

NASC newsletter

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A PUBLICATION OF THE NATIONAL ASSOCIATION OF SENTENCING COMMISSIONS

2008 NASC CONFERENCE

BUILDING BRIDGES: PHILOSOPHY, POLICY & PERFORMANCE

AUGUST 3-5, 2008 • THE PALACE HOTEL • SAN FRANCISCO, CA

The theme of the 2008 NASC conference is "Building Bridges," and it is an invitation for judges, legislators, academics and policy-makers from around the country to consider what it means to build bridges between sentencing philosophy, policy, and practice, and to contemplate their roles in constructing those bridges. How do punishment philosophies translate into actual policy, and then into practice? What has been the role of sentencing commissions in building bridges between philosophy, policy, and practice? The 2008 conference promises to be both engaging and thought-provoking.



San Francisco is, of course, home to the famous Golden Gate Bridge. Completed in 1937, it is one of the most beautiful, and most photographed, bridges in the world. It remains a stunning example of bridge engineering, both as a structural design challenge and for its aesthetic appeal. The city is also home to exceptional cultural attractions, diverse communities, and world-class cuisine. The region boasts other alluring attractions, such as the scenic wine country of Sonoma and Napa counties, the beautiful hills of Marin County, and the breathtaking redwood trees of Muir Woods. All of this makes San Francisco one of the world's most appealing travel destinations.

President's Message



The Palace
San Francisco

On August 3 -5 2008, the National Association of Sentencing Commissions (NASC) will hold its annual conference in San Francisco at the historic Palace Hotel. Our co-host this year is the Stanford Criminal Justice Center at the Stanford Law School. I extend a particular thanks to Kara Dansky of the Criminal Justice Center and her staff for all the work they have done to host our conference.

Our theme, Building Bridges: Philosophy, Policy and Performance, aptly covers the very special agenda we have this year. Sunday afternoon, August 3, we are joining with some of the nation's leading law schools for a special presentation entitled "On the Shoulder of Giants" which will honor the work of Norval Morris and Dan Freed. This provides a very special opportunity to engage in thought-provoking discussions with the pioneer thinkers in our field. I fully expect the excitement from the Sunday afternoon sessions to flow into Sunday's 5 p.m. NASC Reception. On Monday morning, we kick off with a special panel that will help us to transition from academic thinking to the real life applications of policy in the justice process. I am sure that this panel will be as intriguing to law scholars as it will be to judges and legislators. On Tuesday morning, we have the chance to hear the results of a recent study by the National Center for State Courts examining the impact of guidelines on sentencing consistency and fairness in the states of Michigan, Minnesota and Virginia. And later in the morning, we will be able to go to the heart of sentencing guidelines and the workings of our adversarial system in a plenary session on the balance of power between judges and prosecutors.

In addition to these great plenary sessions, our planning committee has developed a challenging agenda, with presentations on the new federal crack/powder cocaine policies, the nationalization of prison crowding, risk assessment, the role of the media as it relates to sentencing policy, the unintended consequences of some drug sentencing reforms --- and more. We continue to feature states that are considering significant sentencing policy changes and we are repeating the very popular round tables where you, the conference attendee, have a chance to interact with, and get to know, your peers across the country. Hopefully, the conversations started at these round tables will carry over into the remainder of the conference and well beyond.

Tuesday afternoon, we will have a special screening of the *film Quiet Rage: The Stanford Prison Experiment* and have an opportunity to meet with its creator, Professor Phillip Zimbardo, for a question and answer period.

As a closing note, we have three positions up for election on the NASC executive committee. Voting will take place during the conference and the results will be announced during Tuesday's luncheon. If you are interested in running for the executive committee, please let me know.

We hope to see you in San Francisco, the city by the bay.

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Conference Registration

Building Bridges: Philosophy, Policy & Performance



Conference Website
<http://scjc.stanford.edu/nasc2008>

Registration Fees
The conference registration fee is \$375.00 (\$400.00 if after July 9, 2008). This includes a reception on Sunday evening, continental breakfast Monday and Tuesday, and lunch Monday and Tuesday.

Hotel
The Palace Hotel
2 New Montgomery Street
San Francisco, CA 94150
Tel: 415.512.1111
Room Rate: \$190 per night (if booked before July 11, 2008)

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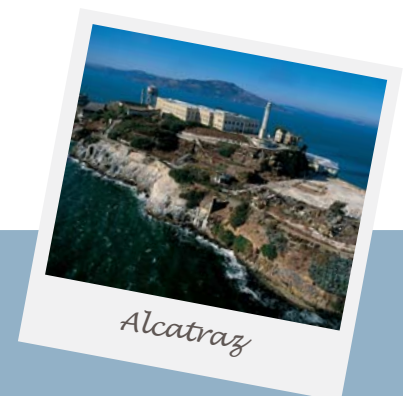
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San Francisco

Conference Hotel

2008

Palace Hotel
2 New Montgomery Street
San Francisco, California 94105

In 1875, the Palace Hotel debuted as the world's largest and most luxurious hotel, towering eight stories over San Francisco. A bridge from the old world to the modern city, the Palace recreates the elegance and glamour of 19th century high society, with its beautiful vaulted ceilings and original Austrian crystal chandeliers. Host to presidents, royalty and giants of industry, the Palace has been lavishly restored with loving attention to its rich past. Centrally located downtown and adjacent to the Financial District, the Palace indulges guests with modern conveniences and the quality of service that gave the Age of Elegance its name.



The Palace
San Francisco

Centrally located downtown, adjacent to the Financial District, the Palace is within walking distance to Union Square, the cable cars, the Embarcadero, Chinatown, SF Museum of Modern Art, and the Theater District.

Click below to make reservations:

<http://www.starwoodmeeting.com/StarGroupsWeb/res?id=0801106474&key=6FEE7>

Sunday, August 3

12:00 p.m. **Registration Begins**

Pre-Conference Agenda

1:30 p.m. **Standing on the Shoulders of Sentencing Giants Session One:
Honoring Norval Morris**

Steven Chanenson, Professor of Law, Villanova College of Law
Richard Frase, Professor of Law, University of Minnesota School of Law
James Jacobs, Professor of Law, New York University School of Law
Marc Miller, Professor of Law, University of Arizona Rogers College of Law
Franklin Zimring, Professor of Law, UC Berkeley School of Law

3:00 p.m. **Afternoon Break**

3:15 p.m. **Standing on the Shoulders of Sentencing Giants Session Two:
Honoring Daniel Freed**

Steven Chanenson, Professor of Law, Villanova College of Law
The Honorable Nancy Gertner, Judge, United States District Court, District of Massachusetts
Marc Miller, Professor of Law, University of Arizona Rogers College of Law
Kate Stith, Professor of Law, Yale Law School
Ronald Weich, Chief Counsel to Sen. Harry Reid, Majority Leader

5:00 p.m. **Reception for conference participants**

Conference Agenda

7:30 a.m. Continental Breakfast
8:30 a.m. Welcome and Introductions

Jeff Adachi, Public Defender, City of San Francisco
Matt Cate, Secretary, California Department of Corrections and Rehabilitation

9:00 a.m. Plenary Session I: Building Bridges from the Academia to Policy and Performance

Cal Hobson, Former Senator, State of Oklahoma
Thomas Ross, President, Davidson College
Kate Stith, Professor of Law, Yale Law School
Barbara Tombs, Senior Fellow, Vera Institute of Justice

10:30 a.m. Morning Break

Break Out Sessions

10:45 a.m. 1 Drug Series #1: The Rippling Effect of Crack/Powder Cocaine Retroactivity

Kenneth Cohen, Director of Legislative Affairs, U.S. Sentencing Commission
Lisa Rich, Legislative Director, U.S. Sentencing Commission
Jay Rorty, former Federal Public Defender, Northern District of California
Glenn Schmitt, Office of Research & Development Director, U.S. Sentencing Commission
Brian Whisler, Assistant United States Attorney, Eastern District of Virginia

2 Capacity and the Nationalization of Prison Overcrowding

Richard Allen, Commissioner, Alabama Department of Corrections
David Ball, Research Fellow, Stanford Criminal Justice Center
Michael Connelly, Administrator, Evaluation & Analysis Unit,
Oklahoma Department of Corrections
Don Specter, Executive Director, Prison Law Office

3 New Horizons in Sentencing Policy

Barbara Tombs, Senior Fellow, Vera Institute of Justice
Jim Hardesty, Justice, Nevada Supreme Court
Tom Ullman, Connecticut Sentencing Task Force
Michael Kainen, Executive Director, Vermont Sentencing Commission

12:15 p.m. Luncheon and Address - Sentencing in California

Gloria Romero, California State Senator and Chair, Public Safety Committee

Monday, August 4

2008

The Palace
San Francisco

Break Out Sessions

1:45 p.m. **4 Drug Series #2: Drug Courts and Beyond**

Daniel Abrahamson, Director of Legal Affairs, Drug Policy Alliance
Sharon Neumann, Community Sentencing & Offender Information Services, Oklahoma
Tim Silard, Chief of Policy, San Francisco District Attorney's Office
Doug Marlowe, Adjunct Associate Professor of Psychology in Psychiatry
University of Pennsylvania School of Medicine

5 The Role of the Media in Sentencing

Lisa Rich, Legislative Director, United States Sentencing Commission
Andy Furillo, Staff Reporter, Sacramento Bee
Michael Vitiello, Professor of Law, McGeorge School of Law
Robert Weisberg, Professor of Law, Stanford Law School

6 Evidence-Based Practices in Sentencing

Laura Appleman, Assistant Professor of Law, Willamette College of Law
Elyse Clawson, Executive Director, Crime and Justice Institute
Kim Hunt, Executive Director, District of Columbia Sentencing Commission
Roger Warren, President Emeritus, National Center for State Courts

3:00 p.m. **Afternoon Break**

Break Out Sessions

3:15 p.m. **7 Drug Series #3: Unintended Consequences of Drug Sentencing Reforms**

Bruce Stout, Staff Director, Sentencing and Corrections Task Force,
New Jersey Government Efficiency and Reform (GEAR) Commission
Barry Krisberg, President, National Council on Crime and Delinquency
Helen Pedigo, Executive Director, Kansas Sentencing Commission
David Swayze, Chair, Delaware Sentencing Research and Evaluation Committee

8 Sentencing Policy for Mentally Ill Offenders

W. David Ball, Research Fellow, Stanford Criminal Justice Center
Mark Bergstrom, Executive Director, Pennsylvania Commission on Sentencing
David Soule, Director, Maryland State Commission of Criminal Sentencing Policy
Bruce Gage, University of Washington

9 Sentencing Guidelines Third Dimension: Offender Risk of Re-offense and Prison Populations

Paul Bellatty, Director of Research & Evaluation, Oregon Department of Corrections
Steven Chanenson, Professor of Law, Villanova College of Law
Craig Prins, Executive Director, Oregon Criminal Justice Commission
The Honorable Michael Wolff, Judge, Missouri Supreme Court

Tuesday, August 5

2008

The Palace
San Francisco

7:30 a.m. **Continental Breakfast**

8:00 a.m. **Plenary Session II: Consistency and Disparity in Sentencing Today-Minnesota, Michigan and Virginia**

The Honorable F. Bruce Bach, Chair, Virginia Sentencing Commission
Jeffrey Edblad, Chair, Minnesota Sentencing Commission
Brian Ostrom, Senior Research Associate, National Center for State Courts
Charles Ostrom, Professor of Political Science, Michigan State University
Kevin Reitz, Professor of Law, University of Minnesota School of Law

Round Table Discussions

9:45 a.m. **Technocorrections and Sentencing**

Chair: Michael Connelly, Administrator, Evaluation & Analysis Unit, Oklahoma Department of Corrections

The Public Safety Consequences of Sentencing Guidelines

Chair: Kim Hunt, Executive Director, District of Columbia Sentencing Commission

Victims Issues in Sentencing

Chair: Nina Salarno-Ashford, Consultant, Crime Victims United of California

Sentencing for Felony DUI Offenders

Chair: The Honorable Joseph Colquitt, Chair, Alabama Sentencing Commission

The Impact of Truth in Sentencing Laws on Prison Populations

Chair: Rosa Davis, Chief Assistant Attorney General, Alabama

Juvenile Amenability and Sentencing

Chair: Susan Katzenelson, Executive Director, North Carolina Sentencing Policy and Advisory Commission

Sentencing and Immigration Law

Data Integration and Sentencing

10:45 a.m. **Plenary Session III: The Balance of Power Between Judges and Prosecutors**

Richard Gebelein, Chief Prosecutor, State of Delaware
The Honorable Robert J. Humphreys, Judge, Virginia Court of Appeals
The Honorable Steven Perren, Justice, California Court of Appeal
Robert Weisberg, Professor of Law, Stanford Law School
Ron Wright, Professor of Law, Wake Forest University School of Law

12:30 p.m. **Luncheon: NASC Election Results and NASC Annual Business meeting**

3:00 p.m. **Screening of Quiet Rage: The Documentary
Followed by Q&A and a book-signing with Professor Philip Zimbardo**

Guaranteed to stimulate critical thinking and discussion, the film features archival footage, flashbacks, post-experiment interviews with the prisoners and guards, and comparisons with real prisons. It documents the surprise arrests by city police and vividly shows the pathology that developed among participants, forcing the two-week study to be terminated after only 6 days. It has been shown in high school and college courses and to a wide array of community audiences, including correctional, judicial, military, and civic groups. <http://lucifereffect.org>

Funding Woes Hit Alabama Hard – But Governor Provides Respite

Alabama's financial problems appear to best those in any other state, especially when you consider the funds spent on corrections. As noted in Pew Charitable Trusts February 2008 publication, *One in 100: Behind Bars in America 2008*, Alabama ranks last among all states when considering the percentage of general fund budgets devoted to corrections (2.6%), compared to the national average of 6.8%. In addition, since 1987, the portion of Alabama's General Fund Budget devoted to the Alabama Department of Corrections has actually decreased 2.4%. Some supplemental funding for the Department of Corrections for FY 2008 may be possible. The Governor has included legislation on this subject in his call for a special session May 27, 2008. While encouraged, we remain guardedly optimistic because this funding bill also includes supplemental appropriations from the General Fund for Medicaid and other departments of state government.

The budget for 2009 does not offer much hope for improvement. The General Fund Budget approved by the Legislature in the closing days of the Regular Session reduced appropriations to all state departments and agencies by 17.75%. That amount was then appended as a conditional appropriation. Signing the General Fund Budget into law on May 19, 2008, Governor Bob Riley exercised his line item veto authority and removed the 17.75% conditional appropriation, returning the budget to its pre-reduced level. We are cautiously optimistic the budget will hold, although a later declaration of proration by the Governor is a real possibility.

Collaboration and Support Continue to Advance Sentencing Commission's Reform Efforts

While we may be short on funds, we excel in other areas, with Alabama managing to achieve major improvements in its criminal justice system and proceed with sentencing reform. These advances have been achieved through the vision, tenacious support and hard work of leaders from all branches of state government. Their leadership and involvement with the Sentencing Commission's reform efforts are among our greatest assets. The Commission could ask for no better allies than Alabama's Chief Justice, Sue Bell Cobb, and Administrative Director of Courts, Callie Dietz, who have not only pledged their continued assistance to ensure the effective implementation of the sentencing standards, but have also taken an active role in many of the other reform efforts of the Commission.

Cooperative Community Alternative Sentencing Project

Chief Justice Cobb recently joined with the Alabama Sentencing Commission, co-chairing a statewide steering committee established to improve and further develop community punishment options through the collaboration of agencies at both the State and local levels. The goal of the project is to develop model programs in four sites that will develop an effective continuum of community sanctions, utilize evidence-based practices, and serve as mentors and models for the rest of the state. The project seeks to develop the programs in the selected

jurisdictions by relying on input from local committees in the jurisdictions themselves. Guidance will be provided from standards approved by the state steering committee, with technical assistance from the Vera Institute of Justice and the Crime and Justice Institute (CJI), made possible by funding from the Pew Charitable Trusts. Project technical assistance will include three key components provided by Vera and CJI: 1) research and data analysis; 2) strategic planning sessions; and 3) development and submission of a comprehensive sentencing alternatives expansion plan for approval by the state steering committee.

Drug Courts

Chief Justice Cobb has also committed to make Alabama a safer place to live by increasing the use of therapeutic drug courts to deter drug addicted or abusing offenders from further criminal activities. Through her leadership, and with the cooperation of Governor Bob Riley and the Legislature, the Commission's recommendation for an increased drug court presence is coming to fruition. There are now 36 drug courts operating in 38 counties, including 26 judicial circuits under models suggested by the Chief Justice's Drug Court Task Force. Given the level of commitment and leadership, it is not unrealistic to expect the development of drug courts in the remaining 29 counties within the next two years.

Data Issues Delay Truth-in-Sentencing and Full Reporting of Effectiveness of the Initial Voluntary Sentencing Standards

The effectiveness of the Initial Voluntary Sentencing Standards, as well as the development of a more complete intermediate punishment system in Alabama, is essential to the development of an effective truth-in-sentencing system for this State. For a truth-in-sentencing system to be effective there must be room at every level of corrections programs for sentenced offenders. Major data issues have delayed the development of truth-in-sentencing standards, which are now being addressed by the Sentencing Commission. These standards are in the process of development but improved data will be necessary to complete the standards.

The Initial Voluntary Sentencing Standards approved by the Legislature and implemented October 1, 2006, appear to be in use in most Alabama counties. The Sentencing Commission has now received 12,557 worksheets, representing 81% of the sentencing events in which completion of a worksheet and consideration of the recommended sentence are required. Data issues, however, are delaying a complete reporting of the effectiveness of the sentencing standards. These data issues revolve around the use of the court's case management and information system (SJIS), determining the sentence entered in convicted cases, the incomplete reporting to the Sentencing Commission of worksheets used to compute the sentencing recommendations, and the difficulty of tying the worksheets to SJIS data.

Alabama continued

To resolve data issues needed to accurately measure the effectiveness of the sentencing standards and help facilitate improved data collection across State Criminal Justice agencies, Commission staff has begun:

- Working with the Administrative Office of Courts (AOC) to resolve SJIS issues;
- Working with the AOC to provide training for court specialists in data entry for sentencing orders;
- Chairing a committee to provide a recommended uniform sentencing order for judges to use in sentencing felony cases;
- Working with the Administrative Office of Courts to improve the MIDAS case management system so that it is 1) acceptable to all community corrections programs as a uniform data collection system for that segment of the criminal justice system; 2) modified to clearly delineate community correction programs from court referral programs; and 3) revised to include a case management and reporting component for drug courts;
- Providing input to the Alabama Department of Corrections on essential data elements and reporting capabilities needed in its new web-based information system;
- Supporting and providing input to Pardons and Paroles and AOC in their efforts to improve the Pardons and Paroles data system for data collection purposes, as well as case management; and
- Coordinating review of existing risk and needs assessment instruments to identify instruments that may be adaptable to all agencies to determine the level of supervision for individual offenders, to identify factors that can be addressed to reduce the criminal tendencies of individual offenders, and to test the effectiveness of these strategies.

Bills in Alabama's Legislative Package Fail To Pass During 2008 Regular Session

The Commission's 2008 legislative package, like many other bills introduced during the 2008 Regular Session, got caught up in a log jam of local interests and filibusters and failed to pass simply because of inaction rather than opposition or lack of support. Among the bills introduced by the Commission was one to postpone the development and implementation of truth-in-sentencing standards. Postponement is required because sufficient alternative punishment options are not available, Alabama's prisons are approaching 200% of design capacity, and insufficient information is available to determine to what extent judges are complying with the recommendations of the initial sentencing standards and the effect of the standards on the prison population. The bills that were introduced during 2008 and are expected to be reintroduced during next year's Legislative Session are:

- Amending the directive to the Sentencing Commission to submit a proposal for truth-in-sentencing standards to the Legislature in 2011 rather than 2009, to allow the Commission time to test the effectiveness of the initial sentencing standards and to gather and organize the data essential to this enterprise and to allow for the further development of alternatives to incarceration to make room in prison for extended sentences for violent and serious repeat offenders;
- Amending the Community Corrections Act to give trial judges discretion to sentence offenders convicted of drug sales (excluding trafficking) to community corrections programs;
- Amending Alabama's Split Sentence Statute to prohibit the imposition of consecutive periods of incarceration portions of split sentences for separate offenses, to uniformly apply the limits of probation terms to all split sentences (5 years for felons), and to specify continuing jurisdiction for trial judges in split sentence cases; and
- Providing for an expanded prison industry both to train inmates in productive jobs and to provide constructive activity for imprisoned offenders.

The members and staff of the Alabama Sentencing Commission are indebted to the National Association of Sentencing Commissions for the assistance and advice that has been provided since our state's Commission was established in 2000. As a result of NASC membership, Alabama has been able to receive significant support and invaluable assistance from Pew Charitable Trusts, Vera Institute of Justice, Crime and Justice Institute (CJI), and the National Institute of Justice (NIJ), resulting in implementation of many of our criminal justice reform recommendations. Thank you NASC for your commitment to assisting sentencing commissions, both new and old, through the sharing of information, ideas, expertise and experience on issues relating to sentencing policies and practice.

Alaska Judges and Department of Corrections Discuss Sentencing Practices

Alaska judges spent a half-day of their annual judicial conference discussing sentencing policy and practices. This was an unusual opportunity because Alaska's stable and limited sentencing provisions – presumptive sentencing ranges, well-established sentencing case law, and a 2.8% trial rate for felony cases – result in few reasons for judges to discuss sentencing. The April 30 panel of judges and the state's new Commissioner of Corrections was designed to give judges time to update their knowledge of case law, learn about DOC policies on classification, and review probation resources.

Alaska judges may set conditions for offenders on probation, and may recommend to the Department of Corrections that it provide specific types of housing or treatment for offenders who are incarcerated. The judges cannot, however, specify that an offender serve time in a hard bed rather than a halfway house; be housed in Alaska rather than in a private prison in Arizona (which houses about 850 Alaska offenders with sentences of more than eighteen months); or receive treatment while incarcerated. Judges, especially those sentencing misdemeanants, were frustrated that arrangements they believed had been agreed to by DOC for offenders to serve time in hard beds were not being carried out. They also were concerned about the statutory lack of provision of probation supervision for misdemeanor offenders, and about lack of treatment and other services for incarcerated offenders.

Commissioner Joe Schmidt reviewed the department's classification process, noting that DOC policy was to keep an offender in the least restrictive environment. The department reviews the initial decision at different points of the offender's service of time, and may move offenders to half-way houses or electronic monitoring to serve part or most of the remaining sentence. Judges may announce a preference at sentencing for service in a hard bed, but if it is not written on the judgment form, Corrections has no knowledge of that preference. In addition, given both policy and cost considerations, the department may not be in a position to meet the judge's preference.

Judges also talked with each other and the commissioner about problems with delays during the pretrial process because these affect the usefulness of the final sentence. Offenders who spend lengthy times incarcerated prior to trial because of delays in receiving discovery, violations of bail conditions, or other problems receive credit for time served, but no treatment or other services. If they have served a substantial part of their sentence while incarcerated pretrial, often they do not have enough time left to qualify for treatment programs in the prisons. Because 80% or more of Alaska's prisoners have substance abuse problems, and are serving relatively short sentences for less serious felonies, many do not receive any assistance. The state's 66% remand to custody rate may stem in part from these circumstances. The Commissioner offered to make additional time to meet with judges for further discussions.

Federal Litigation

Federal district courts continue to rule over parts of the California prison system, most notably medical care (the *Plata* case), mental health (*Coleman*) and other cases in such areas as dental treatment and disability rights. *Plata* itself has proved the most significant, and Judge Henderson's new receiver in that case has recently asked the Legislature for a commitment of several billion dollars to bring the medical delivery system into compliance. The next several months will tell us what means-and-ends requirements the court will impose and how the legislature will respond.

But at the same time, the combination of *Plata* and *Coleman* has brought California closer to the unprecedented step of a federal court order to cap prison populations and possibly, as a consequence, force release of prisoners. Under The Prison Litigation Reform Act, a court with injunctive control of a state prison or prison system may not order prisoner release unless previous less intrusive orders have failed to alleviate the unconstitutional condition and the defendant has had a reasonable time to comply with court orders; moreover as a procedural threshold, a plaintiff seeking a prisoner release order must file a request for appointment of a special three-judge court to consider the necessity of such a release order. Judge Henderson, in the *Plata* case, has now joined Judge Karlton, in the *Coleman* case, to issue an order for creation of a three-judge panel, and the panel (consisting of Judges Henderson and Karlton themselves, along with Court of Appeals Judge Stephen Reinhardt) has now been appointed.

State Legislation

In 2007, to deal with the crisis of incarceration in California and perhaps also satisfy the federal courts, legislators introduced bills in both the Assembly and the Senate to establish a California sentencing commission to bring some new regulatory guidance and planning to the sentencing system, and the Governor himself proposed a version of a commission plan. Both bills introduced in the legislature remain pending in the 2008 legislative session, but passage seems unlikely.

The Governor did convince the Legislature to pass AB 900 in 2007, a bill clearly designed to do just enough to forestall a federal judicial prison population cap. AB 900 called for \$10 billion in lease revenue bonds to expand the number of state prison beds. It also directed funding and managerial measures to somewhat augment rehabilitation and reentry programs inside and outside prison, to create incentives for counties and cities to share the burden of housing state prisoners, and to create a new hybrid entity called a "Secure Reentry Facility." Federal judges, while not foreclosing the possibility that further managerial and budgetary adjustments might forestall an absolute prison population cap, have vigorously denounced AB 900 and related state measures as woefully insufficient to remedy California's prison overcrowding problem.

2008 Ballot Initiatives

Two important and somewhat opposite-looking sentencing-related voter initiatives are likely to win a place on the November 2008 ballot. One is the *Safe Neighborhoods Act*. Its key provisions would: add new 10-year enhancements for felons who carry loaded or concealed guns in public and also expand the state's "10-20-life" law to accomplices as well as actual shooters in crimes where guns are brandished or fired; enhance assorted penalties for street gang members convicted of crime; make it easier for local prosecutors to obtain civil anti-gang injunctions and evict public housing residents involved in gangs or drugs; guarantee \$600 million in existing local law enforcement spending and add \$365 million more, including funds for prevention and rehabilitation programs; require convicted gang offenders to register with local law enforcement each year for five years after conviction or their release from custody, and increase penalties for individuals who provide contraband to gang members in prison.

The other major initiative is the *Nonviolent Offender Rehabilitation Act (NORA)*. This proposed law would: expand and increase funding and oversight for individualized treatment and rehabilitation programs for nonviolent drug offenders and parolees; reduce the criminal consequences of nonviolent drug offenses by mandating three-tiered probation with treatment and providing for case dismissal and/or sealing of records after probation; limit a court's authority to incarcerate offenders who violate probation or parole; shorten the mandatory parole period for most drug offenses, including sales, and for nonviolent property crimes; and reduce certain marijuana misdemeanors to infractions.

Blakely

Early predictions were that *Blakely* would be only a minor problem in California because of the enhancements that were tried by juries. The *Cunningham v. California* case showed, however, that California was somewhat *Blakely* vulnerable, because of its triad structure, whereby judges could choose between a high, low, and middle term for many crimes, and the factual predicates for applying the upper-term, which turned out to be *Blakely*-applicable criteria. Nevertheless, the *Blakely-Cunningham* doctrine, while requiring some predictable litigation work in application to old cases, has not proved to be a major issue. The legislature successfully, if only temporarily, responded to *Cunningham* with SB 40, which "solved" the Sixth Amendment problem by making the choice within the triad wholly discretionary. However, even that solution sunsets in 2009. Legislation was proposed in 2008 that would extend the sunset provision to 2011. To the extent that there will be *Cunningham* issues down the road, they will likely involve highly nuanced Sixth Amendment issues about whether *Almendarez-Torres v. United States*, which held that defendants have no right to a jury trial on proof of prior offenses, might apply not only to the sheer existence of a prior criminal judgment but also to more normative questions like the degree of weight to be accorded past felonies, including those from out of state.

A Tradeoff of Lighter Drug Trafficking and Repeat Drug Selling Sentences for Harsher Sentences for Serious Person and Property Crimes

In terms of criminal justice policy, House Bill 210 is surpassed in importance only by such changes as the establishment of the Sentencing Accountability Commission in 1987 (SENTAC) and Truth in Sentencing in 1990. When House Bill 210 became law on June 30, 2003, the expectation was that the impact of the significant reductions in the controversial drug trafficking and repeat drug selling mandatory sentences would be offset by the increased penalties for serious crimes such as Robbery 1st, Assault 1st, Burglary 1st, and Burglary 2nd. It was estimated that initially there would be a short-term savings due to the decrease in the number of Department of Correction (DOC) beds used for drug dealers and that over the long-run more beds would be needed for the longer violent offenders' terms. Eventually the combination of the shorter drug and longer violent crime sentences would result in a bed neutral DOC impact.

This goal would have been met, if all other things besides sentence length had remained constant, between 2003 and 2007. However, as recent study documents, criminal justice practice and crime volume shifts cannot always be anticipated and may result in unexpected outcomes. The initial HB 210 study (DelSAC, October 2005) showed a significant decrease in the need for DOC beds. At this early stage, not only were 298 DOC beds saved due to shorter drug selling sentences, but also fewer than expected Robbery 1st Degree cases received the new 3-year minimum term, resulting in an additional 57 DOC bed savings. Overall, in the initial phases of HB 210, there was a surprising 355 bed savings. This bed savings contributed to the no-growth period in the DOC prison population in 2003 and 2004.

In a follow-up study in 2006-2007, the HB 210 sentence lengths – longer for violent crimes and shorter for drug selling – for the most part conformed to the new law. However, instead of a bed saving as was initially experienced, or a bed neutral result that was originally expected, there was a need in 2006-2007 for at least 338 more DOC beds. This increased bed demand was caused more by changes in crime volume, conviction rates and plea-bargaining than deviations from the expectations for HB 210. Of special note is the significant increase in the use of habitual sentences in place of the shorter HB 210 drug sentences. While there was speculation that this might happen, this is the first documentation that such a change actually occurred. These changes since 2004, many of them unanticipated, contributed to the increased 2006 and 2007 DOC prison population. Summaries, as well as detailed analyses, of the complex changes associated with HB 210 cases are available.

David Swayze, Chair
Delaware Sentencing Research and Evaluation Committee

District of Columbia Latest Annual Report Issued

The D.C. sentencing guidelines system dates back to the pilot program begun in June 2004, and will celebrate its fourth anniversary this year. The D.C. Sentencing and Criminal Code Revision Commission recently issued an annual report, the first since the system became a permanent feature of Superior Court operations. The report documents an exceptionally high rate of compliance with the guidelines and increases in compliance since the period of the pilot program.

To review, the sentencing guidelines are voluntary. A judge may elect not to follow the guidelines in a particular case. The Master and Drug Grids were designed with a recommended sentencing range for each of sixty boxes corresponding to a particular offense severity level and criminal history score.

During the period from July 1, 2006, through December 31, 2007, the Commission collected 2,663 Sentencing Guideline Forms (SGF), representing guideline recommendations and actual sentences in felony cases. During this reporting period, Sentencing Guideline Forms representing counts that fell in probation-eligible boxes on both grids accounted for 67.2% of the total number. Conversely, 19.7% of the total fell in prison-only boxes, while 13.1% of all cases fell in boxes permitting a short split sentence. Approximately 46% of the sentences in the current period were drug charges. Most (90.5%) of these drug sentences fell in the probation eligible boxes. This means that judges had the discretion to impose probation, a short split sentence, or a prison sentence in the vast majority of drug cases. Conversely, only 47% of SGF on the Master Grid fell in probation-eligible boxes.

Sentences "Within the Box" and Sentences "Outside the Box"

89.5% of all sentences are sentenced "within the box," that is the sentence disposition and length of sentence were consistent with the options for that box and the recommended range. For example, a sentence to probation is "within the box" if the case falls within a box that is probation eligible and the suspended prison sentence also falls within the range. The remaining 10.5% are "outside the box."

Prison sentences were imposed in 62% of the SGF collected during the current period. Of these, 92.5% of all prison sentences are sentenced within the box. The remaining 7.5% are outside the box (3.3% above the range; and 4.2% below the range).

There were 606 SGF with probation sentences, 22.7% of the total. Under guideline rules, a short split sentence is one where the judge imposes a prison sentence within the applicable range, suspends execution of all but six months or less (but not all) of it, requires the defendant to serve the part of the sentence that is not suspended, and places the defendant on probation up to five years. Absent a departure, it can be used only in the shaded boxes. There were 407 SGF with short split sentences, 15.3% of the total.

89.3% of all probation sentences are sentenced within the box. The remaining 10.7% of probation sentences that are outside the box are sentences to probation in a non-probation-eligible box. 97.1% of short split sentences were in boxes that permitted short splits. The remaining 2.9% are short split sentences in a non-short-split eligible box.

Comparison of Within the Box Sentences: Current and Previous Periods

The previous report analyzed 5,454 forms, representing sentences imposed during the period from the inception of the guidelines through June 30, 2006, while this report analyzes 2,663 sentences imposed from July 1, 2006 through December 31, 2007. Prison sentences comprised 62% of SGF during the present period, down slightly from 65% for the previous period. Probation sentences also decreased slightly, from 24.7% to 22.7%. The percentage of short split sentences increased from 10.3% to 15.3%.

Overall, compliance has generally increased from the last report. The percentage of sentences within the box grew from 87.9% in the previous period to 89.5% in the period covered by this report. 92.5% of prison sentences were within the box in the current period, compared to 89.7% in the previous period. However, the percentage of probation sentences that were within the box decreased slightly from 91% in the previous period to 89.3% in the current period, and the percentage of short split sentences within the box also decreased slightly from 98.6% to 97.1%.

Integration of Automated Records

The Commission continues to move toward full automation, which should improve timeliness, accuracy, and completeness of records. Currently, an interface is nearly operational between the Commission's new information system and the Superior Court CourtView database, using the JUSTIS network to link the systems. Our probation office (CSOSA) is developing its own link, which when finished (projected complete by the end of this fiscal year), will link all three systems. This will insure the transmission of Court and CSOSA information to the Commission more accurately and efficiently and will allow more timely inquiries to judges regarding sentences that require a further explanation. This process will also allow the Commission to supplement its database with cases that may have been missed prior to the activation of these interfaces. Automation and concomitant improvement in the business process is crucial because it will not only improve monitoring of the guidelines, but will also allow more time for the Commission's staff to focus on potential modifications of the guidelines, as well as other research.

The Commission intends to study whether any of the existing guideline recommendations may be in need of revision based on experience to date. The Commission will update its reports on overall sentencing trends when the Superior Court's automated records are fully integrated into the Commission's database.

Other Business

The annual report also documents the 2007 amendments to the sentencing guidelines, which include new offenses and penalties as well as rule changes that supplement or clarify existing guideline practices. Beginning in May 2008, the Commission will focus its energies on Criminal Code Revision. The Commission is mandated to make comprehensive recommendations regarding the D.C. Code, to revisit its language, penalties, classification system, and organization.

Legislation

The Massachusetts legislature is currently considering a number of sentencing reform proposals. Five of the sentencing reform bills include a comprehensive set of sentencing guidelines. The Massachusetts Sentencing Commission remains encouraged by the continued interest in sentencing reform. On May 9, 2008, the Crime and Justice Institute convened a forum at the State House in Boston attended by legislators, policy makers, and academics. The forum was held in conjunction with the publication of a report entitled "Promoting Public Safety Through Successful Community Transition." In its report the Crime and Justice Institute called for sentencing reform as a critical piece to the issue of prison over-crowding and prisoner re-entry:

"The Governor and the Legislature should enact and amend legislation . . . to reduce the barriers to successful transition at all points in the reentry process including diversion, sentencing, incarceration, post-release supervision and community transition."

Access and Fairness Survey

Massachusetts Sentencing Commission staff members are assisting with the data collection, coordinating data analysis, and preparing statistical reports for a statewide Access and Fairness Survey. This survey is part of the CourTools performance metrics developed by the National Center for State Courts. The survey measures the ratings of court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect. All court users - e.g., attorneys, defendants, witnesses, victims, jurors, family members - are asked to complete the survey as they leave the court. The survey project will be conducted at all court locations in Massachusetts during calendar year 2008. The Boston Municipal Court Department established a Court Operations and Policy Implementation Committee to determine how the results of the survey may be used to revise current business practices and courtroom procedures. A copy of the survey instrument is available on line at <http://www.mass.gov/courts/revised-survey-english-march08.pdf>.



Daniel Lawrence and Elizabeth Marini of the Massachusetts Sentencing Commission work on the Access and Fairness Survey Project at the Brockton Trial Court.

Other News

The Honorable Robert A. Mulligan, Chief Justice for Administration and Management of the Massachusetts Trial Court and Chairman of the Massachusetts Sentencing Commission, is the recipient of the 2008 Distinguished Service Award for a state-level court administrator, one of the highest awards presented by the National Center for State Courts. The Distinguished Service Award is presented annually to a person who has made longstanding contributions to improving the justice system and who has supported the mission of the National Center.

The Massachusetts Court Management Advisory Board recognized members of the Sentencing Commission staff for their "commitment to excellence" for their participation with the court metrics working group. The working group coordinated the performance measurement initiative using the CourTools metrics for timeliness and expedition developed by the National Center for State Courts.

Ohio

Late last year, the Ohio Criminal Sentencing Commission began to review ways to make the Ohio Revised Code more readable, with a focus on the criminal sentencing statutes. The Code will never read like supermarket fiction, since it covers some complex concepts, but it can be simpler to understand and apply.

The Commission issued its first "simplification" report in May. It suggests ways to cut miles of unnecessary words from the Code without changing a wisp of meaning. The Speaker of Ohio's House of Representatives has asked the state's bill drafting agency to work on the Commission's recommendations, beginning this summer.

On more substantive topics, the Commission's revisions to Ohio's asset forfeiture laws took effect last year. The plan streamlined the law, established a "proportionality" review, and clarified the rights of the state, defendant, and third parties. Training went well with no notable controversies.

The Commission will soon return to sentencing consistency, particularly regarding consecutive terms. We are looking to provide meaningful guidance in a post-Blakely context and welcome any suggestions.

Pennsylvania

The 2007-2008 Session of the Pennsylvania General Assembly is proving to be a busy one for the Pennsylvania Commission on Sentencing. On July 17, 2007, Governor Edward Rendell signed Act 37 (Senate Bill 116) which directs the Commission to adopt guidelines for fines and other lawful economic sanctions and prescribe community service alternatives which may be imposed in lieu of part or all of the fine. House Resolution 12, adopted by the House of Representatives on October 16, 2007, requires the Commission to conduct a study on the use and impact of mandatory minimum sentences, and to report on its activities, findings and recommendations no later than two years following adoption of the Resolution. And a legislative reform package (House Bills 4, 5, 6 and 7), expected to be enacted before the summer recess in July 2008, will substantially expand the duties and responsibilities of the Commission.

Economic Sanctions Project (Fines & Community Service Guidelines)

In recent years, the Commission has undertaken considerable research related to the imposition, collection and impact of economic sanctions in Pennsylvania. These studies by the Commission documented the varied practices throughout the Commonwealth for ordering restitution, fines, costs, fees and forfeitures; the hydraulic effect that increasing one economic sanction has on other economic sanctions; and the mixed outcomes in terms of successful collection and consequences for non-payment.

Pennsylvania continued

While the Commission understood the need to move expeditiously to comply with the mandate of Act 37, it also recognized the complexity of the task of developing a comprehensive set of guidelines for fines or other economic sanctions. As a result, the Commission adopted a two-track approach. On the 'fast-track' was the development of guidelines for fines and community service to be considered as non-confinement 'restorative sanctions' recommendations. These recommendations, discussed in the February 2008 edition of the NASC Newsletter, have been incorporated into proposed changes to the sentencing guidelines that were adopted by the Commission on December 5, 2007, and for which public hearings were held in February 2008. The second track of this project, discussed below, is a long-term research effort to obtain the information necessary to expand guidelines for fines and community service to cells of the guidelines that presumptively recommend ranges of incarceration, whether as alternatives to or enhancements of existing recommendations. Of critical importance is the development of a comprehensive view of the current use of all economic sanction, those mandated or permitted by statute and those established by local courts.

Since the enactment of Act 37 and the development of the 'fast track' proposals, the Commission has turned to the task of improving its baseline information on economic sanctions ordered and collected. Through its research partnership with The Pennsylvania State University, progress has been made in matching Commission and Administrative Office of Pennsylvania Courts 2006 data. This is not an easy task, considering the 1,518,508 economic sanctions imposed on 210,982 unique offenses during 2006, and including 1,091 different categories. Staff is presently working to reduce the 1,091 different types of economic sanctions into 9 categories: county costs, county fees, county fines, state costs, state fees, state fines, restitution, escrow (i.e., bail money that is returned to the offender), and other. The next step in the project involves conducting analyses using case, offender, and county characteristics to predict the imposition of fines/fees/costs (combined and separately), restitution, state economic sanctions, and county economic sanctions.

Mandatory Minimum Project

In response to the directives of HR 12, the Commission outlined a research strategy that included three phases: (1) Diagnostic Phase - establishing baseline information on the utilization of mandatory minimum sentences; (2) Process Phase - documenting the state and local practices and procedures that impact prosecution of, and sentences for, mandatory-eligible offenses; and (3) Outcome Phase - determining the effectiveness of sentences imposed pursuant to mandatory sentencing provisions as measured against stated goals.

A number of specific tasks have been identified for each phase of the project, including:

- (1) Diagnostic Phase
 - a. Analysis of sentencing data (2001, 2004, 2005, 2006)
 - b. Analysis of diagnostic and classification information (DOC admissions)
 - c. GIS mapping of school zones
 - d. County data collection (detailed information on a sample of mandatory-eligible cases)

- (2) Process Phase
 - a. Review (legislative intent/purposes, published research)
 - b. Interviews (judges, defense, prosecution, law enforcement, corrections, parole, etc.)
 - c. Surveys (judges, defense, prosecution, legislators, offenders, public poll)
 - d. County data collection (post-survey issues)

- (3) Outcome Phase
 - a. Analysis of recidivism data (criminal history, probation/parole revocations)
 - b. Analysis of other outcome measures (costs, crime rates, treatment outcomes, etc.)
 - c. County data collection (issues relating to recidivism and other outcomes)

The analysis of sentencing data has been completed, which documents the current utilization of mandatory sentences for three major categories: drug trafficking, repeat violent offenses, and violent offenses with firearms. Other work underway includes the development of the five survey instruments (judges, defense, prosecution, legislators and offenders) and the preparation of questions for a public poll; these are nearing completion.

Pennsylvania continued

Reform Legislation

The reform legislation presently before the General Assembly (House Bills 4, 5, 6, 7) address sentencing and parole decision-making, state and county place of confinement, institutional programming and community supervision. The package advances several important public policy goals: accountability, transparency, efficient use of correctional resources, system-wide coordination and the grounding of policies in evidence-based research.

Coordination between sentencing and parole is particularly important in Pennsylvania because of the structure of its indeterminate sentencing system. For confinement sentences, the court is required to impose a minimum and maximum term of incarceration. The sentencing guidelines provide recommendations for the minimum sentence, but do not recommend a maximum sentence. By statute, the maximum must be at least double the minimum, but cannot exceed the maximum penalty authorized for the offense. An offender under the jurisdiction of the Parole Board is required to serve the minimum sentence before being eligible for parole; there is no right to parole. While the Board has developed and uses internal parole decision-making guidelines, there are limitations on the public availability of the instrument and the transparency of the decisions.

While the primary purpose of Pennsylvania's sentencing guidelines is retribution, the decision at parole is much more focused on public safety, and greater consideration of an offender's risk of re-offending. Because of a lack of coordination and/or communication between sentencing and parole, decisions made at these two intercepts may operate at cross-purposes. This legislation contains several proposals to improve coordination and transparency.

The legislation adds the Secretary of Corrections, the Chair of the Board of Probation and Parole, and the State Victim Advocate as ex officio, non-voting members of the Commission. The addition of these three officials to the Commission, as non-voting members, will promote greater coordination in the development and implementation of sentencing and parole policies, and a greater sensitivity to the impact of these policies on victims, offenders, correctional agencies and institutions.

Pennsylvania continued

The legislation also includes two major changes regarding confinement of offenders. First, with few exceptions, offenders with aggregate maximum sentences of two years or greater will be confined in state correctional facilities; presently, confinement sentences with a maximum of less than five years may be served in county facilities. Second, certain less serious offenders confined in a state correctional facility will be eligible for 'recidivism risk reduction incentive' credit. This program, similar to earned time, provides a mechanism for earlier parole consideration of an offender who has been certified as having successfully completed required institutional programs.

The legislation also assigns substantial new duties and responsibilities to the Commission, including:

"Research, policy recommendations, and the collection, preparation and dissemination of information on resentencing and parole;"

"Adoption of guidelines for resentencing to be considered by the court following revocation of probation, county intermediate punishment and state intermediate punishment, and related reporting;"

"Adoption of guidelines for parole to be considered by the court (sentences served in county facilities) and the Board (sentences served in state facilities), and related reporting;"

"Adoption of recommitment ranges following revocation of parole to be considered by the Board, and related reporting;" and

"Monitor, evaluate and report on the Recidivism Risk Reduction Incentive Program."

The reform package was overwhelmingly approved by the House of Representatives earlier this year, and was recently reported out of the Senate Judiciary Committee. Consideration by the Senate of Pennsylvania is expected during June.

United States Sentencing Commission

In 2007, the U.S. Sentencing Commission focused on a policy issues that has been the subject of debate in Congress, among judges and lawyers, and in the public for the past 20 years: the disparity between federal crack and powder cocaine sentences created by the 100 to 1 ratio in federal law. Because the guidelines incorporate this ratio, penalties for crack offenses are significantly higher than penalties for an equivalent amount of powder cocaine.

On May 1, 2007, the Commission submitted an amendment to Congress that modified the offense levels for crack cocaine offenses, proposing that the offense levels for these offenses be reduced by two levels. This reduction was designed to address some of the disparity in punishment for crimes involving these two types of the drug while keeping the guidelines consistent with the mandatory minimum penalties that apply in these cases. This amendment went into effect on November 1, 2007, after Congressional review. On December 11, 2007, the Commission voted to make the changes to crack cocaine sentencings retroactive, effective March 3, 2008. The Commission estimated that approximately 20,600 offenders would be eligible for a sentence reduction under the retroactive amendment, and that, on average, offenders would receive a 17.7% reduction in sentence.

To date, the Commission has received information on 5,796 cases in which a motion was made to reduce the sentence pursuant to the retroactive crack amendment. The motion was granted in 4,663 cases (80.5%) and a reduction was applied. The average sentence reduction in these cases is 17.5 percent.

In the 1,133 cases where the motion to reduce sentence was denied, 330 (29.1%) were previously identified by the Commission as eligible to receive a sentence reduction, with the remainder representing cases in which a sentence reduction. Eligible offenders who were denied a reduction have a higher prevalence of weapon indicators, particularly mandatory minimums related to firearms, aggravating role in the offense, and higher criminal history categories than those receiving a reduced sentence. Offenders who were eligible for but denied a sentence reduction also had a substantially higher rate of below-range sentences (40.1% compared to 29.8%) at their original sentencing. The benefit conferred by the original departure or variance is commonly cited by judges as a reason not to reduce a sentence further.

The Commission is continuing to collect data on these cases and is publishing comprehensive statistics on an on-going basis. For more information on these cases, go to www.ussc.gov and select 'Federal Sentencing Statistics' from the Publications menu.

Projecting the Impact of Proposed Legislation

The *Code of Virginia* requires the Virginia Criminal Sentencing Commission to prepare fiscal impact statements for any proposed legislation that may result in a net increase in the population of offenders housed in state correctional facilities. These impact statements must provide details as to the anticipated impact on adult and juvenile correctional populations, as well as any necessary adjustments to Virginia's sentencing guidelines. The impact statements also describe the potential impact on local and regional jails and community corrections programs.

To prepare the impact statement, the Commission must estimate the increase in annual operating costs of the state's prison system if a particular proposal were to be enacted. A six-year projection is required. The highest single-year increase in prison operating costs is identified. Virginia law requires that this amount be printed on the face of the bill. Virginia's Department of Juvenile Justice goes through an identical process for any bill that would result in a net increase in the population of juveniles committed to the state. The Department of Juvenile Justice forwards its analysis to the Sentencing Commission and a combined statement is submitted to the General Assembly.

For each law enacted that results in a net increase in the prison or juvenile correctional center populations, the *Code of Virginia* specifies that a one-year appropriation must be made. The appropriation must be equal to the highest single-year increase in operating costs for the six years following the effective date of the law. The Sentencing Commission is unaware of any other state with a provision requiring the appropriation of funds tied to the enactment of criminal justice legislation. Appropriations made under Virginia's provision are deposited into its Corrections Special Reserve Fund. The Fund is used solely for capital expenses, including the cost of planning and designing new prison facilities that may be needed in the future.

During the 2008 General Assembly session, the Sentencing Commission prepared 293 impact statements on proposed legislation. Nearly half (45%) of the bills analyzed would have expanded or clarified existing crimes, but well over a third (38%) would have defined new crimes in the *Code of Virginia*. Sex offenses, illegal aliens, and firearm purchases were the most frequent topics among bills analyzed for the 2008 Session.

Diverting Additional Low-Risk Offenders through Risk Assessment

In 1994, the General Assembly charged the Sentencing Commission with the development of a risk assessment instrument for nonviolent offenders with a target of diverting up to 25% of low-risk felons from the state's prison system into other punishment options. After several years of pilot testing, the instrument was refined and integrated into the guidelines in 2002. In 2004, at the request of the legislature, the Sentencing Commission increased the maximum score an offender

could receive and still be recommended for an alternative sanction. In the most recent fiscal year, 51% of eligible nonviolent felons were recommended for an alternative to incarceration; however, only 27% of eligible nonviolent felons were recommended for and subsequently received an alternative sanction. Many of Virginia's judges have expressed concern that the Commonwealth does not have a sufficient array of sanctioning options for low-risk offenders.

In a new mandate, the General Assembly has directed the Department of Corrections and the Sentencing Commission to determine what types of programs and program capacities would be needed to increase the number of nonviolent offenders diverted from prison.

In collaboration with Sentencing Commission, the Department of Corrections must identify measures that would be necessary to divert up to 50% of prison-bound nonviolent offenders. These offenders must be identified as low-risk on the Sentencing Commission's risk assessment scale. The scale is specifically designed to identify low-risk larceny, fraud, and drug offenders who are recommended for incarceration on the state's sentencing guidelines as candidates for alternative sanctions in lieu of prison or jail.

A report is due to the legislature by September 1, 2008.

Examining Crimes Committed in the Presence of Children

The Sentencing Commission is about to embark on a unique research project. At the request of one of its legislative members, the Sentencing Commission will examine crimes committed in the presence of children. In making his request, the legislator expressed his concern over the profound effect crimes can have on the health and welfare of the children who witness them, as well as the impact that exposure to crime may have on later behavior. Other members agreed that this would be valuable, groundbreaking research and the request was approved.

In conducting its study, the Sentencing Commission will examine the number of convictions for, and the nature of, crimes committed in the presence of children and how the presence of children during the commission of a crime was taken into account during sentencing.

Strategies are currently being developed to identify cases involving child witnesses, since this information is not readily available in Virginia's criminal justice databases. The study is expected to last through 2008.

Virginia continued

Study Visit from Jack Straw, the Lord High Chancellor of Great Britain

Jack Straw, the Lord High Chancellor of Great Britain and Secretary of State for Justice, recently paid a visit to Richmond, Virginia, and met with the Supreme Court Chief Justice, Attorney General and members and staff of the Criminal Sentencing Commission. The British government has formed a working group to consider the advantages, disadvantages and feasibility of a structured sentencing framework and permanent sentencing commission for England and Wales. This Sentencing Commission Working Group is expected to make its recommendations to Lord High Chancellor Straw later this summer.

In his visit with Virginia officials, Mr. Straw focused his inquiry on the following questions: 1) What do Virginia judges think about the sentencing guidelines, was there initial hostility and, if so, how was it overcome? 2) Why did Virginia adopt an advisory rather than a prescriptive sentencing guidelines system? 3) How does Virginia maintain such a high judicial compliance rate although the sentencing guidelines are only advisory? 4) How is the Virginia Criminal Sentencing Commission insulated from political pressures? 5) Does the Virginia Criminal Sentencing Commission enjoy the confidence of the public? 6) What effect has the Virginia Criminal Sentencing Commission had on legislative proposals? and 7) Has the Virginia Criminal Sentencing Commission's sentencing guidelines system successfully controlled the prison population?



Virginia officials meet with British Lord High Chancellor Jack Straw
(Attorney General Bob McDonnell, Chief Justice Leroy Hassell,
Judge Robert Humphreys, Right Honorable Jack Straw, and Judge Bill Petty)

Washington

The 2008 Washington State legislative session was convened the first week in January. The Sentencing Guidelines Commission (SGC) did not anticipate any major changes to state sentencing laws during this session. However, the legislature discussed major gang legislation (most of which did not pass) and rejected a bill to increase the ranges across the sentencing grid. This proposal to increase discretion was rejected for a third time because the legislature did not want to appear to be "soft on crime;" however, decreased sentences at the lower end of the sentencing grid were necessary to offset the costs of increased penalties for the more serious crimes.

Washington State is known for a strong, prevention-based juvenile justice system. Although the juvenile offense rate has been dropping, the Sentencing Guidelines Commission is devoting new energy to its responsibilities for recommending changes to juvenile disposition guidelines. A newly formed Juvenile Justice Committee has identified some major policy areas for discussion by the SGC. These include a focus on girls in the juvenile justice system, disproportionate minority contact with the system, and the response to juvenile sex offenders. The juvenile committee is also interested in revisiting the concept of decline into the adult system.

The Governor and Legislature enacted a major new offender re-entry effort in 2007. This legislation responds to research that identifies the supports and restraints most likely to result in lowered recidivism by offenders returning to the community. The intended results include an increase in public safety and a decrease in criminal justice costs. The Sentencing Reform Act (SRA) requires the SGC to report on recidivism and yet the SGC data is not comprehensive enough to provide a holistic picture of recidivism. The SGC is devoting resources to work with stakeholders and reconfigure its methodology to improve recidivism reporting. There is an effort underway to distinguish between adult and juvenile recidivism in a manner that documents real trends in juvenile crime.

The SGC by statute serves as a clearinghouse and information center for the collection, preparation, analysis and dissemination of information on state and local adult and juvenile sentencing practices. Pursuant to its statutory mandate, the SGC maintains an extensive computerized database on sentencing in all areas of the state. In addition to responding to data requests, the SGC publishes numerous reports about the status of sentencing. The Washington State Sentencing Guidelines Commission has hired new staff to focus on data quality and apply new technology for collecting and storing data.

Washington continued

The SGC will continue meeting the legislative mandate to recommend evidence-based options to stabilize or reduce the adult prison population in this state. Since passage of the SRA in 1981, there have been numerous amendments adding community supervision components to sentences. Existing statutes have become nearly unreadable and many agree it is time to have an in-depth policy discussion about the community portion of sentences. The Sentencing Guidelines Commission proposed legislation that was passed in 2008 to simplify the Community Custody statutes. Currently, the SGC is conducting an intense review of the policies underlying community custody in light of the research. SGC is pleased that a number of superior court judges are joining in the policy discussion and is launching its review of supervision with national research on the impact of community supervision on recidivism, and using cost-benefit scenarios to lay a foundation for its recommendations.

In 2008 the legislature created a Sex Offender Policy Board to be staffed and maintained by the SGC. The board is composed of front line experts from across the sex offender response system. The board will keep apprised of best practices and review high profile cases. That new Board must submit a workplan to the legislature within the first six months. The Sex Offender Policy Board and the SGC will also be looking at sex offender registration and issues related to implementing the federal Adam Walsh Act. The relatively new "determinate plus" system in Washington provides for lifetime supervision of some sex offenders. A 2007 task force agreed that this new system needs review as well. We look forward to the August NASC conference for the chance to exchange views with representatives of other jurisdictions on these very important issues.



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