

The Sentencing Guideline



A Biannual Publication of the
National Association of Sentencing Commissions

Kansas Sentencing Commission to Host Summer Conference

ANNOUNCING

THE
NATIONAL ASSOCIATION OF
SENTENCING COMMISSIONS

2001 ANNUAL CONFERENCE
Kansas City
August 5-7, 2001



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The NASC 2001 Annual Conference will be held August 5-7, 2001 at the elegant Fairmont Hotel, located on the famous Country Club Plaza amidst some of Kansas City's best restaurants, shopping, and blues clubs.
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Pennsylvania Certifies Summer Conference a Success

Despite stormy weather just prior to the conference that complicated some travel plans, ninety commission members, staff, academics, researchers and policy experts attended the 2000 NASC Conference held on August 6-8 in Pittsburgh Pennsylvania. The conference opened with welcoming remarks from the Chief Justice of Pennsylvania

as well as the Chair and Vice Chair of the host commission, the Pennsylvania Commission on Sentencing. Three plenary sessions, twelve breakout sessions, discussion groups, a dinner cruise and *NASC Jeopardy* rounded out the agenda.

Monday's *Keynote Address*, given by Judge Richard P. Conaboy, former Chair of the

Pennsylvania and United States Sentencing Commissions, focused on the benefits and limitations of sentencing guidelines. Judge Conaboy's message discussed the importance of sentencing in the criminal justice process and set a wonderful tone for the conference. (Con't on page 8)

NASC Mission Statement

“ To facilitate the exchange of ideas, data and expertise among sentencing commissions and to educate and inform policymakers and the public on issues related to sentencing policies and sentencing commissions.”

NASC Board Members



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**Thank You
Pennsylvania
for a Great Summer
Conference!!**

Message From the Chair.....



I am pleased to announce the successful completion of the 6th Annual National Association of Sentencing Commissions (NASC) conference held last summer in Pittsburgh, PA. What a conference it was. On behalf of the entire NASC membership, I would like to congratulate the Pennsylvania Commission on Sentencing, its staff and especially its Executive Director, Mark Bergstrom, for an innovative and informative conference. The work that goes into putting together a conference such as ours is an enormous task and I appreciate the all the efforts of everyone involved.

I would also like to take this opportunity to announce the election results for the four open positions on the NASC Board. Congratulations to Barbara Tombs, Executive Director of the Kansas Sentencing Commission, and Kevin Blackwell, Research Associate with the United States Sentencing Commission, who were elected to serve their first terms on the Board. Two board members, Mark Bergstrom (PA) and Kim Hunt (DC), were selected to their second and final terms. These members join Deb Dailey (MN), Ed McConkie (UT), and Michael Traft (MA).

The Executive Board of NASC encourages readers of this newsletter to attend the association's 7th annual conference in Kansas City, MO, August 5-7, 2001. The Program Committee, chaired by Barb Tombs, has secured a very attractive site for this year's meeting, the Country Club Plaza – the city's premier destination for shopping, dining and nightlife. The Committee is finalizing program plans to attract anyone interested in sentencing policy. The Program Committee and Board are committed to seeing that the annual conference panels continue to improve in quality and scope.

We are seeking your advice and input. We expect the annual conference to continue to grow and flourish, and believe that attracting policy makers and Commission members is of foremost importance. Board members have been contacting members and former members of NASC and asking for suggestions on how to expand our conference and attract targeted groups. If you have not been contacted and have suggestions, please call me (Phone: (202) 353-7794; Email: khunt@dcacs.com) or another member of the Board. We will make sure your suggestions are considered for this and future annual conferences. **Looking forward to seeing you in KC this summer!**

Best regards,
Kim S. Hunt,
Chair, NASC Executive Board

Maryland Enhances Its Website

The State Commission on Criminal Sentencing Policy in Maryland has substantially enhanced its web site in 2000, extending its use as an outreach mechanism for the public and policymakers. SCCSP staff electronically formatted the *Maryland Sentencing Guidelines Manual* and put the manual on the SCCSP website to benefit all practitioners who need instruction and information on the guidelines and on the completion of Sentencing Guidelines Worksheets. The version of the Manual on the SCCSP website is an exact duplicate of the hard copy that had been previously distributed by the Administrative Office of the Courts and is currently being distributed by the SCCSP. In an effort to assist those practitioners who complete the Sentencing Guidelines Worksheets, staff added a section entitled "Common Mistakes in Worksheet Completion" to the site. This section follows a brochure to be distributed to all parties who participate in worksheet completion.

Two new sections were added to the site in order to make the

site more useful to the public, practitioners, researchers, and policy makers. The first new section, entitled "Criminal Justice Resources," has three subsections: Publications, State Government and Criminal Justice Links. This section brings together a collection of publications by components of the U.S. Department of Justice, Office of Justice Programs and by state sentencing commissions on a variety of sentencing issues; a list of offices in Maryland State government from the legislative, judicial, and executive branches; and an index of resources including federal government offices, research organizations, public interest groups, associations, non-profit groups and think tanks representing a wide range of viewpoints on criminal justice.

The second new section, entitled "Sentencing in the News," focuses on current sentencing issues that appear in publications across the country. This section gives a month-by-month review of sentencing issues that have made local and national headlines. Summaries of articles from national newspapers, maga-

zines, academic journals, and websites are indexed by subject matter, including recent legislation and court decisions. The Commission's news summaries have proven to be extremely useful and informative to both Commissioners and Staff. Please feel free to download these monthly compilations for individual use or for distribution. They can be found at www.gov.state.md.us/sentencing under "Sentencing in the News."

The State Commission on Criminal Sentencing Policy has made a commitment to keeping the public informed on all areas of criminal justice concerning sentencing, in the state of Maryland and beyond. The Commission facilitates the distribution of information through their web site. In addition to the most recent addition to the site, *The 2000 Annual Report*, completed in December 2000, the Commission staff will add the new *Sentencing Guidelines Manual* and the new Sentencing Guidelines Worksheet upon completion and approval by the Commission. Early in 2001, a report, *Issues in Maryland Sentencing*, done by graduate students at the University of Maryland, will also be placed on the site.

Pennsylvania Pursues an Aggressive Research Agenda

The Commission's Research Unit is presently engaged in three research projects: a Boot Camp Evaluation Project, a Restorative Sanction/Restitution Project, and a Sentencing Guidelines Evaluation Project. A brief overview of each project is provided below. When each is completed, final reports will be published by the Commission.

Boot Camp Evaluation Project

Act 1990-215 mandates the Commission to monitor and evaluate the Boot Camp program annually. The current study includes three phases. Part I describes the flow of offenders who are

statutorily eligible for Boot Camp, recommended for the Boot Camp, and admitted into the Boot Camp. The 2000 Report will include offenders eligible, recommended, and admitted into Boot Camp from 1992 through 1998. Part II provides findings from a recidivism study of Boot Camp offenders, and includes Boot Camp graduates from 1996 and 1997 and a comparable group of offenders released from prison during those two years. Recidivism is analyzed, based on PBPP data, with respect to both technical violations and new crime convictions. Part III involves a survey of Boot Camp offenders to measure attitudinal and behavioral changes that

may occur as a result of their Boot Camp experience and to see if any of these changes might be related to recidivism reduction.

Restorative Sanction/Restitution Project

This project examines the use of restorative sanctions with a particular emphasis on restitution. Phase I of the study involves data collection from court and probation records in seven counties (Allegheny, Blair, Centre, Dauphin, Erie, Montgomery, and Philadelphia), which will provide a representative statewide

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Alaska Renews Commitment to Combat Alcohol Abuse

Alaska has focused its legislative and policy efforts in the sentencing arena on drunk driving and related alcohol policy matters during the past six months. A series of deaths, including three students in separate incidents in the summer, caused renewed attention to the issues. A few weeks before the deaths, Alaska's Criminal Justice Assessment Commission had published a report emphasizing the costs of alcohol, the need for treatment to reduce recidivism and recommending ways to deal with the problems. Combined with national initiatives, particularly the new federal requirement for blood alcohol levels of .08, and recommendations made by the Anchorage Mayor's Task Force on Drunk Driving, the CJAC recommendations have formed the foundation of major new legislative and Drunk Driving, the CJAC recommendations have formed the foundation of major new legislative and budget proposals for the legislative session that opens January 8, 2001 in Juneau.

Some of the most important recommendations made by the Criminal Justice Assessment Commission that are being included in legislation or budget proposals, or that executive branch agencies and the courts are working to develop:

- Expand the capacity of the Alcohol Safety Action Program to screen and monitor offenders convicted of alcohol related offenses;
- Provide more resources for alcohol treatment, including culturally relevant treatment, in a variety of settings;
- Increase resources for enforcement of alcohol related laws, particularly in the remote rural areas of the state
- Address the problems related to underage drinking more effectively, including considering using Youth Courts to handle some alcohol related offenses;
- Deal with the needs of offenders who have both mental disabilities and substance abuse problems;
- Use drug courts and other restorative justice means for responding to crime overall and substance abuse related offenses in particular.

Besides these proposals, some legislators are calling for increasing penalties for repeat offenders, for those with higher blood alcohol levels, and for vehicular homicides. The bipartisan support for a response to the alcohol problems suggests that most of the proposals will receive careful attention. The industry opposes proposals to increase taxes on alcohol but may also receive more support in the next year.

Oklahoma Sentencing Commission Supports Drug Courts

Three out of every four non-violent drug offenders entering Oklahoma Drug Courts stay in the program, according to the findings of a study conducted by the Statistical Analysis Center of the Oklahoma Criminal Justice Resource Center as presented to the Oklahoma Sentencing Commission at its monthly meeting.

In testimony presented to the Oklahoma Sentencing Commission, David Wright, Ph.D., Director and principle investigator of a three year study of Oklahoma Drug Courts, reported that Oklahoma Drug Courts are above the national average when it comes to retention and completion rates. Dr. Wright reported a seventy-four percent retention rate in Oklahoma Drug Courts is above the national average of sixty percent after one year and well above the thirty-nine percent completion rate of offenders entering traditional outpatient treatment as a requirement of probation.

This is one of several positive outcomes noted by the research team examining Drug Court programs in seven Oklahoma counties. According to Dr. Wright, the evaluation team examined case files of more than 1,000 non-violent offenders entering the programs during the last three years.

"One of the more important factors to be considered is the recidivism rate", added Dr. Wright. "Fourteen percent of Drug Court graduates have been re-arrested, while twenty-two percent of probationers were re-arrested. Recidivism for the Drug Court graduates is almost half as much as that of the comparison group of probation offenders, which is very encouraging," Dr. Wright concluded.

Paul O'Connell, OCJRC director, explained to the commission that recidivism and other outcome measures are critically important to state policy makers. "This difference in recidivism between Drug Court graduates and comparable probationers could identify a significant cost saving to the state. This also seems to indicate that our Drug Court program in Oklahoma is working."

A complete copy of the report, [Evaluation of Oklahoma Drug Courts 1997 – 2000](#), is available from the Oklahoma Criminal Justice Resource Center. For additional information, contact David Wright, Ph.D., by calling 405-858-7025; or by e-mail at dwright@oklaosf.state.ok.us.

Pennsylvania Pursues an Aggressive Research Agenda

(Continued from page 3)

sample. Phase II of the study will examine the use of restitution in all 67 counties from 1994 and 1996-1998. As of December 2000, the site visits to Centre, Blair, Erie, Dauphin, and Allegheny counties were completed. Another objective of the study is to obtain victims' perceptions about their experiences with the criminal justice system, particularly as related to a victim's experience with the determination and collection of restitution. A second survey of judges, prosecutors, defense attorneys, and probation officers has been developed to elicit further information on the imposition of restitution. Finally, the project team is collecting additional information on two issues that have important implications for the accuracy of correctional impact analysis and for assessing guideline compliance: the amount of time served for county jail sentences, and the imposition of consecutive versus concurrent sentences.

Sentencing Guidelines Evaluation

Pennsylvania's sentencing guidelines provide the most extensive sentencing discretion of any guideline system. The guidelines have the widest ranges of any state sentencing guideline system, and no limits are placed on the types of factors that judges might consider when departing from the guidelines. Recently, the Commission observed that departures from the guidelines are often the rule rather than the exception. Serious violent offenders were the targets of recent revisions (1994, 1997) to the guidelines, yet departures from these revised guidelines were so numerous that the Commission questioned whether the changes were effective in changing sentencing practices. This project studied departures for serious violent offenders by analyzing the Commission's 1996-1999 sentencing data, trying to identify factors that differentiated departures below the guidelines from conforming sentences. In addition, interviews regarding particular sentences imposed for 'three strikes' offenses were conducted with judges in ten counties where the majority of departures occurred. Analyses of the quantitative data revealed that those offenders who were identified as the most serious were most likely to get a departure sentence below the guidelines. The qualitative analysis found that the dominant reason provided by judges for a departure



The Resource Corner

Wanted...

NASC is seeking information about your agency's current programs and services for publication in its newsletter. For more information about posting information, please contact Paul O'Connell, Editor—405-858-7025

Utah Sentencing Commission Justifies Existence During Sunset Review

Going into its 10th year, the very existence of the Utah Sentencing Commission will be determined during the upcoming General 2001 Legislative Session. During a preliminary portion of the required statutory sunset review, an interim Law Enforcement and Criminal Justice Subcommittee unanimously endorsed the renewal of the Sentencing Commission for another 10 years. However, that vote was only advisory and the one that counts will occur sometime in January or February. During its preliminary presentation, Chair, John T. Nielsen, summarized the critical contributions of the Commission. He added that both adult and juvenile justice policy had greatly benefited over the years from the Commission's forum of reasoned and researched approach to often volatile political issues such as mandatory sentencing, parole, and community sanctions.

In an effort to emphasize the importance of renewing the Utah Sentencing Commission for through the year 2012, staff is focusing on an active research approach for best policymaking. In the coming years, all three branches of government will continue to face critical decisions concerning adult and juvenile sentencing and corrections. Utah policymakers will deserve sound, rational, experienced, and research-based recommendations when it comes to juvenile and adult sentencing guidelines, standardization of property offenses and sentences, enhancement reform, and a "politically distant" forum for hearing public concerns over drug offenses and sentences.

In particular, as Utah's population grows at an historic pace, state government will continue to need to invest in smart sentencing. A coordinating entity to revise guidelines and other placement tools should be preserved to assure limited resources are used wisely and expensive prison beds are maximized. Meanwhile, drug courts, day reporting centers, community correctional centers, are expanding at unprecedented rates and need evaluation and further direction into the coming century. The current make-up of the 27 member Sentencing Commission, it is being argued, makes it ideal for such guidance.

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NASC Membership

The mission of the Association is to facilitate the exchange and sharing of information ideas, data, expertise, and experiences and to educate on issues related to sentencing policies, sentencing guidelines, and sentencing commissions.

Membership is open to any individual who works or serves on a sentencing commission or similar governmental body charged with sentencing policy responsibilities, or works for any other government agency directly involved in the development of state or federal policy, and any other academic, public or private employee, student, or other individual interested in sentencing.

Please contact a member of the Board of Directors for further details regarding membership.

D.C. Commission Assesses Legislation

The Advisory Commission on Sentencing was formed to recommend policies consistent with the National Capital Revitalization and Self-Government Improvement Act of 1997, which mandated Truth-in-sentencing provisions for the District of Columbia. Through the Act, Congress abolished parole for the most serious felonies, and required that good time credit be calculated according to federal law.

Following the Commission's recommendation, the District of Columbia Council enacted the Sentencing Reform Amendment Act of 2000, which established a "unitary" sentencing system in the District. Accordingly, one set of rules shall apply to all persons convicted of felony and misdemeanor offenses in the District. In the same legislation, the Council addressed the following issues: establishing terms of supervised release, establishing new authorized maximum terms of imprisonment for offenses formerly carrying a life sentence, and amending the Youth Rehabilitation Amendment Act.

The Commission has begun its assessment of sentencing practice before and after determinate sentencing, and its assessment of the implementation of determinate sentencing. During fiscal year 2002, the Commission expects to complete the data collection and analysis on two samples: (1) two thousand cases from the period 1996-2000, and (2) two thousand cases beginning August 5, 2000.

U.S. Sentencing Commission Year in Review

The United States Sentencing Commission on May 1, 2000, sent to Congress a number of amendments to the federal sentencing guidelines that will significantly increase penalties for some serious crimes. Many of the newly enacted guideline provisions are in response to congressional concerns and address such serious crimes as the improper use of new technology in copyright and trademark violations, sexual offenses against children, methamphetamine trafficking, identity theft, cell phone cloning, telemarketing fraud, and firearms offenses.

On May 11, U.S. Sentencing Commission Vice Chair John Steer testified on behalf of the Commission about federal drug policy before the House Governmental Reform Subcommittee on Criminal Justice, Drug Policy and Human Resources. Testimony focused on drug sentencing trends, mandatory minimum drug penalties, and how these statutory penalties interact with the federal sentencing guidelines.

The Commission announced on August 8, its priorities for the amendment cycle ending May 1, 2001. The priorities include work on an economic crimes package; money laundering; counterfeiting; further responses to the Protection of Children from Sexual Predators Act of 1998; firearms; nuclear, chemical, and biological weapons; unauthorized compensation and related offenses; offenses implicating the privacy interests of taxpayers; the initiation of a review of the guidelines relating to criminal history; and the initiation of an analysis of the operation of the "safety valve" guidelines.

On October 12 and 13, the Commission presented its Third Symposium on Crime and Punishment in the United States. The symposium, "Federal Sentencing Policy for Economic Crimes & New Technology Offenses," focused on current economic crime sentencing and the ways in which new technologies have impacted the landscape of criminal activity. The Commission co-sponsored this symposium with the Committee on Criminal Law of the Judicial Conference, the ABA White Collar Crime Committee, and the National White Collar Crime Center. The Tech Center of the George Mason University School of Law hosted the event.



Pennsylvania Certifies Summer Conference a Success (Continued from page 1)

Judge Thomas Ross, a Superior Court Judge in North Carolina and Director of the North Carolina Administrative Office of the Courts, provided a *Luncheon Address* that reminded participants of the complexity of criminal justice decision-making and the many factors and players impacting on the sentencing process. It challenged the audience to address systemic issues when developing structured sentencing policies. Tuesday's *Keynote Address*, "Crime and Punishment in the U.S.: Some Recent Trends," was presented by Professor Alfred Blumstein, the J. Erik Jonsson University Professor at Carnegie Mellon University. Through the disaggregating of crime and punishment rates, Professor Blumstein illustrated how research can and should be used to inform criminal justice policy-making. Transcripts of these three presentations are being prepared and will be distributed to all conference attendees and NASC members.

The highlight of the conference social activities was a Monday evening Dinner Cruise on a chartered riverboat.

The cruise of Pittsburgh's three rivers began with a reception sponsored by the Duquesne University Law School, followed by a fabulous dinner buffet.



NASC Summer Conference (Continued From page 1)

The theme for the seventh annual NASC Conference is "Developing Rational Sentencing Policy in an Irrational World of Crime." Conference workshops will include such topic areas as racial disparity in sentencing, sentencing and the media, unintended consequences of sentencing policy and steps in the development and enactment of national sentencing policy. The annual conference provides an excellent opportunity for the formal and infor-

mal exchange of information and ideas among policy makers, commission members and practitioners dealing with sentencing issues. In addition, it will be a great opportunity to try some of Kansas City's outstanding barbecue. Hotel room rate for this year's conference will be \$85.00 per night. Conference Material will be mailed in April of 2001.

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Massachusetts Legislation Builds Momentum

The Massachusetts sentencing guidelines legislation has languished in the legislature since it was originally filed for the 1997 legislative session. In contrast to earlier years, there is some momentum developing in support of the guidelines legislation for the upcoming session. This emerging interest in the guidelines legislation is related to a particular, highly-publicized case.

The Massachusetts Sentencing Commission is encouraged that some legislative action on the proposed guidelines may occur in the upcoming session. In September, in a highly publicized case, a judge imposed a sentence that was viewed as unduly lenient. Writing in the *Boston Globe*, one observer, among others, linked the strong public reaction over this particular sentencing decision to a call for legislative action on the proposed sentencing guidelines:

The problem here is not that [the judge] "abused" her discretion. It is that she, like other judges across the Commonwealth, acts every day on the basis of nearly unlimited latitude in sentencing - and, by extension, plea bargaining - with no accountability to either the public or other judges . . . Even under the guidelines, [the judge] could still have imposed her preferred sentence, no matter how unpalatable it might be to prosecutors or the public. But she would have had to explain herself - in public, and in writing - citing specific mitigating circumstances, and prosecutors would have been able to appeal. The proposed sentencing guidelines would not eliminate discretion or judgment, as federal guidelines have largely done, but they would promote consistency and proportionality in sentencing - and discourage unjustified extremes in sentencing, at both ends of the spectrum. (Boston Globe, September 17, 2000, p. H1).

Since September, the Massachusetts Bar Association has convened a task force to address issues involved in the guidelines legislation. The Boston Bar Association in conjunction with MassINC is planning a forum on sentencing reform which will highlight the sentencing guidelines legislation. The Massachusetts Sentencing Commission is working to build on this growing support for the guidelines to achieve the formal enactment of the sentencing guidelines this year.

Kansas Sentencing Commission Looks Towards Future

On May 25, 2000 SB 323 was signed into law in Kansas to address the state's escalating prison population. SB 323 commonly referred to as the "Mega Corrections Bill" contained a carefully crafted balance of changes to the Sentencing Guidelines Act combined with additional resources for expanded community based alternative sanctions to incarceration in state correctional facilities. In addition, the bill contained a provision making the changes to the guidelines retroactive, thus applicable to any offender sentenced since the 1993 enactment of the sentencing guidelines. The target population for the sentencing changes was low-level property offenders and parole and probation condition violators.

As Kansas begins its 2001 legislative session, SB 323 remains a major point of discussion. By December 31, 2000, half way through the current fiscal year, the state's prison population has been reduced by 412 offenders and postrelease supervision caseloads have declined by 1,637 offenders. It is projected that by the end of the fiscal year the state prison population will house 641 fewer prisoners due to changes contained in SB 323. To date there has been no increase in violators with new sentences or in the

number of new court commitments. Although it is early yet to claim complete success with the bold changes contained in the new law, the outlook is very promising.

For the first time in over seven years, there are no proposals before the legislature for either expansion or new construction of correctional facilities. Amidst heated debates over public safety and political issues surrounding an upcoming Attorney General's race, it will take a concerted effort to retain all the provisions of SB 323 and to stop proposed measures to repeal portions of the bill. The legislature has introduced a Concurrent Resolution to place a one-year moratorium on any changes to the Sentencing Guidelines to allow for an evaluation of the impact of the recent legislation.

Since the state currently is not facing a severe overcrowding situation, the Sentencing Commission decided during its recent retreat to focus on proactive measures to address long term issues related to prison population. During the next year, the Commission will attempt to develop a comprehensive statewide policy to deal with drug offenders in the criminal justice system, specifically those offenders whose offense is primarily one of substance abuse and addiction. Developing alternatives to incarceration for drug offenders that include comprehensive treatment, accountability and community involvement may be more effective and efficient than traditional incarceration.



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