

The Sentencing Guideline

A publication of the National Association of Sentencing Commissions

National Association of Sentencing Commissions

Executive Board

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2010 NASC Conference

Sound Sentencing Policy: Balancing Justice and Dollars
August 8-10, 2010
Point Clear, Alabama



The Alabama Sentencing Commission is proud to host the 2010 NASC conference at the Grand Hotel Marriott Resort in Point Clear, Alabama. This year's conference is located on historic Mobile Bay and only 21 miles from Alabama's beautiful Gulf Shore beaches.

Now in its 16th year, NASC brings together judges, legislators, 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. This year's conference is entitled "Sound Sentencing Policy: Balancing Justice and Dollars."

With this timely theme, the conference will offer plenaries, workshops and roundtable discussions on sentencing policies and the hurdles sentencing commissions and criminal justice officials must overcome during these times of shrinking budgets and scarce resources, as well as innovative ways that states have faced these challenges.

President's Message

With troubled economic times, budgets have been reduced, now and for the near future. Criminal justice policy makers and professionals alike are seeking ways to become more cost efficient than ever before. In many states, legislatures are now in session and are considering ways to reduce criminal justice spending without compromising public safety of their citizens. But how is this balance best achieved?

The 2010 NASC conference will plunge headlong into these critical issues. The theme of this year's conference is "Sound Sentencing Policy: Balancing Justice and Dollars." The agenda will feature numerous workshops and roundtables that will encourage active exchanges among facilitators and participants and provide opportunities for hands-on activities.

This year's conference will be held on August 8-10 in Point Clear, Alabama. I would like to thank the Alabama Sentencing Commission for hosting the conference this year. It takes a great deal of hard work and dedication to host such an event and we sincerely thank them.

I hope you will take a moment to visit the conference website at <http://nasc2010.alacourt.gov/> . Through the website, you can now register and make hotel reservations. The conference agenda will be posted soon.

If you are interested in participating in a workshop or have a suggestion for a roundtable topic, please contact Lynda Flynt, Director of the Alabama Sentencing Commission, at lynda.flynt@alacourt.gov.

We hope that you will join us in Alabama for what promises to be a very engaging conference!
Meredith Farrar-Owens, NASC President

Conference Registration

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

- ▲ \$375.00 if paid before July 12, 2010
- ▲ \$450.00 if paid on or after July 12, 2010

To register online go to: <http://nasc2010.alacourt.gov/registration.html>

When registering and paying with a check, click below to print the registration form:
http://nasc2010.alacourt.gov/NASC%202010_Registration_Paper%20Form.pdf

Cancellation Policy

- Full refund for cancellation prior to July 12, 2010
- \$50 administrative fee if cancellation occurs from July 12 to July 25, 2010
- No refund for any cancellation on or after July 26, 2010

National Association
of Sentencing Commissions

2010 Annual NASC Conference

August 8-10, 2010

Grand Hotel Marriott Resort, Golf Club & Spa
Point Clear, Alabama

Get
to the
Point!
Point Clear,
Alabama

The National Association of Sentencing Commissions (NASC) was created to facilitate the exchange and sharing of information, ideas, data, expertise, and experiences and to educate on issues related to sentencing policies, guidelines and commissions. 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.

Grand Hotel Marriott Resort

Experience a stunning beach resort in Point Clear, Alabama - the exquisite Grand Hotel Marriott Resort, Golf Club & Spa. Overlooking scenic Mobile Bay and offering a dramatic departure from standard Gulf Coast resorts, this grand beach resort boasts two challenging golf courses as part of the Robert Trent Jones Golf Trail. It also features a luxurious 20,000 square foot European-style spa, a fabulous array of exceptional dining options, and a sizeable marina for sailboats, yachts, and fishing boats. The delightful beaches and extraordinary pool complex offer plenty of entertainment for the whole family. The Marriott Grand, the Queen of Southern Resorts, is an escape from ordinary Gulf Coast beach resorts.



Conference Accommodations

The Grand Hotel Marriott Resort, Golf Club & Spa
1 Grand Boulevard, Point Clear, Alabama 36564

Room rate: Single and double rooms \$125.00 plus 22% state and local taxes per night.

Reservations: 1.800.544.9933 Ask for the "NASC 2010" group code when making your reservation., or online at <http://nasc2010.alacourt.gov/accommodations.html>

Transportation: The Mobile, AL airport is 46 miles from the Hotel with the Pensacola, FL airport 65 miles away. The Marriott Grand Hotel's Transportation Department has guaranteed attendees a discounted rate of \$40 per person (one-way) to and from each airport. In order to receive the discounted rate, you must contact the Transportation Department(251) 928-9201 ext. 6624 or via email at transportation@marriottgrand.com prior to the conference no later than August 3rd.

Hotel Cut-Off Date: July 9, 2010

Alabama



Following last year's report of compliance on utilization of the initial voluntary sentencing standards, the Alabama Sentencing Commission has now completed a comparative analysis of sentencing practices before and after implementation of the sentencing standards, with encouraging results.

Alabama adopted and implemented voluntary sentencing standards in 2006, which consist of scored worksheets recommending both prison/non-prison dispositions and sentence lengths for three offense types - Personal, Property and Drugs, representing 87% of the most frequent felonies of conviction. In 2009, the Sentencing Commission was able to report compliance rates, using an evaluation process based on the sentencing worksheets received. The initial results of judicial compliance with the sentencing standards recommendations were inconclusive as to the evidence of their effectiveness because of the low worksheet submission rates. Since the Commission only received 45% of worksheets for applicable cases, it was difficult to pinpoint the effectiveness of the sentencing standards in the first two years. While the data gave indications of compliance, it proved much more useful in determining process issues that the Commission needed to address. The Commission is currently addressing these issues by requiring final worksheets and orders to be submitted in paper form, beginning April 1, 2010, rather than electronically. In addition, the Commission is continuing training on the use of the standards; recommending use of a uniform felony sentencing order; modifying the Sentencing Reform Act to require that the final worksheet submitted to the Commission contain the judge's signature or initials and that the worksheet be made a part of the court record; clarifying the worksheet instructions; and modifying the

worksheets to include attempts, solicitations and conspiracies for murder and certain drug offenses. The modifications of worksheets and instructions and signature requirement are proposals included in the Commission's Legislative package this year.

Comparative Analysis of Sentencing Practices Before and After Implementation of the Sentencing Standards

This year, Commission staff completed a project evaluating the impact the sentencing standards have had on sentencing practices involving worksheet offenses before and after their implementation. After reviewing the changes in the percent of convicted offenders who are sentenced to prison or non-prison alternatives before and after the implementation of the standards, the study answers the fundamental question of whether the sentencing standards are proving to be an effective agent of sentencing reform. The analysis shows that the Standards are effective in reducing prison admissions for nonviolent offenders and for increasing the use of alternative sentencing options.

Reviewing the use of prison before and after the implementation of the sentencing standards for the 26 worksheet offenses, two general themes emerge. First, personal offenses exhibited consistent use of prison before and after implementation of the standards. The use of prison for these personal offenses either stayed the same or varied by no more than one percentage point, with the exception of the offenses of Assault 2nd, Robbery 2nd and Robbery 3rd. The serious personal offenses have maintained the use of prison after the standards became effective, consistent with the original intent of the standards to ensure that prison resources would be available for violent offenders. The second trend is that the use of prison for property and drug offenses is declining. The use of prison for every drug and property worksheet offense declined after the sentencing standards were implemented.

Another significant finding from the analysis was that implementation of the sentencing standards has diminished the use of prison for first time offenders of drug and property offenses while remaining constant for personal offenses. With the exception of Burglary 1st, there have been percentage point drops of 10% or greater in at least one of the three years following the effective date of the standards.

Except for adoption and implementation of the sentencing standards, there has been no other identifiable major change in recent years that would impact sentencing practice, as evidenced by the increased use of alternative sentencing sanctions for many of the offenses covered by the sentencing standards. Increased use of alternative sanctions for nonviolent and less serious offenses, while maintaining consistent prison utilization for violent and serious offenses, demonstrates that the sentencing standards are influencing sentencing practice and policy in Alabama.

2010 Legislative Package

The Sentencing Commission introduced three bills during the 2010 Regular Session of the Legislature. The bills' provisions focus on 1) elimination of unwarranted disparity; 2) providing a wider array of sentencing alternatives; and 3) alleviating prison overcrowding. The first bill and our highest priority is the Sentencing Standards Modification bill which will add the inchoate offenses of attempts, conspiracies, and solicitations to commit murder and certain controlled substances offenses.

The Sentencing Commission recommended amendment of the standards to include these crimes in recognition of the fact that the punishment for the completed offense and the inchoate offense were the same and there was a real possibility that without these modifications an offender convicted of the inchoate offense could be given a harsher sentence than the offender who actually completed the offense.

For the third year, the Commission is recommending amendment of the Community Punishment Corrections Act to eliminate the absolute prohibition for offenders convicted of selling controlled substances (in any amount) from participating in a community corrections program as an alternative to incarceration. If enacted this change will afford trial judges the opportunity to increase the use of alternatives to incarceration for nonviolent offenders and maintain meaningful judicial discretion, as well as increase the availability of drug treatment for offenders suffering from drug abuse or addiction.

The third legislative bill amends Alabama's split sentencing statute to expressly prohibit the imposition of consecutive split sentences or "the stacking" of split sentences for separate convictions sentenced at the same event. Under current practice, consecutive splits are sometimes imposed, in which case a defendant is required to serve more than the statutory minimum imprisonment portion of a split sentence without the possibility of parole or good time credit. The other major provision of the bill amends the split sentencing statute to uniformly apply the same limitation period (5 years for a felony and 2 years for a misdemeanor) governing straight probation sentences, to the probation portion of a split sentence.

The Cooperative Community Alternative Sentencing Project (CCASP), a joint initiative of the Chief Justice and Alabama Sentencing Commission, continues its work to establish model community supervision programs, utilizing uniform risk/need assessment instruments.

One of the most exciting initiatives of the Alabama Sentencing Commission is the Cooperative Alternative Sentencing Project (CCASP), a joint project of the Commission and the Chief Justice of Alabama, which

Alabama *continued*



began in 2008. This project, 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, has already begun to show positive results in two of the four pilot sites chosen for the first phase of the project.

The primary goal of the project is for each jurisdiction to actively involve all its major criminal justice stakeholders and, through self-examination and analysis, collaboration, and cooperation, improve services at the local level. With the formation of local alliances among the agencies supervising offenders in the community, each jurisdiction can define a model system that establishes a continuum of graduated supervision for the fair, effective, and efficient delivery of services.

During 2009, CCASP was active in Lawrence and Montgomery Counties, and will become active in Jefferson and Marshall Counties in 2010. Lawrence County, the first site selected to participate in 2008, has completed the self-analysis and is now in the process of beginning its comprehensive plan for community supervision. Montgomery is still in the analysis stage of the process. The project is already beginning to show success in the form of identifying specific strengths and weaknesses in each jurisdiction.

With the assistance of the Chief Justice, the Board of Pardons and Paroles, and local community corrections agencies, CCASP has begun implementation of uniform risk and needs assessment tools in the four pilot sites and Shelby County. The risk/needs assessment instruments adopted by CCASP were the new Ohio Risk and Needs Assessment Tools, developed by well-known leaders in the field of risk and needs assessment. The instruments are non-proprietary and can be used in Alabama at no cost. Probation and Community

Corrections supervision officers of the pilot jurisdictions have already begun using the instruments. Ten of those have now been trained to teach others how to use the instruments.

Initially the risk and needs assessment instruments will be used in the pilot sites to direct case planning and identify resources or services needed in the community for supervision to be successful. The instrument results, along with case plans for offenders, will be forwarded to the Sentencing Commission to establish a risk/needs database for analysis. This process will initiate the collection of data necessary to begin the first steps of implementing essential evidence-based practices in our state's community supervision programs.

Host State of 2010 NASC Conference

The Alabama Sentencing Commission is honored to have been selected to host the National Association of Sentencing Commissions' 2010 Annual Conference, "Sound Sentencing Policy: Balancing Justice and Dollars." The conference will be held at the Grand Hotel Marriott Resort in Point Clear, Alabama, on August 8th-10th. Reservations for the conference and for hotel rooms may be made through our website, <http://sentencingcommission.alacourt.gov>. As always, we look forward to sharing ideas and learning of the innovative ways others have grappled with shrinking budgets. The NASC Annual Conference is always a valuable learning experience and we know that this year's conference will be a great opportunity for practitioners from around the country to examine other states' experiences and discuss emerging issues and innovative ways others have addressed escalating prison and jail populations. The conference site is a wonderful one, located on historic Mobile Bay and only a short drive from Alabama's Gulf Shore Beaches. We hope that many who will be coming to the conference can bring their family and enjoy the wonderful activities and attractions Alabama has to offer.

Alaska



During the past seven months, Alaska's criminal Justice Working Group moved forward, focusing on electronic exchange of discovery information among agencies, re-entry, Project HOPE, and ongoing analysis of recidivism and program effectiveness. Leadership of the Working Group changed, as co-chair Justice Carpeneti was elected by his colleagues to be Chief Justice. The Group's other co-chair, Lieutenant Governor Sean Parnell was sworn in as governor when former governor Sarah Palin resigned. Governor Parnell asked that Attorney General Dan Sullivan take his place as co-chair of the group. The Working Group's Efficiencies Committee addressed the need for briefer presentence reports, and started a pilot project with a "short form" in the Kenai court. It focused most of its efforts during the past seven months on developing the capability to electronically exchange discovery materials among the law enforcement agencies, prosecutors and defense attorneys. Parts of such a system are already in place in Fairbanks and for the Anchorage municipal prosecutor's office. The project will review systems provided by vendors during the next six months, and will consider the standards for creating, storing, and retrieving digital evidence, as well as exchanging it in criminal cases.

During the next six months, the Working Group's Prevention and Recidivism Committee will focus on:

- Re-entry: Sixty-six percent of Alaska offenders are rearrested within three years after their release. To help reduce that percentage, the CJWG created the Alaska Offender Re-entry Task Force as a subcommittee of the Prevention and Recidivism Committee. The Task Force will include representatives of housing and labor programs, along with community members, victim representatives, and others who are not members of the CJWG. A senior staff person from the Department

of Corrections was designated as head of the Task Force, and the CJWG will provide help in coordinating meetings, drafting a five-year strategic plan, and locating technical assistance resources.

- Probation monitoring with Project HOPE model: Anchorage probation officers file nearly one hundred petitions to revoke probation each month just for technical violations. Project HOPE in Hawaii is an evidence-based program that reduced revocation rates for offenders in the program to 5%, compared to 15% for a control group, and re-arrests to 21%, compared to 47% for the control group. The Department of Corrections, collaborating with Working Group members, is moving forward to develop a pilot program in Anchorage based on this model. Initial contacts with all of the participating agencies have been made; new forms for the project have been drafted, and agencies are working to locate the resources needed to begin work.

- Ongoing recidivism study: Alaska has not had an ongoing process for monitoring recidivism or the effectiveness of programs designed to reduce recidivism. The CJWG members are cooperating in building a database and method of tracking released offenders in coming years. The database will look at recidivism of all released offenders, and of offenders participating in evidence-based programs including institutional education and substance abuse treatment, reentry for offenders with mental health issues, therapeutic courts, and juvenile programs. Executive branch agencies and the courts will provide data; the Judicial Council and the Institute for Social and Economic Research at the University of Alaska Anchorage will create the database and conduct the analyses.

District of Columbia



The DC Sentencing and Criminal Code Revision Commission has focused most of its energy over the past few months on two major projects. The first project is the development and implementation of the Sentencing Guideline Application (SGS), a web based application for use by the Commission in calculating guideline recommendations, capturing information on sentences imposed, and electronically reporting information to the Sentencing Commission. In addition to the web application, a web service component has been constructed to allow for information to flow directly from the court's data system into the Commission's SGS environment through a secure private DC JUSTS network. This project has languished for a number of years due to a change in the court's data system and numerous technical challenges. However, it has finally arrived at the testing phase and is projected to be operational this February. This will be a significant issue for the Commission since it will enable us to receive all sentencing data from the courts for monitoring, analysis, and evaluation of the sentencing guidelines. Fingers are crossed that no significant obstacles will be encountered in this final phase.

The second project the Commission is undertaking is the Revision of the DC Criminal Code. This is a significant undertaking for the Commission and considerable planning went into which approach should be taken. The revision of the criminal code could range from revising the statutes to make language clear and consistent to adopting a complete Model Penal Code. Lengthy discussions were held by the Commission relating to the most appropriate approach and it was

decided to divide the revision into several stages to fully understand the complexity and issues that would be encountered during the revision. The Commission decided to start with an assessment of whether the fines and criminal penalties for felony offenses were proportional to the seriousness of the offense and make recommendations for changes if necessary. It is anticipated this step of the process will be completed by the end of May and a report released. The next phase of the code revision process will be determined by the Commission at that time.

Massachusetts



Legislation

The Massachusetts legislature is midway through the 186th session of the General Court. A number of sentencing reform proposals are pending during this two-year legislative session, including proposals for sentencing guidelines. On November 18, 2009, the Massachusetts Senate passed Senate Bill 2220 "An act reforming the administrative procedures relative to criminal offender record information and pre- and post-trial supervised release." The legislation would provide parole eligibility to offenders sentenced for mandatory drug offenses. Offenders would be eligible for parole consideration at two-thirds of the minimum sentence for state prison sentences and one-half the maximum sentence for house of correction sentences. The legislation would also apply to those offenders currently incarcerated for these offenses. The legislation provides for a system of mandatory post-release supervision for offenders sentenced to state prison. It is expected that the Massachusetts House of Representatives will consider this bill over the next few months. The text of the bill is available at:

<http://www.mass.gov/legis/bills/senate/186/st02pdf/st02220.pdf>.

Massachusetts *continued*



Evidence-Based Practices

There is interest in learning about ways that evidence based practices might be applied to sentencing policies in Massachusetts. The Flaschner Judicial Institute held a seminar on "Evidence-Based Sentencing and Recidivism Reduction" in November 2009. This seminar was attended by many judges interested in sentencing policies. Representatives from the Sentencing Commission, correctional and parole agencies were also in attendance. Judge Roger Warren of the National Center for State Courts presented information on current research in the area of the application of Evidence Based Practices with respect to sentencing. More information about the Flaschner Judicial Institute can be found at: <http://www.flaschner.org/>. Further sessions on this topic are being planned for larger groups of judges.

Access to Justice Survey

Access to justice has been a major priority for the Massachusetts Trial Court. A new Special Advisor for Access to Justice Initiatives was appointed in June 2009 in recognition of the critical role of the judicial branch during a challenging economy when data confirm that more people seek recourse from the courts. As social, linguistic, and economic diversity in the Commonwealth grows, as laws become more complex, and as increasing numbers of middle class individuals and the poor represent themselves in legal matters, ensuring court-based access services to litigants is an integral part of the mission of the judicial branch. One of the first projects of the new Special Advisor was the implementation of an Access to Justice Survey. This survey was distributed to all Trial Court employees and collected information on seven key aspects of access to justice services: services for court users with limited or no English skills, advocates, self-represented litigant

services, alternative dispute resolution, technology, collaborations with other organizations, and general services for court users. Massachusetts Sentencing Commission staff assisted in the compilation and analysis of the system-wide access to justice survey. The report is available at:

<http://www.mass.gov/courts/atjreport.html>.

Budget Initiatives - Flexible Workforce Project

The Massachusetts Trial Court continues to explore ways to address constrained fiscal resources. One of the initiatives, developed by the Chief Justice for Administration and Management, assigned central office staff to court locations across the state on a part-time basis. The uniform court staffing model was used to identify those court sites that are currently understaffed and in need of additional resources. All Massachusetts Sentencing Commission staff are participating in this initiative. Beyond providing necessary staff to the receiving court location, this initiative has a number of additional benefits. Participating staff gain skills as they are cross-trained in court procedures and computer systems; communication between court departments is improved; participating staff become motivated as they develop a broader perspective on court issues. It is expected that this project will last throughout fiscal year 2010.

Survey of Sentencing Practices

The most recent annual survey of sentencing practices and the Felony and Misdemeanor Master Crime List are available on our website:

<http://www.mass.gov/courts/sentcomm.html>.

Minnesota



The Minnesota Sentencing Guidelines Commission produced annual reports on sentencing practices and trends which are available on the agency website at <http://www.msgc.state.mn.us>. Modifications to the Sentencing Guidelines Grids were also made. Commission staff continue to serve on several statewide criminal justice committees and will be working on fiscal notes and budget reduction scenarios once the Legislature convenes on February 4, 2010.

Sentencing Trends

Minnesota continued to experience a decrease in the number of felons sentenced, a trend that began in 2007. There were 15,394 felony offenders sentenced in 2008, a 4.8% decrease from 2007. The trend appears to be the result of the decline in both the number of felony DWI offenders sentenced and the number of drug offenders sentenced, namely meth offenders. In 2008, person offenses accounted for 27.6 percent of all offenses sentenced, the highest proportion since 1996.

Guidelines Modifications

The Commission made a number of modifications to the Sentencing Guidelines Grids including moving certain prostitution offenses such as sex trafficking from the regular grid to the sex offender grid. In most cases, placement of prostitution offenses on the sex offender grid results in more presumptive prison sentences and longer sentences. Additionally, offenders who commit these offenses may be eligible for a second custody status point and some prior criminal sexual conduct offenses carry higher criminal history weights.

Collaboration with Criminal Justice Agencies

Minnesota Sentencing Guidelines staff serve on the Criminal Justice Forum and the Department of Corrections Evidence-Based Practices Policy Team. The Criminal Justice Forum was called together to evaluate and examine criminal justice efficiencies and costs savings, and will submit a report on its findings and recommendations to the Minnesota State Legislature by February 15, 2010. Chaired by the Chief Justice of the Supreme Court, the membership is comprised of representatives from criminal justice agencies from the state, county, and city levels.

The Minnesota Legislature tasked the Department of Corrections Evidence-Based Practices Policy Team to undertake an assessment of the use of evidence-based practices for community supervision in Minnesota and opportunities for greater implementation of evidence-based practices. The policy team will report its findings and recommendations to the legislature by January 15, 2011.

Budget Proposals

The Minnesota Sentencing Guidelines Commission, along with all state agencies, was requested to provide for a 3% holdback to the current year's unspent budget and submit a plan for a 3% reduction to next year's budget starting July 1, 2010.

Missouri



Missouri Commission Biennial Report: Wide Sentence Disparities for Nonviolent Offenders; Recommended Sentences Result in Lower Recidivism

There are wide disparities, county by county, in the use of prison for punishing nonviolent offenders, according to the Missouri Sentencing Advisory Commission's recent Biennial Report. In addition, rates of re-offending are much higher for those sent to prison than for those sentenced to regular or enhanced probation supervision in the community, particularly for nonviolent offenses.

The report's data show that public safety - the Sentencing Advisory Commission's primary goal - has been enhanced through the system of recommended sentences, which forms the basis of the Sentencing Assessment Reports that are provided to courts and attorneys.

The full 2009 report is on the Commission's website, www.mosac.courts.mo.gov; it contains data analysis on many aspects of Missouri sentencing. Also available are the Commission's Smart Sentencing bulletins and information on the commission's upcoming educational program on evidence-based sentencing.

Ohio



The Commission continues to monitor and discuss Ohio's prison crowding situation. In addition, the Commission made concrete proposals to the General Assembly on drug policy. Many of the recommendations were included in legislation now pending in the Senate.

The Commission reviewed and suggested changes to other bills pending in the House Judiciary-Criminal Justice Committee at the behest of the Committee's Chairman.

In 2007, the Ohio Supreme Court decided two Colon cases, highlighting gaps in current criminal statutes regarding the mental element needed for culpability. The Commission worked to identify those gaps and suggested appropriate mental states and definitional changes. The work is ongoing.

The Commission continued its major project to streamline the Criminal Code that began in 2007. The goal is to make the Code more workable for criminal justice practitioners, including judges, prosecutors, defenders, and to produce a Code that can be readily understood by the defendants and victims directly affected by it.

Pennsylvania



University to provide maps of school zones in the major municipality in each of Pennsylvania's 67 counties.

Mandatory Sentencing Report

In October 2009, the Pennsylvania Commission on Sentencing (PCS) released a 480 page report, "A Study on the Use and Impact of Mandatory Minimum Sentences". This report was in response to House Resolution 12 of 2007, which directed the Sentencing Commission to study mandatory sentencing. This resulted in a two-year project in which the Commission adopted a multi-method approach that included three phases:

Phase I: Documentation of the current utilization of mandatory sentences. The first phase examined the frequency of mandatory sentencing and trends in mandatory sentencing. First, in determining the frequency of mandatory sentencing, we looked at how often eligible offenders receive a mandatory sentence versus how often they are reported as such to the Commission. Second, we used PCS data from 1990-2007 to examine trends in the sentences imposed for mandatory eligible offenses.

Phase II: Processing of mandatory sentencing. The second phase examined how mandatory cases are processed and the utilization of the plea negotiation process. First, we conducted a statewide survey of judges, district attorneys, and public defenders to obtain a better understanding of how cases are processed in their respective counties. Second, we conducted a study utilizing data from the Administrative Office of the Pennsylvania Courts, as well as Commission on Sentencing data, to determine how often mandatory eligible offenders received a charge reduction that resulted in the offender no longer being eligible for the mandatory minimum sentence. Third, we contracted with the Geographic Information Analysis Core within the Population Research Institute at Penn State

Phase III:

Effectiveness of mandatory sentences. The third phase examined whether mandatory sentences are effective, particularly with respect to lowering recidivism. This phase included three surveys: 1) a survey of legislative members about the intended purposes of sentencing, 2) a survey of offenders to determine the extent of their knowledge about sentencing issues, and 3) a poll of Pennsylvania citizens to assess the public's awareness of mandatory sentencing statutes. We also conducted four recidivism studies of mandatory eligible offenders: drug delivery offenders, school zone offenders, repeat violent offenders, and firearms offenders.

Major Findings

Frequency of Mandatory Sentencing

- ▲ Overall, about 45% of the mandatory eligible offenses received a mandatory sentence.
- ▲ About 54% of the offenses that received a mandatory minimum sentence were reported as such to the Sentencing Commission.
- ▲ While there has been an increase in the number of offenses reported to the Commission from 1990 to 2007, the proportion of offenses that were violent [average of 3%] and drug delivery offenses [average of 21%] remained fairly stable throughout this time period.
- ▲ There has been a general increase in the length of sentence for both firearms offenses and repeat violent offenses. For offenders convicted of drug delivery offenses, the average minimum sentence remained fairly stable over the 18-year period examined.

Survey of Judges, District Attorneys, and Public Defenders

- ▲ In a survey of judges, district attorneys, and public defenders there was general agreement that about 70% of the mandatory eligible cases involved some type of plea agreement. The type of plea agreement was more likely to involve the dropping of charges than a reduction in charge or a minimum sentence less than that required by the mandatory statute.
- ▲ District attorneys indicated that they were more likely to invoke the school zone mandatory when children were present than if children were not present, although they did not appear to make distinctions with respect to the distance from the school.

Study on the reduction of charges for mandatory eligible cases

- ▲ In a study of charge reduction, overall, about 34% of mandatory eligible offenders had a charge reduction that resulted in the offender becoming ineligible for the mandatory. Consistent with the survey findings, most charge reductions involved the dropping of charges rather than a reduction in the severity of the charge for all three offender groups.

Mapping of School Zones

- ▲ Mapping of school zones in the major municipality for each county indicated that the percentage of the municipality that was within 1,000 feet of a school ranged from .5% to 39%, with a statewide average of 19%.

Mapping of arrests within Philadelphia County for 2002 showed that 3,365 [72%] of the arrests for drug delivery offenses were within 1,000 feet of school property. There were 34 offenses reported to the

Commission on Sentencing as being sentenced under the mandatory school zone statute for that year.

Survey of Pennsylvania Citizens and Offenders

- ▲ In a poll of Pennsylvania citizens, the percentage who could correctly name at least one offense requiring a mandatory minimum sentence ranged from 34% [using a 'strict' interpretation] to 51% [using a 'loose' interpretation]. The most frequently cited offenses were sexual offenses involving children (28%), violent offenses involving a firearm (28%), DUI (23%), and drug trafficking (11%).
- ▲ In a survey of offenders sentenced to prison most could correctly identify the offenses that had mandatory sentencing provisions. They were most likely to identify 'selling drugs near a school' [80%], 'committing a violent offense with a gun' [76%], and 'selling drugs over a certain amount' [70%] as mandatory eligible offenses. Most offenders also knew the two offenses that did not carry a mandatory sentence, as they were least likely to indicate that 'hitting someone and breaking their nose' [12%] and 'stealing \$250,000 at work' [31%] had mandatory sentences.

Studies on the imposition of the mandatory sentence

- ▲ In the studies of the imposition of the mandatory sentence, offense seriousness, prior convictions, and type of disposition [i.e., trial vs. plea] were found to be the strongest and most consistent predictors of the imposition of the mandatory sentence. In general, offenders who had prior convictions, and/or were convicted via a trial were more likely to receive the mandatory sentence. For repeat violent offenders and firearms offenders, those convicted of more serious offenses were more likely to receive the mandatory sentence. For drug delivery offenders, those convicted of dealing in smaller quantities of drugs were more likely than those convicted of dealing in larger quantities of drugs to recidivate.

Pennsylvania *continued*



Studies on Recidivism

- ▲ In the four recidivism studies, involving three-year follow-ups, the recidivism rate [i.e., arrest for a new crime or technical violation resulting in re-incarceration] were as follows: drug delivery offenders [54%], school zone offenders [57%], repeat violent offenders [54%] and firearms offenders [50%].
- ▲ The age of the offender and the number of prior arrests were found to be the strongest and most consistent predictors of recidivism. Those offenders who were younger and those offenders with a greater number of prior arrests were more likely to recidivate.
- ▲ Neither length of sentence nor the imposition of the mandatory sentence per se, was related to recidivism.

Major Recommendations

The Commission's recommendations included specific suggestions for the General Assembly, the Criminal Procedural Rules Committee, and its own future research and actions. Most notably, the Commission recommended that the General Assembly:

- ▲ Repeal the Drug-Free School Zone mandatory legislation, which is irregularly applied and overbroad geographically, in favor of the existing guidelines-based youth and school sentencing enhancement.
- ▲ Allow sentencing courts to use existing authorized sentencing options, including State Intermediate Punishment (alternative to traditional prison) and County Intermediate Punishment (alternative to traditional jail), to satisfy lower-level drug trafficking mandatory minimum sentences.

- ▲ Distinguish between those mandatory sentencing provisions that apply automatically based on conviction and those that require 'prosecutorial notice,' by referring to the latter as 'sentencing enhancement upon prosecutorial notice'.
- ▲ Increase the threshold for the application of the mandatory for the lowest category of cocaine from 2 to 5 grams.
- ▲ Amend the definition of 'previous conviction' to require a conviction on the previous offense prior to the occurrence of the current offense to eliminate the stacking of previous convictions in the sentencing of multiple offenses during one judicial proceeding.
- ▲ Link penalties to the aggregate weight of compounds and mixtures in the judicial proceeding.
- ▲ Reduce the amount of mandatory fines.

For a copy of the full report,

see the Commission's website at

http://pcs.la.psu.edu/HR_12_FINAL_REPORT_WEB.pdf

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