The Sentencing Guideline

A publication of the National Association of Sentencing Commissions

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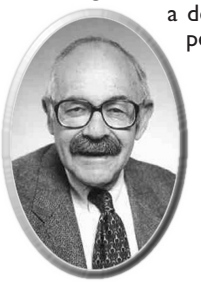
FOCUS ON DRUGS

Crime Up As NASC Conference Convenes in Virginia

Several of the nation's top crime experts are set to address the annual conference of National Association of Sentencing Commissions, the first conference that comes as the nation's level of serious crime is on the rise. After a decade of steady declines, the FBI reported preliminary figures on June 24 that show a 2 percent increase in the overall number of serious crimes reported to police. Robberies were up 3.9 percent; burglaries rose by 2.6 percent.



Speakers scheduled for the Williamsburg, Va., conference Aug. 4-6 include:

- Alfred Blumstein of Carnegie Mellon University *(pictured at left)*
- Charles Wellford of the University of Maryland
- James Austin, director of the Institute on Crime, Justice and Corrections
- Urban Institute Senior Fellow Jeremy Travis, and
- U.S Assistant Attorney General Deborah J. Daniels.

The conference speakers are expected to address the relationship between the crime rate and sentencing practices, including what the 2001 uptick in crime may indicate about the efficacy of community policing, community corrections, gun control and enforcement, incarceration and release practices.

The conference, entitled "Sentencing and Justice in America: That the Future May Learn from the Past," also will include discussions of the federal sentencing guidelines, sentencing disparities, drug treatment initiatives, fiscal accountability, deterrence, and risk assessment.

Despite budget cutbacks and travel restrictions in many states, more than 100 sentencing practitioners from across the country are expected to attend. Budget reductions in Michigan forced the elimination of that state's sentencing commission, though its guidelines remain in effect.

U.S. Supreme Court Says *Apprendi* Rule Does Not Apply to Mandatory Minimums

Five justices of the U.S. Supreme Court declined June 24 to extend the rule from *Apprendi v. New Jersey*, 530 U.S. 466, 67 CrL 483 (2000), to mandatory minimum sentencing schemes. A divided majority held that a fact that increases the minimum sentence for an offense without increasing the maximum sentence may be treated as a sentencing factor rather than as an element of the offense. (*Harris v. United States*, U.S., No. 00-10666, 6/24/02)

In *Apprendi* the court noted that, since *McMillan v. Pennsylvania,* 477 U.S. 79 (1986), courts have distinguished between "sentencing factors," which are found by the trial judge at sentencing by a preponderance of the evidence, and offense "elements," which trigger the constitutional guarantees of a jury trial, the reasonable doubt standard, and (in federal prosecutions) grand jury indictment. In *McMillan,* the court upheld a state statute that boosted the minimum sentence for a crime on the basis of a fact—the visible possession of a firearm during the crime—that was found by a judge by a preponderance of the evidence.

The concept of sentencing factors described in *McMillan* came in for criticism in *Apprendi.* The *Apprendi* court, recognizing a limit on legislatures' power to define crimes and designate facts as either offense elements or sentencing factors, held that any fact, other than a prior conviction, that increases the statutory maximum penalty for an offense must be treated as an element of the offense. It noted, however, that the case did not require it to address the continued vitality of *McMillan.*

In the wake of *Apprendi*, some courts have broadly read the principles applied in that case as logically extending to all facts that define the range of punishment, including facts that increase the statutorily prescribed minimum sentence. See, e.g., *United States v. Strayhorn,* 250 F.3d 462, 69 CrL 308 (6th Cir. 2001). Courts have also struggled with whether and how to apply *Apprendi* to guideline sentencing schemes. See, e.g., *United States v. Guevara,* 277 F.3d 111, 70 CrL 245 (2d Cir. 2001). As the defendant in the instant case noted, an increase in a minimum sentence truncates the discretion of the sentencing judge, whereas an increase in a maximum sentence broadens the judge's discretion. They also noted that, since few defendants are sentenced to the maximum, an increase in the minimum sentence will affect more defendants than an increase in the maximum sentence. **(continued on Page 2)**

NASC Mission Statement

"To facilitate the exchange of ideas, sata and expertise among sentencing commissions and to educate amd inrom policymakers and the public on issues related to sentencing policies and sentencing commissions."

(continued from Page 1)

Historical Practice

A plurality opinion written by Justice Anthony M. Kennedy and subscribed by Chief Justice William H. Rehnquist and Justices Sandra Day O'Connor and Antonin Scalia reaffirmed *McMillan*'s vitality and distinguished between the Constitution's requirements for facts that increase a minimum sentence, and those for facts that increase the maximum sentence. Justice Stephen G. Breyer added a concurring opinion in which he agreed that facts triggering an increased minimum sentence need not be treated as offense elements, but he held on to his belief that *Apprendi* was wrongly decided.

The plurality observed that the decision in *Apprendi* was based on the historical practice of treating facts that increase the maximum punishment as offense elements. In contrast, there is no clear record of how history treated facts that increase the minimum punishment, the plurality said. *McMillan* emphasized that the fact triggering the mandatory minimum sentence in that case was the type of fact that has traditionally been treated as a circumstance for judges to weigh when exercising discretion to pick a sentence within a statutorily prescribed range, the plurality said.

Reconciling *Apprendi*

In view of this understanding of historical practice, there is nothing inconsistent between the holdings in *Apprendi* and *McMillan,* the plurality decided. It observed that the rights to indictment, jury trial, and proof beyond a reasonable doubt limit the ability of the government to impose punishment, and that legislatures may not manipulate the definition of crimes and the designation of sentencing factors to circumvent these limits. In both *Apprendi* and *McMillan,* the court asked whether the Constitution allowed a legislature to label a fact as a sentencing factor. For a fact that increases the maximum sentence the answer is no; for a fact that increases the minimum sentence, the answer is yes, the plurality decided. It reasoned:

If the facts judges consider when exercising their discretion within the statutory range are not elements, they do not become as much merely because legislatures require the judge to impose a minimum sentence when those facts are found—a sentence the judge could have imposed absent the finding. ... There is no reason to believe that those who framed the Fifth and Sixth Amendments would have thought of them as the elements of the crime.

Once a jury determines the existence of facts that establish the maximum sentence, the rights to indictment, jury trial, and proof beyond a reasonable doubt no longer come into play, the plurality concluded.

Turning to the instant case, the plurality and Breyer upheld an imposition of the mandatory minimum sentence provided by 18 USC 924(c)(1)(A)(ii) for cases in which a defendant convicted of using or carrying a firearm during and in relation to a violent crime or drug trafficking crime brandished the firearm during the offense.

The plurality and Breyer also pointed out that even if they were to hold that *Apprendi* applies to mandatory minimum sentencing schemes, the holding would not signal the end to such schemes, which have been criticized as impeding parity in sentencing. The facts that trigger mandatory minimums would just have to be charged and found by the jury.

Other Views

O'Connor, unlike Breyer, signed onto all of Kennedy's opinion for the plurality, but she too added a concurring opinion to express her continued belief that *Apprendi* was wrongly decided.

Dissenting, Justice Clarence Thomas, joined by Justices John Paul Stevens, David H. Souter, and Ruth Bader Ginsburg—all members of the *Apprendi* majority—argued that the principle they were applying in that case was broader than a rule that focuses on the maximum sentence authorized for an offense. "Whether one raises the floor or raises the ceiling it is impossible to dispute that the defendant is exposed to greater punishment than is otherwise prescribed," the dissenters said.

The fifth justice who signed onto Stevens' majority opinion in *Apprendi* was Scalia. Scalia did not write a separate opinion in this case, but he did offer his views on the scope of the *Apprendi* rule in *Ring v. Arizona,* above, 71 CrL 373, 474.

William C. Ingram, of the Federal Public Defender's Office, Greensboro, N.C., argued for the defendant. Michael R. Dreeben, of the U.S. Solicitor General's Office, argued for the government.

Message from the Chair

"Government is not reason, it is not eloquence, it is force; like fire, a troublesome servant and a fearful master. Never for a moment should it be left to irresponsible action."

- George Washington

Colonial Williamsburg, with its ties to America's founding generation, seems an excellent setting for our members to share their views and to consider Mr. Washington's advice while deliberating on issues in criminal sentencing policy. The business meeting of the National Association of Sentencing Commissions is scheduled for August 6, 2002 in Williamsburg, Virginia and concludes the NASC annual conference that begins August 4. The Executive Committee hopes all NASC members will attend and participate in the meeting, which includes a luncheon beginning at noon. We had a lively discussion last year and expect more of the same.

The NASC Executive Committee consists of seven members elected by the membership attending the Annual Conference. Four positions are coming up for election this year. During the conference, members will be asked to vote for up to four candidates, using ballots and biographical sketches of the candidates provided at conference registration. Ballots will be counted Tuesday morning and the election results will be announced at the business meeting.

Of the four board seats up for election, three seats are open and we encourage members to consider standing for election or nominating colleagues prior to July 20th. We ask that volunteers/nominees supply a biographical sketch by July 20th (fax: 202-353-7831; email: khunt@dcacs.com).

See you in Williamsburg,

Kim S. Hunt
Chair, NASC

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Alabama: Commission Gains New Access to Data

The good news for Alabama is that the Sentencing Commission still exists to continue its comprehensive, systematic analysis of sentencing in Alabama and to make recommendations for needed changes. The Commission is funded for FY 02-03 and has greater access to sentencing data than originally granted. The Legislature, at the Commission's request, extended the deadline for the Commission's recommendations until the March 2003 and granted the Commission complete access to all state confidential criminal justice data. The Legislature also, for the first time, included the Commission in the State's general fund appropriation. Additional funding will be provided through federal grants.

The Commission's primary focus this year has been to obtain reliable accurate data on felony sentencing practices in Alabama. Because separate state agencies keep separate records in different systems, this has been a formidable task. The Commission now has a cohort of almost three years of sentencing data from the court system and the State Criminal Justice Information System showing the arrest date, conviction and date, location of the conviction, sentence imposed, and prior conviction and arrest records of the offender. These records also show the age, race, and sex of the offender, whether the conviction resulted from a guilty plea, and the original formal charge. The Commission also has a cohort of all offenders incarcerated with the Department of Corrections during a three-year period. This cohort includes the same factors but adds time served and type of release. The Commission has ranked Alabama's offenses, for analysis purposes, and is beginning to use this data to identify sentencing problems.

Alabama is working to obtain more detailed information on offender, offense, and victim demographics. To solve the immediate need for detailed information, the Alabama Department of Pardons and Paroles has agreed to assist with sampling probation files. The Department of Pardons and Paroles, along with the Administrative Office of Courts and with the participation of the Commission has also begun to build an automated system for collecting and maintaining pre-sentence investigation data. Preliminary designs are now being considered by the agencies involved and implementation should occur within the next three months.

By the end of this year, Alabama should have a comprehensive database of sentenced offenders. Significant sentencing problems should be identified and the Commission should begin to recommend changes in policy to solve those problems.

Alaska: Therapeutic Justice for Drug and Alcohol Offenders

The new concepts behind drug courts have fired the imaginations of Alaska legislators and administrators in the past year, resulting in two major new therapeutic courts and increased resources for several existing projects. The individual efforts of two judges to create specialized programs for misdemeanor alcoholics and for defendants with mental health issues led to the creation of new projects throughout the state. The legislature, courts and justice agencies obtained federal funds for an Anchorage felony drug court and substantial state funds for an Anchorage court focused on felony drunk drivers and a Bethel court serving repeat offenders with alcohol or drug problems.

The major incentive for defendants to participate in these projects is a reduction in sentence or eventual charge dismissals. Program length for most of the therapeutic courts ranges from 12 to 18 months, with frequent court hearings, random monitoring of drug and alcohol use, and other demanding conditions. Early interviews with judges and attorneys suggest that few defendants are interested in discussing the programs unless they face substantial incarceration time. These defendants tend to be older, repeat offenders. For most first offenders eligible for the programs, the expected sentence would include little to no incarceration and relatively light supervision of probationary terms. The therapeutic programs appear too rigid and difficult for them, particularly because the increased supervision would increase the chances of being penalized for probation violations or new offenses. Legislation passed in 2001 and 2002 allows judges to reduce mandatory minimums or presumptive sentences and otherwise offer sentencing incentives for therapeutic court participants.

The legislature and court have asked the Alaska Judicial Council, an independent state agency, to evaluate five of the therapeutic projects. Most of them have not been established long enough evaluate. The Alaska Law Review will publish an article in June 2002, co-authored by current and former Judicial Council staff, on the costs and benefits, legal issues and program structures for Alaskan therapeutic courts.

Georgia: Commission Approves Options System Targeting Drug Addicted Offenders

As it establishes sentencing guidelines for Georgia, the Governor's Commission on Certainty in Sentencing has approved a new sentencing option for judges intended to cut recidivism among drug addicted and other higher-risk offenders.

Recognizing the successful supervision techniques employed by drug courts in Georgia and across the country, the Commission recommended that judges gain the option to sentence offenders to the Department of Corrections with orders to respond swiftly and certainly to violations of supervision, and to reward compliance by moving offenders up and down the "ladder" of correctional options through an administrative due process. Technical violators would be handled through a structured departmental system and would not crowd jail and court dockets waiting for court dispositions. New criminal offenses, however, would be adjudicated in court.

The Options system would be built on the state's growing base of correctional alternatives. In January 2004, a likely date of guidelines implementation, the state will have approximately 9,000 "alternative beds" in Probation Detention Centers (short-term incarceration), Probation Diversion Centers (similar to work release facilities), Residential Treatment Centers (more intensive, longer term treatment for substance abusing offenders) and Probation Boot Camps. In addition, the state has an array of non-secure or community options, including a Day Reporting Center (in Atlanta) and Intensive Probation Supervision.

Under the Commission's proposal, judges would retain the ability to sentence offenders to specific options programs and to "stack" options (i.e. 4 months in a Probation Detention Center followed by 6 months in a Probation Diversion Center). But they would gain the opportunity to sentence offenders to a specific period of time in either "secure" or "community" options. Offenders sentenced to secure options could be initially placed at any one of the secure facilities (but not prison) and subsequently placed in any of the community options or probation for successful compliance, but returned administratively to a secure option for non-compliance. Offenders sentencing to community options could not be placed in a secure option (or prison) without specific judicial approval.

As many guideline states have done, the options target population will be represented by a stripe through the middle of the sentencing grid. Likely candidates are felony offenders, especially substance abusers, whom otherwise might serve relatively short prison terms, and higher-risk offenders who might be sentenced to probation, but who need more supervision/structure than "regular probation" provides.

The Commission views the Options system as a way to implement the drug court model on a scale broad enough to significantly impact jail and court docket crowding (Georgia courts currently hear about 35,000 Violation of Probation cases each year), as well as help concentrate prison capacity on violent, sex and career criminals.

The Commission also has completed an extensive data collection effort focusing on aggravated assault, burglary and eight other high-volume crimes with broad statutory sentencing ranges. Seventy-four parole officers and investigators from each of Georgia's 49 judicial districts collected detailed information on nearly 3,000 cases, representing close to a 100% response rate in just five weeks.

Data highlights included: 59% of burglaries are residential, and one-half are committed at night; 23% of aggravated assaults involve intent to murder, rape or rob; 35% of robberies involve victim injury; 8% of drug of-

fenses involve a firearm; and the average bad check cases involves 3 counts and a total value of $2,144.

A multivariate analysis of the data indicated that only a few offense variables are statistically significant "drivers" of the prison/probation decision and prison sentence length. Significant variables included the residential vs. non-residential burglary; the aggravated assault intent to murder, rape or rob vs. no intent; injury vs. no injury in cruelty to children cases; and force vs. snatch or intimidation in robbery cases. The Commission is using these research outcomes to separate varieties of these offenses into different offense severity levels on the sentencing grid.

Kansas: New Law Addresses Upward Departures Under *Apprendi*

During the 2002 Kansas Legislative session, the Sentencing Commission introduced and was successful in passing legislation which addresses the constitutionality issue of upward departures under the Sentencing Guidelines that was raised in the U.S. Supreme Court's decision in *Apprendi v. New Jersey* and the subsequent Kansas Supreme Court decision in *State v. Gould*.

In May of 2001, the Kansas Supreme Court ruled in the *Gould* Case that the Kansas scheme for imposing upward departures under its Sentencing Guidelines was unconstitutional on its face, violating a defendant's Sixth Amendment and Fourteenth Amendment Due Process Rights. The Court stated that any fact, other than prior criminal conviction, used to enhance an offender's maximum sentence must be submitted to a jury and proved beyond a reasonable doubt.

Senate Substitute for House Bill 2154 creates a bifurcated departure sentencing procedure that modifies upward durational departures. In this new procedure the jury will determine all the facts that may enhance a maximum sentence, other than prior convictions, beyond a reasonable doubt. The jury may either do this during the trial determination of innocence or guilt, or following a determination of guilt. The trial court will decide at what point in the process this will be done in each individual case. The jury determination of the aggravating facts must be unanimous and the prosecutor must provide notice to seek an upward durational departure sentence 30 days prior to the date of the trial. If the trial date is set for less than 30 days, then notice to seek an upward durational departure must be provided within 5 days from the date of the arraignment.

Although passage of this legislation addresses the constitutionality of upward durational departures, the Commission is anxiously awaiting a Kansas Supreme Court decision in *State v. Carr*, which raises constitutionality issues related to upward dispositional departures. If the Kansas Supreme Court rules upward dispositional departures are also unconstitutional under the *Apprendi* decision, additional legislation will be necessary to address that finding. It would appear the repercussions from the *Apprendi v. New Jersey* decision in Kansas will take some time to sort through.

With strong support from both the Senate and House Judiciary Committees, the Sentencing Commission continues work on developing an alternative sentencing policy for drug offenders, specifically drug possessors and users. The Commission spent a considerable amount of time last year developing a proposal outlining mandatory treatment rather than incarceration for non-violent drug users. Over the next few months, that proposal will be refined and serve as the basis for legislation to be introduced in the 2003 Legislative Session in January.

Maryland: Commission Strengthens Ties with University after Budget Cuts

After an 11% budget cut for FY 2003, due primarily to reduction of its federal grant, Maryland's State Commission on Criminal Sentencing Policy reduced its full-time staff from five to four. While this decrease forced elimination of some activities and reshifting of personnel within remaining functions, the SCCSP has teamed with the University of Maryland (UMD) to try to offset some of the effects of the cuts.

Taking advantage of its ties with the nationally known Department of Criminology & Criminal Justice at UMD, the Commission has obtained interns for the summer and fall who will complete work assignments for course credit with the department. Their work in data entry and staffing meetings will assist full-time staff now assuming other duties. Similarly, graduate students from the department, working part-time, will handle data entry and analysis and complete short-term projects on information requests from judges, policymakers, and the news media. They will also be responsible for the initial work on brief reports on sentencing in Maryland designed to better inform public debate and to raise the Commission's profile with key legislators and other policymakers.

The Commission has also established a relationship with the department's working group on Corrections and Sentencing, headed by Prof. Doris MacKenzie, which will link the Commission and other practitioners to department graduate students for possible research projects and future part-time help. Finally, as another means of maintaining the Commission's commitment to providing research to inform policy deliberation, it is continuing its on-going cooperation with Prof. Shawn Bushway and his collaborator, Prof. Anne Morrison Piehl of Harvard University, in producing academic research on sentencing disparity in Maryland. That partnership has produced a recent journal publication.

NASC has at past conferences discussed the value of developing partnerships between its members and the higher education community in their states. In stable financial periods, those partnerships are valuable. In periods of financial stress, such as today, commissions such as Maryland's may find them virtually invaluable.

North Carolina: Commission Submits Guideline Adjustments to Legislature

The Commission completed its work on a legislatively mandated review of penalties under Structured Sentencing. One of the prompts for the legislative study directive was the Commission/DOC prison population projection, identifying a need for up to 7,000 additional prison beds by FYear 2010-11. In a final report summarizing a comprehensive analysis of the guidelines, the Commission identified six alternatives that would improve fairness and consistency in the State's sentencing structure while slowing the need for additional prison construction. Five of the six alternatives have been introduced in the North Carolina House and Senate for consideration during this year's legislative session.

In addition, the Commission completed two research projects in the spring of 2002: Correctional Evaluation (or Recidivism) Report, mandated biennially to measure recidivism, employment, and other measures for a cohort of probationers and released prisoners; and Sentencing Practices Under North Carolina's Structured Sentencing Laws, a baseline study on case processing, prosecutorial discretion and warranted/unwarranted disparity.

The grant-supported study included field interviews with practitioners as well as descriptive and multivariate statistical analysis of aggregate court data. The focus was on decision steps in felony processing from charging to plea practices, convictions and sentences, with an emphasis on the role of legal and extralegal factors (e.g. race, gender, age, judicial district) on the decisions.

Ohio: Massive Bill Restructures, Simplifies Traffic Laws

The Ohio Sentencing Commission chose to address the State's traffic laws several years ago, separate from our work on other misdemeanors, felonies, and juvenile dispositions. One goal was to simplify the traffic code. The result: Senate Bill 123 and its 1,033 pages of simplicity. We expect our General Assembly to give final approval to the measure by the time this newsletter is published.

As noted in earlier newsletters, this bill traveled a rocky road and frequently stalled. But some relatively minor repairs got us into the passing lane this session. In a (Brazil) nutshell, the traffic bill:

- Gathers scores of driver's license suspensions in one chapter of our Code and places them in a standardized template;
- Consolidates widely scattered penalty provisions into the section that lays out each offense;

- Cuts down on the number of persons who drive under suspension by removing barriers to reinstatement and by giving courts more flexibility in granting limited driving privileges and in setting up payment plans for reinstatement fees;
- Simplifies how "points" accrue against one's license for speeding—easily the most common crime in Ohio—and adds flexibility in dealing with repeat offenders;
- Allows a lesser charge than DUI when someone staggers out of a bar at closing time, sits behind the wheel, but does not drive. (This nuance might be peculiar to Ohio where a person was considered to be "operating" an immobile vehicle if sitting in the driver's seat with keys in the ignition.)
- Does other stuff, mostly good.

On the research front, Ohio does not keep the kind of score sheets submitted by courts in states with sentencing grids. So, it's sometimes difficult to assess how well courts comply with the principles in our presumptive guidelines. While limited funds might doom us, we are trying to use sophisticated software (the type used in complex civil cases such as the tobacco case) to scan and index a high volume of sentencing entries. We're trying to pilot a project in Cleveland, our second largest city.

In addition, Ohio is one of the states targeted for a drug initiative akin to California's Proposition 36. Under our sentencing guidance, even though Ohio prisons take in 20,000 new inmates per year, Ohio courts sentence only a few hundred drug users directly to prison. So the Prop 36-type initiative, if it is passed, would not have nearly as dramatic effect in Ohio.

Oklahoma: Prisons Set to Grow; Governor Vetoes Data Bill

Prison growth in Oklahoma is expected to resume steady growth during FY 03 and beyond, ending a short-lived period of relatively slow growth, according to data presented to the Oklahoma Sentencing Commission in April.

With already the fourth highest incarceration rate in the nation, Oklahoma's prison population is expected to climb by about 3% for each of the next two years, according to a prison population projection model presented by the Oklahoma Criminal Justice Resource Center (OCJRC), which provides staff support to the commission. Housing the additional 1,400 prisoners will cost taxpayers $20 million annually, assuming an average daily cost of $41/day. The population projection is based on OCJRC's FY'01 sentencing data, and assumes that the crime rate and sentencing practices remain constant.

The projected growth comes after a 2-year hiatus in prison growth. Between FY'00 and FY'02, Oklahoma's prison population remained relatively flat after a decade of double-digit percentage growth. Researchers attribute the flat growth line to higher rates of paroles granted by the state's Parole Board. Prison receptions grew during the period, but the rate of monthly paroles approved by the board skyrocketed from less than 10% in 1998 to around 50% in 2002.

A proposal to have the Sentencing Commission supervise a pilot project on criminal justice data integration was vetoed by the Governor. SB 1583 authorized the Commission to choose a local jurisdiction as a demonstration project where police, courts, District Attorneys and other criminal justice officials could begin sharing information electronically. The governor's veto message indicated the proposed pilot project was not a part of the state's Criminal Justice Information Systems Task Force recommendations.

FY'01 data on felony sentencing indicated that drugs, drugs, and alcohol are the top three reasons offenders were sentenced to a prison term that year, accounting for nearly half of new inmates. Drug possession accounted for 19.7% of receptions, drug dealers were 13.7% of new inmates, and DUI accounted for 10.0% of receptions.

Commissions also heard concerns about the reliability of certain sentencing data that indicates offenders' records of prior felony offenses. OCJRC staff noted that courts are providing criminal histories in only 40% of felony cases received. Low reporting of prior offenses may explain why the sentencing report shows that 37.1% of new prisoners were first-time felons.

Presumptive sentencing, whereby low-level offenders are presumed to be sentenced to treatment programs instead of prison, was discussed by the Sentencing Commission, although no action was taken. Governor Frank Keating, in his annual budget proposal, had proposed presumptive or mandatory community sentencing as a means to reduce appropriation needs of the prison system.

Pennsylvania: Juvenile Records Retained in Prior Record Score

During its February 13, 2002 Quarterly Meeting, the Commission voted to solicit comments from various state agencies and associations regarding modifications to the current Sentencing Guidelines (5th Edition, effective 6/13/97). The Commission requested comments on two prior record score policies: the use of juvenile adjudications in the prior record score calculation; and simplification of the "totally concurrent" policy.

The Commission's Policy Committee found that the nature of juvenile court proceedings often leads to inconsistent use of juvenile adjudications in the prior record score calculation, and that the "totally concurrent" policy is difficult to apply because of missing or incomplete criminal history records. Inconsistent application of these policies frustrates the Commission's efforts to eliminate unwarranted sentencing disparity.

Comments were solicited from the Conference of State Trial Judges, the District Attorneys Association, the Association of Criminal Defense Lawyers, the Juvenile Court Judges Commission, and the Pennsylvania Association on Probation, Parole and Corrections. For those supporting changes in the guidelines, the Commission requested specific recommendations.

The Commission reviewed comments received to date during its May 14-15, 2002 meeting. Due to statutory requirements, there was overwhelming support for continuing to include prior juvenile adjudications in the prior record score; there was little support for making major changes to the "totally concurrent" policy. Members thought that most of the objections to the prior record score policies related to difficulties in obtaining complete and accurate criminal history rather than the policies themselves. The matter was referred back to the Policy Committee for further discussion and data analysis. The Commission will invite representatives from relevant agencies and associations to participate in a discussion of these issues during a planned Strategic Planning Session in August.

Staff continues to work on three research projects: Evaluation of the State Motivational Boot Camp; Evaluation of Drug & Alcohol Treatment as a Restrictive Intermediate Punishment; and Evaluation of Restitution Orders and Collections. Staff is assisted on these projects by Sociology/Crime, Law & Justice faculty from the Pennsylvania State University, with whom the Commission has a research partnership.

Utah: DUI Sentencing Matrix Part of Omnibus Reform

The Utah Sentencing Commission is joining a host of other state agencies and non-profit organizations in Utah in implementing recommendations from the Governor's Council on Driving Under the Influence. Created through an Executive Order issued by Governor Leavitt in March 2000, the DUI Council recently completed and distributed a report with recommendations in four areas: history/records; funding needs; public awareness and education; and sentencing laws/practices and accountability.

The recommendations are directed at 20 entities as diverse as the Department of Public Safety, the Utah Medical Association, the Department of Natural Resources/Parks and Recreation, and the Utah Sentencing Commission.

The DUI Council has requested the Sentencing Commission's assistance in three areas:

- developing a sentencing matrix for DUI offenses;
- reviewing all legislation which proposes amendments to DUI laws; and
- creating a DUI sentencing best practices manual.

The sentencing matrix is complete and, at the request of the DUI Council,

is actually a chart which explains the complex and often hard-to-understand DUI laws including mandatory and optional sanctions for various offenses. This chart will be used as an educational tool and as a reference for prosecutors, defense attorneys and judges. Reviewing DUI related legislation will be an on-going effort and is something in which the Sentencing Commission has been engaged since its creation.

The best sentencing practices manual will be a much more involved effort and therefore has been assigned to a subcommittee of the Sentencing Commission formed to address only this issue.

Directed toward judges, prosecutors, and probation officers, the best practices manual is expected to address issues such as the effectiveness of current DUI sanctions, treatment options, charging practices, tailoring individualized sanctions through quality assessments of DUI defendants, and the efficacy of DUI court. The Sentencing Commission will deliver a preliminary progress report to the Legislature in October and will likely present a final product next summer.

Virginia: Meth Guidelines Studied, Risk Assessment Tool Takes Effect

Concern over the potential impact of methamphetamine-related crime in the Commonwealth prompted the 2001 Virginia General Assembly to adopt legislation directing the Virginia Criminal Sentencing Commission to examine the state's felony sentencing guidelines for methamphetamine offenses and to conduct an assessment of the quantity of methamphetamine seized by law enforcement in such cases.

While available statistics indicate methamphetamine crimes increased during the 1990s, both nationally and in Virginia, the Commission found that methamphetamine crimes represent only a very small share of criminal drug activity in the Commonwealth. Although the numbers of seizures and convictions involving methamphetamine have increased in Virginia, particularly in the Western area of the state, methamphetamine remains much less prevalent than other Schedule I or II drugs. Cocaine continues to be much more pervasive a drug in Virginia than methamphetamine. Statewide, convictions for heroin offenses also greatly outnumber those for methamphetamine. In 1999, the Arrestee Drug Abuse Monitoring (ADAM) program continued to show no sign of methamphetamine's spread to arrestees in the Eastern United States. Methamphetamine-positive rates for Eastern cities participating in the ADAM program have remained at less than one percent.

Overall, the Commission found that Virginia's circuit court judges do not weigh the quantity of methamphetamine as a significant factor when sentencing offenders. Prior record, most notably violent prior record, appears to be the most important factor in determining the sentencing outcome. The sentencing guidelines currently in place in Virginia explicitly account for the offender's criminal history through built-in midpoint enhancements, which increase the guidelines recommendation for offenders with prior violent convictions, and factors on the guidelines worksheets that increase the sentencing recommendation based on the number and types of prior convictions in the offender's record.

The Commission reviewed the numerous mandatory minimum penalties for offenses involving a Schedule I or II drug, including methamphetamine, specified in the Code of Virginia. Many of these mandatory penalty laws became effective as recently as July 1, 2000. These mandatory sentences take precedence over the discretionary guidelines system.

Critics of Virginia's sentencing guidelines have argued that the state's guidelines do not provide as stringent penalty recommendations as the federal guidelines system. The Commission's analysis suggests, however, that the two guidelines systems yield roughly comparable recommendations for seven out of 10 offenders who sell methamphetamine and are convicted in circuit courts in the Commonwealth.

While concluding there is not compelling evidence to recommend revisions to the sentencing guidelines at this time, the Commission will continue to monitor emerging patterns and trends in methamphetamine-related crime in Virginia.

In 1994, as part of the reform legislation that instituted truth-in-sentencing, the state legislature required the Virginia Criminal Sentencing Commission to study the feasibility of using an empirically-based risk assessment instrument to select 25% of the lowest risk, incarceration-bound, drug and property offenders for placement in alternative sanctions. This mandate was made in conjunction with other changes in the Commonwealth's sentencing structure that were designed to substantially increase the amount of time to serve in prison for selected violent offenses and for those offenders with a record of prior violent offenses. The goal was to reserve expensive prison beds for violent and relatively high-risk offenders without jeopardizing public safety. The Commission's objective was to develop a reliable and valid predictive scale based on independent empirical research and to determine if the resulting instrument could be a useful tool for judges in sentencing larceny, fraud and drug offenders who come before the circuit court. After careful consideration of the findings of the Commission's original analysis, its validation study, as well as an independent evaluation by the National Center for State Courts (NCSC), the Commission has recommended expanding the risk assessment program to all circuits in the Commonwealth.

Evidence from the pilot sites indicates that the risk assessment program has encouraged the use of alternative sanctions for selected offenders. Between FY1996 and FY2001, the rate at which eligible offenders were diverted from incarceration to alternative sanctions increased by nearly 30% in the risk assessment pilot sites, compared to only 4% in non-pilot circuits. The NCSC evaluation confirmed the fiscal benefits of the program. It is estimated that had the risk assessment instrument been instituted statewide during 2000, the net benefit would have ranged from $3.7 to $4.5 million. The Commission's validation study, conducted in 2001, resulted in a refined risk assessment instrument that improves the accuracy of the risk tool in predicting recidivism among drug, larceny and fraud offenders.

Risk assessment became a component of Virginia's discretionary guidelines system on July 1, 2002.

Washington State: Creating a Separate Grid for Drug Offenses

Washington State Sentencing Reform Act (SRA) was enacted in 1981 and since its 1984 effective date, has been amended during every subsequent legislative session. During the late 1980s, many of the amendments to the SRA resulted in increased penalties for drug offenses.

In the summer of 2000, the Sentencing Guideline Commission (SGC) initiated a comprehensive review of the Act. In January 2002 the Commission delivered a report to the legislature on the result of its review. The report included a summary of the Commission's findings in several areas and where appropriate, recommendations for improvement. As to drug offenders, the Commission urged that the state's resources would be better expended on treatment rather than incarceration and that a separate sentencing grid should be constructed and used for drug offenders. The Commission's recommendations included provisions for reductions in sentence length and the requirement that the funds saved in incarcerations costs be captured and used to fund mandatory treatment of offenders.

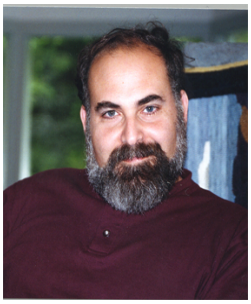
The State legislature, during the 2002 session, enacted a Commission-proposed bill that reduces the seriousness level, and concomitantly the term of confinement, for convictions of manufacturing, delivering, or possessing with the intent to deliver heroin or cocaine. The bill, as signed into law, also mandates that savings realized from the sentence reductions be dedicated to local treatment facilities. The new law also requires the drafting of a separate drug grid. SGC staff and various other identified groups are now working on the implementation of this new law.

Considerations on Sentencing for Drug Offenses

By Mark A.R. Kleiman
for the Georgia Governor's Commission on Certainty in Sentencing

Sentencing for drug crimes is partly about the crimes and partly about the people. Sentencing for drug crimes, like all sentencing, is partly about the crimes and partly about the people. But drugs are different because of the market forces at work, and sentencing ought to reflect those differences. Drugs are traded in competitive markets, where capacity removed is likely to be replaced. That makes it harder to shut down drug dealing through deterrence and incapacitation than it is to reduce "predatory" crimes by those means. As a result, long sentences for drug dealers have not proven effective in reducing the supply of drugs. Giving longer sentences to dealers who use violence, intimidate witnesses, disrupt neighborhoods, and employ minors can help shape the drug markets to have fewer noxious side-effects.

Locking up drug dealers (and users) who are also non-drug criminals can help reduce non-drug crime. In sentencing drug dealers whose activity does not involve such special factors, the obvious elements to consider are the drug involved, the quantity involved, and the offender's role in the transaction or organization. Different weights of different drugs can be compared either in money terms or with regard to the number of dosage units involved and the social harm per dosage unit.



Professor Kleiman

The main goal in sentencing drug users is to get them to quit; shrinking demand, by forcing arrested users to abstain, is a much more effective way to shrink the markets than imprisoning dealers. Incarceration is too expensive to use for this purpose, except for those users who are also high-rate serious non-drug offenders. But close community supervision with testing and sanctions, if done right, can be both effective and cost-effective.

One purpose of sentencing is the prevention of future crimes through deterrence, incapacitation, and rehabilitation. (Another is retribution.) But the market nature of drug transactions means that the logic of crime prevention works entirely differently for those crimes than it does for "predatory" crimes such as burglary or robbery. The difference is not a moral one – it's not that drug dealing is somehow less evil than theft – but an operational one. In operational (not moral) terms, drug dealers have customers, who seek them out, while muggers and burglars have victims, who are trying to avoid them.

Replaceability in the Drug Markets

Locking up a mugger or a burglar reduces the number of muggings or burglaries by at least the number that would have been committed by the person locked up. Muggers and burglars don't have to compete with one another for opportunities; there are plenty of potential victims available. So locking one up doesn't create any new opportunities for others. Locking up a drug dealer in an active market has no comparable effect on the volume of drug sales. Instead, it creates an empty niche in the market, to be filled by a new dealer or by expanded sales activity from a current dealer.

As long as there are drug buyers looking to "score," scaring off or locking up one dealer simply creates a market opportunity for another dealer. Since retail dealing demands no special skill and pays substantially better than other forms of unskilled crime, the supply of potential dealers, especially in poor urban neighborhoods, seems to be effectively unlimited. That explains the otherwise paradoxical result that the fifteenfold increase in the number of cocaine dealers in prison over the past twenty years has failed to increase the price of cocaine; indeed, cocaine prices have fallen about 80% between 1980 and today. Trying to reduce the size of the drug problem by locking up more and more dealers for longer and longer terms is a demonstrably unsuccessful project. The federal drug laws, and the sentencing guidelines that implement them, essentially incorporate that failed strategy, both by their severity and by their emphasis on drug and quantity as the primary elements of the sentencing calculation.

Incentives to Reduce Violence and Neighborhood Disruption

There are big practical dividends available from designing a sentencing scheme for drug offenses that pays more attention to the realities of market behavior and the realities of drug dealing as an activity. Not all drug dealing is equally bad in its neighborhood effects. Discreet indoor dealing in multi-purpose locations is less disruptive than outdoor dealing or dealing from dedicated dealing locations such as crack houses. Dealing without gunfire is much less disruptive than dealing with gunfire. The use of adolescents as dealing accomplices – effectively encouraged by the lighter sanctions provided under the juvenile laws – does enormous damage to the young dealers. By concentrating on flagrant dealing, or dealers who use violence, or dealers who use juveniles, rather than simply making the cases that are easiest to make, police and prosecutors can force dealing activity into less noxious forms: not an undiluted success, but a success nonetheless.

Locking up the worst-behaved dealers will exert useful deterrent and incapacitative force in shaping the conduct of the drug markets. Sentencing policies that emphasize those side-effects of dealing can operate both directly on dealers, and indirectly by influencing police and prosecutor behavior, to discourage the most socially damaging styles of dealer activity. But for these enhancements to have meaningful behavioral effects, the baseline sentences cannot be too long.

A five-year enhancement for using a gun on top of a one-year baseline drug sentence is a major deterrent from the dealer's perspective, and well worth the effort of proving from the prosecutor's. That same enhancement on top of a fifteen-year baseline is a footnote; the added time doesn't even start for fifteen years, which is likely beyond the dealer's planning horizon. Accordingly, experience at the Federal level shows that certain enhancements, such as that for employing a juvenile, are very rarely used; apparently investigators and prosecutors have found that the extra work of proving them up outweighs the benefit in enhanced severity.

The same argument applies to other enhancements, such as the "school zone" rule. Those enhancements compete for prison space and for the attention of dealers and prosecutors with enhancements for violence, neighborhood disruption, and the use of juveniles as apprentices. For the "school zone" rule, which in practice turns out to have little to do with the problem of actually dealing to schoolchildren near schoolyards, the game probably isn't worth the candle.

Giving due consideration in sentencing to the full range of relevant conduct, rather than concentrating on the easily ascertainable and quantifiable factors of drug and weight, will complicate the process of drafting guidelines and the process of sentencing based on those guidelines. Those processes could be somewhat simplified by treating neighborhood disruption, for example, as an "aggravating circumstance" assigned no particular weight but left as a factor to influence the discretion of the sentencing judge. But such treatment would have the probable result of elevating the importance of the "scored" considerations over the miscellaneous aggravators and mitigators. If something has to be simplified out and left in the "aggravations and mitigations" column, arguably it should be the drug and amount rather than, for example, the difference between the operator of a crack house that makes a whole neighborhood unfit to live in and the organizer of the sort of discreet hand-to-hand dealing that distributes drugs but does not create disorder.

Incapacitation and Just Deserts

Many of the most dangerous offenders are "generalists" rather than "specialists," and may add drug dealing to their offense repertoire. In those cases, a drug conviction represents an opportunity to get a serious social problem off the streets for a while. The severity of the current offense will be a smaller consideration in those cases than the criminal history as a whole.

Of course, sentencing for drug dealers cannot be based entirely on these forward-looking, practical considerations. Dealing, and especially large-scale dealing, requires punishment on just-deserts grounds, and the statutory provisions that implement these concerns have to be recognized in any set of guidelines.

Measuring the Scale of Drug Selling

Comparing any two dealing cases with one another in terms of the moral guiltiness of the offender involves too many considerations to be done with any great precision, but in principle the question is: how much drug distribution was involved in the transaction or the organization in question, and what was the role of the defendant in that transaction or organization: Principal or accessory? Organizer, manager, specialist, line worker, or auxiliary?

The "how much" question is complicated by the multiplicity of drugs. On the scale of seriousness, there is no obvious way to compare a kilo of marijuana with five grams of cocaine.

Perhaps the simplest approach to the drug-and-quantity question would be to use retail sales prices; money is always a convenient metric, and cutoffs could be established at, say, factors of four and five: $20, $100, $500, $2500, $10,000, $50,000, $250,000, $1 million. Drug prices change, but usually not very rapidly; tables updated every second year would rarely be grossly wrong. If they are to track reality, such calculations should be based on the net weight of the active drug, not – as in the federal guidelines – the gross (diluted) weight.

Alternatively, each quantity of each drug (again, using net weight) could be translated into dosage units, and the harmfulness of each drug per dosage unit calculated based on national estimates of the quantity of that drug sold and measures of death, injury, and addiction. Actual dosage units vary, even for a given drug, with inexperienced users typically using less and long-standing users who have become tolerant to the drug's affects using more. It would be necessary to define a standard dosage unit equal to the amount usually consumed at one stroke by a user who is neither naïve to the drug nor strongly tolerant to its effects. The factual inquiry could focus on actual customs in drug selling and use: what is the accepted purity-adjusted weight for a joint or a rock or a bag of heroin? A dosage-based system would be much harder to implement with any precision than would a money calculation, but might track more closely our intuitive sense of the evils involved with the various drugs.

Correctional Options for Drug Buyers

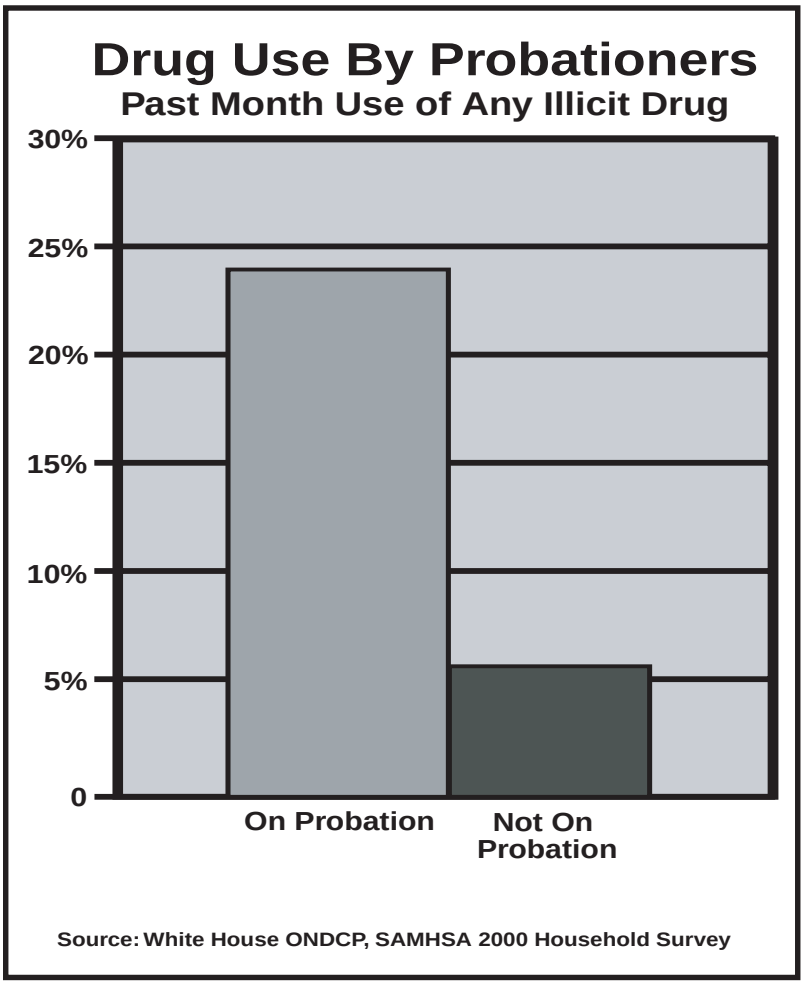
To shrink the drug markets, we need to incapacitate, rehabilitate, or deter drug buyers, not drug sellers. As long as the buyers are there, someone will sell to them. In sentencing drug buyers – usually for the crime of possession, but also for small-scale dealing – one focus ought to be on reducing their future drug-buying and their future non-drug crime.

(In principle, we might try to reduce the prevalence of drug use via general deterrence, but the sheer number of drug buyers makes the arithmetic of that approach discouraging, and the most deterrable buyers – non-addict users who are otherwise law-abiding – are by that same token not very attractive candidates for severe punishment. The mere fact of arrest and conviction may do almost all that can valuably be done in those cases.)

Shrinking Drug Use Without Incarceration

Imprisonment as a punishment for simple drug possession ought to be, as it is, relatively rare, and it ought to be driven almost entirely by the offender's criminal history.

But drug users, whether arrested for drug possession or for other offenses, can and should be forced to stop using drugs. This will have an immediate rehabilitative effect on the offenders themselves – ending, or even reducing, illicit drug use will tend to reduce non-drug offense rates – and will also help shrink the illicit markets, with all the damage they do in the form of violence, corruption, neighborhood disruption, and the entrapment of juveniles in criminal enterprise. Drug-involved offenders, like the rest of us but probably more so, respond more powerfully to immediate sanctions than to deferred ones, and more powerfully to virtually certain punishments than to punishments with low probability, even if the low-probability threat is severe.



The hard question is how to design and implement a program of community supervision that performs drug tests often enough to foreclose the possibility of undetected use and that delivers quick, reliable sanctions for every incident of detected use or failure to appear for testing. Those sanctions can be relatively mild – hours of community service, day reporting, a day or two or three of confinement – as long as they are known to happen every time. Speed and reliability require replacing discretionary sanction-setting with formulaic sanction-setting; that has the additional advantage of putting the onus for the sanction directly on the offender, and not on the choice of a probation officer or judge.

The primary role of drug treatment in this scheme is as a backup, for those offenders who know they need it or those who prove that they need it by repeated failure. Insisting that every drug-involved offender attend formal drug treatment is neither necessary, nor economic, nor practicable. Noncompliance rates in diversion programs are very high. Drug courts do much better, but nowhere are they currently operating at a scale big enough to put a dent in the drug markets. What is needed is a program that can feasibly be applied to the entire population of drug-involved offenders under criminal justice supervision. Because this group includes most very heavy illicit drug users, and because those heavy users in turn constitute the bulk of the illicit markets, getting an effective handle on drug use in the offender population provides the best intermediate-term hope for reducing the damage now done by drug dealing.

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NASC SURVEY: RECENT STATE DRUG SENTENCING REFORMS

STATE	YEAR	SUMMARY	COMMENTS
Arkansas	2001	Encourages courts to screen felony drug possession defendants as candidates for diversion and drug treatment.	
Arizona	1996	Diverts non-violent offenders convicted of drug possession from prison into treatment. (Proposition 200)	Arizona court analysis estimates that in 1999, this measure save nearly $7 M.
California	2000	Diverts approximately 36,000 drug possession offenders from jail and prison into treatment. (Proposition 36)	Legislative analysis estimates that this measure will save $100 to $150 M annually.
Idaho	2001	Approx. $5.2 M for community-based substance abuse treatment for probationers and parolees and for services that support the drug court program.	
Kansas	2001	Sentencing Commission s Drug Policy Subcommittee is proposing a Proposition 36 style sentencing reform that requires mandatory treatment in lieu of incarceration. Subcommittee recommendation regarding the target population of non-violent drug offenders includes: 1. Those whose current offense of conviction is for drug possession only and does not include manufacturing, trafficking or possession with intent to sell offenses. 2. Criminal history classifications of I to E only. 3. No prior convictions for drug trafficking, manufacturing or possession with intent to sale. 4. Prior convictions for drug possession would be eligible. 5. Offenders convicted of person felonies on Non-Drug Severity Level 8, 9, and 10 upon the finding of the court that the offender does not pose sign. threat to public safety. Proposed criteria resulting in the expulsion from mandatory program: 1. Conviction of a new felony offense other than drug possession. 2. Not condition violations, with the exception of absconding.	Other Subcommittee rec's: 1. Drug possession convictions be sentenced on Severity Level 4. 2. Border Boxes on Severity Level 4 receive probation. 3. Unsuccessful discharge or quit treatment subjects offender to entire underlying prison sentence. 4. Mandatory aftercare. 5. Establish criteria that would result in expulsion of the offender from the mandatory treatment program. 6. Develop statewide comprehensive treatment system.
Louisiana	2001	Legislation allows a person charged with delivering a controlled substance to be eligible for treatment in lieu of prosecution, and courts are allowed to directly place those convicted of felony controlled substances offenses in community corrections programs. Mandatory 20-year sentence for drug dealing was amended to include only those who possess a firearm or deliver drugs to minors. Amended the habitual offender law to eliminate mandatory life imprisonment for certain controlled substance distribution crimes punishable by terms of less than 10 or 12 years. (S 239)	
Maryland	1999	Division of Parole and Probation s Break the Cycle initiative targets all drug addicted offenders on probation and parole. Twice-per-week drug testing conducted in seven jurisdictions, with varying availability of treatment and a variety of sanctions policies.	More than 40,000 offenders participated to date. Evaluation shows 56% drop in drug test positive rate, 28% reduction in 180-day rearrest vs. comp. group.
Massachusetts	2001	Sentencing Guidelines Commission — proposal on mandatory minimums would give judges limited authority to sentence below the mandatory minimum drug sentences for mitigating circumstances. (S 1004)	Standard for going below the mandatory sentence would be more stringent than for general departures.
Michigan	1998	Reformed 650-lifer law which mandated life in prison without parole for offenders convicted of intent to deliver 650 grams or more or heroin or cocaine. The new law changes the mandatory life sentence to life or any term of years, not less than 20.	650 Lifer Law is/was one of the harshest drug laws in the country.

NASC SURVEY: RECENT STATE DRUG SENTENCING REFORMS (CONT.)

STATE	YEAR	SUMMARY	COMMENTS
New York	2002 Proposed	Governor's bill would reduce some mandatory minimum sentences while increasing penalties for offenders who use weapons and employ juveniles. It also increases treatment opportunities for some lower-level drug offenders. Assembly Speaker's bill would extend treatment options to Class B felons, by far the largest group of drug criminals.	Legal Action Center study says the state could save $30,666 to $74,243 for every second felony offender diverted from prison to treatment.
Ohio	2002 Proposed	Targeted for a drug initiative akin to California s Proposition 36. Under their sentencing guidance, even though Ohio prisons take in 20,000 new inmates per year, Ohio courts sentence only a few hundred drug users directly to prison. Persons charged with drug possession could elect to enter a treatment program instead of facing a prison term. The initiative limits jail terms to 90 days for those who continue to violate drug possession laws during or after treatment. The initiative could appear as an amendment to the Ohio Constitution on the November 2002 ballot.	Sentencing Commission members prefer setting Ohio s drug policy by statute rather than by constitutional amendment.
Oklahoma	2002	Funding for Community Sentencing program budget is maintained at a $5 M level during FY03, the same level as FY02, despite 5% cutbacks in most agency programs due to statewide revenue reductions. The budget for Drug Courts remain funded at $2.6 M level despite statewide budget cutbacks. Twenty-seven drug courts are active across Oklahoma.	Lawmakers remain hopeful that investments in alternatives to prison for drug-addicted offenders will relieve crowding in the prison system, which is expected to resume steady growth after two years of relatively flat population.
Oregon	2001	Provides probation services for those convicted of possession of a controlled substance or a property offense motivated by drug dependence. Legislation directs local public safety councils to develop drug treatment plans that integrate with the justice system (S914).	
Pennsylvania	1994, 1997	Beginning with the 1994 sentencing guidelines, and expanded under the 1997 guidelines, the Commission provided an intermediate punishment (IP) trade off provision that permitted the use of an individualized, comprehensive treatment program in lieu of incarceration for targeted Level 3 and Level 4 offenders.	Linked to the 1997 sentencing guidelines, the Commonwealth provided total funding for prescribed comprehensive treatment for all targeted offenders in selected counties. Current appropriation is $13 M annually.
Utah	2000	Legislature authorized the creation of a Drug Board pilot project. Drug Board, which gets its name from the oversight agency, the Utah Board of Pardons and Parole, is modeled after drug court and directs its services to parolees with substance abuse problems. Goal is to treat the substance abuse problems and help the participants successfully complete parole rather than return them to prison for parole violations stemming from the substance abuse problems.	Pilot project has been operating in two counties for two years and is funded for the coming year. Annual approp. is $510,000.
Washington	2002	Legislature enacted SHB2338 An Act relating to the recommendations of the sentencing guidelines commission regarding drug offenses As requested by the commission, the bill reduces the seriousness level and concomitantly the term of confinement, for convictions of manufacturing, delivering, or possessing with intent to deliver heroin or cocaine. The bill, as signed into law, also mandates that savings realized from the sentence reductions be dedicated to local treatment facilities. The new law also requires the drafting of a separate drug grid.	Sentencing Commission and various other identified groups are now working on the implementation of this new law.

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A Publication of the
National Association of Sentencing Commissions

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