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newsletter

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National Association of Sentencing Commissions

Executive Board

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2008 NASC CONFERENCE

BUILDING BRIDGES: PHILOSOPHY, POLICY & PERFORMANCE

AUGUST 3-5, 2008 • THE PALACE HOTEL • SAN FRANCISCO, CALIFORNIA

Every year the NASC Conference brings together hundreds of judges, legislators, academics and policy-makers from around the country to examine our nation's experiences with sentencing laws and practices, and to identify emerging issues and innovations. The Stanford Criminal Justice Center is hosting the 2008 NASC Conference in San Francisco, California, on August 3-5. The conference will be held at the impeccable Palace Hotel, one of the city's finest. The conference registration fee will be \$375 through July 9 (\$400 for late registration). The Palace Hotel is offering the special conference rate of \$190 per night from August 1 through August 6. Please visit the conference website for more information:

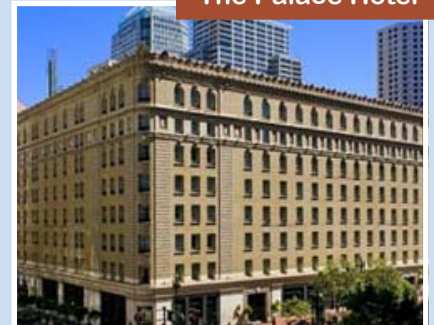
<http://scjc.stanford.edu/nasc2008>.

San Francisco is often called "Everybody's Favorite City," a title earned by its scenic beauty, cultural attractions, diverse communities, and world-class cuisine. Measuring 49 square miles, this very walk-able city is dotted with landmarks like the Golden Gate Bridge, cable cars, Alcatraz and the largest Chinatown in the United States. A stroll of the City's streets can lead to Union Square, the Italian-flavored North Beach, Fisherman's Wharf, the Castro, Japantown and the Mission District, with intriguing neighborhoods to explore at every turn.

Alcatraz



The Palace Hotel



National Association
of Sentencing Commissions

President's Message

On August 3—5, 2008, the National Association of Sentencing Commissions (NASC) will have its annual conference in San Francisco, California, at the historic Palace Hotel. The Palace Hotel is not only a destination point in the heart of the City, it is in easy reach of the Embarcadero, Union Square shopping, the cable cars, Chinatown, North Beach, Pier 39, Fisherman's Wharf and the Golden Gate Bridge — and this is just for starters.



Fisherman's Wharf

Our host this year is the Stanford Criminal Justice Center. A special thank you is already appropriate for the hard work contributed and success achieved by Kara Dansky, the Center's Executive Director. The 2008 theme is *Building Bridges: Philosophy, Policy, and Performance*. We have an exciting addition this year to our conference with the first presentations starting Sunday afternoon, featuring the philosophical and legal roots of sentencing guidelines. "On the Shoulders of Giants" will chronicle and recognize the changes in American law that have made Sentencing Guidelines a reality. These presentations are being organized by Steve Chanenson from Villanova School of Law and Marc Miller from the University of Arizona Rogers College of Law. You won't want to miss the Sunday evening reception that will offer a unique gathering of judges, legislators, policy makers, researchers and academics who all share common concerns about the quality of justice in America.



The Palace Hotel Ballroom

While the agenda is filling up fast, it is not too late to tell us about some of the great work you are doing and issues that you think are important enough to be addressed on a panel or at a roundtable discussion. Please e-mail me at john.o'connell@state.de.us with your input or willingness to volunteer and I will quickly forward it to the planning committee.

San Francisco is an incredible city. The cost of holding a conference in San Francisco is more than in previous conference sites. The conference fee of \$375 (and \$400 for late registration) covers the bare minimum costs. Be assured that the hotel room cost of \$190 per night is well within the federal per diem rate and is very competitive with any other 4 or 5 star hotel in the city.

The National Association of Sentencing Commissions is a truly voluntary organization with no dues. As such, the success of the conference depends so much on our dedicated host, presenters, and sentencing commission staff from around the country who serve on committees and provide services. For instance, the Virginia Sentencing Commission, especially Rick Kern, Meredith Farrar-Owens and Carolyn Williamson are to be thanked for volunteering to produce this newsletter again this year. Please consider contributing information about your state in the forthcoming June issue of *The Sentencing Guideline* newsletter by May 1, 2008.

John P. (Jack) O'Connell,
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Alabama

Alabama Sentencing Commission Focuses on Data Quality, Training and the Expansion of Alternative Sentencing Options

Following adoption and implementation of voluntary sentencing standards in October of 2006, the Alabama Sentencing Commission has focused on analyzing the worksheets and data to determine if judges are changing their sentencing practices to comply with the sentencing standards' recommendations. This process has been both a frustrating and enlightening endeavor. While we acknowledge that "data is our friend," we now realize that it is also a very demanding one. In our attempt to determine compliance, it became apparent that sentencing data acquired through the database of the Administrative Office of Courts was insufficient to meet our needs, inasmuch as identical sentences were ordered in various manners, there was no consistency in sentence entries into the system, and original sentences were often overridden to reflect later modifications such as the suspension of a prison sentence, or the grant or revocation of probation. To resolve these problems, the Sentencing Commission has embarked on sentencing entry training for court specialists, is developing a uniform sentencing order, and will undertake the creation of its own standards compliance database.

While we have experienced the loss of key IT personnel and are currently working with new programmers, the electronic worksheets that were demonstrated in Oklahoma during last year's NASC Conference are undergoing modifications to improve access and encourage greater utilization. In addition to the helpline manned by Sentencing Commission staff, further training on use of the electronic worksheets is planned for this year. In addition, our consultants at Applied Research Services (ARS) are in the process of modifying the Commission's simulation model to include a MS-SQL desktop engine and Visual Basic.Net to streamline all import and date pre-processing data tasks. Further modifications to the simulation model are currently being undertaken by ARS to incorporate easy-to-use application software that utilizes user-friendly dialog boxes and drop-down menus, which will allow the Commission staff to build new worksheets and modify worksheet parameters. The third upgrade to the simulation model includes an integrated management tool that makes it easier to build and archive new policies, as well as store separate scenarios with the estimated impact associated with each scenario. This will give Commission staff the ability to create a new policy scenario, analyze the impact, and save the policy details and results in a library.

Although the Sentencing Commission has been required to focus much of its attention on data issues, it has made great strides towards achieving its goals of sentencing reform, particularly in the area of developing alternative sentencing options. Through the efforts of the Sentencing Commission and the Department of Corrections, community corrections programs have grown from 29 programs serving 38 counties in FY 2006 to 33 programs serving 44 counties in FY 07. As of the beginning of 2008, we have had commitments from 7 counties to establish community corrections programs. In addition, Chief Justice Sue Bell Cobb has announced that one of her top priorities is to establish drug courts in all 67 counties of the state. Last year Alabama had 17 drug courts serving adult offenders in 23 counties. Through the efforts of the Chief Justice's Task Force on Drug Courts, Alabama now has 38 drug courts operating in 37 counties (27 of the 41 judicial circuits). Twenty six (26) more drug courts in 26 counties (15 circuits) are expected to be established in 2008.

To facilitate the development of a true continuum of effective community-based punishment options, which is a key component of many of the Commission reform efforts, The Pew Charitable Trusts' Public Safety Performance Project is providing the Sentencing Commission technical assistance through the Vera Institute of Justice. In addition to conducting a comprehensive survey of existing community corrections programs, the Vera Institute of Justice is assisting with implementation of a joint project of the Chief Justice and the Sentencing Commission, "The Cooperative Community Sentencing Alternatives Project" (TCCSAP). This project will involve the selection of four pilot sites to serve as models for the statewide development of a community-based punishment continuum, selected and provided with technical assistance by a Statewide Steering Committee. Local steering committees will be established in each selected jurisdiction, consisting of key stakeholders who will provide support and participate in strategic planning efforts. Through participation in this program, it is expected that jurisdictions will gain a better understanding of the offender population, their needs and the resources available in their community, and will work in closer collaboration with other criminal justice stakeholders to develop a strategic plan for operation of community-based programs that provide quality supervision and treatment for otherwise prison-bound offenders.

Alabama

Sentencing Commission's 2008 Legislative Package


The Sentencing Commission is introducing 5 bills during the 2008 Regular Legislative Session, with the primary bills including amendment of the Sentencing Reform Act to postpone the implementation of truth-in-sentencing from the scheduled date of October 1, 2009, to October 1, 2011, and amendment of Alabama's split-sentencing statute to prohibit the imposition of consecutive split sentences, elimination of the boot camp provisions and imposition of a maximum term of probation. The major provisions of these bills are summarized below:

Truth in Sentencing - Postpone Implementation until 2011. There are several major tasks that must be accomplished before the adoption and implementation of truth-in-sentencing (TIS): 1) the initial voluntary sentencing standards must be accepted and used effectively; 2) there must be sufficient space in the various levels of corrections (probation, community corrections, prison and re-entry) to accommodate the increased prison population that will result from the implementation of TIS; and 3) TIS standards must be developed and approved by the Sentencing Commission and the Legislature. All three of these must be completed before TIS can be adopted and implemented. The Alabama Sentencing Commission and all of the key criminal justice cast are now working on these critical elements, as well as attempting to evaluate the compliance rate for the existing sentencing standards, improve data entry, collection and analysis, and continue training on proper completion and submission of the sentencing worksheets and use of the electronic forms.

The Sentencing Commission has drafted a timeline as a blueprint for completion of the basic prerequisites for the implementation of truth-in-sentencing and proposes aggressive timeframes beginning January 2008. There are several critical prerequisites, including developing the new sentencing standards themselves, that must occur before truth-in-sentencing can be successfully adopted and implemented in Alabama. A fundamental and most essential prerequisite to establishing a truth-in-sentencing system is developing capacity within the corrections system, e.g., probation, community corrections, prisons, and re-entry supervision. Currently, the capacity to accommodate any meaningful truth-in-sentencing system does not exist. The minimum required to ensure that adequate resources are available to accommodate TIS will include: building at least two new prisons (one for females and one for males) and having them fully staffed and operational; diversion of the maximum number of felony offenders from prison to alternative punishment programs; and expanding and improving probation capacity and supervision by increasing the number of supervising officers.

Until these critical elements - creating capacity, successful implementation and effective use of the initial voluntary sentencing standards; and the development and adoption of TIS standards - Alabama cannot adopt TIS as a sound and effective public safety policy. The Alabama Sentencing Commission is currently working to bring all three elements together and until then is requesting that the Legislature postpone the time for developing and implementing the second set of sentencing standards based on time served, the truth-in-sentencing standards, until 2011.

Amendment of Split Sentencing Statute. This bill amends Section 15-18-8 of the Code of Alabama 1975, to prohibit the imposition of consecutive incarceration portions of split sentences for separate offenses. Under existing law, during the incarceration portion of a split sentence, the offender is not entitled to deductions from his sentence for good time, nor can (s)he be considered for release on parole. There currently is no prohibition regarding the imposition of consecutive split sentences or the stacking of split sentences to require a defendant to serve more than one mandatory imprisonment portion of a split sentence for more than one offense. This bill would expressly prohibit sentencing a defendant to serve multiple consecutive incarceration portions of split sentences upon conviction for more than one offense. It also expressly provides the remedies that are available upon revocation of probation, specifically provides for continuing jurisdiction when a defendant is sentenced to a split sentence, uniformly applies the maximum terms of probation for all types of sentences, eliminates the provisions relating to boot camp (since these disciplinary camps have now been terminated in Alabama), and authorizes full credit for time served on probation, upon successfully completing a court-ordered residential drug or alcohol treatment program. The bill also clarifies that for a split sentence of 15 years or less, during the maximum term of imprisonment imposed (up to three years), a defendant shall not be eligible for good time or parole. It further expressly provides that the sentencing court retains jurisdiction to modify the existing sentence.



Community Corrections Act. Amends §15-18-171(14) to remove convictions for the sale of drugs from the list of excluded offenses for community correction program diversion eligibility. The offense "distribution of drugs" under Alabama's Criminal Code includes both sales and delivery. While a person convicted for the delivery of drugs in violation of the statute is not prohibited from participating in a community corrections programs, under existing law, a person convicted for the sale of drugs (including small amounts) in violation of the same statute is prohibited from participating in a community corrections program. This bill would authorize defendants convicted of the sale of a controlled substance to be considered for participation in a community corrections program. (would not include large amounts of drugs prosecuted as drug trafficking).

Theft of Property. Amends theft of property statutes to classify thefts of property from the custody of a law enforcement agency and donated property under either theft 1st, 2nd or 3rd degree, depending on the value of the property involved. Under existing law, these thefts are only included in the definitional section of the Criminal Code.

Prison Industry. Amends §§ 14-7-7, 14-7-8, 14-7-12 through 15, and 14-7-18 through 22, of the Code of Alabama, relating to the Department of Corrections prison industries, inmate training, and inmate rehabilitation, to authorize the Department to contract with private industry for onsite work programs. The bill also specifically authorizes state, county and municipal employees and nonprofit organizations to purchase products made by prison labor directly from the Department of Corrections, and provides for the vocational training and rehabilitation of inmates through greater utilization of prison industries.

Although the Alabama Sentencing Commission has now implemented voluntary sentencing standards and has expanded alternative sentencing options, much work remains to be done to determine compliance with the standards, ensure evidence-based practices are being utilized in community correction programs and drug courts, and data collection and analysis is being completed to develop and implement truth-in-sentencing standards. This year the emphasis will be on improving the quality of program services, sentencing data, and continuing education for judges, prosecutors, defense lawyers, and court specialists on proper use of the worksheets and sentencing standards. Development of a uniform sentencing order and extensive training on standard procedures for sentencing entries has already been initiated and is expected to be completed by the end of this fiscal year.

Alabama has made extraordinary improvements in its criminal justice system but we realize that we have a long way to go before we reach our goals. The potential for improvement is promising, inasmuch as we have garnered the strong support of our new Chief Justice, Sue Bell Cobb, and continue to have the support of Governor Riley, the Legislature, and Prison Commissioner Richard Allen. The next few years are crucial in successfully implementing the existing sentencing standards and developing effective sentencing alternatives to move toward the adoption of truth-in-sentencing standards.

Commission staff and members are indebted to the NASC members, other sentencing commissions, The Pew Charitable Trusts, and the staff and associates of the Vera Institute of Justice for the assistance provided to Alabama. We would like to take this opportunity to thank each one of you for your invaluable advice, guidance, and friendship.

Alaska

The Alaska Legislature funded the Judicial Council to coordinate and staff a Criminal Justice Working Group. Each of the executive branch agencies is represented by its commissioner, and the courts by their administrative director for the state. The Judicial Council's executive director also is a member. The Chief Justice and Lieutenant Governor co-chair the group. Historically, similar groups have operated in Alaska since the mid-1970s, with the Judicial Council staffing many of them.

Following its first meeting in December, the group decided to focus in two main areas, recidivism/prevention and efficiencies, which will include information technology, data collection, disaster preparedness, and case processing improvements. Issues that the recidivism/prevention committee might consider included barriers for defendants trying to complete treatment, drug, alcohol and mental health problems that could be addressed at re-entry, therapeutic courts, and existing or proposed prevention programs. For the work of the group as a whole, members decided to think about setting goals that could be measured, and about the process of making the changes that the group might agree on.

Members decided to review budget and legislative issues at each meeting, and to set aside time to resolve inter-agency issues that arise between meetings. Examples of inter-agency issues addressed at the December meeting included courthouse security, coordination of DNA testing between the courts and the crime labs, and coordination of training conferences among the different agencies.

The Working Group's next meeting was set for January 15. On January 16 and 17, most of the group's members were scheduled to testify before a Senate Judiciary Crime Summit. The Judiciary Chair, Senator Hollis French (a former prosecutor) hoped to "identify cost-effective methods to combat crimes as well as [identify] concrete actions . . . to improve public safety." Steve Aos, from the Washington State Institute for Public Policy, spoke with the group about evidence-based policies. After January, the group will meet periodically, with separate meetings for committee and subcommittee work.

Delaware

Tracking Justice

The Delaware Statistical Analysis Center (DeSAC), as the research partner for the Delaware Sentencing Guideline Commission (SENTAC) and the Delaware Sentencing Research and Evaluation Committee, provides routine reports that track two important aspects of sentencing. First, sentencing guideline compliance is monitored annually through the SENTAC Compliance Report. Second, the Superior Court Case Processing quarterly report provides an assessment of the Delaware Supreme Courts' Administrative Directive 130, the speedy trial standard. This standard requires 90 percent of the cases be brought to disposition within 120 days.

A key to sentencing guideline compliance is whether an offender is sentenced to jail or prison. Both are known as Level V in Delaware. One of the things that make this difficult is that credit for time served prior to disposition, as defined by law, is counted as a compliance Level V term. While many Superior Court sentencing orders include explicit information regarding "credit for time served," others only provide an indirect reference. To provide an accurate assessment of sentencing guideline compliance, DeSAC reviews the court docket record prose for all notations relating to credit for time served and cross-checks this information with the sentencing order and the Department of Correction pre-trial detention information. Due to limited resources, this analysis is only done for cases where there is at least one Felony C charge in the disposition. Felony C dispositions are selected because they are the least serious crime where the "presumptive" sentence requires at least some Level V incarceration (statutory range of 0 to 15 years and guideline presumptive sentence of up to 30 months). The most frequent Felony C convictions are for possession of illicit drugs with the intent to deliver (drug selling), Rape 4th, Sexual Solicitation of a Child, Kidnapping 2nd, Arson 1st, Burglary 1st, Assault 1st, Carjacking 1st and Theft greater than \$100,000.

Between 2004 and 2006, 76 percent of the Felony C cases include at least some Level V time. Eleven percent of the Felony C sentences exceed the high-end presumptive 30-month range. As a part of Delaware's Truth in Sentencing law, a "regular" Felony C offender must serve a minimum of 75 percent of the Level V sentence, but 12 percent of the Felony C sentences are special "addiction" sentences. Addiction sentences are Level V sentences that embrace the SENTAC principles of rehabilitation within the sentencing guideline framework to give the offender positive incentive for addressing their addiction in a prison based treatment program. An addiction sentence tends to be longer than the "regular" sentence, which serves to motivate the offender to complete the Level V treatment program. Addiction sentences can be suspended upon successful completion of either the 12 to 18 month prison addiction treatment program or the six-month boot camp program.

The Superior Court Case Processing report at the end of each quarter examines the number of cases that exceed 120 days (the 90 percent speedy trial compliance standard), 180 days (the 98 percent speedy trial compliance standard), and one year (the 100 percent speedy trial compliance). The analysis differentiates between special cases such as homicide and those involving mental health examinations because these cases are subject to separate standards. On December 31, 2007, 291 cases exceeded the 120-day speedy trial standard. Of these, 178 cases were explicitly affected by the Administrative Directive 130 speedy trial standards, representing about 14 percent of the Department of Correction's pretrial detention population. Sixty-five cases exceeded the 180-day standard, and 45 cases exceed the one year standard.

Massachusetts

Legislation

The Massachusetts legislature is currently considering a number of sentencing reform proposals. Five of the sentencing reform bills include a comprehensive set of sentencing guidelines. A hearing on proposed sentencing guidelines legislation was held on November 13, 2007, before the Joint Committee on the Judiciary. Prior to the legislative hearing a number of events on the topic of sentencing reform were convened in the Boston area.

On October 17, 2007, the Rappaport Institute at the Kennedy School of Government sponsored a symposium on "Incarceration and Inequality." Bruce Western, professor of sociology at Harvard University, discussed his research on the impact of incarceration on individuals and communities. Chief Justice Robert Mulligan, chairman of the Massachusetts Sentencing Commission, discussed research on the growth of the correctional system in Massachusetts and the need for sentencing reform. In the fall of 2007 the Massachusetts correctional system surpassed the level of 25,000 inmates for the first time in the history of the commonwealth. With a capacity of 16,000 beds, the shortfall of 9,000 beds has never been larger.

On October 23, 2007, the Massachusetts Bar Association (MBA) sponsored a sentencing symposium at the Massachusetts State House to discuss the crucial issue of sentencing reform. MBA president David White headed a panel that included members of the legislature, judiciary, academia, sheriffs, public safety, defense bar, and advocacy groups. Representative Roger Goodman from the state of Washington spoke of the success of sentencing reform in his state.

The Massachusetts Sentencing Commission remains encouraged by the continued interest in sentencing reform.

CourTools

The Massachusetts Sentencing Commission had been assisting the Administrative Office of the Trial Court with a court metrics project. The Trial Court has adopted the National Center for State Courts CourTools, a set of ten metrics designed to offer court managers a balanced perspective on court operations. The results of the implementation of the four metrics that address timeliness and expedition can be found at:

<http://www.mass.gov/courts/metricreport06.pdf>. In 2007 the Sentencing Commission assisted with the implementation of a fifth metric, designed to assess ratings of court users on the court's accessibility and its treatment of customers in terms of fairness, equality, and respect. Information on CourTools can be found at http://www.ncsconline.org/D_Research/CourTools/tcmp_courttools.htm.

Byrne Grant Award

The Massachusetts Sentencing Commission was awarded funds from the state's Byrne Grant program to fund a project entitled "Collaborative Training Initiative with Criminal Justice Agency Research Staff." Through many years of coordinated efforts, much information in Massachusetts' criminal justice agencies is highly automated. This automated information can be used to support research activities such as statistical reporting, program monitoring, performance measurement, impact evaluations, and data-mining. As automated criminal justice information systems continue to be developed, agency research staff should be trained in the most current and innovative research technologies. Many criminal justice agency staff may not be specifically assigned or trained as researchers but may have a great deal of automated information available and want to apply basic research methods to the extraction, analysis, and presentation of that data. The goal of the project is to enhance the ability of criminal justice agency personnel - both research staff and others - to contribute to the development of effective criminal justice policy through empirical research.

The first part of the project involves a needs assessment survey so that training topics and the levels of instruction are targeted to the needs of the criminal justice agency staff. The second part of the project involves providing training in such areas as the use of office automation products to support research (e.g. databases, spreadsheets, presentation software), statistical packages (e.g. SAS, SPSS), data extraction and exchange technologies (e.g. XML, HTML, Crystal Reports), and mapping.

By providing joint training to research staff in criminal justice agencies including sentencing, corrections, probation, parole, sheriffs, police, victim services, community corrections, the project also serves to develop a strong network among the agencies and staff which further promotes the exchange of knowledge, information, and technology.

Pennsylvania

Proposed revisions to the sentencing guidelines

Pennsylvania's initial sentencing guidelines became effective June 22, 1982, and were subsequently amended on nine occasions, most recently in 2005 (6th Edition). The Commission is proposing the following revisions to the 6th Edition sentencing guidelines: assigning new offense gravity scores (OGS) to certain offenses; adding a law-abiding behavior requirement to the juvenile lapsing provision; expanding recommendations for consideration of state intermediate punishment; and providing recommendations for the use of fines and community service as restorative sanctions as an initial response to the requirements contained in Act 2007-37. Some of the major revisions that are being proposed are as follows:

Juvenile lapsing provision. The current guidelines provide a lapsing of certain juvenile adjudications if the offender is 28 years of age or older at the time the current offense was committed. The Commission has proposed including a requirement for a ten-year period of law-abiding behavior in order for this lapsing to occur. Law abiding behavior is defined as a period with no adjudications or convictions for misdemeanors or felonies, and no confinement related to prior adjudications or convictions for misdemeanors or felonies. While retaining the lapsing provision, this proposal takes into account the higher risk for re-offending by youthful offenders that persist in criminal activity.

Alternative sanctions. Pennsylvania's sentencing options provide for County Intermediate Punishment and State Intermediate Punishment to be used in lieu of county jail and state prison, respectively. The current guidelines provide a 30 month minimum sentence threshold for targeting the use of intermediate punishments: offenders with a minimum sentence recommendation of less than 30 months are recommended for county intermediate punishment, and those with a minimum sentence recommendation of 30 months or greater are recommended for state intermediate punishment. The Commission has proposed a change that would place greater emphasis on recommended place of confinement [i.e., county jail or state prison] for targeting the use of intermediate punishments, to promote greater consideration of these options at both the state and county level.

Economic sanctions recommendations. The current guidelines provide recommendations for three categories of economic sanctions: fines, costs and fees, and restitution. Pursuant to Act 2007-37 the Commission is required to adopt guidelines for fines and other lawful economic sanctions, and to prescribe community service alternatives that may be imposed in lieu of fines. The Commission is

undertaking a comprehensive study of the use of fines and other economic sanctions as part of this effort, with particular focus on the imposition and collection of fines in recent years. However, as an initial response to the mandate of Act 37, the Commission has advanced a proposal, limited to the least serious offenders, which provides structured sentencing recommendations for the use of fines and/or community service as restorative sanctions without confinement. In order to avoid concerns regarding an offender's ability to pay, the Commission used community service hours as the starting point for its recommendations, since community service could be ordered without consideration of ability to pay. The proposal links the number of hours of community service recommended to the existing guideline recommendations, so that those offenders with more serious offenses or more extensive criminal history are recommended for more hours of community service. If the court determines the offender does have the ability to pay, and chooses to impose a fine, the proposal uses the community service recommendation to determine the fines recommendation. The proposal contains a sliding scale, in which the fine is determined by multiplying the number of hours that would otherwise have been ordered as community service by the offender's hourly wage, with the state minimum wage serving as the default. Based on experiences in other jurisdictions, the scaling of fines to ability to pay leads to higher compliance rates and increased overall collections.

The Commission will be holding three public hearings to receive comments on the proposed revisions to the sentencing guidelines. The Commission will evaluate the proposed revisions after consideration of the testimony and comments received. Any amendments adopted by the Commission will be submitted to the General Assembly for review. Proposed amendments become effective 90 days after publication unless rejected by concurrent resolution of the General Assembly.

Pennsylvania

State Intermediate Punishment Legislative Report

In January 2008 the Commission released its 2008 Legislative Report on Pennsylvania's State Intermediate Punishment Program. In 2004, Pennsylvania's General Assembly passed legislation creating the State Intermediate Punishment [SIP] Program, which is a two-year, step-down, substance abuse program for offenders sentenced to state prison [Act 112 of 2004]. The program was established in 2005, and since that time, there have been 1,022 offenders referred to the Department of Corrections for evaluation, 662 offenders sentenced to the program, 44 offenders expelled, and 22 who have successfully completed the program. Since the Commission's last legislative report in 2006, the number of counties sentencing offenders to the SIP Program has grown from 20 to 51 [out of 67 counties], though the Department of Corrections has estimated that there are over 4,600 SIP eligible offenders who have been sentenced to prison but not referred to the program since the program was established.

While there are too few offenders at this point to conduct meaningful statistical analysis between offenders who complete the program and offenders who are expelled, preliminary analyses indicated some significant differences. Preliminary findings comparing offenders who successfully complete SIP with those who are expelled from the program show that those who use crack, are younger, and score higher on the recidivism risk assessment scale are more likely to be expelled from the program than those who do not use crack, are older, and score lower of the recidivism risk scale. This issue of trying to distinguish which offenders are most likely to successfully complete the program will continue to be examined by the Commission for the Commission's next report. Additionally, the next report will include the findings of the Commission's first recidivism study of SIP offenders to see which offender's are most likely to desist from future crime.

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Virginia

Violent Offenders in Virginia's Prison Population

January 1, 2008, marked the thirteenth anniversary of the abolition of parole and the institution of truth-in-sentencing in the Commonwealth of Virginia. Sentencing reform dramatically changed the way felons are sentenced and serve time in Virginia. For felonies committed on or after January 1, 1995, the practice of discretionary parole release from prison was abolished and inmates were limited to earning no more than 15% off their sentences. Virginia's felons now must serve at least 85% of their prison or jail terms. A critical component of the new system was the integration of sentencing guidelines for use in felony cases tried in the state's circuit courts. Originally adopted by Virginia's judges several years before, the voluntary sentencing guidelines were revised to be compatible with the truth-in-sentencing system. Primary features of the new guidelines were codified in 1995. The Virginia Criminal Sentencing Commission was created to implement and oversee the new truth-in-sentencing guidelines, to monitor criminal justice trends, and to examine key issues at the request of policymakers.

Abolishing parole and achieving truth-in-sentencing were not the only goals of sentencing reform. Ensuring that violent criminals serve longer terms in prison was also a priority. The General Assembly adopted modifications to Virginia's sentencing guidelines to increase the sentences recommended for violent offenders. The sentencing enhancements built into the guidelines prescribe prison sentences for violent offenders that are significantly longer than historical time served by these offenders under the parole system.

Unlike other initiatives, which typically categorize an offender based on the current offense alone, the truth-in-sentencing legislation defines an offender as violent based on the totality of his criminal career, both the current offense and the offender's prior criminal history, including juvenile adjudications. Section 17.1-805 of the *Code of Virginia* defines violent offenses for the purposes of the guidelines. Included in the definition are offenders convicted of burglary of a dwelling and burglary while armed with a deadly weapon. The definition also includes offenders who have been convicted of any burglary in the past. For nonviolent offenders, the sentencing guidelines recommend terms roughly equal to the terms they served prior to the abolition of parole. In addition, as directed by the General Assembly, the Sentencing Commission has developed and implemented an empirically-based risk assessment instrument to identify the lowest risk, incarceration-bound, drug and property offenders for alternative (non-prison) sanctions.

Sentencing reform has resulted in longer prison terms for violent offenders. This approach to reform was expected to alter the composition of the state's prison population. Over time, violent offenders queue up in the system due to longer lengths of stay than under the previous system. Nonviolent offenders sentenced to prison, by design, are serving about the same amount of time on average as they did under the parole system. Moreover, with the use of risk assessment, a portion of nonviolent offenders receive alternative sanctioning in lieu of prison. As a result, the composition of the prison population has been undergoing a dramatic shift.

Using the definition of a violent offender set forth in § 17.1-805, the prison population is now composed of a larger percentage of violent offenders than when parole was abolished. On June 30, 1994, 69.1% of the state-responsible (prison) inmates classified by the Department of Corrections (DOC) were violent offenders. At that time, nearly one in three inmates was in prison for a nonviolent crime and had no prior conviction for a violent offense. By May 30, 2004, the percent of the inmate population defined as violent had increased to 74.4%. As of June 13, 2007, 79.1% of the inmate population was defined as violent under § 17.1-805.

A clear shift has taken place. Because violent offenders are serving significantly longer terms under truth-in-sentencing provisions than under the parole system and time served by nonviolent offenders has been held relatively constant, the proportion of the prison population composed of violent offenders relative to nonviolent offenders has grown. As violent offenders continue to serve longer terms and risk assessment identifies low-risk nonviolent offenders for alternative punishment options, the proportion of violent offenders housed in Virginia's prison system should continue to increase over the next several years. The Commission will continue to monitor this trend.

Virginia

Methamphetamine Crime in Virginia

Methamphetamine, a derivative of amphetamine, is a potent psychostimulant that affects the central nervous system. A man-made drug (unlike other drugs such as cocaine that are plant derived), methamphetamine can be produced from a few over-the-counter and low-cost ingredients. In the United States, the use of methamphetamine is most prevalent in the West, but is becoming increasingly popular in the Midwest and South as well. Concern over the potential impact of methamphetamine-related crime in Virginia prompted the 2001 General Assembly to direct the Commission to examine the state's felony sentencing guidelines for methamphetamine offenses, with specific focus on the quantity of methamphetamine seized in these cases. The Commission conducted a second detailed study in 2004. Many public officials in Virginia have remained concerned about methamphetamine in the years since the Commission's last study. In response, the Commission this year has completed a third study, and the most comprehensive to date, on this specific drug.

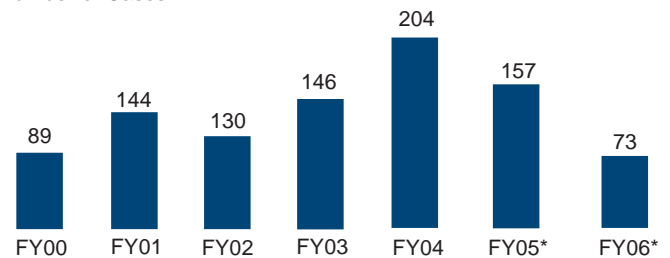
In its 2001 and 2004 studies, the Commission found that the number of convictions involving methamphetamine, although increasing, represented a small fraction of the drug cases in the state and federal courts in the Commonwealth. Overall, the Commission's analysis revealed that sentencing in the state's circuit courts was not driven by the quantity of methamphetamine seized. The offender's prior record and the number of charges resulting in a conviction were the most important factors in determining the sentencing outcome. The Commission carefully considered the existing sentencing guidelines and current statutory penalties applicable in methamphetamine cases. With little evidence to suggest that judges were basing sentences on the amount of methamphetamine seized, the Commission did not recommend any adjustments to Virginia's historically-based sentencing guidelines to account for the quantity of this drug. This year's study, included as a chapter in the Commission's *2007 Annual Report*, presents the most recent data available on use of the drug, lab seizures, and arrests and convictions in the state. Several findings are highlighted below.

The number of methamphetamine laboratory seizures by federal or local agencies in Virginia has decreased substantially in the past few years, from a peak of 66 in 2004 to 18 in 2006 (preliminary). As of August 31, 2007, 11 methamphetamine lab seizures had been reported to the DEA for 2007. Methamphetamine laboratory seizures within Virginia are largely clustered in the Southwest region of the state. This pattern may be attributable to the common borders shared with Tennessee and Kentucky, both of which have been listed among the top ten states in methamphetamine lab seizures for the past three years.

The number of methamphetamine cases in the state's circuit courts increased between fiscal year (FY) 2000 and FY2004. In FY2000, 89 cases involved manufacturing, distributing, selling, possessing with the intent to sell, selling for accommodation or possessing (without the intent to sell) methamphetamine. This number increased dramatically in FY2001 and peaked in FY2004 at 204 reported cases. Data for FY2005 and FY2006 suggest a downward turn in the number of methamphetamine convictions, with 157 and 73 cases in each year, respectively. Figures for recent years are subject to change due to lags in reporting and may increase as additional reports are received; however, it is unlikely that FY2006 cases will exceed the number of cases recorded in FY2004.

Methamphetamine Convictions in Virginia's Circuit Courts, Fiscal Years 2000-2006


Number of Cases



*Data are incomplete. While the figures for prior years may increase slightly as post-sentence reports are received, the figures for FY2005 and FY2006 should be considered incomplete and subject to greater increases.

Note: A case includes all convictions that are handled together in the same sentencing hearing.

Source: Pre/Post-Sentence Investigation (PSI) Report Database



Methamphetamine remains much less pervasive in Virginia than other Schedule I or II drugs. Among circuit court cases involving the most commonly reported drugs (cocaine, heroin, ecstasy, and methamphetamine), cocaine was listed as either the primary or secondary drug in 87% of FY2005 cases. Methamphetamine was recorded as one of the two drug types in 5% of the cases that year.

Most felony offenses involving a Schedule I or II drug are covered by Virginia's sentencing guidelines. The guidelines worksheets take into account an offender's prior record and the nature of the current offense. With the exception of cocaine offenses, the quantity of the drug seized does not affect the guidelines recommendation. On July 1, 1997, the Commission implemented guidelines enhancements for offenders convicted of manufacturing, distributing, selling or possessing with the intent to sell certain amounts of cocaine. Based on analysis of historical data, the Commission approved guidelines enhancements that increase the sentence recommendation in cases involving large amounts of cocaine. A factor on the prison sentence length worksheet increases the midpoint recommendation by 3 years for cocaine distribution involving 28.35 grams (1 ounce) up to 226.7 grams (just under a half-pound). For the distribution of 226.8 grams of cocaine (a half-pound) or more, the midpoint recommendation is increased by 5 years.

Each year, the Commission monitors the sentencing guidelines system and considers possible modifications to increase the usefulness of the guidelines. The Commission analyzes changes and trends in judicial sentencing practices in order to identify specific areas where the guidelines may be out of sync with current judicial thinking. This year, the Commission examined the sentencing guidelines in relation to methamphetamine offenses. The Commission found that there is no empirical evidence at this time to support revisions to the sentencing guidelines based on the quantity of methamphetamine.

Rigorous testing, using the same methodology and statistical techniques employed during the development of Virginia's historically-based guidelines, did not reveal a statistically significant relationship between the quantity of methamphetamine and sentence outcome. Numerous categorizations and permutations of the amount of methamphetamine were formulated in order to identify any points at which the quantity may have affected the length of sentences imposed by the judges, controlling for other factors related to the offender and offense.

The Commission, however, will continue to monitor and examine patterns in the sentencing of methamphetamine cases and the impact of drug quantity.

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