
Connecticut Sentencing Task Force

**Recommendation for the
Connecticut Sentencing Commission**

January 7, 2009

CONNECTICUT SENTENCING TASK FORCE

The Connecticut Sentencing Task Force was created up passage of Public Act 06-193, *An Act Concerning Criminal Justice Policy and Planning and the Establishment of a Sentencing Task Force*. The primary purpose of the Connecticut Sentencing Task Force is to review criminal justice and sentencing policies and laws of this state for the purpose of creating a more just, effective and efficient system of criminal sentencing.

Task Force and Subcommittee Members

Chairman

Robert Farr

Members and Subcommittee Members

Alfred Adinolfi
Henri Alexandre
Brian Austin
Hakima Bey-Coons
Randy Braren
Richard Brown
William Carbone
Michael Cardona
Brian Carlow
Patrick Carroll
Alyse Chin
Andrew Clark
Kevin Clifford
Brian Coco
Eric Coleman
Michelle Cruise
Linda Deconti
Maureen Derbacher
Larry D'Orsi
Roland Fasano
John Forbes
Deborah Fuller
Matthew Gedankys
Stephen Grant
Thomas Hogane
Brian Hill
Kevin Kane
Aileen Keays
John Kissel
Nancy Kushins
David Labriola
John Lahada
Merit Lajoie

Theresa Lantz
Michael Lawlor
Fred Levesque
Martin Looney
Scott Lunt
Eugene Marcucci
Andrew McDonald
Loel Meckel
Stephen Ment
Catherine Meyer
Andrew Moseley
Hilda Nieves
Brian Norwood
Arthur O'Neill
Mark Palmer
James Papillo
Lori Ricks
Jennifer Robinson
Peter Rockholz
Andrew Roraback
Joseph Rubin
Jon L. Schoenhorn
David Shepack
Shoshanna Silverberg
Jamie Spallone
Richard Sparaco
Susan Storey
Jerry Stowell
Frank Sykes
Ray Stuart
Richard Taff
Preston Tisdale
Thomas Ullmann
Thomas White

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Introduction

Pursuant to Sec. 3 Subsection (d) (8) of Public Act 08-143, “*Not later than January 7, 2009 [the Sentencing Task Force shall] make a recommendation as to whether a permanent sentencing commission should be established, and if so, make recommendations concerning the mission, duties, membership and procedures of such a commission.*”

Over the past thirty years, Connecticut has undergone substantial changes to its sentencing system. Among these changes was the shift from indeterminate to definite sentencing and the enactment of habitual offender laws, mandatory sentencing and truth-in-sentencing policies. Through a series of progressions and regressions, the state has adopted and altered various sentencing strategies to address diverse and often conflicting objectives. These changes have left the system fragmented and in need of systemic review.

The fragmentation of the system coupled with recent issues of prison overcrowding and rising correctional costs, prompted officials to more proactively examine the impact of its sentencing and corrections policies on the criminal justice system. In 2005, the General Assembly called for the Legislative Program Review and Investigations Committee to review mandatory minimum sentences in the state.¹ In its final report, the Committee recommended that an interim sentencing task force be created to further review sentencing practices.² Accordingly, in June 2006, the General Assembly enacted Public Act No. 06-193, which created the Sentencing Task Force and charged it with “reviewing criminal justice and sentencing policies and laws in the state for the purpose of creating a more effective and efficient system of criminal sentencing.”³

The Sentencing Task Force met on a regular basis to carry out its work and established four Subcommittees to examine in detail critical aspects of the state’s sentencing policies and processes. These Subcommittees include: Offense Classifications, Community Supervision and Alternative Sanctions, Sentencing Structure, and Sentencing Disparity.

The momentum for reform, however, was stifled after the Subcommittees were created as a result of the brutal murder of a family in Cheshire by two individuals recently released onto parole, and the scrutiny over the incidents that followed. This incident in July 2007, stirred the debate about the effectiveness of the state’s sentencing and corrections policies. The murders also revealed significant limitations on the availability and quality of the data within the criminal justice system. In particular, it became more apparent that pertinent offender-specific information does not always follow the offender through the various stages of the criminal justice system. The incident also revealed that it is difficult to determine the exact number of people incarcerated in state correctional facilities for specific offenses, such as murder related to home burglaries. The emergence of these

¹ Legislative Program Review and Investigations, *Mandatory Minimum Sentences*, December 2005. http://www.cga.ct.gov/2005/pridata/Studies/pdf/Minimum_Mandatory_Sentences_Final_Report.PDF

² Ibid. See p. 81.

³ See: <http://www.cga.ct.gov/2006/ACT/PA/2006PA-00193-R00HB-05781-PA.htm>

issues highlighted the need for an objective entity to serve as the central repository of sentencing data collection and analysis in the state.

Subsequently, the General Assembly asked the Sentencing Task Force to report back no later than January 7, 2009 on whether a permanent sentencing commission should be established. After further examination of current practices, the Sentencing Task Force has determined that Connecticut would benefit greatly by establishing a permanent sentencing commission. The purpose of the proposed Connecticut Sentencing Commission would be to review existing and proposed statutes, legislation, policies and practices; and to make recommendations to government bodies and agencies. The Sentencing Task Force believes that the creation of a sentencing commission is one of the most promising strategies to respond to issues of prison overcrowding and creating data-driven policies to improve sentencing policies in a cost-effective manner.

This report provides national and state contextual information to support the recommendation for the Connecticut Sentencing Commission (Commission). The first section of the report provides a national overview of sentencing commissions including an explanation of the impetus for their creation and a description of the elements of an effective sentencing commission. The second section describes examples of cost-effective sentencing strategies employed by the sentencing commissions in Kansas and Virginia. The third section describes previous and current sentencing policies in Connecticut. Finally, the last section describes the specific components of the Connecticut Sentencing Commission Recommendation (Recommendation) including its: mission, duties, membership, location in government and authority. The complete Recommendation can be found in Appendix A.

I. National Overview of Sentencing Commissions

Sentencing commissions are charged with creating sentencing policies and practices that promote public safety. They are objective, nonpartisan bodies that use empirical data to review existing sentencing policies and make data-based policy recommendations to the legislature, judiciary and executive branch to ensure fair and equitable sentencing policies and practices. Sentencing commissions draw on professional policy and research expertise as well as perspectives from various parts of state government in crafting their recommendations. Currently, there are 22 active state sentencing commissions (including the District of Columbia) in the United States. Sentencing commissions vary in terms of their structure, membership, duties and relationship with state government. For your reference, a catalog of state sentencing structures is contained in Appendix B.

Sentencing commissions were first created in the late 1970s and were charged with creating sentencing guidelines. States were developing guidelines systems in order to reduce racial, gender and geographic disparities caused by indeterminate sentencing and broad judicial discretion. Legislatures around the country assigned sentencing commissions the task of developing sentencing guidelines in order to ensure proportionality in sentencing and increase uniformity in decision-making.

During the 1980s and 1990s sentencing commissions became more widespread and the impetus for their creation shifted, mainly due to the enactment of the Federal Crime Bill of 1994 and the allocation of federal Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) monies. Moreover, states were moving from indeterminate to determinate sentencing in an effort to implement truth-in-sentencing and other determinate sentencing policies. Thus, these commissions were dealing with multiple issues caused by harsher sentencing policies and their impact on incarceration rates and the prison population.

Although sentencing commissions have historically been associated with creating and administering sentencing guidelines, a third shift in sentencing commission development has recently emerged: states are creating sentencing commissions to examine criminal sentencing policies in broader terms and are not specifically focused on developing sentencing guidelines. Instead, commissions are focusing on issues of prison overcrowding, community sentencing alternatives and reentry strategies. Of the four most recently established sentencing commissions—Colorado, Nevada, New York and Vermont⁴—none were primarily charged with implementing sentencing guidelines.

Colorado, for example, established its commission in 2007 to address mounting concerns about the increasing prison population, high recidivism rates and growing correctional expenditures. The prison population had increased nearly 400 percent in the previous two decades and was projected to grow by nearly 25 percent by 2013.⁵ During the same time

⁴ As of September 2008, the Vermont Sentencing Commission is defunct.

⁵ Division of Criminal Justice, Office of Research and Statistics, *Crime and Justice in Colorado 2006*. June 2007.

period, correctional expenditures increased from \$57 million to \$702 million.⁶ The political pressure to curtail prison spending and reduce the prison population spawned the passage of the commission's enacting legislation. In 2008, the commission made 66 policy recommendations to the Governor to improve current criminal justice practices. These recommendations range from expanding the use of intermediate sanctions for probation violators to providing good time credits to jail inmates.⁷

Further, Nevada revived its commission after nearly seven years of inactivity to examine criminal justice policies beyond sentencing that would prevent further prison construction; the commission in New York was established to evaluate the efficacy of the state's mandatory minimum law for drug offenses and is currently exploring strategies to reduce the number of technical violations for people on parole; and the commission in Vermont was directed to analyze the most effective sentencing strategies, given that the state recently increased the statutory punishment of sex offenders. In addition, officials in Illinois and Tennessee are in the early stages of drafting legislation to create a sentencing commission—neither of which are exploring sentencing guidelines.

The important role that sentencing commissions can play in the development of state sentencing policies and practices is acknowledged by the American Law Institute, which is revising the Model Penal Code that was originally drafted in 1962 and is including a recommendation that each state create a permanent sentencing commission.⁸ The Model Penal Code supports a permanent, rather than temporary, commission because the environment in which sentencing policy is made is constantly in flux and a review of sentencing policies is an ever-present need. An entity must exist to perform monitoring, research, planning, consensus-building and data-driven lawmaking on a continuing basis.

http://dcj.state.co.us/ors/pdf/docs/Crime%20and%20Justice%202006%20Report%20Files/complete_Crime_Justice-2006.pdf

⁶ Ibid.

⁷ Colorado Commission on Criminal and Juvenile Justice, *2008 Recommendations*. December 2008. <http://cdpsweb.state.co.us/cccj/pdf/2008%20recommendations/12-10-08%20recommendations%20and%20discussion.pdf>

⁸ The American Law Institute, *Model Penal Code: Sentencing Preliminary Draft No. 3*. Available for purchase at: http://www.ali.org/index.cfm?fuseaction=publications.ppage&node_id=93

II. Innovative Strategies in Kansas and Virginia

All sentencing commissions share the common goal of ensuring the efficiency and cost-effectiveness of sentencing policies, while at the same time promoting public safety. Yet, they often approach the task of impacting sentencing policies differently. Below are examples of innovative strategies employed in Kansas and Virginia.

Kansas: Mandatory Drug Treatment. As a way to control the prison population and reserve prison space for the most serious offenders, the legislature charged the Kansas Sentencing Commission with identifying and analyzing ways to reduce the prison population when the prison population projections indicate the inmate population will exceed available capacity within two years.⁹

In 2003, after the sentencing commission projected that the state may need to construct new inmate housing units for its expanding prison population, the commission proposed an alternative sentencing policy for non-violent offenders. Enacted into law in 2003, SB 123 created mandatory, community-based drug treatment in lieu of incarceration for certain non-violent drug possessors. Under SB 123, eligible offenders receive a mandatory community-based sentence with up to 18 months of drug treatment in the community. The program directs about 1,400 people per year into mandatory treatment, roughly 475 who would have gone to prison absent the legislation.

Virginia: Fiscal Impact Statements. The Virginia Criminal Sentencing Commission has played a significant role in controlling correctional spending through its authority to conduct fiscal impact statements on pending legislation. The sentencing commission must prepare an impact statement for any bill that would result in an increase in the length of prison sentences including all bills that: (1) add new crimes punishable by imprisonment; (2) expand the period of incarceration for existing offenses; (3) impose minimum or mandatory terms of incarceration; or (4) modify the law governing the release of an offender in any way that increases prison time.¹⁰

After a relevant bill is introduced, the sentencing commission analyzes it and prepares the fiscal impact statement, which is then printed on the face of the legislation. A subcommittee then determines if there is funding to support the bill. If not, the bill dies without reaching the floor for consideration. Most important to this process is that a bill's sponsor must identify the source of revenue to fund the bill before it can be reported out of committee.

Most importantly, this requirement has not been made at the expense of protecting public safety in Virginia. The process forces legislators to consider the corresponding costs of any proposed policies. It is part of a comprehensive approach to sentencing policy development that focuses on reserving expensive prison space for violent and repeat offenders. Other states including Kansas, North Carolina and Pennsylvania, among others, require that the sentencing commission conduct fiscal impact statements.

⁹ Kansas Statutes §§ 74-9101.

¹⁰ Virginia Code §§ 17.1-803.

Virginia: Risk Assessment at Sentencing. Another tool put in place by Virginia's commission was the development of a risk assessment tool at sentencing.¹¹ The Virginia instrument was designed to identify non-violent offenders who could be diverted from prison. The legislature set as a target that 25 percent of non-violent offenders should be diverted from prison. To create the risk assessment tool, the sentencing commission analyzed characteristics like criminal history, substance abuse, education, employment history, family background and recidivism patterns in a sample of 1,500 people with a felony conviction for fraud, larceny and drug related offenses. The factors they found relevant to an offender's risk of reconviction included: age, prior record, prior juvenile incarceration, recent history of incarceration, and whether the offender acted alone. Since these factors were found to be statistically significant in predicting recidivism, the sentencing commission created the risk assessment instrument based on these factors among others.

Prior to statewide implementation in 2002, the National Center for State Courts evaluated a pilot of the instrument in six jurisdictions. The evaluation showed that Virginia saved \$1.5 million in those sites alone by using the risk assessment to target offenders for community punishment; had the pilot been implemented statewide, the estimated savings would have been \$3.7 to \$4.5 million.¹² Nearly half of the offenders for whom a risk assessment was completed in 2006 were recommended for an alternative sanction.¹³ By using cost-benefit and recidivism analyses, early evaluations have determined the instrument is effective at identifying low-risk populations.

¹¹ Virginia Code §§ 17.1-803.

¹² Ostrom, B., Kleiman, L., and Cheesman II, F. *Offender Risk Assessment in Virginia*, National Center for State Courts. http://www.vcsc.state.va.us/risk_off_rpt.pdf

¹³ Ibid.

III. Criminal Sentencing in Connecticut

As described above, Connecticut has enacted several sentencing reforms in the past thirty years. These changes have been spurred by dissatisfaction with the rehabilitative goals and sentencing disparities widespread during the 1970s. First, most notable about these reforms, was the shift from indeterminate to definite sentencing in 1981.¹⁴ Previously, the state operated an indeterminate sentencing system whereby judges tailored the length and nature of the sentence to the specific rehabilitative needs of the individual defendant, and parole boards maintained authority over the duration of the sentences served through discretionary release. The adoption of determinate sentencing in 1981 shifted the goal of sentencing to deterrence and punishment rather than rehabilitation. Under the determinate scheme, judges impose a single fixed term of imprisonment, but retain discretion to consider a wider range of penalties (e.g. probation, mandatory treatment, fines) and determine the sentence length within the statutorily defined limits and deter. Sentencing decisions are primarily based according to crime severity and individual culpability, and traditional parole is abolished.

The second significant reform in Connecticut was the enactment of several mandatory minimum penalties throughout the 1980s and 1990s.¹⁵ These policies limit judicial discretion by requiring a minimum term of imprisonment for certain convictions. The mandatory minimum sentencing policy was a symbol of the state's attempt to be tougher on criminals and part of the new determinate sentencing framework.

A third reform occurred in 1993 when discretionary parole was reinstated for sentences greater than two years and the authority to grant parole was given to the Board of Parole.¹⁶ The board was made a separate state agency responsible for both parole supervision and release decisions.

The most recent reform in Connecticut was in 1995 when the General Assembly established a truth-in-sentencing policy for violent offenders.¹⁷ This policy was intended to ensure that serious and violent offenders serve at least 85 percent of their sentences prior to release. The policy was tied to federal funding allocated by the Violent Offender Incarceration and Truth-in-Sentencing (VOI/TIS) program. During the same time period, an attorney general opinion, which was requested by the Department of Correction, interpreted the truth-in-sentencing law as eliminating "good time" credits.¹⁸ A later Connecticut Supreme Court opinion ruled in accordance with the attorney general's opinion.¹⁹

¹⁴ Legislative Program Review and Investigations, *Mandatory Minimum Sentences*, December 2005. http://www.cga.ct.gov/2005/pridata/Studies/pdf/Minimum_Mandatory_Sentences_Final_Report.PDF

¹⁵ Ibid.

¹⁶ Ibid.

¹⁷ Ibid.

¹⁸ Ibid.

¹⁹ Ibid.

These policy changes, along with other penalty enhancements and reforms, have contributed to the fragmentation that currently exists within Connecticut's sentencing system. During the same time period these changes were made, the state saw a significant rise in its prison population and costs. The prison population, for example, has increased nearly 250 percent in the past two decades; in 1985, the prison population was 5,422 and in 2007 it had grown to 18,902.²⁰ The most recent estimates show the incarceration rate for sentenced inmates as 392 people incarcerated per 100,000 in the population.²¹ This is slightly below the national average of 405 per 100,000 but is, nonetheless, the highest rate of the northeastern states.²² Correctional expenditures have also significantly increased during the past twenty years; in 1985, correctional expenditures were only \$81 million whereas in 2006 they were \$631 million, representing an eight-fold increase.²³ According to a recent report by the Pew Center on the States, Connecticut spent more on corrections than on higher education in 2007.²⁴

In addition to experiencing significant growth to its prison population and concomitant costs, Connecticut has significant racial disparities within its correctional system. In particular, the state incarcerates blacks at a rate twelve times higher than whites.²⁵ This rate ranks Connecticut as having the fourth highest racial disparity of blacks to whites in the nation.²⁶

Given the state of the correctional system as described above and the current budget shortfall, the need for rational, data-driven sentencing policy is needed in Connecticut now more than ever. The establishment of the Connecticut Sentencing Commission provides an opportunity for the state to collaboratively build upon the criminal justice information and processes in place to develop in-depth knowledge of the state's sentencing practices. As listed in the following sections, the Connecticut Sentencing Commission will have the capacity to analyze the practical implications of sentencing structures, develop valid data on the impact of changes in sentencing and publish fiscal analyses of pending sentencing provisions and policies. The Commission will work to achieve its goals through a strong collaboration and cooperation with current criminal justice entities to avoid duplication and increase its level of effectiveness. These functions, among others, can assist the state of Connecticut in dedicating its limited resources in the most effective and efficient manner while ensuring and enhancing public safety and justice.

²⁰ Criminal Justice Policy and Planning Division, *Annual Report 2007 Prison Population Projection Study*, 2007.

<http://www.ct.gov/opm/LIB/opm/CJPPD/CjResearch/PopulationForecast/PopulationForecastReport2007.pdf>

²¹ National Institute of Corrections, *Statistics for the State of Connecticut*, 2006.

<http://www.nicic.org/Features/StateStats/?State=ct#3>

²² Ibid.

²³ National Association of State Budget Officers, *Fiscal Year State Expenditure Report 1985-2007*.

²⁴ Pew Center on the States, *1 in 100: Behind Bars in America in 2008*, 2008.

²⁵ Mauer, M. and King, Ryan S. Sentencing Project, *Uneven Justice: State Rates of Incarceration By Race and Ethnicity*. July 2007.

²⁶ Ibid.

IV. Proposed Connecticut Sentencing Commission Components

This section describes the five components contained in the Connecticut Sentencing Commission Recommendation: (a) mission/purpose of sentencing; (b) duties; (c) membership; (d) location in government; and (e) authority. In each subsection, the specific language from the Connecticut Sentencing Commission Recommendation is included for your reference.

a. Mission/Purpose of Sentencing:

This hereby creates the Connecticut Sentencing Commission, hereinafter referred to as the Commission, the mission of which is to review the existing and proposed sentencing structure, including current statutes, proposed legislation, policies and practices; and to determine and make recommendations to the General Assembly, Governor, and other appropriate criminal justice agencies.

In fulfilling its mission, the Commission shall be mindful that:

The primary purpose of sentencing in Connecticut is to enhance public safety while holding the offender accountable to the community. Sentencing is to reflect the seriousness of the offense and should be proportional to the harm to victims and the community, utilizing the most appropriate sanctions available, including incarceration, community punishment and supervision. Sentencing should have as an overriding goal the reduction of criminal activity, the imposition of just punishment, and the provision of meaningful, effective rehabilitation and reintegration. Connecticut sentences should be fair, just and equitable while promoting respect for the law.

A clearly stated mission is an important element to the Connecticut Sentencing Commission's success. It provides a specific mandate to the Commission and describes the overall scope of its work. The mission statement is broad enough so that the Commission can grow without moving beyond its scope, but narrow enough so that it is directed in carrying out its duties. The purpose of sentencing is also defined to guide the philosophical aspects of punishment for the state. The Recommendation indicates that the primary purpose of sentencing in Connecticut is to "enhance public safety while holding the offender accountable to the community". This notion should guide the Commission in carrying out its duties, and recommending policy changes to the General Assembly and other criminal justice professionals.

b. Duties:

The Commission shall perform the following duties:

- (1) Facilitate the development and maintenance of a statewide sentencing database in collaboration with existing state and local agencies.*
- (2) Evaluate current sentencing statutes, policies and practices including cost-benefit analysis.*
- (3) Conduct sentencing trends analyses, studies and offender profiles.*
- (4) Provide training regarding sentencing and related issues, policies and practices.*
- (5) Act as a sentencing-policy resource for the state.*
- (6) Preserve judicial discretion and provide for individualized sentencing.*
- (7) Evaluate the impact of pre-trial, sentencing diversion, incarceration and post-release supervision programs.*
- (8) Perform fiscal impact analyses on select proposed criminal justice legislation.*
- (9) Identify potential areas of sentencing disparity relevant to racial, ethnic, gender and socioeconomic status.*

The Commission's duties describe its overall responsibilities and functions. Unlike other commissions in the state that focus on broad criminal justice policies, the duties set forth in the Connecticut Sentencing Commission Recommendation focus specifically on *sentencing* policies and practices. This is an important distinction because it differentiates the Commission from other criminal justice agencies that are exploring the efficacy of the state's criminal justice policies (e.g. Office of Policy and Management, Criminal Justice Policy and Planning Division, Criminal Justice Policy Advisory Commission). There is not, however, an objective body exploring specific sentencing issues and how these practices impact the criminal justice system as a whole. The responsibilities of the Commission are described in greater detail below.

1. Facilitate the development and maintenance of a statewide sentencing database in collaboration with existing state and local agencies. The Connecticut Sentencing Commission's primary responsibility will be to serve as a comprehensive sentencing resource for the state. One of the primary tasks of the Commission will be to develop an extensive sentencing database. The sentencing database will draw on information collected by other state agencies (e.g. Department of Correction, Board of Parole and Pardons, Court Operations Division) in addition to collecting *new* offender-specific sentencing information, such as plea information and prior criminal history, which currently is not easily accessible. Once completed, the database will enable the state to follow the offender throughout the entire system, from arrest to post-release supervision, rather than the agency-by-agency approach that is currently in place.

Importantly, the data collected will gather information at the individual level rather than aggregate information, which does not provide detailed information about the offense or offender. For example, with individual level data, the Commission will be able to determine the number of offenders convicted of burglary in the second degree who are drug-dependent and have previous histories of violence who are incarcerated in state correctional facilities. This level of detail will assist policymakers in identifying where resources should be spent in order to ensure the best fiscal benefit to the state, while at the same time developing sentencing policy that maintains public safety.

Access to the appropriate valid and reliable data is critical to the Commission's ability to assist policymakers in crafting effective sentencing and corrections policies. The Commission will use its advanced data capacity to inform sentencing policy decisions, gauge the fiscal impact of proposed legislation, help judges determine the appropriate factors to be relied upon in imposing sentences and conduct evaluations of policies and programs.

2. Evaluate current sentencing statutes, policies and practices including cost-benefit analysis. The evaluation of sentencing options and practices, including their economic benefit, will determine the efficacy of different sentencing decisions and options. For example, the Commission will have the capacity to ascertain whether an incarceration sentence for a particular offense (e.g. burglary) is more effective in reducing recidivism in comparison to non-prison alternatives for similar types of offenders. In addition, the Commission may choose to evaluate the effectiveness of mandatory minimum sentences

on offender outcomes. This type of analysis will provide policymakers, judges and other officials with data-driven information regarding the effectiveness of certain sentencing options, which in turn will help them determine which types of sentences are most appropriate for specific offenses and offenders. At a time when budget constraints are prevalent and prison bed availability is limited, this type of evidence-based research ensures the efficient allocation and expenditure of limited resources.

3. Conduct sentencing trends analyses, studies and offender profiles. Analyses related to sentencing trends and offender characteristics can assist policymakers and other criminal justice officials in understanding how sentencing practices change over a given period of time. Trends analyses conducted by the Commission can include an analysis of the number of prison admissions and types of offenses (i.e. new court commitment, probation violator, parole/post-release violator) over the previous five years to understand how sentencing practices have changed in recent years. Interpretations of the trends and the factors that drive the trends have important policy and research implications. For example, an uptick in the number of admissions to prison due to technical probation violators may guide the Court Support Services Division in creating a system of graduated responses in responding to violations of community supervision. A system of graduated responses may help ensure that prison beds are reserved for the most violent offenders who pose the most significant threat to public safety. Of equal importance, trend analysis can help identify the impact of legislation that has been previously enacted to determine whether the intended results were achieved or whether there were unanticipated outcomes of the policy change.

4. Provide training regarding sentencing and related issues, policies and practices. Training criminal justice professionals about sentencing policies and practices is an important aspect of any sentencing commission's work. Training seminars conducted by the Commission will provide probation and parole officers and staff, state attorneys, public defenders, judges, court staff and others an opportunity to better understand certain aspects related to sentencing decisions, court processes, statutes and policies. For example, the Commission may choose to hold an annual informational session for Superior Court staff and attorneys on new sentencing alternatives or sentencing trends. This will help courts understand what resources are available to certain districts and how these sentencing options can be most effectively utilized. Training may also include seminars for new parole and probation officers on basic criminal justice terminology and sentencing statutes, or training for parole officers on significant statutory changes (e.g. changes to registration provisions of the Sex Offender Registry Act).

5. Act as a sentencing-policy resource for the state. As listed above, the responsibilities of the Connecticut Sentencing Commission will focus specifically on sentencing issues. The Sentencing Commission will serve as a resource for the state on all matters concerning sentencing practices and policies, in addition to examining their impact on the criminal justice system as a whole. Serving in this capacity may entail providing expert testimony before the General Assembly, conducting research studies on sentencing practices for certain crimes (i.e. crimes related to the sale or possession of methamphetamine) or providing training on the effectiveness of specific diversion or

reentry programs. The Commission would be viewed as the expert body in the state related to sentencing policy and data analysis.

6. Preserve judicial discretion and provide for individualized sentencing. There was overarching consensus among the Sentencing Task Force that the state is not interested in creating sentencing guidelines. Although sentencing commissions have historically been created to administer sentencing guidelines, Connecticut is part of the nationwide trend of “third generation” sentencing commissions that are focused on the broader implications of sentencing issues. As such, an important function of the Commission will be to maintain judicial discretion and allow judges the flexibility to individualize sentences based on the unique circumstances of each case. Instead of creating and modifying sentencing guidelines, the Commission will serve as a fair-broker of sentencing data collection and analysis to ensure that sentencing policy and practices are rooted in empirical analysis and evidence-based practices, rather than anecdotal information.

7. Evaluate the impact of pre-trial, sentencing diversion, incarceration and post-release supervision programs. Evaluation is crucial to the ongoing success of any criminal justice system. In order to provide a deeper understanding of the effectiveness of the state’s current programmatic options, the Commission will conduct evaluations of the state’s existing pre-trial, diversion, incarceration and post-release supervision programs. These studies will help answer key questions about a program’s desired results, impact and cost-benefit. This information will enable program administrators and policymakers to make informed decisions about program design, resource distribution, and funding streams. For example, an evaluation of the state’s drug court program can provide critical information related to its impact on the prison population and recidivism rates and other offender-specific outcomes. This information may be used in supporting the expansion or modification of the program.

8. Perform fiscal impact analyses on select proposed criminal justice legislation. Having accurate and timely data will make it possible for the Commission to analyze the fiscal impact of proposed and existing criminal justice legislation. Fiscal impact statements may be used to analyze the potential or incurred costs of newly created and existing crimes. The General Assembly may request a fiscal impact analysis on a policy that raises the classification of a crime from a misdemeanor to a felony, sentences that carry a minimum or mandatory term of incarceration, laws governing the release of prisoners and proposed sentencing enhancements. This type of analysis provides policymakers with data-driven information on the costs of newly proposed sentencing and corrections policies. This information will ensure that limited correctional resources are spent in the most effective manner.

9. Identify potential areas of sentencing disparity relevant to racial, ethnic, gender and socioeconomic status. As stated earlier, issues related to racial disparity are particularly acute in Connecticut at the current time. Given the salience of these issues, an important function of the Sentencing Commission would be to consider the impact of race, ethnicity, gender and socioeconomic status in developing policy recommendations. The Commission may consider conducting racial impact statements or other analyses on

select legislation to inform policymakers of the potential impact a proposed new policy may have on people of color and other disenfranchised communities.²⁷

c. Membership:

(1) The Commission shall consist of the following members:

- (A) Four legislators from the Connecticut General Assembly appointed by each of the following:*
 - i. The Senate President Pro Tempore will appoint a majority party Senate member from the Standing Committee on Appropriations*
 - ii. The Speaker of the House will appoint a majority party House member from the Standing Committee of the Judiciary*
 - iii. The Senate Minority Leader will appoint a minority party Senate member from the Standing Committee on the Judiciary*
 - iv. The House Minority Leader will appoint a minority party House member from the Standing Committee on Appropriations*
- (B) Two judges or justices appointed by the Chief Justice of the Supreme Court*
- (C) A representative from Court Support Services Division appointed by the Chief Justice of the Supreme Court*
- (D) The Commissioner of the Department of Correction*
- (E) The Chief State's Attorney*
- (F) The Chief Public Defender*
- (G) A state's attorney appointed by the Chief State's Attorney*
- (H) A member of the criminal defense bar appointed by the President of the Connecticut Criminal Defense Lawyer's Association*
- (I) The State's Victim Advocate*
- (J) The Chairman of the Board of Pardons and Paroles*
- (K) The Commissioner of the Department of Public Safety*
- (L) A municipal police chief appointed by the President of the Police Chief's Association*
- (M) The Commissioner of the Department of Mental Health and Addiction Services*
- (N) The Undersecretary from the Office of Policy and Management, Criminal Justice Policy and Planning Division*
- (O) Four Public Members:*
 - i. One formerly incarcerated person or an advocate for formerly incarcerated people jointly appointed by the President Pro Tempore of the Senate and the Speaker of the House*
 - ii. One victim of a crime or victim advocate appointed by the Governor*
 - iii. One academic appointed by the Chief Justice of the Supreme Court*
 - iv. One member of a civil rights organization representing issues of racial disparity appointed by the minority leaders of the Senate and the House*
- (P) One active or retired judge or justice who shall serve as Chairperson appointed by the Chief Justice of the Supreme Court*
- (Q) One member of the Commission shall serve as Vice-Chairperson elected by a majority of the members of the Commission.*

(2) Commission member terms: Commission members shall serve between 2-4 year staggered terms and may be reappointed for additional terms. Members of the Commission who serve because of their public office or position shall serve only as long as they hold such office or position.

The Recommendation for the Connecticut Sentencing Commission has representation from all branches of government in its 23 designated members. Terms are staggered and varied in order to avoid complete membership turnover during the same time period. In addition to having a diverse and well-represented membership, agency leaders, rather

²⁷ According to Public Act 08-143, Sec. 5 (a) racial and ethnic impact statements shall be prepared on certain bills and amendments.

than their designees, are represented on the Commission as their perspectives are critical to the decision-making process. Leaders of the General Assembly may choose to designate themselves to the Commission. A chart detailing the membership, appointing authority and term length for the members of the Commission can be found in Appendix C.

Although not specified in the Recommendation, many sentencing commissions utilize standing committees which can include individuals who are not commission members, with a commission member serving as the chairperson of each committee. Standing committee tasks may include: (1) exploring data sharing and IT issues; (2) examining collaborative opportunities with universities; and (3) studying a particular policy area, such as reentry issues. Standing committees provide an opportunity to bring in critical perspectives and expertise without expanding the commission's voting body beyond a reasonable and manageable size. If the Commission decides to create standing committees, their details, including their composition and delegated responsibilities, should be incorporated into its administrative rules.

d. Location in Government:

(1) The Commission shall be located within the Office of Policy and Management for administrative purposes only.

Sentencing commissions vary in terms of their location in government. Many are located within the confines of the executive branch because criminal justice procedures and data collection are often executive branch functions. Others are located within the legislature or the judiciary, and some are entirely free-standing entities. Of the 22 currently active sentencing commissions, ten are a part the state's executive branch, six are part of the state's judicial branch, two are a part of the state's legislative branch and four are independent of any branch of government.

The Sentencing Task Force believes the Commission should be located in the executive branch, housed within the Office of Policy and Management for administrative purposes only (APO). The Task Force members believe it is important that the Commission is perceived as a government agency and an objective body with some level of autonomy. Its location within the Office Policy and Management would also ensure that administrative matters are handled properly without overburdening the staff, in addition to minimizing expenditures.

e. Authority:

- (1) Upon completion of the sentencing database, the Commission shall review criminal justice legislation as requested and as resources allow.*
- (2) The Commission shall propose modifications and recommendations on criminal justice legislation to the Joint Committee on Judiciary. Upon receipt of the modifications and recommendations, the Joint Committee on Judiciary shall call for a hearing.*
- (3) The Commission shall have access to confidential information received by sentencing courts and the Board of Pardons and Paroles. This information may include, but shall not be limited to: arrest data, criminal history data, medical records and other non-conviction information.*

- (4) *The Commission shall obtain full and complete information in regard to programs, other activities and operations of the state, and may request and shall be given access to and copies of, by all public officers, departments, agencies and authorities of the state and its political subdivisions, such public records, data and other information and given such assistance as the Commission determines it needs to fulfill its duties.*
- (5) *All confidential information requested by the Commission shall remain confidential under its purview.*
- (6) *Any statutory requirements of confidentiality regarding such records, data and other information, including penalties for violating such requirements, shall apply to the Commission, its staff and its other authorized representatives in the same manner and to the same extent as such requirements and penalties apply to any public officer, department, agency or authority of the state of its political subdivisions.*
- (7) *Confidential records obtained by the Commission shall be exempt from Sec. 1-210 of the Freedom of Information Act, which require disclosure of such records.*
- (8) *The Commission shall be deemed a criminal justice agency of the State.*
- (9) *The Commission shall meet at least quarterly and at such other times as the Chairperson deems necessary*
- (10) *The Commission shall report annually to the General Assembly, Governor, Chief Justice and the people of the State of Connecticut by the 15th of January.*

A Commission's authority describes: (1) the role it plays in developing or modifying the state's sentencing policy; and (2) its ability to request and obtain confidential and privileged information.

Most highly-functioning and effective sentencing commissions have the authority to propose or modify sentencing policy, yet its authority is delegated in different ways. The legislature may take either an *active* or a *passive* role in addressing proposals and recommendations submitted by the commission. In an *active* role, the legislature must vote to accept and enact the statutory or policy changes proposed by the commission. Under this design, the majority vote of both houses is required to enact sentencing policy changes. If the policy recommendation does not receive a majority vote, the bill dies and no further action is taken.

In contrast, states where the legislature takes a *passive* role, proposals for sentencing policy changes become effective unless the legislature takes action to oppose the changes in a specified period of time. In other words, the legislature does not have to actively vote to approve the policy, rather they need only vote to oppose a policy change.

The General Assembly should take an active role in responding to proposals from the Sentencing Commission. As listed in the Recommendation, Commission will review sentencing-related legislation as requested and as resources allow. After its review, the Commission will submit recommendations to the Joint Committee on Judiciary for a legislative hearing. This process strikes a balance between being perceived as merely advisory and appearing too authoritative. In addition, it ensures that the Sentencing Commission can perform a "gate-keeping" function, where it reviews and analyzes bills as they are proposed by the General Assembly, and provides an overview of the merits of the legislation and whether amendments are needed. Such a process will ensure that public safety dollars are spent most effectively and efficiently.

In addition, it is important that the Commission have appropriate access to confidential and privileged data maintained by state and local agencies. Public and private records such as arrest history, medical history, mental health records and other information used in sentencing and release decisions is critical in understanding the policy implications. According to the General Statutes of Connecticut § 54-142n, non-conviction information may only be disclosed to agencies deemed as a criminal justice agency. This language is incorporated into the Recommendation to ensure that the Commission has the authority to access the information it needs to inform policy-decisions.

Conclusion

In sum, Connecticut is in need of a well developed and properly implemented sentencing commission. A more comprehensive, robust, data-driven approach toward sentencing can have a significant impact on creating a more effective, efficient and fair criminal justice system for the citizens of Connecticut, while preserving judicial discretion. Short-term solutions or approaches will not adequately address the needs of the state's sentencing system. As outlined in the Recommendation, the Connecticut Sentencing Commission will have the capacity to analyze current sentencing practices and policies, provide valid data on the impact of proposed changes and produce short- and long-term fiscal analyses on pending sentencing provisions and policies. In addition, the Commission will evaluate current and future sentencing policy with regard to proportionality, disparity and effectiveness on reducing recidivism. The Commission will work to achieve its goals through strong collaboration and cooperation with current criminal justice entities to avoid duplication and increase its level of effectiveness. These functions, among others, can assist the state of Connecticut in dedicating its limited resources in the most effective and efficient manner while ensuring public safety and justice.

Appendix A:
Connecticut Sentencing Commission
Recommendation

Connecticut Sentencing Commission Recommendation

Pursuant to Sec. 3. Subsection (d) (8) of Public Act 08-143: *“Not later than January 7, 2009, [the Sentencing Task Force shall] make a recommendation as to whether a permanent sentencing commission should be established and, if so, make recommendations concerning the mission, duties, membership and procedures of such a commission.”*

(a) Mission. This hereby creates the Connecticut Sentencing Commission, hereinafter referred to as the Commission. The mission of which is to review existing and proposed sentencing structure, including current statutes, proposed legislation, policies and practices; and to determine and make recommendations to the General Assembly, Governor, and other appropriate criminal justice agencies.

Purpose of Sentencing. In fulfilling its mission, the Commission shall be mindful that: The primary purpose of sentencing in Connecticut is to enhance public safety while holding the offender accountable to the community. Sentencing is to reflect the seriousness of the offense and should be proportional to the harm to victims and the community, utilizing the most appropriate sanctions available, including incarceration, community punishment and supervision. Sentencing should have as an overriding goal the reduction of criminal activity, the imposition of just punishment, and the provision of meaningful, effective rehabilitation and reintegration. Connecticut sentences should be fair, just and equitable while promoting respect for the law.

(b) Duties. The Commission shall perform the following duties:

- (1) Facilitate the development and maintenance of a statewide sentencing database in collaboration with existing state and local agencies
- (2) Evaluate current sentencing statutes, policies and practices including cost-benefit analysis
- (3) Conduct sentencing trends analyses, studies and offender profiles
- (4) Provide training regarding sentencing and related issues, policies and practices
- (5) Act as a sentencing-policy resource for the state
- (6) Preserve judicial discretion and provide for individualized sentencing
- (7) Evaluate the impact of pre-trial, sentencing diversion, incarceration and post-release supervision programs
- (8) Perform fiscal impact analyses on select proposed criminal justice legislation
- (9) Identify potential areas of sentencing disparity relevant to racial, ethnic, gender and socioeconomic status.

(c) Commission membership:

(1) The Commission shall consist of the following members:

- (A) Four legislators from the Connecticut General Assembly appointed by each of the following:

- i. The Senate President Pro Tempore will appoint a majority party Senate member from the Standing Committee on Appropriations
 - ii. The Speaker of the House will appoint a majority party House member from the Standing Committee of the Judiciary
 - iii. The Senate Minority Leader will appoint a minority party Senate member from the Standing Committee on the Judiciary
 - iv. The House Minority Leader will appoint a minority party House member from the Standing Committee on Appropriations.
- (B) Two judges or justices appointed by the Chief Justice of the Supreme Court
- (C) A representative from Court Support Services Division appointed by the Chief Justice of the Supreme Court
- (D) The Commissioner of the Department of Correction
- (E) The Chief State's Attorney
- (F) The Chief Public Defender
- (G) A state's attorney appointed by the Chief State's Attorney
- (H) A member of the criminal defense bar appointed by the President of the Connecticut Criminal Defense Lawyer's Association
- (I) The State's Victim Advocate
- (J) The Chairman of the Board of Pardons and Paroles
- (K) The Commissioner of the Department of Public Safety
- (L) A municipal police chief appointed by the President of the Police Chief's Association
- (M) The Commissioner of the Department of Mental Health and Addiction Services
- (N) The Undersecretary from the Office of Policy and Management, Criminal Justice Policy and Planning Division
- (O) Four Public Members:
 - i. One formerly incarcerated person or an advocate for formerly incarcerated people jointly appointed by the President Pro Tempore of the Senate and the Speaker of the House
 - ii. One victim of a crime or victim advocate appointed by the Governor
 - iii. One academic appointed by the Chief Justice of the Supreme Court
 - iv. One member of a civil rights organization representing issues of racial disparity appointed by the minority leaders of the Senate and the House
- (P) One active or retired judge or justice who shall serve as Chairperson appointed by the Chief Justice of the Supreme Court
- (Q) One member of the Commission shall serve as Vice-Chairperson elected by a majority of the members of the Commission.

(2) Commission member terms: Commission members shall serve between 2-4 year staggered terms and may be reappointed for additional terms. Members of the Commission who serve because of their public office or position shall serve only as long as they hold such office or position.

(d) Location in government.

- (1) The Commission shall be located within the Office of Policy and Management for administrative purposes only.

(e) Authority.

- (1) Upon completion of the sentencing database, the Commission shall review criminal justice legislation as requested and as resources allow.
- (2) The Commission shall propose modifications and recommendations on criminal justice legislation to the Joint Committee on Judiciary. Upon receipt of the modifications and recommendations, the Joint Committee on Judiciary shall call for a hearing.
- (3) The Commission shall have access to confidential information received by sentencing courts and the Board of Pardons and Paroles. This information may include, but shall not be limited to: arrest data, criminal history data, medical records and other non-conviction information.
- (4) The Commission shall obtain full and complete information in regard to programs, other activities and operations of the state, and may request and shall be given access to and copies of, by all public officers, departments, agencies and authorities of the state and its political subdivisions, such public and private records, data and other information and given such assistance as the Commission determines it needs to fulfill its duties.
- (5) All confidential information requested by the Commission shall remain confidential under its purview.
- (6) Any statutory requirements of confidentiality regarding such records, data and other information, including penalties for violating such requirements, shall apply to the Commission, its staff and its other authorized representatives in the same manner and to the same extent as such requirements and penalties apply to any public officer, department, agency or authority of the state or its political subdivisions.
- (7) Confidential records obtained by the Commission shall be exempt from Sec. 1-210 of the Freedom of Information Act, which requires disclosure of such records.
- (8) The Commission shall be deemed a criminal justice agency of the State.
- (9) The Commission shall meet at least quarterly and at such other times as the Chairperson deems necessary.
- (10) The Commission shall report annually to the General Assembly, Governor, Chief Justice and the people of the State of Connecticut by the 15th of January.

Appendix B:

Sentencing Commission Structures

State	Name of Commission	Year Created	Location in Government	Number of Members	Number of Staff ⁴	Budget ⁵
Alabama	Alabama Sentencing Commission	2000	Judiciary	16	3	\$184,000
Arkansas	Arkansas Sentencing Commission	1993	Independent	9	5	\$351,074
Colorado	Colorado Commission on Criminal and Juvenile Justice	2007	Executive	26	1	\$92,657
Delaware	Delaware Sentencing Accountability Commission	1984	Executive	11	--	--
District of Columbia	District of Columbia Sentencing and Criminal Code Revision Commission	1998	Independent	20	5	\$602,000
Kansas	Kansas Sentencing Commission	1989	Executive	17	12	\$784,403
Louisiana	Louisiana Sentencing Commission	1987	Executive	23	--	--
Maryland	Maryland State Commission of Criminal Sentencing Policy	1996	Executive	19	4	\$355,037
Massachusetts	Massachusetts Sentencing Commission	1994	Judiciary	15	4	\$232,000
Minnesota	Minnesota Sentencing Guidelines Commission	1978	Executive	11	9	\$926,000
Missouri	Missouri Sentencing Advisory Commission	1994	Independent	11	1	\$95,000
Nevada	Nevada Advisory Commission on the Administration of Justice	2007	Judiciary	17	N/A	\$50,000
New Jersey	New Jersey Commission to Review Criminal Sentencing	2004	Executive	13	1	\$100,000
New Mexico	New Mexico Sentencing Commission	2001	Executive	23	8	\$606,000
New York	New York State Commission on Sentencing Reform	2007	Executive	11	N/A	N/A
North Carolina	North Carolina Sentencing and Policy Advisory Commission	1990	Judiciary	30	9	\$900,000
Ohio	Ohio Criminal Sentencing Commission	1991	Judiciary	31	3	\$300,000
Oregon	Oregon Criminal Justice Commission	1995	Independent	9	6	\$600,000
Pennsylvania	Pennsylvania Commission on Sentencing	1978	Legislature	11	16	\$2,258,940
Utah	Utah Sentencing Commission	1993	Executive	27	2	\$185,000
Virginia	Virginia Criminal Sentencing Commission	1995	Judiciary	17	10	\$1,050,960
Washington	Washington Sentencing Guidelines Commission	1981	Legislature	20	9	\$937,000

⁴ There are no permanent staff on the commissions in Delaware and Louisiana; staff from an umbrella organization are used to conduct the commission's work.

⁵ Funding in Delaware and Louisiana is funneled through an umbrella organization, thus its annual budget is not determinable.

Appendix C:
Membership and Terms for
Connecticut Sentencing Commission

Member(s)	Term
4 Legislators	2 years
2 Judges or Justices	4 years ¹
A representative from Court Support Services Division	2 years
The Commissioner of the Department of Correction	Duration of office or position
The Chief State's Attorney	Duration of office or position
The Chief Public Defender	Duration of office or position
A state's attorney	3 years
A member of the Criminal Defense Bar	3 years
The State's Victim Advocate	Duration of office or position
The Chairman of the Board of Pardons and Paroles	Duration of office or position
Commissioner of the Department Public Safety	Duration of office or position
A municipal police chief	2 years
Commissioner of Department of Mental Health and Addiction Services	Duration of office or position
The Undersecretary from Office of Policy and Management, Criminal Justice Policy and Planning Division	Duration of office or position
An advocate for the formerly incarcerated or a formerly incarcerated person	4 years
An advocate for victims of crime or a victim of a crime	4 years
An academic	4 years
A member of a civil rights organization representing issues of racial disparity	4 years
An active or retired judge or justice to serve at the Chairperson	4 years

¹ In order to prevent the membership from turning over during the same year, these judicial appointments will initially serve 1 and 3 years, respectively.