.



University of Colorado Law Professor Kevin Reitz discusses sentencing models.



NASC conferences emphasize small group discussions where practitioners share experiences and solutions.



The entire Executive Board of the NASC was captured in this rare conference photo. (L to R, Deb Dailey , John Steiger, John Kramer, Rick Kern, Rob Lubitz, Jane Haggerty, and John O'Connell.

NOTE: A detailed summary of the conference is available on the United States Sentencing Commission Web Site: www.ussc.gov

NEWS FROM THE STATES

ALASKA

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KANSAS

Kansas Sentencing Commission

In November of 1998, Governor Bill Graves was re-elected to his second term as Governor for the state of Kansas. Prior to the beginning of the 1999 Legislative Session, Senator Tim Emert was named Chairperson of the Senate Judiciary Committee and Representative Mike O'Neal was appointed Chairperson of the House Judiciary Committee. The Sentencing Commission works closely with both Judiciary Committees to examine and evaluate proposed criminal justice legislation. In addition, the Commission has four new appointments: the Honorable Paul E. Miller, Mayor Dan R. Hoisington, Senator John Vratil, and Ms. Annie Grevas. The new appointments replace members whose terms have expired.

During FY 1998, the Kansas Sentencing Commission continued to produce prison population projections for the Department of Corrections and the legislature. The year end projections for FY 1998 indicated an error rate of 0.09%, missing the projected total year end prison population by only seven inmates. This year, in addition to the year-end projections, prison population by institutional classification level (minimum, medium and maximum) were produced for the first time. These specific projections will assist the state in not only planning for the number of prison beds needed, but, also the specific type of beds and their associated costs.

The first retreat was held this year for members of the Sentencing Commission. Sentencing Guidelines have been enacted for five years and the Commission decided it was the appropriate time to examine and discuss the changing role of the Commission. Ms. Kay Knapp served as the facilitator for the retreat and provided invaluable guidance as the Commission addressed many issues relating to the guidelines and future goals. The retreat served as wonderful opportunity for the Commission to review past activities and discuss future plans.

As the result of many issues raised during the retreat, the Sentencing Commission will be introducing a major bill during the 1999 Legislative Session. The bill includes numerous adjustments to the Sentencing Guidelines that address the issue of proportionality in sentencing. The Commission attempted to examine the sentencing grids in relation to numerous legislative changes that have been instituted over the past five years. The bill drafted by the Commission includes 13 individual proposals that recommend a combination of sentence enhancements and reductions to various criminal offenses. The Commission examined all legislative changes since enactment of the KSGA and included input from judges, prosecutors, and legislators in developing its proposals. The bill will be introduced in January at the start of the Legislative Session.

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MARYLAND

Maryland Commission on Criminal Sentencing Policy

The Maryland Commission on Criminal Sentencing Policy completed its final report to the Governor and the legislature in December 1998. The Commission was established in 1996 to evaluate the state's sentencing and corrections laws and policies. The report contains the Commission's findings and recommendations across three broad policy areas: (1) sentencing policies and practice such as the use of voluntary/advisory guidelines for judges; (2) utilization of intermediate sanctions programs; and (3) release practices such as discretionary parole.

The Commission recommends the creation of a permanent sentencing commission to oversee the guidelines currently operated by the judiciary. After considerable study, the Commission recommends that Maryland maintain its voluntary/advisory guidelines, and concentrate on improving judicial compliance and other incremental changes to the guidelines. The Commission considered alternatives such as presumptive sentencing guidelines and adjustment of the existing grids to better accommodate current sentencing practice. The Commission also recommends that three judge sentence review panels be granted the right to reduce a sentence below a statutorily mandated minimum when appropriate.

The Maryland Commission on Criminal Sentencing Policy also recommends an aggressive expansion of existing

intermediate sanctions, the Maryland Corrections Options Program, using a zone of discretion within the guidelines. The proposal calls for the creation of a Corrections Options Authority with broad powers to assess, place, supervise, and sanction offenders under programs such as intensive supervised probation, day reporting, and house arrest, as well as a number of other programs. Under this plan, judges would consult the guideline recommendation that may include a sentence to the Corrections Options Authority. Then, if judges selected the Corrections Options recommendation, the offender will be sentenced directly to the Authority. The Authority would conduct risk and needs assessment and place the offender in a specific program. As a condition of placement in an intermediate sanction program, the offender will sign a contract agreeing to abide by program rules, and the contract will clearly state the consequences for program violations. The Authority would have the ability to swiftly and effectively respond to program violations, adjusting surveillance and sanctions as detailed in the initial contract. The guiding philosophy of Maryland's Break-the-Cycle program would be used, emphasizing drug testing, sanctions, and treatment. A state and local partnership for the expansion of intermediate sanctions is proposed. The Commission proposes an additional one-year study before attempting to implement a Corrections Options partnership.

After considerable study of proposals to abolish parole, the Commission recommends that the existing release practices of parole and diminution credits be maintained. These practices include an existing requirement that offenders serve at least 50 percent of sentences for violent crimes or burglary. The Commission found that Maryland offenders typically serve a greater proportion of their imposed sentence than the national average. The Commission considered but rejected proposals that further increased the minimum proportion of sentence to be served prior to parole eligibility. The Commission recommends the judicial announcement of a minimum and maximum sentence in order to promote more "truthful" sentencing practices.

The final report and its appendix are available via the internet. The internet address for the final report of the Maryland Commission on Criminal Sentencing Policy is www.gov.state.md.us/sentencing/reports/1998/html/toc.html.

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MASSACHUSETTS

Legislation. The Massachusetts legislature concluded its formal session on July 31, 1998 without taking action of the sentencing guidelines legislation. The sentencing guidelines

legislation has been re-filed in the House and Senate for consideration in the 1999 legislative session.

Sentencing Guidelines and Intermediate Sanctions. The Massachusetts Sentencing Commission successfully completed work on a pilot project in the Worcester Central District Court where the sentencing guidelines were integrated into court operations with virtually no interruptions on case flow. The goal of the pilot project was to test the use of sentencing guidelines as a framework for judges and other court practitioners to use when sentencing an offender to an intermediate sanction. In Worcester county the Office of Community Corrections in cooperation with the local sheriff established a range of intermediate sanctions for use by judges. The intermediate sanctions included a day reporting center, electronic monitoring, house arrest, curfews, enhanced substance abuse testing, and other programs.

Research. The Massachusetts Sentencing Commission recently published a Survey of Sentencing Practices for the period FY 1997. This survey provides data on the 77,684 defendants convicted in Massachusetts during FY 1997. Copies of the survey are available upon request.

Massachusetts Sentencing Commission Members.

Massachusetts Sentencing Commission member S. Jane Haggerty was recently nominated by Governor A. Paul Cellucci to the position of Associate Justice for the Superior Court in Massachusetts. Attorney Haggerty has been a member of the Massachusetts Sentencing Commission since its inception in June 1994 and has also served for several years on the board of directors of the National Association of Sentencing Commissions.

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MICHIGAN

Michigan Sentencing Commission

In late November 1997, the Commission voted 14-4 on Guideline recommendations and submitted the package to the Michigan Legislature. The Senate passed the Guidelines unanimously before the holiday break, but debate in the House has been vigorous. A substitute bill passed House Committee in early May, but prospects for passage before the summer recess are guarded. Major issues include sentence length on serious felonies (the Commission's recommendations included significant increases), prison impact and county jail overcrowding.

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NORTH CAROLINA

North Carolina Sentencing and Policy Advisory
Commission

Juvenile Justice Reform

In January 1998 the Sentencing Commission was asked by Governor Hunt to conduct an empirical analysis of the impact of juvenile justice reforms recommended by the Governor's Commission on Juvenile Crime and Justice. Funded by a grant from the Governor's Crime Commission, and in cooperation with the Administrative Office of the Courts' Juvenile Services Division and the Department of Health and Human Services' Division of Youth Services, staff collected information on a sample of 1,300 juveniles adjudicated delinquent in 1997. The data provided a statistical profile of the juvenile delinquent population, including background information on the juveniles, their prior adjudications, instant

offenses, and dispositions, and served as the basis to analyze the shift in dispositional resources needed to implement proposed changes in the juvenile justice system. The reform targets more selective use of training school facilities for violent and repeat juvenile delinquents, while offering a wide range of graduated intermediate and community sanctions for other adjudicated delinquents. A report of findings was delivered May 1, 1998 to the General Assembly; additional impact projections were continuously provided by staff as the Legislature continued its deliberations of the proposed juvenile justice bill.

At the close of its 1998 Short Session in October, the General Assembly passed the Juvenile Justice Reform Act which models dispositions for juvenile delinquents based more closely on Structured Sentencing concepts of social harm and prior delinquency. It also places greater emphasis on the development and utilization of intermediate sanctions for juveniles.

Innovations in American Government Award Reception

On May 26 a briefing and reception was held at the North Carolina Museum of Art to recognize the legislators, judges, and executive officials who were involved in the development and implementation of Structured Sentencing. North Carolina's "Structured Sentencing" program was selected last year as a 1997 winner of the Innovations in American Government Award. Structured Sentencing was one of ten winning programs selected from 1,540 national, state, and local program applications.

Governor Jim Hunt of North Carolina, David Gergen, chair of the national selection committee and editor at large with the U.S. World and News Report, Secretary of Corrections Mack Jarvis, and Judge Thomas Ross, chairman of the Sentencing Commission, were featured speakers at the reception.

"We now have a creative, tough-minded and fair approach to sentencing," said Governor Jim Hunt. "Under Structured Sentencing, we have truth in sentencing, violent offenders are serving 100 percent of their sentence and we have done away with parole. The justice system in North Carolina is working much better today than it ever has before."

The Innovations in American Government Award is sponsored by the Ford Foundation and administered by Harvard University's Kennedy School of Government in partnership with the Council for Excellence in Government. The Innovations Program recognizes new approaches to solving important public problems and encourages the replication of these government programs.

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OHIO

Ohio Sentencing Commission

In December, 1998, the Ohio Criminal Sentencing Commission presented its misdemeanor and traffic recommendations to the General Assembly. The misdemeanor proposals are not radical. Basic penalties remain the same. However, a new appellate remedy would be added when consecutive misdemeanor sentences exceed 18 months.

The traffic plan has drawn more attention, since it is the way otherwise law-abiding citizens meet the criminal justice system. The Commission's proposal would stiffen penalties for the worst driving offenses (some aspects of vehicular homicide and DUI). But it also would change many statutes with an eye toward helping problem drivers regain their licenses or otherwise avoid suspensions.

The Commission also forwarded a proposal to rewrite Ohio's arcane formula for distributing fine and cost revenue. The new rule would better tie revenues with the entities that incur expenses in misdemeanor cases. But it is a controversial proposal, since several municipalities and their police departments would lose windfalls.

The Commission also reviewed Ohio's unique "mayor's court" system. While these courts can meet out justice at convenient places and times, they occasionally are seen as marsupial. The Commission proposes registration and reporting requirements designed to foster a justice model, rather than an economic model, in these courts.

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OKLAHOMA

Oklahoma Sentencing Commission

Truth in Sentencing was passed by the Oklahoma Legislature in the 1997 session, but received opposition from prosecutors, law enforcement, and victims groups, as a result Truth in Sentencing was debated during the 1998 Legislative Session with both the Oklahoma House and Senate offering

adjustments to the Act. Because no agreement could be reached on changes to the Act, implementation of Truth in Sentencing in Oklahoma was delayed until July of 1999. It is expected that the 1999 Oklahoma Legislature will again revisit the issue of Truth in Sentencing.

The Oklahoma Sentencing Commission has recently completed a statewide Sentencing Study. The study contains all felony dispositions for each county and the entire state. An interim report of the Sentencing Study will be presented to the Legislature on November 30, 1998 with the completed report being presented to the Oklahoma Legislature, February 2, 1999. Information contained in this report will be helpful to the Joint Legislative committee charged with implementing and drafting a revised bill.

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PENNSYLVANIA

Pennsylvania Sentencing Commission

On October 28, 1998, following two years of meetings and a public hearing on the matter, the Commission adopted a final Release of Information Policy that would permit the release of judge-specific information beginning with the 1998 sentencing data. Under the policy, the Commission will provide data for each sentencing year to the Inter-University Consortium for Political and Social Research [ICPSR], the national clearinghouse based at the University of Michigan. Name, social security number and judge name will be removed from the general release of 1997 and prior sentencing data sets. Only name and social security number will be removed from the general release of 1998 and subsequent sentencing data sets.

The 1996 data set was released to the ICPSR in December 1998, and the 1997 data set should be released in March of 1999. The Commission established a menu of standard reports that are available to the general public. Reports are available for each sentencing year, but only if data entry, cleaning and documentation of all sentencing year data have been completed. The Commission also created a committee to work with interested parties to develop county-specific contextual information on criminal justice practices, procedures and programs. This information will be included with the release of judge-specific 1998 sentencing data later this year.

In November 1998, the Commission released its sentencing guideline software application. This version of the software assists users by determining the correct guideline recommendations and printing a prepared facsimile of the sentencing guideline form for use by the court. The next version of the software will allow for electronic submission of all sentencing information to the Commission. The Commission is providing both a reporting and non-reporting version of the software. Only offices that are responsible for sending the guideline form to the Commission use the reporting version. The non-reporting version is available to anyone interested in receiving assistance in the calculation of the sentencing guideline recommendations. The software is free of charge to government offices and is included with the purchase of the *Sentencing Guidelines Implementation Manual, 5th Edition*.

To obtain a copy of the Commission's Release of Information Policy, or to download the sentencing guideline software application, visit our website [<http://www.la.psu.edu/pcs/>].

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SOUTH CAROLINA

South Carolina Sentencing Guidelines Commission

At the end of May 1998, the Truth in Sentencing/Advisory Sentencing Guidelines legislation had been passed overwhelmingly by the South Carolina House and the Senate Judiciary Committee. Unfortunately, the 1998 Legislative Session ended on June 4, 1998 before the full Senate was able to take up the bill. Commission members and staff were pleased with the success of the Guidelines package and are now confident that the bill will pass both the House and Senate during the next Legislative Session beginning in January of 1999. The Speaker of the House and Commission Chairman, David H. Wilkins, will reintroduce the bill at that time. Legislative subcommittee hearings should begin in early January.

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UTAH

The Utah Sentencing Commission has implemented its new 1998 Sentencing & Release Guidelines for Adult Offenders which went into effect October 15, 1998. Training involved approximately 1,300 practitioners including all sentencing court judges, corrections, prosecutors, and legal defenders. Staff logged approximately 4,000 miles traveling around the state. The guidelines are voluntary and intended to be as descriptive as possible of current sentencing practice. Primary revisions include a separate matrix for sex offenders, typical lengths of stay recommendations for the Board of Pardons & Parole, percentage formulas for concurrent and consecutive enhancements, and increased use of intermediate sanctions. The new guidelines reinforce Utah's indeterminate sentencing system and strong parole authority.

The University of Utah was awarded \$200,000 from the National Institute of Justice to evaluate Utah's Juvenile Sentencing Guidelines. In 1997, Utah adopted the Juvenile Guidelines which are premised on earlier intervention and cost \$20 million in resources to the juvenile system. The Utah Sentencing Commission is coordinating efforts between the University, juvenile court, and youth corrections to perform the tracking and longitudinal evaluation.

As a result of its second year of studying intermediate sanctions, the Sentencing Commission has recommended a \$6 million package to the governor to be built into his FY 2000 budget recommendations. The package includes community correctional centers focusing on probationers with substance abuse problems, day reporting centers, and privatizing presentence investigations to free up officers to supervise in the field. The intermediate sanctions package also includes placements for juvenile offenders such as high risk observation and assessment beds for seriously mentally ill offenders, electronic monitoring, and work camps.

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WASHINGTON

Washington Sentencing Guidelines Commission

The Washington State Sentencing Guidelines Commission will begin 1999 with a new chair, law professor David Boerner, who was a principal architect of the Sentencing Reform Act of 1981 and of Washington's structured sentencing system. The membership of the Commission (four ex-officio members, four state legislators and sixteen other members, each appointed by the Governor, representing each of the stakeholders in the criminal justice system) has remained relatively unchanged, except for four new members – a county sheriff, a Superior Court judge and two citizens.

The Commission's new executive director, Roger Goodman, came on board in mid-August, and has helped to reorganize and energize the Commission. In October, the Commission convened for a two-day planning meeting, at which priorities were set and permanent committees were established, including the Standards and Ranges Committee (examining the sentencing grid on a continual basis), the Juvenile Justice Committee and the Legislative Committee. In addition, the Sentencing Practices Review Workgroup (working on a report to the Legislature on adult sentencing practices in the state) and the Technical Legal Workgroup (evaluating statutory changes to and judicial interpretations of sentencing law) will continue to meet throughout the year. The full Commission holds its regular business meetings on a monthly basis.

The 1999 legislative session will be a long session, lasting from January until at least the end of April. The Commission staff will be bearing a heavy load of requests from the Legislature to analyze the effects of proposed bills on prison and jail populations. The Commission enjoys an excellent reputation for the timeliness and accuracy of those estimates.

Two major criminal justice initiatives are expected to make their way through the Legislature, each of which involves the Commission and its staff. The first concerns mandatory drug and alcohol screening and treatment for non-violent offenders and changes in the sentencing of offenders found to have a chemical dependency. The Commission staff has already been assisting legislators with estimates of the effects of this proposal. The other legislative initiative involves giving the Department of Corrections more authority over offenders in the community, who currently number over 55,000 (compared with only about 14,000 in confinement). This will include the use of a research-proven risk assessment tool for the management of offenders, greater imposition of crime-related prohibitions and of affirmative conditions on offenders in the community and coordination of community corrections officers with community police officers in urban areas. The Sentencing Guidelines Commission will be required to devise a community custody "grid" that will overlay the current sentencing grid, so that periods of community custody will be

determined and structured according to the seriousness level of the offense and the criminal history of the offender.

The Commission will have four bills introduced in the 1999 session. These include: 1) a "technical corrections" bill; 2) a bill to require community custody for new classes of offenders (all violent offenses and all "crimes against persons"); 3) a bill to place some currently "unranked" offenses on the sentencing grid (particularly domestic violence offenses); and 4) a bill authorizing the Secretary of Corrections to release very ill offenders to receive medical care provided with resources other than state funds.

By the end of 1999, the Commission staff will have completed numerous reports to the Legislature. These will include: 1) a study of the capacity of the state prisons, county jails and juvenile detention centers; 2) studies of racial, ethnic, gender and age-related disparities in sentencing for both adults and juveniles; 3) studies of recidivism for both adult and juvenile offenders; 4) a report on current sentencing practices in the state; and 5) an original research effort to assess the general deterrent effects of informing target populations (such as school children or inmates just prior to release) about the state's sentencing system.

The Commission staff has grown and continues to grow. A new research director will join the staff in the next couple of months. The remainder of the staff consists of research managers, research analysts, a computer programmer, data compilers and administrative, clerical and support staff.

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UNITED STATES (FEDERAL COURTS)

U.S. Sentencing Commission Year in Review

In January 1998, the Sentencing Commission published for comment a number of proposed amendments, including broad changes in the theft, fraud, and other economic crimes guidelines; issues on telemarketing fraud and other congressional initiatives; and proposals to address a number of circuit conflicts. Subsequently, the Commission held (1) a public hearing in Washington, D.C., that focused on the telemarketing fraud issue, (2) a hearing in San Francisco to receive comment on the proposed amendments to the theft, fraud, and tax guidelines, and (3) its annual, March public hearing covering all the proposed guideline amendments.

Subsequently, on May 1, 1998, the Sentencing Commission sent to Congress 11 amendments to the federal sentencing guidelines. Most notably, the Commission adopted an amendment that provides (1) a sentence increase for fraud that involves mass marketing and (2) an additional sentence increase for fraud that is committed substantially outside the U.S., involves relocating to another jurisdiction to evade law enforcement, or otherwise involves sophisticated concealment. These 11 amendments took effect November 1, 1998.

During the summer of 1998, the Commission and the Criminal Law Committee of the Judicial Conference field-tested a proposed revision of the definition of "loss" as used in theft and fraud cases. In September, many of the judges and probation officers who had participated in the test exercise traveled to Washington, DC, for a day-long debriefing session. In October, Commission staff issued a report summarizing the principal recommendations from the debriefing session.

In response to the Telemarketing Fraud Prevention Act of 1998, the Commission in September adopted additional amendments to the sentencing guidelines. These "emergency" amendments further increase penalties for sophisticated fraudulent schemes, including telemarketing schemes, that impact large numbers of vulnerable victims. These amendments also took effect November 1, 1998.

In September, the Commission convened a staff Policy Development Team to further advise the Commission on issues raised by the No Electronic Theft Act of 1997 (the "NET Act"). In the NET Act, Congress directed the Commission to ensure that the guideline penalties for a defendant convicted of a crime against intellectual property are sufficiently stringent to deter such a crime and that the guidelines provide for consideration of the value and quantity of infringed upon items. At the end of October, Commission Chairman Richard P. Conaboy resigned to clear the path for a new slate of commissioners. The holdover status of commissioners Michael S. Gelacak, Michael Goldsmith, and Judge Deanell R. Tacha expired with the adjournment of the 105th Congress on October 21. The Commission, with all seven commissioner positions vacant, awaits the appointment of its new commissioners. Meanwhile, the Commission staff continues its work on such tasks as (1) developing policy initiatives and options for commissioner consideration, (2) providing training and technical assistance to the criminal justice community, (3) preparing the fiscal year 1998 annual report, and (4) serving as a clearinghouse of federal sentencing information.

In advancing the Commission's research and information dissemination agenda, Commission staff in the fall presented a number of papers at the Annual Meeting of the American Society of Criminology. Topics included computer offense conduct, immigration offenses, methamphetamine offenses, and sentencing guidelines for juveniles.

In 1998, the Commission received documentation on more than 50,000 cases sentenced under the guidelines. The

Commission coded and assimilated the information from these sentencings into its comprehensive, computerized data collection system.

The "HelpLine" provided guideline application assistance to approximately 200 calls a month.

The Commission's training staff continued to provide guideline application and sentencing-related training to judges, probation officers, prosecutors, defense attorneys, and others. During 1998, Commission staff trained approximately 2,400 individuals at 44 training sessions, including ongoing programs sponsored by the Federal Judicial Center and the Department of Justice.

During 1998, Commission staff also received and responded to thousands of information requests from Congress, attorneys, government agencies, researchers, inmates and their families, and the public.

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NASC Elections

Four positions on the NASC executive board will be filled by election at the 1999 conference in Salt Lake City. Each position has a term of three years.

If you are interested in putting your name in nomination, please email a brief biography and statement of interest to: john.steiger@cfc.wa.gov. This information will be published in the summer newsletter prior to the conference.

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