



# National Association of Sentencing Commissions

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## State Updates: 2018

**Typically, the NASC Conference includes a State Update session during which each state provides a two to three minute update on its activities or responds to pre-determined question. This sharing session is valuable to NASC members.**

**Given the full agenda of the 2018 conference, the Executive Committee opted to provide the State Update in advance of the conference. The following summary of responses provide an opportunity for individual follow-up during the conference (and after).**

Questions (May select 1 or more. Responses were limited to 1 page,)

- 1) What is the most significant emerging issue that your agency has encountered this past year and how did you address it?
- 2) What is the most important legislative item that your agency has worked on this past year?
- 3) What project has your agency worked on this past year that you would like to highlight?
- 4) Please share any other issue your Commission or state/District of Columbia has encountered this past year that you would like to bring to NASC's attention.



# National Association of Sentencing Commissions

## State Updates: 2018

### Alaska Judicial Council

#### Submitted by:

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#### **What is the most significant emerging issue that your agency has encountered this past year and how did you address it?**

Alaska enacted its JRI package in July 2016, and criminal justice reform has faced pushback since that time. The past year was no different. In August and September 2017, there were several high-profile murders. The FBI released its crime report in September 2017, which generally showed an increase in crime in over the past year in all categories (a trend that began before the JRI bill was enacted).

Members of the public expressed concern that the increase in crime was due to the JRI bill. Governor Bill Walker called a special session of the Alaska Legislature in October 2017, and included on the agenda a bill to roll back several provisions of the JRI bill. Ultimately, the rollback bill passed in November 2016. It increased prison time for some low-level crimes (prison time was lowered for most non-sex crimes under the JRI bill) and lowered the felony theft threshold (which had been raised under the JRI bill).

Alaska began implementing a new pretrial process in January 2018; it had been enacted in the JRI bill in 2016. During the first few months of implementation, prosecutors and members of the public expressed concern about the requirement of mandatory release for low-risk, non-violent defendants charged with misdemeanors or the lowest level of felony. There was also opposition to the fact that the state's new pretrial risk assessment tool did not account for out-of-state criminal history.

A new bill, passed at the end of the regular 2018 legislative session, repealed the mandatory release provision.

Council staff offered technical support to legislators and members of the Commission testifying in legislative hearings. Staff also attended town hall meetings to provide information to the public; and have also offered information to the media, including offering corrections to any misstatements of fact.

#### **What project has your agency worked on this past year that you would like to highlight?**

Given the amount of media attention paid recently to the new pretrial process and the continuing opposition to criminal justice reform (expressed not just by members of the public but also by judges, prosecutors, and law enforcement officers), the Council has begun a new study on bail practices in Alaska. This study will replicate a study that the Council conducted in 2015 to inform the JRI process.

The new study will examine bail decisions in the period when the mandatory release provision (for low-risk offenders charged with nonviolent misdemeanor and the lowest level of felony) was in place, from April 1, 2018 to June 30, 2018. It will look at whether a secured money bond was ordered, the amount ordered, and other conditions of release. It will also look at the demographic information of the defendants in the sample, in light of the previous study's finding that Alaska Native defendants were disproportionately overrepresented in the pretrial population in prison.

The Council hopes to have this study completed by October in order to present the study at the statewide judge's conference that month. The judges will then be aware of the aggregate effect of their bail decisions.



# National Association of Sentencing Commissions

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## State Updates: 2018

### Arkansas Sentencing Commission

**Submitted by:**

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Act 423 of 2017 made changes to the enabling legislation for the Arkansas Sentencing Commission, including the portion relating to the Sentencing Standards. This amendment required the Commission to determine a sentencing range for each grid cell containing sentences to the Arkansas Department of Correction for all offenses occurring on or after January 1, 2018, replacing the single month duration found in the original Sentencing Grid. This legislation was the result of a year-long comprehensive look at the State's criminal justice system spearheaded by the Council of State Governments. This legislation was supported by the Commission.

To the best of our knowledge, Arkansas was the only state that had a single duration sentence. After an extensive review of actual sentences for the past years' sentences in each grid cell, the ranges were adopted by the Commission and approved the legislature.



# National Association of Sentencing Commissions

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## State Updates: 2018

### Connecticut Sentencing Commission

#### Submitted by:

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#### **What is the most significant emerging issue that your agency has encountered this past year and how did you address it?**

The Commission completed its two-year study on the registration, management, and sentencing of sex offenders in Connecticut as required by Special Act 15-2. In a major proposal, the Commission advocated that the legislature enact reforms to the sex offender registry to change it from a charge-based to a risk-based system.

#### **What is the most important legislative item that your agency has worked on this past year?**

The Commission worked on two legislative proposals. First, the Commission advocated for a major change to the sex offender registry. The bill aimed to create a removal mechanism from the registry and tried to move the sex offender registry from a charge-based to a risk based system. Second, the Commission proposed that the maximum sentence for misdemeanor cases in Connecticut be lowered from 365 to 364 days. Connecticut non-citizen residents, including lawful permanent residents, can face unexpected and unduly harsh immigration consequences because of the relationship between the state's penal code and federal immigration law. A significant impact arises because the maximum potential sentence for conviction of a class A misdemeanor in Connecticut is one year imprisonment, which under federal immigration law can trigger deportation proceedings and removal from the United States. The Immigration and Nationality Act (INA) classifies as "aggravated felonies" certain offenses that carry a sentence of one year or more, regardless of whether they are misdemeanors under state law or if the imposed sentence is suspended.

#### **What project has your agency worked on this past year that you would like to highlight?**

The Commission continues to examine the state's bail practices to maximizing the release of bailable defendants, public safety and court appearance. Partnering with the National Institute of Corrections, the National Center for State Courts, and the Pretrial Justice Institute, a delegation of Commission members traveled to New Jersey and the District of Columbia to learn about their move away from the money-based bail system. The Commission also hosted a symposium on pretrial release and detention at the University of Connecticut School of Law. The goal now is to try to get an agreement from the major stakeholders of the pretrial justice system to move away from money bail as a detention mechanism.



# National Association of Sentencing Commissions

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## State Updates: 2018

### DC Sentencing Commission

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**What is the most significant emerging issue that your agency has encountered this past year and how did you address it?**

The Sentencing Guideline Evaluation Study that was completed in March 2017, contained a number of recommendations include re-examining how criminal history is calculated and used in the Guidelines. The Commission held a retreat in November that focused solely on criminal history issues and identified several specific criminal history related issues that will be examined over the next year including: the impact of criminal history on sentences, lapsed and revival policies, and inclusion of prior misdemeanors and juvenile adjudications in criminal history scores. The Commission intends to use data to evaluate the impact of any proposed criminal history proposed policy change.

**What is the most important legislative item that your agency has worked on this past year?**

The Commission re-ranked the offense of Possession of a Firearm /Prior Felony conviction from offense severity group (OSG) 7 to OSG 8 to address the “Double Counting” issue that previously resulted in elevating the offense to a higher offense severity group and increasing the offender’s criminal history score when an individual sentenced for this offense had a prior felony conviction which resulted in a more severe sentence. The impact of the re-ranking is a prior felony conviction will still be counted in an individual’s criminal history score but will not be used elevate this specific offense to more serious OSG.

**What project has your agency worked on this past year that you would like to highlight?**

The Commission developed and distributed a survey to key agencies that use the Sentencing Guidelines on a regular basis – judges, prosecutors, defense bar, and court service officers. The survey focused on obtaining input on what respondents believe is working well and what is not working well with the Guidelines. The survey responses were analyzed and the Commission is currently using that information to conduct a series of Focus Groups to gain better insight into the responses provided and to identify areas of potential modifications to the Guidelines.



# National Association of Sentencing Commissions

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## State Updates: 2018

### Illinois Sentencing Policy Advisory Council (SPAC)

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**What is the most significant emerging issue that your agency has encountered this past year and how did you address it?**

Data collection to support new reporting requirements on sentencing reforms. SPAC needs more specific sentencing data than is currently collected. We addressed the gap by working with the Administrative Office of the Illinois Courts, the Circuit Clerk's Association and the state's attorneys and public defenders in key counties to develop a method for collecting the data. We have not fully succeeded, but some progress has been made.

**What is the most important legislative item that your agency has worked on this past year?**

This year has been relatively low key on sentencing issues, however SPAC lent its legislative process expertise to advise the proponents of a bill to expand eligibility for the state's most robust diversion program, Adult Redeploy Illinois, to all probation-eligible offenses rather than just non-violent, probation-eligible offenses. The bill is now on the Governor's desk.

**What project has your agency worked on this past year that you would like to highlight?**

We have been highly engaged in the implementation of the Results First CBA model by the Governor's Office of Management & Budget. They have done analysis of seven programs in IDOC, using a significant amount of the data that SPAC input into the model. That process in DOC had very positive effects on internal dynamics between programming, fiscal and research divisions that was gratifying to see. CBA implementation also got funding for the first time.



# National Association of Sentencing Commissions

## State Updates: 2018

### Kansas Sentencing Commission

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#### **What is the most significant emerging issue that your agency has encountered this past year and how did you address it?**

The Commission spent a substantial amount of time working on ways to address inequities in our Kansas Offender Registration Act. We are in a small minority of states that require not only sex offenders but certain violent and drug offenders to register with their local sheriffs' offices four times per year. As a consequence, our registry is three times the size if it were only sex offenders. The research we have performed has resulted in several bills to repeal the drug offender requirements. Studies provided to our legislature clearly indicate no recidivism decrease despite maintaining an infrastructure that costs our counties thousands of dollars statewide every year. Although two Commission bills have not gained passage in the legislature in the past two years, we will continue to address this issue as it in the short-term needlessly increases prison bed space and offender criminal history in the long-term.

#### **What is the most important legislative item that your agency has worked on this past year?**

The Commission has funded for the last 15 years a statewide substance abuse treatment program, commonly known as the SB 123 program. Offenders convicted of possession of controlled substances offenses are potentially eligible for the 18-month program as an alternative to prison. After several years of monitoring, the Commission determined that adding small sales/distribution convictions would also benefit Kansas communities as many of those with addiction were selling to support their habit. [HB 2458](#) was passed in the legislature this year to expand the reach of the SB 123 program to those offenders.

#### **What project has your agency worked on this past year that you would like to highlight?**

While Kansas has not made the huge changes as other states have in the area of legalized medical and recreational marijuana sentencing reform, we are chipping away at the edges. In 2016, the Commission introduced a bill that was later passed to lower the penalty for a second conviction of marijuana possession from a felony to a misdemeanor. It was later determined that due to the testing procedures by our Kansas Bureau of Investigation lab, if marijuana could not be identified by microscopic physical analysis, it was then tested for tetrahydrocannabinol (THC), the active ingredient in marijuana. HB 2566 was introduced by the Commission to add possession of THC to the statute that previously decreased the penalty for possession of marijuana. An inequity existed in enforcing these crimes of possession in that it was possible an offender could be convicted of second-time possession of THC instead of possession of marijuana and receive a felony conviction and sentence rather than receiving punishment as a misdemeanor violation. Simply put, it was better to be caught with the baggie than the bowl. Reducing the penalty for possession of THC makes it consistent with the current penalties for possession of marijuana, which requires a class B misdemeanor upon first conviction, a class A misdemeanor if the offender has a prior conviction and a drug severity level 5 nonperson felony if the offender has two or more prior convictions.



# National Association of Sentencing Commissions

## State Updates: 2018

### Maryland State Commission on Sentencing Policy

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**Project #1: Data-Driven Study on How Juvenile Record Impacts Adult Sentencing.** In Maryland, as with the overwhelming majority of states with sentencing guidelines, one's juvenile delinquency history is considered in calculating the sentencing guidelines. The juvenile delinquency component utilizes a combination of juvenile adjudications and commitments to assign a point value to the offender's juvenile record indicating whether he or she is at low, medium, or high risk of recidivism, which then contributes to a measure of his or her overall prior record. At a public hearing, an attendee expressed concerns regarding purportedly inconsistent application of the term "commitment to state custody." Juvenile records throughout the state, he asserted, use the term to indicate various different types of punishment. In one jurisdiction, commitment might mean a secure detention facility, whereas in another jurisdiction, the jurisdiction uses a form of "community commitment" whereby the court can in-home treatment services to the juvenile. Inconsistent interpretation of what constitutes a "commitment" could have unintended consequences on the calculation of an offender's prior record thereby affecting the guidelines and the sentence imposed. Prompted by the concerns expressed at the public hearing, the MSCCSP collaborated with the Maryland Data Analysis Center (MDAC) to evaluate the juvenile score.

For the juvenile score study, data were collected for more than 50,000 adults sentenced under the criminal sentencing guidelines in Maryland between 2008-2012. In addition to the MSCCSP's own sentencing worksheet data, data were also provided by the Department of Juvenile Services (DJS) and the Department of Public Safety and Correctional Services (DPSCS). DJS provided juvenile delinquency history data and DPSCS provided adult criminal history data. The DJS data allowed the MDAC to conduct an in-depth audit of the juvenile component score as captured on sentencing worksheets, and evaluate its efficacy. The combination of linked DJS and DPSCS data allowed the MDAC to design and test several juvenile delinquency scores, and validate the scoring alternatives across five different measures of adult recidivism—from being rearrested for any offense to being reconvicted for a violent felony. The full report is available on the MSCCSP website at: [http://msccsp.org/Files/Reports/MDAC\\_Juvenile\\_Score\\_Report\\_Jan2018.pdf](http://msccsp.org/Files/Reports/MDAC_Juvenile_Score_Report_Jan2018.pdf)

Several alternative scoring methods were discussed by a commission subcommittee, which ultimately voted last year in favor of one based solely on juvenile adjudications, thus reducing the disparities associated with juvenile commitments and improving the score's predictive ability. The full Commission deliberated on the recommendation at its September and December 2017 meetings, ultimately adopting the subcommittee recommendation. The new juvenile score took effect July 1, 2018.

**Project #2: Study on Alternatives to Incarceration.** The Maryland Justice Reinvestment Act of 2016 required the MSCCSP to study how more alternatives to incarceration may be included in the sentencing guidelines and to submit a report of the findings and recommendations by January 1, 2018. The report reviewed how other jurisdictions incorporate alternatives to incarceration within their sentencing guidelines structures, recommended useful resources to help identify evidence-based alternatives to incarceration, inventoried the currently available alternatives in Maryland on a jurisdiction-by-jurisdiction basis, and provided seven recommended actions for the MSCCSP and other state agencies. The full report is available on the MSCCSP website at: [http://msccsp.org/Files/Reports/Alternatives\\_to\\_incarceration\\_Jan2018.pdf](http://msccsp.org/Files/Reports/Alternatives_to_incarceration_Jan2018.pdf)



# National Association of Sentencing Commissions

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## State Updates: 2018

### Minnesota Sentencing Guidelines Commission

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**Drug Sentencing Reform Act (DSRA) Impact.** In 2015, the Minnesota Sentencing Guidelines Commission adopted significant changes to existing drug sentences in Minnesota. The action taken by the Commission served as a catalyst for the Minnesota Legislature to adopt the most significant drug sentencing reform in 30 years—the Drug Sentencing Reform Act of 2016 (DSRA). As part of the DSRA, the Legislature directed MSGC to study the law’s impact. MSGC reported its initial findings to the Legislature in January, 2018 (all results preliminary):

- Post-DSRA cases saw greater sentence uniformity, by way of reduced departure rates.
- Because of the continuing increase in the volume of drug cases, and an increase in the percent of certain offenders who received prison sentences, the expected post-DSRA reduction in the need for prison beds had not materialized.
- On the other hand, the DSRA appeared to have avoided the demand, over time, for additional prison beds (estimated by applying pre-DSRA sentencing practices to the post-DSRA cases).
- Use of the DSRA’s new gross misdemeanor (for first-time trace possession cases) appeared to have been widespread.

**Criminal History Score (CHS) Review.** The Commission conducted a comprehensive review of CHS. The Commission noted a rise in CHS from 1990 to 2013, and an even more striking fall in CHS of zero over that time. This review led to discussions about possible modifications to CHS policy.

The Commission has discussed the growth of one component of CHS—the custody status point—and is discussing whether its modification would be supportable by a consensus of Commission members. Likewise, the Commission is closely examining its decay policy, by which old offenses no longer contribute to criminal history.

In addition to trends presented by staff, Dr. Julia Laskorunsky presented the Robina Institute of Criminal Law and Criminal Justice’s two-phase study of Minnesota’s CHS. The study concluded that, while CHS predicted recidivism “moderately well,” some components increased the presumptive sentence length without adding to the score’s predictive power for recidivism. This presentation led to further discussion by the Commission as to the purpose of the CHS—is it recidivism? Does it also include retribution, deterrence and public safety? How is success or failure measured?

Also, Commission is discussing a proposal to enhance sentences for repeat violent offenders. Supporters of the proposal argue that repeat violent offenders are more culpable, and a greater risk to public safety. Opponents of the proposal argue that current sentences are adequate and that the proposal will have a racially disproportionate affect.

**Forty Years of Sentencing Commissions.** In recognition of the MSGC’s 40-year history as the nation’s first sentencing guidelines commission, Governor Mark Dayton proclaimed June 7, 2018, as Minnesota Sentencing Guidelines Commission Day.



# National Association of Sentencing Commissions

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## State Updates: 2018

### North Carolina Sentencing and Policy Advisory Commission

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**What is the most significant emerging issue that your agency has encountered this past year and how did you address it?**

#### Juvenile Jurisdiction

As we reported last year, the state Legislature has raised the upper limit of juvenile jurisdiction in North Carolina from age 16 to age 18, effective December 1, 2019. For the past year, the NC Sentencing Commission has been working in a variety of ways to help prepare for implementation by estimating the impact of this legislative change. The Commission has projected the additional resources needed for Youth Development Center beds for juveniles committed to facilities post-adjudication. Commission staff have also been working to estimate the number of detention beds that may be needed as a result of the increased population of juveniles needing confinement pre-adjudication. Lastly, planning is underway to measure the effect of the policy change on outcome measures – namely, juvenile recidivism.

#### Driving While Impaired Offenses

Several years ago, North Carolina created an aggravated sentence for a misdemeanor Driving While Impaired (DWI) offense, with a maximum possible sentence of 36 months. Recent reforms have mandated all misdemeanants (including those convicted of DWI offenses) serve sentences in local jails. These changes, taken together, have raised several issues: (1) whether adequate capacity exists within jails for the population; (2) whether jails are suitable to house inmates serving long sentences; and (3) available options for substance abuse treatment in a jail setting. The NC Sentencing Commission has been tasked by the Legislature with the responsibility of studying the appropriate housing options for DWI offenders serving long sentences, in addition to treatment options for the population. The Commission will report the results of its study to the General Assembly in February 2019.



# National Association of Sentencing Commissions

## State Updates: 2018

### Ohio Criminal Sentencing Commission

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#### **What is the most significant emerging issue that your agency has encountered this past year and how did you address it?**

Criminal justice data in Ohio is disparate, mismatched and complex. Local and state agency data systems lack connectivity and sharing agreements are underutilized. We are working with several jurisdictions to capture and analyze case disposition and other criminal justice data which we believe will lead to demonstrative value of the information for statewide development of a centralized, standardized platform to define, catalog and analyze criminal justice data. Comprehensive analysis of Ohio law enforcement, policing and justice-involved population data and information systems, will lead to the development of policy options that enhance public safety, strengthen behavioral health treatment capacity and wisely parse limited resources.

#### **What is the most important legislative item that your agency has worked on this past year?**

The Commission's study and work on bail practices and pretrial services inspired recently introduced legislation in the 132nd Ohio General Assembly, Sub.HB439 (Dever, Ginter) and SB274 (McColley). The legislation reflects many of the recommendations endorsed by the Commission. Those recommendations are designed to be holistic and focus on achieving consistency, fairness and efficiency in the pretrial system while decreasing the reliance on monetary bail. As such, the use of a validated risk assessment instrument to inform release or detain decisions – realizing that bond should be "risk" based and not "charge" based – is recommended. The use of a risk assessment tool is one more resource a judge can use to inform decisions and ensure equity in all steps of the bail-setting process.

Currently, in Ohio, each court operates independently resulting in varying levels of data collection and submission. The companion bills also provide the foundation for data collection going forward to measure the effectiveness of risk assessment and pretrial detention alternatives. Additionally, the data variables outlined in the bill present the opportunity to understand pretrial functions and, ideally, if and when, combined with other data collection efforts by the Commission, will link those early processes in the criminal justice system to processes that happen later in the system – in other words, the ability to follow a case all the way through the system using just one data source. That kind of criminal justice data connectivity is of immeasurable value to Ohio citizens and policy-makers. The legislation remains pending and if not passed before the end of the calendar year, it will have to be re-introduced in the next General Assembly.

#### **What project has your agency worked on this past year that you would like to highlight?**

The Commission, in collaboration with the Buckeye State Sheriff's Association, the Stepping Up initiative in Ohio and the Council of State Governments has recently undertaken a project designed to establish, and then measure, jail recidivism. We also plan to partner the effort to define jail recidivism with the identification of jail population trends and patterns over time using historical jail data the Commission has from the early 2000s in combination with more recent data.



# National Association of Sentencing Commissions

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## State Updates: 2018

### Oregon Criminal Justice Commission

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**Please share any other issue your Commission or state/District of Columbia has encountered this past year that you would like to bring to NASC's attention**

We are working on several major criminal justice projects in Oregon. We are looking at the intersection of Behavioral Health and the Criminal Justice System. We are looking at Pre-trial reform, including using risk tools and evaluating whether Money bail is still a good idea for Oregon. We have procured and are installing a case management system for all our specialty courts statewide. There is one issue that poses a significant challenge to all of these projects: data sharing. We have run into HIPPA, 42 CFR part 2, public records laws, and just normal run of the mill home grown data hoarding. We are actively trying to address all these concerns with tailored data share agreements, but it's very challenging.

I imagine that these issues plague us all. I'd love NASC to explore these issues, invite speakers to address how they've been able to overcome them, point sentencing commissions in the direction of resources available to assist, and show templates for data share agreements and explanation of how they satisfy all the legal requirements.



# National Association of Sentencing Commissions

## State Updates: 2018

### Pennsylvania Commission on Sentencing

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**Most significant emerging issue.** The Commission held a public hearing to respond to concerns by prosecutors and public health officials about the substantial increase in fentanyl-related overdose deaths. Consistent with the testimony received, the DEA Philadelphia Field Division reported consistent increases in the percentage of all drug seizures containing fentanyl or fentanyl related substances (FRS), from 7% in 2016/Q1 to 30% in 2017/Q2. The Commission adopted a supplement to the sentencing guidelines that increased sentence recommendations for delivery of fentanyl and FRS; the supplement took effect June 1, 2018. During this same period, the Governor declared a Statewide Disaster Emergency to enhance the commonwealth's response to the heroin and opioid epidemic, to increase access to treatment, to coordinate data collection, and to equip first-responders with naloxone.

**Most important legislative item.** The Commission has continued work to develop and implement a sentence risk assessment instrument as required legislation enacted in 2010. Building on preliminary instruments and feedback from practitioners, the Commission adopted a proposal in March 2018 and held public hearings in June. The instrument is a 2nd generation (static risk factors) screening tool integrated as a module of the Commission's online sentencing application, SGS Web, and automatically generates a Sentence Risk Assessment Summary upon completion of the guideline sentence forms. Under the proposal, the Commission recommends the court consider more detailed individualized information (e.g., 3<sup>rd</sup>/4<sup>th</sup> generation assessment) prior to sentencing for high risk and low risk individuals. During the public hearings, many raised concerns about the quality of the data (e.g., age of data sets, 'tainted' criminal justice data due to police misconduct), the outcome measures (e.g., arrests vs. convictions; any re-offense vs. violent re-offense), implementation issues (e.g., delays in processing, resource requirements), and the constitutionality and utility of risk assessment at sentencing. The Commission voted to delay implementation in order to obtain additional feedback and to modify the proposal. Additional public hearings will be scheduled for December 2018. Additional information on this project is available at the Commission's website (<http://pasentencing.us>)

**Project to highlight.** The Commission convened a Strategic Planning Work Group (SPWG) in 2014-2016 to undertake a comprehensive review of the sentencing guidelines. Last year, the Commission established two subcommittees (offense-related policies and offender-related policies) to review the SPWG suggestions, along with recommendations from Pennsylvania's JRI II work group and from several Carnegie Mellon University systems synthesis projects. Suggestions include but are not limited to rebuilding the prior record score (e.g., purposes/calibration, decay/gap/reduction), increasing the number of offense gravity scores, narrowing the sentence recommendation ranges, and creating a step approach to address mitigation, aggravation, and sentencing enhancements. Consideration of changes to the sentencing guidelines, and concurrent efforts related to re-sentencing and parole guidelines, are intended to promote greater coordination in Pennsylvania's indeterminate sentencing system.

**Other issues** Building on its other responsibilities, legislation enacted earlier this year requires the Commission to develop a model pretrial risk assessment tool for domestic violence cases, and to validate any pretrial DV risk assessment used by Pennsylvania counties. The Commission also awaits action before the end of the session (November 30, 2018) on JRI-II legislation.



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## State Updates: 2018

### Virginia Criminal Sentencing Commission

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#### Most significant emerging issue

The most significant emerging issue in Virginia is the interest of the legislature in evaluating the effectiveness of pre-trial supervision programs in the Commonwealth. These programs receive state funding but have never been fully evaluated to assess their impact on failures to appear and new arrests during the pre-trial period. The Virginia State Crime Commission is charged with leading the evaluation project; however, the Sentencing Commission will compile the evaluation data set with information from multiple criminal justice agencies and will assist in analysis of the data in support of the evaluation effort. As part of this process, and for the first time in Virginia, the Commission is analyzing magistrate bail decision data. Some stakeholders are interested in exploring the feasibility of introducing risk assessment at the magistrate bail decision stage.

#### Most significant legislative item

The most significant legislative item that the Sentencing Commission has worked on this year has been the increase in the felony larceny threshold. For a number of years, Virginia has been tied with New Jersey for the lowest felony larceny threshold in the nation (\$200). Virginia's threshold had not been increased since 1980. Bills to increase the threshold have been introduced over the past five years. Legislation was passed during the 2018 Session to increase the threshold to \$500. As the Sentencing Commission had done in years past, staff prepared estimates of the impact on the state inmate population. There will also be cost reductions in other areas of the criminal justice system, such as prosecutors' offices.

#### Highlighted project

This year, the Sentencing Commission updated a previous study on juveniles tried as adults in Virginia's circuit courts. Due to data system limitations, there is no one source of this information in the Commonwealth. Data must be compiled from multiple sources to conduct this research. Despite certain limitations, the Commission's strategy represents the most comprehensive approach to examining juveniles convicted in circuit courts across the state. Overall, since FY2010, there has been a downward trend in the number of juveniles convicted in circuit courts, although sentencing patterns for those who are convicted in circuit court remain much the same as in the 2010 study.

#### Other issue

Given the significant impact of heroin and other opioids in Virginia, the Sentencing Commission, on July 1, 2017, began collecting information on sentencing guidelines forms as to the specific types of drugs associated with felony drug cases. Many of Virginia's statutes apply to broad categories of controlled substances (e.g., Schedule I or II) and specific drug types have not been previously recorded. The Sentencing Commission will begin analyzing these data later in 2018. Policy makers are particularly interested in the prevalence of various drug types by locality/geographic region of the state.



# National Association of Sentencing Commissions

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## State Updates: 2018

### Washington State Sentencing Guidelines Commission

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During this year's legislative session, recurring proposals for various types of post-conviction review processes brought attention to the fact that the state's Sentencing Reform Act (SRA) had not been reviewed in a very long time. Our Commission Chair informed a legislative committee that the Commission was plans to take on that task but could do a more comprehensive review if funding was provided (we have no budget). The Commission also offered to work on a post-conviction review process proposal that is research-based.

The Commission had started discussing areas of the SRA that should be considered for review shortly after the beginning of the year. At the end of the legislative session a budget appropriation provided funding to the Commission for the review along with specifics the legislature wanted from the review, such as recommended changes to sentencing grid to simplify it and increase judicial discretion; reviews of aggravating and mitigating factors, sentence enhancements, legal financial obligations, alternatives to full confinement, and a review of community supervision programs, terms, eligibility, and violations.

In undertaking this review, the Commission set out to incorporate something that was not available at the time the SRA was created: evidence- and research-based practices and policies. In the early 1980s, the theory was that nothing worked. A great deal of research has been completed since then, to the point that we have a much better understanding of what does work, and, just as important, what doesn't work.

Another perspective that is key in the Commission's review of the SRA is simplicity. Over the years, legislative changes have made the laws confusing and more complicated. The Commission will be keeping this perspective in mind when considering its recommendations. The review is due to the legislature on May 1, 2019. Less than 18 months is not a significant amount of time for such a large project, therefore, this is and will be the main focus of the Commission until the beginning of next year.