

# SENTENCING COMMISSION NEWS

OCTOBER 1996: ISSUE 4

## WELCOME

The National Association of Sentencing Commissions (NASC) continues to grow and strengthen. This fourth edition of the semiannual newsletter includes an update from the annual conference held last summer; news from the Commission's Executive Committee; and brief reports from the states. This edition also features sentencing guideline proposals developed by the Massachusetts Sentencing Commission and proposals developed by the South Carolina Sentencing Commission. Included with this newsletter is an updated contact list for sentencing commissions.

## REPORT FROM THE BUSINESS MEETING

Following the completion of the annual conference in Wisconsin last summer, a business meeting was held. This meeting was open to all NASC members. Following is a summary of the actions taken during this meeting.

### EXECUTIVE COMMITTEE ELECTED

The Association elected seven members to the Executive Committee. The following NASC members were elected to serve on the Executive Committee:

✓ Debra Dailey (Executive Director of the Minnesota Sentencing Commission);

✓ Jane Haggerty (Member of the Massachusetts Sentencing Commission);

✓ Richard Kern (Director of the Virginia Criminal Sentencing Commission);

✓ John Kramer (Executive Director of the Pennsylvania Commission on Sentencing and Interim Staff Director of the United States Sentencing Commission);

✓ Robin Lubitz (Executive Director of the North Carolina Sentencing and Policy Advisory Commission);

✓ Phyllis Newton (former Staff Director of the United States Sentencing Commission).

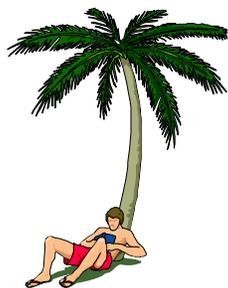
✓ John Steiger (Research Director of the Washington State Sentencing Guidelines Commission).

Members were elected from a slate of candidates offered by the NASC Nominating Committee. The new

Executive Committee will take office on January 1, 1997, and will choose new officers.

Departing members of the Executive Committee include Sandra Shane-DuBow (former Director of the Wisconsin Sentencing Commission and now Executive Director of the Maryland Commission on Criminal Sentencing) and David Factor (former Director of the Oregon Sentencing Commission).

### CHANGES TO BYLAWS ADOPTED



**1997 NASC  
CONFERENCE**

*To be held in:*

**PALM BEACH, FLORIDA**

**JULY 21 TO JULY 22**

**\*\*\*MARK YOUR CALENDAR\*\*\***

The Association approved some minor changes to the bylaws relating to NASC membership and the election of the Executive Committee. Copies of the revised bylaws can be found on the Association's Internet site (see last page).

### ***1997 PROGRAM CHAIR APPOINTED***

The Association voted to hold the 1997 annual conference in Florida next summer. Harry Dodd, Director of Probation and Parole Services for the Florida Department of Corrections, was selected as the Program Chair. The Conference will be held at *The Breakers* in Palm Beach, Florida from July 21 through July 22. Additional information will be forthcoming in the near future.

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## **SUMMARY OF 1996 NATIONAL CONFERENCE**

*Submitted by Sandra Shane-DuBow:  
1996 Program Chair*

The third annual meeting of the National Association of Sentencing Commissions was held in Madison, Wisconsin on July 29-30, 1996. Approximately 100 people attended, including policy makers, state and federal commission members and staff, state agency personnel, researchers, and academics. Attendees were from 28 states and the District of Columbia. The keynote speaker was the Chief Justice of the Wisconsin Supreme Court, Justice Shirley Abrahamson, who stressed the importance of the work of sentencing commissions and the need to continue to develop a rational and integrated policy with regard to sentencing and corrections.

The conference theme was two-part: a review of the past two decades of structured sentencing and a discussion of the future of sentencing reform. Featured Speakers included Professors Al Blumstein of Carnegie Mellon University, Walter Dickey of the University of Wisconsin Law School, Kevin Reitz of the University of Colorado Law School, Michael Smith of the University of Wisconsin Law School, and Michael Tonry of the University of Minnesota Law School.

Michael Tonry opened the program by leading a round table discussion on the challenges faced by state commissions as they implemented, maintained, and

changed sentencing guidelines during the past decade. The round table discussion also addressed the possibilities of additional changes to sentencing and corrections especially with regard to the reemergence of treatment as a viable sanctioning goal.

Other sessions on the program presented by state and federal commission staff and members, and other agency personnel included the following:

- Issues of Race and Sentencing Reform
- Revising Sentencing Guidelines
- Judicial Discretion and Sentencing Guidelines
- Issues in the Evaluation of Sentencing Guidelines
- Judges' Views of Sentencing Guidelines
- Non-Incarcerative Sentencing Options
- Issues of Prison Population Projections
- Researching and Writing Sentencing Guidelines
- Training and Implementation Issues
- Politics, the Media, and Sentencing

Luncheon speakers, Walter Dickey on the conference's opening day and Kevin Reitz on the closing day, discussed topics that have hitherto been somewhat on the periphery of sentencing commission work. Dickey extended a challenge to sentencing commissions to tackle the issues of public safety and community cohesion once the more usual sentencing guideline goals of sentencing equity and proportionality were addressed. Reitz described his research and findings on what appeal courts are doing relative to sentencing guidelines as well as what other research might be done on guideline appeals and what the implications are of appellate findings in guideline cases.

The closing session was a general commentary on the future of sentencing guidelines and sentencing reform. Al Blumstein and Michael Smith added differing perspectives on what the next decade might bring to sentencing research and sentencing guideline work. Blumstein urged the incorporation of more technology to better the sophistication of guideline matrix recommendations, including matrices with more than two dimensions. Smith cautioned about an over reliance on the usual commission products and the threat that establishing equitable sentencing not be narrowly focused, but that it be seen as only one step in a complex process.

## **FEATURED STATES : MASSACHUSETTS AND SOUTH CAROLINA**

### ***MASSACHUSETTS SENTENCING COMMISSION***

(Submitted by Francis J. Carney, Jr., Executive Director)

**Mandate.** The Massachusetts Sentencing Commission was given the mandate to establish sentencing guidelines for all criminal offenses and to integrate intermediate sanctions within the guidelines. The Commission's proposal provides guidelines for all felony and misdemeanor offenses and is intended for use within all courts, both superior and district courts. The original mandate did not permit the Commission to establish guideline ranges below existing mandatory minimum terms. In March 1996, the statute was revised to authorize the Commission to recommend sentencing guideline ranges that are below existing mandatory minimum terms.

**Current Status of Work.** On April 2, 1996, the Commission voted unanimously to adopt its *Report to the General Court* which presents recommendations for a comprehensive new approach to sentencing, including the development of a grid-type model integrating intermediate sanctions with sentencing ranges. Guidelines will only become effective upon enactment into law. The report was forwarded to the General Court on April 10, 1996, and a legislative hearing on the report was held on July 18, 1996. The process of transforming the recommendations of the report into statutory language is currently underway. It is anticipated that a sentencing guidelines bill will be filed by December 1996 with further legislative action taking place when the Legislature reconvenes in early 1997.

**Sentencing Grid.** The vertical axis of the grid encompasses nine levels of offense seriousness, ranging from level 1 (misdemeanors) to level 9 (murder). The horizontal axis of the grid encompasses five criminal history groups: no/minor record; moderate record; significant record; violent or repetitive record; and repeat violent record. The Commission adopted an incident based criminal history scale and included prior juvenile convictions for only the most serious felonies (levels 7 through 9).

There are three distinct zones within the grid: incarceration zone, discretionary zone (incarceration/intermediate sanction), and intermediate sanction zone. Within each cell in the incarceration zone and the discretionary zone, the Commission established a target sentence and guideline range. For target sentences of 24 months or more, the Commission was required by statute to set a sentencing range of +/- 20% of the target sentence. For target sentences under 24 months, the Commission was allowed to set any sentencing range. The Commission elected to establish a broad sentence range where the target sentence was under 24 months. (A copy of the sentencing guidelines grid is reproduced on page 5.)

**Outreach Process.** The process by which the Commission arrived at its proposal was characterized by long hours of spirited debate among members, supplemented by a series of outreach activities. An important component of the development process was an aggressive program of outreach and education. The Commission began with a series of focus groups with victims and representatives of criminal justice groups. Commission members also participated in a number of conferences, training sessions, and other public appearances in order to provide information about the evolving guidelines proposals and to seek further input from interested parties. Finally, in advance of submitting the final proposal, the Commission also held a series of five public hearings around the state. At each stage of the development process, the Commission worked with representatives of print and broadcast media to further this outreach effort.

**Research Orientation.** The enabling legislation also mandated that a comprehensive research effort be undertaken

in conjunction with the development of the sentencing guidelines so that the Commission's decisions and policies would be informed by empirical data. The Commission's research included a study of existing sentencing practices, which documented disparity in sentencing in Massachusetts; a study of time currently being served; and, a study of the impact of the proposed sentencing guidelines on correctional populations. A pilot project to test the sentencing guidelines in the Superior Court was also an important part of the guidelines development process.

**Integration of Intermediate Sanctions.** A significant characteristic of the legislation establishing the Commission was the strength of its mandate to provide for a full implementation of intermediate sanctions as part of the sentencing guidelines:

For every criminal offense under the laws of the commonwealth, the guidelines shall establish: (A) The circumstances, if any, under which the imposition of intermediate sanctions may be proper, . . . and, (B) Appropriate intermediate sanctions for offenders for whom straight imprisonment may not be necessary or appropriate.

Four levels of intermediate sanctions were developed: Level I - Financial Accountability (i.e., monitoring the timely payment of restitution, fines, etc.); Level II - Standard Supervision; Level III - Daily Accountability (e.g., day reporting center, electronic monitoring); and, Level IV- 24-Hour Restriction (e.g., halfway house, inpatient substance abuse treatment facility). For each cell within the discretionary zone and the intermediate sanction zone on the grid, two or more levels of intermediate sanctions were recommended for use by judges.

**Mandatory Sentences.** The original enabling legislation did not permit the Commission to recommend guideline ranges below any existing mandatory minimum terms. A 1996 amendment changed this provision:

In its development of the sentencing guidelines, the Commission shall not be bound by any existing mandatory maximum or minimum term prescribed by statute and may recommend target sentences that exceed existing mandatory maximum terms or that fall below existing mandatory minimum terms.

Given this authority, the Commission recommended that no sentence shall exceed the statutory maximum term. With respect to mandatory minimum sentences, the Commission considered four separate categories of offenses: drug, OUI, firearms, and all others. Noting that the length of the mandatory minimum terms seemed appropriate for all such crimes except drug crimes, the Commission recommended against any departure below the mandatory minimum terms for all mandatory offenses except drug offenses, with a limited exception for third-time OUI offenders being placed in long-term residential treatment programs in lieu of the mandatory sentence.

The Commission integrated mandatory drug offenses within the sentencing guidelines grid and recommended a "double departure" standard: first, a judge can depart below the minimum mandatory term and sentence within the guideline range by finding one mitigating factor; and, second, in exceptional circumstances, a judge can sentence below the guidelines range by finding an additional compelling mitigating factor. Because many of the mandatory drug offenses were integrated into the grid within the discretionary zone (incarceration or intermediate sanctions), this could result in a non-prison sentence for many drug offenders. The judge also retains the option of imposing the mandatory minimum term and the imposition of the mandatory minimum would not constitute a departure even if it exceeds the relevant guideline range.

**Prospects for the Future.** The Commission is encouraged because the proposed system of sentencing guidelines has been generally well received. Work is presently underway with the Legislature on the process of converting the recommendations of the report into a statutory format.

# MASSACHUSETTS

## Sentencing Guidelines Grid

Level	Illustrative Offense	Sentence Range				
9	Murder	Life	Life	Life	Life	Life
8	Manslaughter (Voluntary) Rape of Child with Force Aggravated Rape Armed Burglary	96 - 144 Mos.	108 - 162 Mos.	120 - 180 Mos.	144 - 216 Mos.	204 - 306 Mos.
7	Armed Robbery (Gun) Rape Mayhem	60 - 90 Mos.	68 - 102 Mos.	84 - 126 Mos.	108 - 162 Mos.	160 - 240 Mos.
6	Manslaughter (Involuntary) Armed Robbery (No gun) A&B DW (Significant injury)	40 - 60 Mos.	45 - 67 Mos.	50 - 75 Mos.	60 - 90 Mos.	80 - 120 Mos.
5	Unarmed Robbery Stalking In Violation of Order Unarmed Burglary Larceny (\$50,000 and over)	12 - 36 Mos. IS-IV IS-III IS-II	24 - 36 Mos. IS-IV IS-III IS-II	36 - 54 Mos.	48 - 72 Mos.	60 - 90 Mos.
4	Larceny From a Person A&B DW (Moderate injury) B&E (Dwelling) Larceny (\$10,000 to \$50,000)	0 - 24 Mos. IS-IV IS-III IS-II	3 - 30 Mos. IS-IV IS-III IS-II	6 - 30 Mos. IS-IV IS-III IS-II	20 - 30 Mos.	24 - 36 Mos.
3	A&B DW (No or minor injury) B&E (Not dwelling) Larceny (\$250 to \$10,000)	0 - 12 Mos. IS-IV IS-III IS-II IS-I	0 - 15 Mos. IS-IV IS-III IS-II IS-I	0 - 18 Mos. IS-IV IS-III IS-II IS-I	0 - 24 Mos. IS-IV IS-III IS-II	6 - 24 Mos. IS-IV IS-III IS-II
2	Assault Larceny Under \$250	IS-III IS-II IS-I	0 - 6 Mos. IS-III IS-II IS-I	0 - 6 Mos. IS-III IS-II IS-I	0 - 9 Mos. IS-IV IS-III IS-II IS-I	0 - 12 Mos. IS-IV IS-III IS-II IS-I
1	Operating Aft Suspended Lic Disorderly Conduct Vandalism	IS-II IS-I	IS-III IS-II IS-I	IS-III IS-II IS-I	0 - 3 Mos. IS-IV IS-III IS-II IS-I	0 - 6 Mos. IS-IV IS-III IS-II IS-I
<b>Criminal History Scale</b>		<b>A</b> No/Minor Record	<b>B</b> Moderate Record	<b>C</b> Serious Record	<b>D</b> Violent or Repetitive	<b>E</b> Serious Violent

The numbers in each cell represent the range from which the judge selects the maximum sentence (Not More Than);  
The minimum sentence (Not Less Than) is 2/3rds of the maximum sentence and constitutes the initial parole eligibility date.

**Sentencing Zones**

	Incarceration Zone
	Discretionary Zone (incarceration/intermediate sanction)

**Intermediate Sanctions Levels**

IS-IV	24-Hour Restriction
IS-III	Daily Accountability
IS-II	Standard Supervision

## ***SOUTH CAROLINA SENTENCING COMMISSION***

(Submitted by Ashley Harwell-Beach, Director)

The South Carolina Sentencing Guidelines Commission has devoted the past year to the development of advisory sentencing guidelines to complement truth in sentencing -- 85% time served requirement -- for all crimes with maximum penalties of one year or more. The eighteenth, and possibly final, grid scenario is complete and is currently being tested in our General Sessions courts with moderate success thus far. The Commission plans to present sentencing guidelines legislation to the legislature in 1997.

The Composition of South Carolina Sentencing Guidelines: The grid itself is a version of the modified desserts model and is based on two things: the number and severity of current convictions and the number and severity of prior criminal history. Severity level is determined by the most serious offense of conviction. All other convictions in the current commitment will be scored. One point will be given for each offense in the current commitment. If there is more than one A, B, or C felony, each additional A, B, or C felony will receive 4 points. Scoring of the Prior Record is calculated on a separate Prior Record Form and is calculated as follows:

Each Prior A, B, or C Felony Conviction	+5 points
Each Prior D, E, or F Felony Conviction	+3 points
Each Prior A, B, or C Misd. Conviction	+2 points
Each Prior Misd. Conviction <1 year	+1 point(Limit 5)

A separate column was created for offenders with no prior convictions. The method of providing ranges for Aggravating and Mitigating Factors is quite similar to the North Carolina grid. If Aggravating Factors are found, the Judge can sentence the offender up to approximately 20% higher than the high end of the Presumptive Range, but the sentence cannot exceed the statutory maximum for the offense. If Mitigating Factors are found, the Judge can sentence the offender approximately 20% lower than the low end of the Presumptive Range. The list of Aggravating/Mitigating Factors is non-exclusive. Sentences in the Aggravating or Mitigating ranges are not considered departures from guidelines as long as the Aggravating/Mitigating Factors Form is completed. Departures from guidelines are limited to cases in which the defendant provided "substantial assistance" or the defendant had limited mental capacity.

The presumptive sentence for all A, B, and C Felony offenders is prison. Enhanced use of Community Punishments and Intermediate Sanctions is encouraged for nonviolent offenders. Sanctions available include Intermediate Sanctions, both Residential, such as Boot Camps and Restitution Centers, and Non-residential, such as electronic monitoring, home detention, and intensive supervision; Community Punishment System which is similar to intensive supervision with a little larger caseload size limited by statute; Probation Sanctions where the level of surveillance and intervention is determined by risk and needs analysis by probation agents assigned to the offenders. Financial Sanctions which may terminate supervision upon full payment of restitution or other financial obligation.

Offenders could be sentenced to an intermediate sanction if they are appropriate for such according to the sentencing guidelines grid. Each Residential and Non-Residential Sanction will have a maximum length of stay specified by statute. Minimum lengths of stay would be established by policy. The Judge has the option to sentence either to a specific Residential Intermediate Sanction based upon individual factors and circumstances presented during the case or may select a specific Non-residential sanction. In addition, the Judge may request that the Department

***--- CONTINUED ON PAGE 8 ---***

# COMMISSION CONTACT LIST

(Updated October 1996)

COMMISSION OR COUNCIL	CONTACT PERSON, PHONE AND FAX	ADDRESS
Alaska Judicial Council	Teri Carns 907-279-2526, Fax: 907-276-5046	1029 W. Third Avenue, Suite 201 Anchorage, AK 99501
Arkansas Sentencing Commission	Leslie M. Powell, Executive Director 501-682-5001, Fax: 501-682-5018	101 East Capitol, Suite 450 Little Rock, AR 72201
Delaware Sentencing Accountability Commission	Richard S. Gebelein, Chair 302-577-2400, Fax: 302-577-3440	820 N. French St., 4th Floor Wilmington, DE 19801
Florida Sentencing Commission	John N. Hogenmuller, Director 904-922-5085, Fax: 904-922-9185	Supreme Court Building Tallahassee, FL 32399
Kansas Sentencing Commission	Barbara Tombs, Executive Director 913-296-0923, Fax: 913-296-0927	Jayhawk Tower, 700 S.W. Jackson, Suite 501, Topeka, KS 66603
Louisiana Sentencing Commission	Carle Jackson, Director 504-925-4484, Fax: 504-925-1998	1885 Wooddale Blvd., Room 708 Baton Rouge, LA 70806
Massachusetts Sentencing Commission	Francis J. Carney, Jr., Executive Director 617-742-6867, Fax: 617-973-4562	Saltonstall Office Building, Room 902, 100 Cambridge Street, Boston, MA 02202
Maryland Commission on Criminal Sentencing Policy	Sandra Shane-DuBow, Executive Director 301-405-6739, Fax: 301-405-4733	2220 LeFrak Hall, University of Maryland, College Park, MD 20742,
Michigan State Sentencing Guidelines Commission	Carlo P. Ginotti, Counsel/Administrator 517-373-0170; Fax: 517-373-0171	P.O. Box 30036 Lansing, MI 48909
Minnesota Sentencing Commission	Debra Dailey, Executive Director 612-296-0144, Fax: 612-297-5757	205 Aurora Avenue, Suite 205 St. Paul, MN 55103
Missouri Sentencing Advisory Commission	Tracy Knutson, Executive Director 314-877-1142, Fax: 314-877-1081(1082)	220 S. Jefferson St. Louis, MO 63103
Montana Sentencing Commission	Tammy Plubell, Administrative Officer 406-444-3910, Fax 406-444-4920	P.O. Box 201301 Helena, MT 59620-1301
North Carolina Sentencing & Policy Advisory Commission	Robin Lubitz, Executive Director 919-733-9543, Fax: 919-733-2991	P.O. Box 2472 Raleigh, NC 27602
Ohio Criminal Sentencing Commission	David Diroll, Executive Director 614-466-1833, Fax: 614-728-4703	513 E. Rich St., Suite 100 Columbus, OH 43215
Oklahoma Truth in Sentencing Advisory Commission	Paul O'Connell, Jr., Executive Director 405-858-7027, Fax: 405-858-7040	5500 N. Western, Suite 245 Oklahoma City, OK 73118
Oregon Criminal Justice Commission	Phil Lemman, Executive Director 503-378-2053, Fax: 503-378-8666	155 Cottage Street, NE Salem, OR 97310

COMMISSION OR COUNCIL	CONTACT PERSON, PHONE AND FAX	ADDRESS
Pennsylvania Commission on Sentencing	John Kramer, Executive Director 814-863-2797, Fax: 814-863-2129	P.O. Box 1200 State College, PA 16804-1200
South Carolina Sentencing Guidelines Commission	Ashley Harwell-Beach, Director 803-734-6200, Fax: 803-734-8727	1105 Pendleton Street, Suite 220 Columbia, SC 29201
Utah Sentencing Commission	Edward S. McConkie, Director 801-538-1645, Fax: 801-538-1024	101 State Capitol Salt Lake City, UT 84114
Virginia Criminal Sentencing Commission	Richard Kern, Director 804-225-4565, Fax: 804-786-3934	100 N. 9th St Richmond, VA 23219
Washington Sentencing Guidelines Commission	Dick Van Wagenen, Executive Officer 360-753-3084, Fax: 360-753-6620	PO Box 40927 Olympia, WA 98504-0927
United States Sentencing Commission	John Kramer, Interim Staff Director 202-273-4510, Fax: 202-273-4529	One Columbus Circle, NE, Suite 2-500, Washington, DC 20002

***SOUTH CAROLINA***  
***(continued from page 6)***

of Probation, Parole, and Pardon Services determine the most appropriate specific sanction based upon an analysis of pertinent risk and needs factors.

If the presumptive sentence recommends prison, split, or suspended sentences will not be allowed. Suspended sentences will continue to be used with Community Punishment sentences. Crimes that carry Mandatory Minimum sentences will be subject to guidelines; however, if the Mandatory Minimum is greater than the guidelines recommendation, the Mandatory Minimum will override the guidelines. If the guidelines recommendation is greater, the guidelines will control.

South Carolina Sentencing Guidelines Commission News: The Commission has hired Marchar P. Stagg, formerly of the South Carolina Department of Probation, Parole, and Pardon services, to fill the newly created position of Commission Statistician. Marchar will take over modeling work begun last year by Jack O'Connell, Director of the Delaware Statistical Analysis Center. The addition of this position is critical to our success and the longevity of

the Commission as it greatly increases our independence. In addition, our offices have relocated to the House of Representatives' Office Building. Please take note of our new address and phone number listed on the above contact page.

**RESEARCH IN ACTION  
PARTNERSHIP**

As reported in the April 1996 NASC Newsletter (Issue 3), NASC has joined with the *National Center for State Courts* and the *Conference of State Court Administrators* to form a "Research in Action Partnership." This initiative is funded by the National Institute of Justice.

As part of this joint effort, the Partnership is interested in obtaining information from sentencing commissions. The Project Director, Brian Ostrom of the National Center for State Courts, has recently sent a letter to commissions requesting two sources of information.

- Copies of empirically based research and/or reports that analyze sentencing consistency and disparity, and/or the affects on prison population of implementing sentencing guidelines.

- The most current copy of each state's sentencing guidelines, or if still in the development phase, the most current proposals.

If you have any questions concerning this request, call Brian at 804-259-1523.

## NEWS FROM THE STATES

**ARKANSAS:** The Arkansas Sentencing Commission is preparing its biennial report to the Legislature, which will be completed and distributed by October 11. Included in the report will be a history of the development of the sentencing standards and an assessment of the impact of the standards on the corrections system. The report will present statistics showing the rate of compliance with the standards and will stress the importance of the collection and use of data.

Executive Director, Leslie M. Powell, is working with the directors of the Department of Correction and the Department of Community Punishment to develop a Correctional Plan for Arkansas which will be a basis for a balanced correctional system.

Wanda Hays has been promoted to Research Coordinator. Ms. Hays has been with ASC since its creation in 1993 and was previously employed with the Correction Resources Commission. She will be traveling to Chicago in October to receive additional training on the SPSS program. Congratulations!

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**KANSAS:** During FY 96, the Kansas Sentencing Commission was designated the agency responsible for completing the official prison population projections for the state. Utilizing the Prophet Simulation Model, annual population projections and over 57 individual legislative impacts were completed by the Commission during the legislative session. In an attempt to enhance submission rates and improve data quality, the Commission introduced legislation that permitted revisions to the mandated Journal Entry Form. The revisions resulted in detailing the sentencing data requested and in reducing the current eight to ten page Journal Entry to a more manageable three pages.

Faced with concern over current prison capacity, the Commission worked with both Judiciary Committees in the House and Senate to draft and pass legislation that incorporated the use of "Border Boxes" on the Drug Sentencing Grid. Border Boxes carry a presumptive prison

sentence, however, permit the use of a non prison sanction if there is treatment readily available and the offender presents no threat to society. The imposition of the non prison option under the Border Boxes is not appealable, like a departure. This specific piece of legislation also doubled sentence lengths for the most severe crimes on Levels I and II of the sentencing grid. Introduction and passage of this legislation was viewed as a cooperative effort among legislators to address the need for lengthy sentences for serious violent offenders and the need to provide a treatment option for drug offenders, while at the same time operating within current prison capacity.

The Sentencing Commission was also chosen by the newly formed Youth Authority to complete population projections and profiles of juvenile offenders in state youth centers. The study is part of the Juvenile Justice Reform Act which was passed in the 1996 legislative session. The study is due to be released to the Legislature in January 1997.

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**MARYLAND:** Maryland's voluntary sentencing guidelines which have been in place since the early 1980's, are monitored by the Administrative Office of the Courts and advised by a sentencing guidelines board composed of state judges. These voluntary guidelines were descriptive in origin and designed to be revised whenever actual sentences disagreed with the guidelines more than 66% of the time. Attempts to revise the guidelines in the early 1990's met with resistance, however, when prosecutors accused the Guidelines Board of attempting to reduce sentences since the proposed revisions did call for reductions in sentence lengths for some offenses (as well as increases in sentence lengths for others). Resistance was public and strong enough that the Chief Judge of the State Court of Appeals suspended the revisions, and the extant guidelines remain unrevised since 1987.

In the spring of 1996, the Maryland Legislature passed a bill creating the Maryland Commission on Criminal Sentencing Policy and charged this body to make recommendations on a wide variety of sanctioning issues including:

1. Whether the current system of descriptive guidelines should be retained or modified or whether the state should adopt presumptive sentencing guidelines;
2. Whether parole should be eliminated or retained;
3. Whether good time formulas should be modified;
4. How sentencing alternatives could be incorporated into a coordinated system of correctional options available at state and local levels; and
5. How proposed changes in any of these areas would impact state and local correctional resources.

The new nineteen member Commission, chaired by retired Court of Appeals Judge John F. McAuliffe, has been meeting since late July. Sandra Shane-DuBow is the Executive Director. See page 13 for job announcements.

#### MASSACHUSETTS:

*See feature article beginning on page 3.*

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**MINNESOTA:** The Commission has been working with the legislature to develop sentencing policies that better ensure that state prison resources are reserved for violent offenders and to preserve truth in sentencing. Changes to the guidelines went into effect this past August that will result in more theft offenders being recommended to receive community based sanctions and possible local incarceration rather than prison time. Additional changes are scheduled to take effect in August 1997 that will also help to reserve prison for violent offenders by slightly adjusting recommended durations for nonviolent offenders. The Commission will continue to focus on the sentencing laws and practices for drug offenders but no further major modifications to the guidelines are proposed this year. In addition, the Commission is examining the role of plea negotiations in the sentencing decision.

The Commission participates in a statewide effort to coordinate the sharing of information among members of the criminal justice community. Recent improvements include the development of a statewide data model, the addition of juvenile information and certain misdemeanor information to the computerized criminal history record, and the creation of a statewide system for tracking "orders of protection." Priorities for the upcoming legislative session include the development of a statewide architecture for criminal justice information, the design and implementation of systems that will provide more complete jail and probation information, and the creation of a "data warehouse" to support policy and management decision making.

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**MISSOURI:** The Missouri Advisory Commission has continued its work on the development of advisory guidelines for felony sentencing. In June of 1996, the Commission conducted a second survey of 96 members of

the criminal justice system to solicit input on the draft revision of the guidelines. That group consisted of presiding judges, prosecutors, defense attorneys, public defenders and members of citizen groups. Suggested changes were incorporated where appropriate and consistent. The Commission is making final decisions regarding recommended lengths of the sentencing ranges on the grids. The impact of the guidelines, assuming full compliance, has been analyzed with each new draft. This is consistent with the Commission's charge to consider the resources of the Department of Corrections in its recommendations.

The Commission, in cooperation with the Office of the State Courts Administrator, is also in the process of developing a training program regarding the use of the advisory guidelines to be held in various locations. This training will be made available to judges, prosecutors, public defenders and private attorneys. The finalized advisory guidelines will be released at that time. The Commission will then commence its monitoring of the use of the guidelines by sentencing judges throughout the state.

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**MONTANA:** In July 1996, the Commission celebrated its first anniversary. Those first twelve months were filled with challenges, opportunities, and accomplishments. The accomplishments include: gaining public insight through a public opinion survey of 800 Montana households, collecting detailed data from 1,000 criminal cases in 44 of 56 Montana counties, evaluating sentencing structures across the United States including Montana's indeterminate sentencing structure, drafting a set of Montana sentencing guidelines to facilitate Commission discussion about how guidelines would work in Montana, and finally organizing fifteen public forums across our vast state and receiving a grant from the Edna McConnell Clark Foundation to complete those forums.

On July 25, 1996, the majority of Commission members decided before they could answer the important question of whether guidelines are advisable in Montana, they needed more personal contact with the public. Therefore, the Commission has postponed making that decision until the fifteen public forums are completed. Since July, much of the Commission's efforts have been directed to the planning of and preparation for the public forums. The forums will occur between October 2, 1996, and November 15, 1996.

The Commission has scheduled a meeting for November 20, 1996, to decide whether guidelines are advisable in Montana. Should the Commission decide guidelines are advisable, the Commission would most likely request that the Legislature allow the Commission two more years to develop a guideline proposal, submit that proposal to criminal justice professionals for comment, and identify the impact the proposed guidelines would have on correctional

resources in Montana. The Commission would then submit the guideline proposal to the 1999 Legislature.

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**NORTH CAROLINA:** During the past legislative session, the General Assembly enacted two recommendations offered by the Sentencing Commission. The first recommendation increased the period of post-release supervision for sex offenders and other felons and the second recommendation clarified the relationship of the guidelines to the juvenile law. The Commission is developing a new package of recommendations to improve the Structured Sentencing system and to strengthen community corrections. These recommendations will be introduced in the General Assembly early next year.

The Commission issued its statewide monitoring report for 1995 and published a progress report on Structured Sentencing. These reports show that the new law is achieving its goals of establishing truth in sentencing, increasing time served for violent offenders, channeling nonviolent first offenders into intermediate punishments, expanding resources in the community, and balancing prison populations with prison capacity.

The Sentencing Commission is now on the Internet. The temporary web site is <http://www.nclaw.com/sentencing>.

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**OHIO:** Ohio's new sentencing structure (S.B. 2), based on recommendations of the Ohio Criminal Sentencing Commission, took effect July 1. Commission members and staff developed training materials and conducted scores of seminars for judges, prosecuting and defense attorneys, and other practitioners in anticipation of the new law. The Commission also worked on corrective legislation designed to harmonize S.B. 2 changes with other legislative initiatives.

Meanwhile, the Commission continued work on misdemeanor recommendations, focusing primarily on traffic offenses. A misdemeanor report will be submitted to the legislature early in 1997. Also, legislation was introduced to expand the Commission's charge to a study of juvenile dispositions. The bill passed the Ohio House and awaits consideration in the Senate. We did lots of other good stuff, too. Alas, most of it is too dull to report.

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**OKLAHOMA:** The Oklahoma Truth in Sentencing Policy Advisory Commission completed its recommendations in April 1996 and presented its final report to the Oklahoma Legislature late in the 1996 session. The Commission's proposal received little consideration from the Legislature for basically two reasons: 1) not enough time was given to educate state legislators and 2) there was no fiscal impact completed to address the cost of its recommendations. As a result, the recommendations did not receive adequate

review and action on truth in sentencing issues was subsequently delayed for another year. The focus, therefore, of the Commission's work during this legislative interim is to educate policy makers and the public about the merits of the Commission's product and to prepare a fiscal impact for legislative consideration.

*Public Education* - It's election time in Oklahoma and the political climate has brought truth in sentencing to the forefront of the political debate. Recent publicity of a murder by an inmate while on an early release program has led to the suspension of all early release programs, legislative calls for truth in sentencing, and the resignation of the Director of the Department of Corrections. With the recent publicity and the suspension of early release programs, the public's confidence in the criminal justice system is wavering and prison overcrowding in Oklahoma is at crisis levels.

To promote truth in sentencing legislation, presentations have been arranged with state legislators, law enforcement associations, treatment providers, judges, and the public to build a consensus around the Commission's product. Town meetings have also been scheduled by the League of Women Voters to bring attention to the problems of the criminal justice system and have public support of proposed solutions. Law enforcement alliance groups are also traveling the state educating the public about criminal justice issues and supporting truth in sentencing initiatives.

*Fiscal Impact* - A data subcommittee has been formed to determine the cost of the Commission's plan. The committee is charged with developing a fiscal impact using information acquired by a sentencing study conducted by commission staff supported by data from the Oklahoma Department of Corrections. The Commission will use two impact models, an "in-house" model developed by Commission researchers and NCCD's Prophet model. It is anticipated that both projections will be completed this fall in time for legislative interim studies planned for the first of the year.

With these two areas of focus, we hope that the issue of truth in sentencing will be addressed early in the legislative session. We believe that the political climate is ready for justice reform. The question will be at what cost.

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**OREGON:** Oregon's sentencing efforts continue to revolve around three ballot measures overwhelmingly passed by voters in November 1994.

Measure 17 requires state prison inmates to work full-time. Measure 11 provides mandatory minimum prison sentences for listed person offenses and prohibits sentence reductions for program participation or appropriate institutional behavior. The measure automatically transfers juveniles

*See feature article beginning on page 6.*

committing Measure 11 offenses to adult court. There is no exemption or departure mechanism for first-time offenders or others for whom mitigating factors exist. Finally, Measure 10 amended the Constitution to require a 2/3 majority of the legislature to reduce any voter-approved sentence (i.e., Measure 11).

As a partial response, a 1996 special legislative session approved transferring responsibility to counties for supervision of offenders on probation or post-prison supervision and for felons sentenced to 12 months or less. Under Senate Bill 1145, counties establish Local Public Safety Coordinating Councils (LPSCCs) responsible for planning appropriate levels of punishment, sanctions, and services and allocating community corrections funding from the state. The bill authorizes the local supervisory authority (typically a sheriff or community corrections director appointed in each county) to move SB 1145 offenders among various sanctions with the sentencing judge having veto authority over those changes.

A legislative task force is reviewing Measure 11 for possible changes but appears to be more willing to add crimes to its provisions than remove them. Current prison population projections indicate that Measure 11 alone will double the prison population during the next 10 years.

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**PENNSYLVANIA:** The Pennsylvania Sentencing Commission recently finished holding statewide public hearings on proposed changes to the revised set of guidelines that went into effect in August 1994. The primary changes involve increasing the severity of sentence recommendations for repeat offenders, expanding the use of restrictive intermediate punishments, and providing consistency between the guidelines and the newly enacted "3 strikes" law in Pennsylvania. It is anticipated that these changes will be submitted to the Legislature in early 1997 and, if the General Assembly does not veto the proposal, new guidelines will become effective in the spring of 1997.

Pennsylvania's eleven member Commission received a record number of new appointments this year. The newly elected Governor, Tom Ridge, appointed three new members, and the Supreme Court Justice, Robert Nix, made two new judicial appointments. Further, this is the first time that the Commission has elected a legislative member, rather than a judge, to chair the Commission. John Kramer, Executive Director of the Pennsylvania Sentencing Commission, is also serving as Interim Director of the United States Sentencing Commission. During the past year, Dr. Kramer has been involved in an evaluation of the federal guidelines.

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**SOUTH CAROLINA:**

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**UTAH:** Utah is in the process of repealing all of its mandatory minimum sentences. Last year, following a statewide study, the Utah Sentencing Commission sponsored successful legislation which repealed mandatory minimums for sex offenses. It is also promoting a repeal of mandatory minimums for drug offenses in the coming legislative session. Due in large part to Commission efforts, indeterminate sentencing and parole board powers are being maintained and even augmented in the state.

Currently, the Commission is reviewing and updating the sentencing and release guidelines. Specific adjustments are being contemplated to the criminal history assessment and the crime severity axes and the lengths of stay are being adjusted upward to better reflect current practice. The Commission is also currently exploring the addition of a risk assessment tool for sex offenders to be added to the guidelines and is seeking assistance from any other state on this matter. Our hope is to develop a tool that would better reflect the unique risks sex offenders pose, particularly when the offender lacks any significant criminal history.

The Commission has made it a priority to extensively study intermediate sanctions. The study is beginning with presentations from the primary entities in the criminal justice system and contracting with the University of Utah Graduate School of Social Work to compile a report. As the populations in both adult corrections and the juvenile justice systems rapidly grow, intermediate sanctions will play an increasing role in Utah. The Sentencing Commission is the ideal forum to recommend new alternatives and to improve the existing ones.

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**WASHINGTON:** The Legislature has expanded the Sentencing Commission's duties to include juvenile offender sentencing and directed the Commission to recommend changes in juvenile disposition standards. Washington is the only state that uses a "guidelines grid" approach to juvenile sentencing. The Commission is considering proposals to simplify the grid, create a treatment-oriented disposition alternative for substance abusers, and create a "youthful offender" alternative for juveniles tried and sentenced as adults.

On the adult side, the Commission staff is preparing the first annual report on the sentencing practices of individual judges for serious, armed felonies as required by a 1995 initiative. The report will be published in early December. It will show the percentage of each judge's sentences within the standard range and the reasons for exceptional sentences outside the range.

The Washington State Supreme Court has upheld the state's 1993 "three strikes" law against an array of constitutional challenges. The law requires life imprisonment after the third separate conviction for specified serious felonies.

The Washington Legislature has enacted a "two strikes" law requiring life imprisonment after the second separate conviction for specified sex offenses. A citizen's group is circulating petitions for a "one-strike" ballot initiative mandating life imprisonment for the first conviction of specified sex offenses against children.

*See next column for job announcement.*

ongoing relationship with the Sentencing Commission as a research consultant conducting a study of sentencing disparity.

In August, the Commission convened a public hearing in Denver, Colorado to hear suggestions for simplifying the federal sentencing guidelines.

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**U. S. SENTENCING COMMISSION:** NASC members can tap into a wealth of sentencing materials by accessing the Commission's home page, which was recently rated one of the hottest Internet sites by *USA Today*. A wide selection of information is available, including a category to showcase state sentencing commission materials. Commissions are encouraged to submit in electronic form relevant documents to be posted for global access on the World Wide Web. (See *State Sentencing Commission News*, Issue 3, or contact the Commission's webmaster at (202) 273-4604 for details.)

A comprehensive review of the sentencing guidelines continued to be a top agency priority in 1996. The review's objective is to reduce the complexity of guideline application and to assess how well the guidelines are meeting the congressional objectives outlined in the Sentencing Reform Act of 1984. In order to focus its efforts on this initiative, the Sentencing Commission declared an informal hiatus on guideline amendments for its 1995-96 cycle.

In March, the Sentencing Commission held a public hearing on proposed amendments to its money laundering and child pornography guidelines. Subsequently, on April 30, the Commission sent Congress two guideline amendments that will significantly increase the penalties for individuals convicted of certain sex offenses. The amendments will take effect November 1, 1996, if Congress takes no action to the contrary.

In June, the Commission submitted to Congress two reports, one addressing the issue of the deterrent effect of the guidelines on computer fraud and the other analyzing cases of sexual abuse, child pornography, and the promotion of prohibited sexual contact.

The Commission appointed Dr. John H. Kramer, Executive Director of the Pennsylvania Commission on Sentencing, as its Interim Staff Director effective July 22. Dr. Kramer replaces Ms. Phyllis J. Newton, who served as staff director for more than six years. Ms. Newton will maintain an

## **JOB ANNOUNCEMENTS**

**WASHINGTON STATE:** The Sentencing Guidelines Commission is seeking applications for a *Research Director*. The *Research Director* reports to the Executive Officer and directs a seven-person professional research staff. The *Research Director* is responsible for technical and program management of all projects and related studies in the agency. For more information, qualifications, and application procedures, contact: Richard Van Wagenen, Executive Officer, Washington State Sentencing Guidelines Commission, P.O. Box 40927, Olympia WA 98504-0927. Phone 360-753-3084, Fax 360-753-6620. The closing date is December 1, 1996, but may be extended if necessary.

**MARYLAND:** The Commission on Criminal Sentencing Policy is seeking applications for two positions; an *Associate Director for Policy* and an *Associate Director for Analysis*. The *Associate Director for Policy* will assist in staffing subcommittees, research other jurisdictions sentencing reforms, conduct research on available and needed alternatives to incarceration, assist in the preparation of documents for educational purposes, serve as commission staff liaison to legislative committee staff, and perform other duties as directed. The *Associate Director for Analysis* will assist in staffing the research subcommittee, assist in conducting basic sentencing research, assist in the development of models for sentencing guidelines, assist in prison and jail population projection analysis, perform policy impact analysis, and perform other related duties as directed. For additional information, qualifications, and application procedures, contact Sandra Shane-DuBow, Executive Director. Phone 301-405-6739.

# NASC ON THE INTERNET

As a reminder, NASC has an active Internet site. The NASC's Web site is included under the home page of the United States Sentencing Commission. The Internet address is:

***<http://www.ussc.gov>***

The NASC information is found under the "State Sentencing Commissions" folder. Included are copies of the NASC newsletters (all four editions), copies of the NASC bylaws, and other items of interest. Soon, we hope to post the transcripts of the speakers from the 1996 annual conference in Madison, Wisconsin.

NASC continues to solicit information from the states to add to the site. For more details and submission instructions, please refer to the update for the *United States Sentencing Commission* on page 13.

## IN THIS ISSUE

<i>Feature</i>	<i>Page</i>
New Executive Committee	1
Bylaws Amended	2
1997 Program Chair	2
1996 Conference Highlights	2
Featured States:	
<i>Massachusetts</i>	3
<i>South Carolina</i>	6
Commission Contact List	7
Research in Action Partnership	8
News From the States	9
Job Announcements	13
NASC on the Internet	14

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