

The Sentencing Guideline

A publication of the National Association of Sentencing Commissions

National Association of Sentencing Commissions

Executive Board

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2009 NASC Conference

Fifteen Years of NASC: Looking Back, Moving Forward

August 2-4, 2009 Baltimore, Maryland



Baltimore's Inner Harbor is one of the most photographed and visited areas of the city. It has been one of the major seaports in the United States since the 1700s and started blossoming into the cultural center of Baltimore in the 1970s.

Distinct in function and form, locals and visitors alike enjoy Baltimore's Inner Harbor and the surrounding neighborhoods that offer a variety of fine dining, cultural experiences and exciting nightlife.

From breath-taking panoramic views of the skyline from the Observation Level of the World Trade Center to the up-close and personal experiences of street performances happening spontaneously at the waterfront, Baltimore's Inner Harbor offers more to see and do than you might imagine.





President's Message

This year marks the 15th anniversary of the National Association of Sentencing Commissions (NASC). By the early 1990s, a handful of states and the federal government had created sentencing commissions and charged these new entities with examining sentencing policies and practices. NASC was established in a very informal manner through a desire to share information and experiences among individuals involved in the area of criminal sentencing. Over the next decade, the number of sentencing commissions grew, as additional states throughout the country developed an interest in examining sentencing policy or implementing reform to address not only disparity but a number of other objectives as well, such as prison population growth and crime rates. Every year, the NASC conference brings together judges, legislators, correctional officials, policy makers, academics, researchers, and practitioners from around the country to examine our nation's experiences with sentencing laws and practices and to discuss emerging issues and innovations.

To mark the anniversary of our organization, the theme of this year's conference is "Fifteen Years of NASC: Looking Back, Moving Forward." The conference will be held in Baltimore, in the beautiful Inner Harbor, on August 2-4, 2009. The agenda will invite participants to examine the lessons learned over the last decade and a half and to consider what challenges lie ahead - and how best to face them. With most states experiencing troubled economic times, one of the biggest challenges is likely to be budget reductions. This means that states must set spending priorities in all sectors, including public safety.

We hope that you will join us in Baltimore for what promises to be a very engaging conference!

Meredith Farrar-Owens, NASC President

Tentative Plenary and Panel Topics include:

State of Sentencing Research with Drs. Alfred Blumstein and Charles Wellford
Consequences of Escalating Incarceration Rates
Shrinking Budgets and Meeting Court and Corrections Needs
Incorporating Risk Assessment into Decision Making
Sentencing Since Booker
Evidence Based Practices in Sentencing
Federalism and Sentencing Policy - Roles of Federal, State and Local Agencies
Release and Revocation Decisions
Alternative Sentencing and Reentry
Drug and Other Specialty Courts
Role of Victims in Sentencing and Victims Rights

The NASC conference will devote one session to roundtable discussions. Participants will be able to engage in in-depth discussions on a variety of topics with colleagues from around the country.

Interested in participating on a panel or have a suggestion for a panel or roundtable topic? Contact NASC President Meredith Farrar-Owens via e-mail at meredith.farrar-owens@vcsc.virginia.gov.



Conference News

Fifteen Years of NASC: Looking Back, Moving Forward Baltimore, Maryland August 2-4, 2009

Host

Maryland State Commission on
Criminal Sentencing Policy

Conference Web Site

<http://www.msccsp.org/nasc2009>

Registration Fees

The conference registration fee is \$375 through July 10, 2009.
After July 10, the conference rate will be \$450.

The registration fee includes a reception on Sunday evening and
breakfast and lunch on Monday and Tuesday.

Hotel Information

The conference hotel is the Renaissance Baltimore Harborplace Hotel
in the scenic Inner Harbor. The hotel conference rate is \$185 + tax.
You must make your reservations by July 8th to take advantage of this
special rate. Reservations can also be made via phone at 1-800-535-
1201. Ask for the "NASC 2009" block.

Special Event

NASC has a block of 50 tickets for the Baltimore Orioles/Boston Red
Sox baseball game scheduled for August 2, 2009 (Game time:
1:35pm). NASC attendees can purchase these tickets for an addi-
tional fee of \$25 each (limit of two tickets per attendee). See
conference website for details.

Area Airport

Baltimore Washington International (BWI)

BWI Super Shuttle operates between the airport and hotel. The cost is
\$13 one way per person. Cab fare between the hotel and the airport
is approximately \$32. Baltimore's Light Rail Service provides easy
access from the airport to Baltimore's Inner Harbor for \$1.60.



Alabama

In this time of economic crisis, Alabama continues to look for new ways to improve its criminal justice system and to make the most efficient use of our limited resources. Although everyone faces the reality of a declining economy, our state remains 49th or 50th in almost every category of available resources. Alabama must continue to look for ways to economize and to improve services. These efforts continue to move Alabama toward evidence-based practices in criminal sentencing through improving data quality and community supervision and treatment programs. Implementation of the initial voluntary sentencing standards, which became effective October 1, 2006, remains the most important work of the Alabama Sentencing Commission. Indications are that the overwhelming majority of sentencing judges are using the standards.

The Alabama Sentencing Commission is now in the process of reviewing compliance and preparing to publish compliance reports. The Commission will use this information to identify problem areas and to continue the implementation process. To improve data quality, the Commission continues to work on initiating a uniform sentencing order that will assist judges in identifying and utilizing available sentencing options. This project is now in the pilot phase and we hope to finalize a standard sentencing order for felony cases early this year. While the process has been encouraging, modifications have been required to ensure statewide acceptance of the uniform order. When judges realize the variance in how sentences are ordered, they understand the difficulties presented to the Department of Corrections and probation in interpreting how to carry out those orders. Through a careful process of judicial involvement in designing the uniform order, adopting the order, and presenting it for use, the Commission hopes to obtain acceptance and consistent use of the order by judges to improve the overall quality and clarity of sentences imposed.

A major emphasis of the Commission during FY 2008 and FY 2009 has been expanding and improving community programs and supervision. Alabama is seeing progress on three fronts: the development of drug courts; the expansion of community corrections programs into more jurisdictions; and the implementation of the Cooperative Community Alternative Sentencing Project. Chief Justice Sue Bell Cobb, after two years in office, has overseen the expansion of drug courts in Alabama to 42 drug courts in 41 Counties. An additional 21 counties are in the development process. Only five of Alabama's 67 Counties have not made substantial progress in implementing drug courts; however, viable community corrections programs now exist in 45 of Alabama's 67 counties. Because these counties represent 83% of annual prison admissions, they have the potential to substantially affect prison admissions. The Sentencing Commission is grateful for the strong leadership provided by Chief Justice Cobb and by Richard Allen, Commissioner of the Alabama Department of Corrections, in the expansion and improvement of alternative sentencing programs in our state. Chief Justice Cobb and Commissioner Allen are continuing their efforts to educate the public, attorneys, and the judiciary on the benefits to public safety of using these intermediate punishment options.

One of the major undertakings of the Alabama Sentencing Commission, the Cooperative Community Alternative Sentencing Project, was made possible by funding from the Pew Charitable Trusts, with technical assistance provided by The Vera Institute of Justice and the Crime and Justice Institute. The object of this project is to focus on and find solutions to Alabama's fractured system of community supervision involving various, and oftentimes competing, state and local entities. The project is governed by a State Steering Committee with representative membership from all involved, or potentially involved, state and local agencies or officials.

The State Steering Committee has selected four pilot sites that will receive technical assistance in analyzing all local community supervision programs, identifying strengths and weaknesses, and deciding how to exploit the strengths and address the weaknesses on the local level. The project seeks to define the role of each local agency, identify the offenders who should be directed to each agency, and further find ways for the agencies to work together to make the most efficient use of available resources. The State Steering Committee is developing a list of plan elements the State recommends for utilization on the local level. Each local jurisdiction will submit its plan to the State Steering Committee for approval and guidance. This project has the potential for providing a number of positive results throughout Alabama's Criminal Justice System.

The project has already produced one encouraging result by providing a forum for considering risk and needs assessment tools that might be adopted for statewide use. This is the first time Alabama agencies have engaged in a collaborative dialogue on this subject. Other potential benefits that have been identified are: the development of a real cooperative effort among agencies at both the state and local level to improve community punishment and supervision; the development of mentors from the initial pilot jurisdictions to provide assistance to other jurisdictions in improving their programs; and the construction of a more unified and comprehensive community service system for Alabama. Alabama is grateful to the Pew Charitable Trusts, the Vera Institute of Justice, and the Crime and Justice Institute for the opportunity to implement this project.

One last note, Alabama is hoping to host the 2010 NASC conference at the Grand Hotel in Point Clear, Alabama, a nationally known coastal resort with outstanding beach, spa, and golfing facilities. Please check out the hotel's website at <http://www.marriottgrand.com> and begin making plans for an outstanding sentencing conference and wonderful family vacation.

California's November 2008 Voter Initiatives

The November 2008 ballot contained three voter initiatives related to the administration of criminal justice in California. Proposition 5 (NORA - the Nonviolent Offender Rehabilitation Act) called for an expansion of California's much-lauded Prop 36, provision of additional funding for drug courts, radical alterations to the administration of parole, and initiation of a number of programs related to youth justice. Proposition 6 (the Safe Neighborhoods Act) called for increased spending on local law enforcement and lengthier prison terms. Proposition 9 (Marsy's Law) called for massive changes in the requirements for notifying and involving crime victims at all levels of the criminal justice system and severe curtailments of inmates' rights during the parole process.

Prop 5 lost, but for the wrong reasons. One legitimate objection to Prop 5 is that it would have created an entirely new infrastructure within the California Department of Corrections and Rehabilitation, which would likely have led to increased bureaucracy and conflict within an already problem-ridden Department. Most of the voters who opposed it, though, did not cast their votes in opposition to increased governmental bureaucracy. They voted against Prop 5 largely because they were persuaded by Senator Diane Feinstein (who referred to the initiative as a "drug dealers bill of rights") or because they identified with Martin Sheen (who also opposed the initiative).

Prop 6 seemed to be off to a good start, but lost steam along the way. One reason for its demise could be the fact that its primary donor was indicted on charges involving fraud, cocaine, ecstasy, and prostitutes about half way into the election cycle.

Another possible explanation, however, is that voters viewed it as a step in the wrong direction for California. Prop 6 would have reallocated money currently spent on education, health and human services, housing, and environmental protection, to spending on the state's prison and parole services. It would have required that all youth age 14 years or older who are convicted of any gang-related felonies be prosecuted as adults and increased prison terms for most gang-related felonies. It would have deprived anyone convicted of any recent crime of public housing services. The state's Legislative Analyst's Office predicted that it would have cost the state at least a half billion dollars in capital outlay and at least a half billion dollars annually, and would have an unknown net fiscal impact for state trial courts, county jails, and local criminal justice agencies.

Prop 9 won, most likely because it was heralded as a Crime Victim's Bill of Rights. It is true that the bill sets forth a number of statements purporting to declare the rights of crime victims (most of these declarations are unenforceable) and contains some improvements in the area of victim notification and the right to be present and heard at hearings. Unfortunately, this law in fact does little to provide any actual assistance to crime victims. The law's biggest impact will come in the area of parole - in all indeterminate life sentence cases, there will now be a 15-year delay before the inmate may seek a new hearing for release on parole after being denied at a previous hearing. Inmates may shorten the period of delay (to a minimum of three years), but have to meet extremely high substantive and procedural burdens in order to do so. Of course, this has little to do with crime victims - the actual needs of most crime victims will continue to go unmet.

2008 Annual Report Issued

The Maryland State Commission on Criminal Sentencing Policy (MSCCSP) recently issued its 2008 annual report. The report provides a comprehensive examination of judicial compliance with the state's voluntary sentencing guidelines, describes information provided on the state's sentencing guidelines worksheets, and details planned activities for 2009. Select findings are summarized briefly below. The full report is available on the MSCCSP website at <http://www.msccsp.org/publications/ar2008.pdf>.

In fiscal year 2008, the MSCCSP received 11,658 sentencing guidelines worksheets for offenders sentenced in the state's circuit courts. The vast majority of cases were resolved by either an American Bar Association (ABA) plea agreement (51.5%) or a non-ABA plea agreement (28.5%). Approximately half of convicted defendants (52.9%) were sentenced to both incarceration and probation (as opposed to incarceration only, probation only, or neither).

The overall guidelines compliance rate in fiscal year 2008 well exceeded the MSCCSP's goal of 65% compliance. Approximately 80% of cases were compliant with the recommended guidelines range. When departures occurred, they were more often below the guidelines rather than above. All eight judicial circuits met the benchmark rate of 65% compliance, and three experienced an increase in guidelines compliance rates in fiscal year 2008. The circuit with the largest number of defendants, the Eighth Circuit (Baltimore City), had the highest compliance rate.

Departures were least likely for drug offenses, followed by person offenses and property offenses. A comparison of judicial compliance rates by type of disposition (plea agreement, plea with no agreement, bench trial, and jury trial) showed that compliance was most likely in cases adjudicated by a plea agreement. This is not surprising given that the plea agreement category includes ABA pleas, which as of July 2001, are defined compliant by the MSCCSP. In contrast, compliance was least likely in cases adjudicated by a bench trial, and downward departures were more common than upward departures among these cases. When compliance rates by both crime category and disposition were considered, the highest compliance rate was observed for drug offenses disposed of by a plea agreement. Property offenses adjudicated by a bench trial had the lowest compliance rate, and all departures in this category were sentenced below the guidelines.

When sentences departed from the recommended guidelines range, the reason for departure was provided by the sentencing judge in 40% of cases sentenced. The most commonly cited reason for departures both below and above the guidelines was a recommendation of the State's Attorney or Division of Parole and Probation.

Activities of Note in 2008

In 2008, the MSCCSP classified new and amended offenses passed by the General Assembly during the 2008 Legislative Session; reviewed and amended the classification of current offenses to ensure consistency among offenses with similar penalties; adopted slight modifications to the instructions for calculating the adult prior record score and victim psychological injury components of the sentencing guidelines; continued reporting on judicial compliance rates and victims' involvement in sentencing; provided data to state agencies and other interested parties; worked with Applied Research Services, Inc. to implement a sentencing/correctional simulation model; and partnered with the Technology and Communications Division of the Maryland Department of Public Safety and Correctional Services to finalize the development of an automated sentencing guidelines system. The MSCCSP also provided training and orientation to promote the consistent application of the guidelines, as well as accurate and timely submission of sentencing guidelines worksheets. Finally, the MSCCSP worked to improve the accuracy of the sentencing guidelines data by completing several data reviews and data entry enhancements.

Planned Activities for 2009

In 2009, the MSCCSP will continue to review sentencing practice throughout the state and will provide training and orientation to those responsible for completing guidelines worksheets. The Commission will update the Sentencing Guidelines Manual to incorporate adopted modifications to the guidelines. Additionally, the Subcommittee on Sentencing Guidelines will review new and revised offenses adopted by the General Assembly in 2009 and will examine the application of the guidelines to specific offenses, such as theft involving large dollar amounts. The Commission's other standing subcommittee, the Subcommittee on Sentencing Drug Offenders, will continue to assess sentencing options for the state's drug offending population. The MSCCSP will begin utilizing the sentencing/correctional simulation model and the automated sentencing guidelines system noted above. The simulation model will analyze the impact of proposed guidelines revisions on the correctional population and will provide the ability to analyze the impact of changes in operating policies, sentencing practices, post-release practices, and external system pressures on the system. The automated system, designated as the Maryland Automated Guidelines System (MAGS), will fully automate sentencing guidelines calculation in a web-based application that will allow criminal justice practitioners to complete and submit guidelines worksheets electronically. Finally, the MSCCSP will host the NASC annual conference in Baltimore's Inner Harbor August 2-4, 2009. We hope to see you there.

Massachusetts

Access and Fairness Survey

Massachusetts Sentencing Commission staff coordinated the data collection, data analysis, and statistical reporting for a statewide Access and Fairness Survey. The survey project was conducted at all court locations in Massachusetts. By the end of calendar year 2008 a total of 9,046 court users participated in the survey at 106 court locations.

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. An interim report of the project found that:

- 80.8% agreed or strongly agreed that their overall experience at the courthouse was satisfactory;
- 87.9% agreed or strongly agreed that they were treated with courtesy and respect;
- 91.5% agreed or strongly agreed that they felt safe in the courthouse; and,
- 66.5% agreed or strongly agreed that they were able to complete their court business in a reasonable amount of time.

Information on all of the CourTools currently utilized in Massachusetts (including the full Interim Report on the Access and Fairness Survey Project) are available at: <http://www.mass.gov/courts/cmabreport.html>. A final report of the Access and Fairness project is forthcoming.

Legislation

The Massachusetts legislature is just beginning the 186th session of the General Court. All sentencing reform proposals are expected to be re-filed as the new two year legislative session begins. Like so many states, Massachusetts is addressing budget deficits and prison over-crowding. A recent article restated the link between fiscal discipline and sentencing reforms:

. . . the combination of the state budgetary and prison overcrowding crises offers Massachusetts an opportunity to become smarter in its sentencing policy and to adopt the best solution: using fiscal-cost forecasting for criminal sentencing. (Rachel E. Barkow and Joshua J. Libling, "Sentencing Laws Needn't Drain Us," Boston Herald, December 6, 2008)

The Ohio Criminal Sentencing Commission continued to work on comprehensive proposals for the General Assembly concerning the sentencing statutes. Major topics in 2008 included simplifying the felony and misdemeanor sentencing statutes, culpable mental states after the Court's decisions in the *State v. Colon* cases, and a survey of judges, prosecutors, and defense attorneys regarding felony sentencing laws.

The Ohio Criminal Sentencing Commission continues work on a project to streamline the Criminal Code. The goal is to make the Code more workable for judges, prosecutors, defenders, law enforcement, and corrections workers and to produce a Code that can be understood by the defendants and victims directly affected by it. For instance, the Commission suggested simple changes in standard phrases that could shorten the Ohio Revised Code by a half million words--roughly the size of Tolstoy's *War and Peace*--without changing a wisp of meaning. Legislative drafters have been passive resistive, but we'll forge ahead.

Ohio's sentencing guidelines, S.B. 2 adopted in 1996, were effective in slowing the growth of the state's prison population. In 2007 and 2008, the number of prison inmates exceeded pre-S.B. 2 levels for the first time. Some of that can be attributed to the enactment of longer mandatory sentences in the past dozen years. And the Ohio Supreme Court's decision to strike certain reviewable findings in light of the *Apprendi/Blakely/Booker* line of cases also contributed to the increase. Last fall, the Commission surveyed felony judges, prosecuting attorneys, and the defense bar on a range of sentencing guidance issues. Generally, practitioners remain comfortable with most of S.B. 2, but favored voluntary guidelines over the mandatory system enacted in 1996. The results will be reported to the General Assembly soon.

Pennsylvania

Major Corrections Reform Legislation Passed

On September 25, 2008, Governor Rendell signed a comprehensive legislative package that provided for extensive changes in the sentencing, corrections, and parole process in Pennsylvania. This legislation, which addresses a wide variety of issues, including early parole, parole jurisdiction, place of confinement, and compassionate release, was designed to increase transparency and rationality while coordinating both the front and back-ends of its criminal justice system.

Parole Guidelines. The legislation has a significant impact on the Pennsylvania Commission on Sentencing, which is mandated with several new responsibilities. One of the major tasks is the development of parole guidelines and the collection, analysis, and dissemination of information on decisions made by all paroling authorities. Pennsylvania is one of the few states that retained its indeterminate sentencing structure when it established sentencing guidelines, which was in the early 1980's. Under this system, the Pennsylvania Board of Probation and Parole [PBPP] has not only supervision responsibility, but also release decision-making responsibility for offenders serving a maximum sentence of two years or more. For offenders serving a maximum sentence of less than two years, the sentencing judge has exclusive paroling authority. The Commission has been tasked with creating parole and re-parole release guidelines for both the PBPP (for state offenders) and county judges (for county offenders), and revocation ranges for state parole violations.

In deciding whether to grant parole release, the PBPP currently uses a decisional instrument that takes into account actuarial information correlated to reduce risk of re-offending (e.g., violence; risk/needs; institutional programming; institutional behavior), professional judgment (e.g., offense and offender information; recommendations of judge, prosecutor and correctional staff; victim input) and the interaction of the two (e.g., demonstrated motivation for change; assessment of parole challenges; overall risk; re-entry plan). While the parole guidelines have focused more on the risk of re-offending [i.e., public safety], the sentencing guidelines have focused more on proportional and fair punishment [i.e., retribution]. The decision to transfer the responsibility of parole guidelines to the Sentencing Commission will provide the opportunity to review these purposes and to allow for better coordination between sentencing and parole policies and decision-making.

In developing the parole guidelines, the Commission is required to address several factors including the following:

- Encourage inmates and parolees to participate in programming that has been demonstrated to be effective in reducing recidivism, including appropriate drug and alcohol treatment programs;
- Prioritize the use of incarceration, rehabilitation and other criminal justice resources for offenders posing the greatest risk to public safety;
- Take into account available research related to risk of recidivism, minimizing the threat posed to public safety and factors maximizing success of re-entry.

As with the sentencing guidelines, the development of the parole guidelines will be a public process that includes holding public hearings to elicit feedback from all parties.

Recidivism risk reduction incentive. Pennsylvania has been one of the few states without any type of 'good-time' policy for state sentenced offenders. The new legislation has now created an early release mechanism called the Recidivism Risk Reduction Incentive [RRRI]. This incentive is designed to provide non-violent offenders with participation in evidence based programs, and upon successful completion they become eligible for early parole. At the time of sentencing, the judge is required to impose two sentences for these offenders: the usual minimum and maximum sentence, and the additional RRRI minimum sentence. This provision became effective November 24, 2008 and the Commission has revised its SGS web enabled guideline entry system to accommodate this change.

Additional Responsibilities. To the Commission on Sentencing's existing duty of adopting sentencing guidelines, the reform legislation adds not only the development of parole and re-parole guidelines, but also guidelines for re-sentencing following revocation of probation and intermediate punishment, recommitment ranges following revocation of parole, and the reporting of all sentencing and parole decisions to the Commission for analysis and public dissemination. When adopting or re-adopting any guidelines, the Commission is required to use a correctional population simulation model to determine the resources required to carry out any proposed changes.

New Members. The legislation also increased the Commission's membership to include three ex-officio, non-voting members to promote system-wide policy discussions: the Secretary of Corrections, the Parole Board Chairman, and the state Victim Advocate. The three new members attended their first meeting at the Commission's December 2008 meeting.

Work Groups. To date, the Commission has not been allocated additional resources or positions to assist in carrying out its new mandates. In an effort to move forward on its new responsibilities, the Commission had created five work groups to start addressing the various aspects of the new mandates: 1) County Parole Guidelines and County Data Collection; 2) State Parole Guidelines and Reccommitment Ranges, 3) Sentencing and Re-Sentencing Guidelines; 4) State Data Collection and Application Development, and 5) Research and Evaluation.

In addition to the reform efforts discussed here, there have been other significant changes impacting the system such as: changing the law governing place of confinement [jail versus prison], temporary transfer of prisoners to state prisons near the courthouse for judicial proceedings, new work release procedures, and prisoner information provisions. For more information on the reform package bills, see the Commission's website at <http://www.pasentencing.us>.

United States

The United States Sentencing Commission has announced that it will hold a series of regional public hearings on federal sentencing policy throughout 2009. The Commission is holding these hearings to receive testimony on federal sentencing practices and the operation of the federal sentencing guidelines.

The regional hearings coincide with the 25th anniversary of the Sentencing Reform Act of 1984 ("SRA"). The SRA established the Commission as an independent agency in the judicial branch of government and directed it to establish sentencing policies and practices for the federal criminal justice system, principally through the promulgation of federal sentencing guidelines. After holding a series of regional public hearings in 1986, publishing two drafts of sentencing guidelines for public comment, and receiving more than 1,000 letters and position papers from individuals and groups, the Commission submitted the initial set of sentencing guidelines to Congress in April 1987. After the requisite period of congressional review, the guidelines became effective on November 1, 1987. Since 1987, the guidelines have been amended more than 700 times and they have been used by federal courts to sentence more than one million defendants.

As directed by the SRA, the sentencing guidelines are designed to -

- incorporate the purposes of sentencing (i.e., just punishment, deterrence, incapacitation, and rehabilitation);
- provide certainty and fairness in meeting the purposes of sentencing by avoiding unwarranted disparity among offenders with similar characteristics convicted of similar criminal conduct, while permitting sufficient judicial flexibility to take in account relevant aggravating and mitigating factors; and
- reflect, to the extent practicable, advancement in the knowledge of human behavior as it relates to the criminal justice process.

The Commission expects to receive testimony from a wide range of witnesses from across the nation, including representatives of the judiciary, law enforcement, prosecutors, defense attorneys, and community interest groups, as well as sentencing experts and others interested in federal sentencing. The Commission is seeking recommendations regarding changes to the Sentencing Reform Act and other relevant statutes, the federal sentencing guidelines and policy statements, and the Federal Rules of Criminal Procedure that will further the statutory purposes of sentencing.

The first public hearing in this series is scheduled to be held in Atlanta, February 10-11, 2009. Additional information about the regional public hearings will be posted on the Commission's website at <http://www.ussc.gov>.

Also, the Commission has announced that it will hold its Annual National Seminar on the Federal Sentencing Guidelines from June 10-12, 2009 at the Hilton Riverside Hotel in New Orleans. There is no tuition or registration fee necessary to attend this seminar, but registration is required. For hotel reservations call the New Orleans Hilton Riverside at (504) 561-0500. For the special room rate, mention you are attending the "Federal Sentencing Seminar."

Topics for this seminar include: "Sentencing Reform Act: 25 Years Later;" New Guideline Amendments; Guideline Departures and Variances; Relevant Conduct; Immigration Offenses; Drug Offenses; Fraud & Theft Offenses; Criminal History; Organizational Guidelines; Chapter Three Adjustments; Child Pornography and Sex Offenses; Firearms Offenses; Alternatives to Incarceration; Restitution Issues; Grouping of Multiple Counts; and a specific training sessions for defense attorneys, probation officers, and prosecutors.

Virginia

The Virginia Criminal Sentencing Commission has embarked upon a new research project this year, one of the firsts of its kind in the nation. Earlier this year, members of the Commission voted to conduct a comprehensive study of crimes committed in the presence of children, noting that crimes can have a profound effect on the health and welfare of the children who witness them, even when they are not the direct victims. Many practitioners in the field of criminal justice and child protective services report a connection between witnessing certain crimes and negative impacts on children. Noting that children are potentially harmed by witnessing crime and that judges may take this into account when deciding the appropriate punishment for an offender, Commission members agreed that the study would provide useful information and the study was approved. The goal is to identify crimes witnessed by children, to describe the nature of such crimes, and to determine how courts respond to and utilize information concerning the presence of children during the commission of the crime when sentencing the offender. This project will entail unique and groundbreaking research.

Commission staff explored numerous potential sources of information in order to identify cases where a child was present during the commission of the crime. At the outset, Commission staff contacted numerous state and local agencies looking for data that would be useful in examining sentencing patterns in child witness cases. Staff members spoke with representatives of the Virginia Department of Social Services, a local social services department, a child witness task force, and the Virginia Network of Victims and Witnesses of Crimes. Based on the responses from these agencies, however, the Commission determined that none have automated data that could be utilized for this particular study.

Although several avenues of identifying cases with child witnesses were explored, no existing data sources were adequate for efficiently detecting cases for inclusion in the study. After careful review of the options, the Commission decided to proceed with a point-forward study. The Commission will be contacting prosecutors around the state for help in identifying cases that meet the study's criteria. To assist prosecutors, the Commission is creating a data collection form on its website. Prosecutors will be able to enter the offender's identifying information and electronically transmit it to Commission staff for data storage and analysis. Once the offenders have been identified, the Commission will examine each case in detail and record pertinent information for each, including the number of child witnesses, the age of each witness, the relationship between the witness and the offender, the location of the offense, the most serious injury sustained by the victim, if applicable, and the location of the witness relative to the offense. Although this approach will require additional time for data collection, it will yield more reliable and complete results than the alternative methods.

The Commission will monitor data collection in the coming months. Because of the uniqueness of this study, it is not certain how long the data collection phase must last to ensure that a sufficient number of cases for analysis will be achieved. A progress report will be provided in the Commission's 2009 Annual Report. The Commission's most recent annual report is available on the Commission website at: <http://www.vcsc.virginia.gov/2008AnnualReport.pdf>

Washington

Washington State's juvenile justice system has achieved national recognition for its evidence-based system for the rehabilitation of juvenile offenders. This system has increased public safety, reduced recidivism, saved state resources, and changed the direction of many young lives.

Now Washington's Sentencing Guidelines Commission and Superior Court Judges Association are proposing to the state legislature a planning process to devise a model for using evidence-based programs, sentencing and quality assurance strategies for community supervision of adult felons. The recommendations are due in December 2009 as specified in bills currently under consideration by the state legislature.

In 1981, Washington was the second state in the nation to adopt a system of determinate sentencing that structures, but does not eliminate, judicial discretion. However, the original Sentencing Reform Act did not include provisions for post-release supervision and services, except for the First Time Offender Waiver. A patchwork of laws and practices regarding community custody is now recognized as ripe for reform - especially since recent research has identified how carefully targeted programs, provided to the right offenders, can reduce recidivism.

A meta-analysis of that research by the Washington State Institute for Public Policy - along with additional work by the Institute - will help guide Washington's effort to redesign community custody. The Center for Court Research, a division of the Administrative Office of the Courts will assist in developing and implementing ongoing evaluation.

System change of this magnitude will be complex, demanding, and incremental. It will require cross-system agreements, careful and consistent offender assessments, training for those who will deliver evidence-based services, and ongoing monitoring to ensure program integrity.

But improving community custody is strongly supported by the state legislature. In 2007, the legislature invested \$25 million in expanding access and improving re-entry services; in 2008, it reorganized and simplified community custody statutes. Creating an evidence-based system for community custody is the logical next step forward - or perhaps more accurately, the logical next leap forward.

Redesigning Washington's system of community supervision for adult felons will be challenging, but there is broad consensus that the time for change is now, and that the costs of waiting any longer are unsupportable.

A New Sentencing Council for Scotland?

The devolved government of Scotland was established in 1999 following the first elections to a Scottish Parliament. The first administration was a majority Labour government. The present administration was formed in May 2007 by the Scottish National Party as the single largest party, although the party does not have an overall majority in parliament. This is the first time that the Scottish National Party have formed an administration. The Cabinet Secretary for Justice, Kenny McAskill MSP, is a former criminal lawyer. Under his leadership of the justice portfolio, the current administration has taken a radically different approach to criminal justice and penal policy from their predecessors. Scotland currently imprisons 141 per 100,000, close to the top of the European league table for imprisonment. The government believes that this is too high and has expressed its intention of reducing the rate of imprisonment. In particular, the government wishes to develop a coherent penal policy that uses prison for serious and dangerous offenders but deals with lower risk offenders in the community.

The development of the government's policy can be traced through a number of published documents. In November 2007 the government published the report of the Review of Community Penalties, Reforming and Revitalising.

This report argued that community penalties suffered from an image problem. The public perceived them to be "soft". The government response was to propose changes to community penalties which would demonstrate that community penalties were primarily retributive, that they were demanding and rigorously enforced, that they were more immediate and involved visible and meaningful "payback" to the community.

In July 2008 Scotland's Choice, the report of the independent Scottish Prisons Commission was published. The Commission was an independent body, chaired by a former First Minister of Scotland, a member of the Labour Party. This report set out a radical vision for a rational penal policy based on evidence from around the world of effectiveness. The report argued that Scotland had a choice between a continued rise in the prison population, further prison overcrowding, increased corrections budgets and little improvement in the safety and security of Scotland's communities or a more positive approach to penal policy which used scarce resources more effectively to reduce offending behaviour, have a smaller prison population which allows staff to deliver programmes which can produce change in behaviour, and enhance the safety of our communities. The report has twenty-three major recommendations which range from prosecution to aftercare. The recommendations on sentencing include the establishment of a National Sentencing Council with the power to develop sentencing guidelines. This echoes a recommendation of the Sentencing Commission for Scotland which was set up by the previous administration in 2003 and published its final report in 2006.

In September 2008, the Government published a consultation paper, Sentencing Guidelines and a Scottish Sentencing Council. This document presented a range of proposals about the remit, function and membership of the Council, the nature of the guidelines, the relation between the Council, the Government and the Courts etc. There were a total of sixteen questions for consultation.

Most recently, in December 2008, Protecting Scotland's Communities was published. This further developed the government's approach to penal policy and in particular indicated that the government will legislate in the forthcoming Criminal Justice and Licensing Bill (Scotland) to create a judicially-led Scottish Sentencing Council. This body will "develop and oversee a national system of sentencing guidelines to bring greater consistency and transparency to the sentencing process." Further details about the remit, membership and powers of the Council will appear in the Bill later this year, but the September 2008 consultation paper gives a clear indication of the government's plans.

The Council will almost certainly be judicially led. The membership of ten will be dominated by the legal profession, with one post being reserved for a representative of a victim's organisation, one for a senior police officer and two posts for independent non-judicial members which will be filled by an open public appointments process. The Council seems likely to produce guidelines incrementally, much like the Sentencing Guidelines Council in England and Wales and unlike the proposals in New Zealand for an inaugural set of comprehensive guidelines. The Council will be able to use both narrative and numerical approaches to developing guidelines. Judges would be under a statutory obligation to adhere to guidelines and would be obliged to provide detailed reasons should they decide to depart from the guideline in any individual

case. The Court of Appeal would retain its power to issue guideline judgements but would be obliged to apply guidelines issued by the Sentencing Council. The Appeal Court could ask the Sentencing Council to review a guideline, but it is not clear what would happen if the Council, having reviewed the guideline, decided not to change it. The Council would have the power to decide its own working procedures. However, certain, at this stage unspecified, officers, would be allowed to invite the Council to produce guidelines on particular issues or specific offences but the Council would not be obliged to take on such references. These last two points indicate a lack of clarity in the powers of the Council and its relation to both the government and the Courts. One would hope that these uncertainties will be clarified in the forthcoming Bill.

The Bill will be put before the current session of parliament later this year. As the government does not have a simple majority, it is by no means certain that it will succeed. If the legislation gets through Parliament, these proposals will provide for a statutory Sentencing Council and Sentencing Guidelines for the first time in Scotland.

One can only speculate about the potential contribution of a Scottish Sentencing Council to the government's ambitious penal reform agenda. The current proposals are perhaps best described as a modest beginning to the project of sentencing reform in Scotland.

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NIJ Workshop

ICPSR Workshop on Sentencing and Other Federal Case Data Analysis July 20-23, 2009

In partnership with the U.S. Sentencing Commission and the Bureau of Justice Statistics, the National Institute of Justice is introducing a new workshop on sentencing and other Federal case data analysis. The purpose of the workshop is to promote Federal court research by improving:

- Understanding of Federal case processing from arrest through sentencing and post-release stages (e.g., sentencing guidelines);
- Familiarity with data compiled by BJS' Federal Justice Statistics Program and data manipulation techniques (e.g., standard analysis and linking files); and,
- Knowledge of multi-level and multi-stage statistical techniques (e.g., Hierarchical Linear Modeling).

The four-day workshop will use lecture, demonstration, and sentencing data exercises which require experience with regression analysis and SPSS. HLM software will be demonstrated. Applicants must submit a curriculum vitae and a cover letter indicating interest in Federal court research and the above learning objectives, as well as relevant experience. Admission is limited to 20 participants. Applicants with applied research or academic backgrounds-including legal studies, criminology, criminal justice, sociology, political science, anthropology, and economics-are encouraged to apply.

Information on BJS' Federal Justice Statistics Program and related reports are available at <http://www.ojp.gov/bjs/fed.htm>.

Reports prepared by the USSC are available at <http://www.ussc.gov/annrpts.htm>.

| | |
|--------------|---|
| Instructors: | Professor Brian Johnson (Dept. of Criminology and Criminal Justice - University of Maryland, College Park); staff from the USSC and BJS |
| Location: | University of Michigan, Ann Arbor |
| Fee: | None |

Stipend: Support for non-Federal employees (up to \$1,250) will be made available to qualified applicants for travel and living expenses.

Application: Beginning February 9, 2009, applications can be submitted online using the ICPSR Summer Program's Web portal at <http://www.icpsr.umich.edu/sumprog/2009/registration.html>. The application deadline is Monday, April 27, 2009. Early application submissions are encouraged.

Applicants who are selected will be contacted after May 1, 2009.

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