

MAINE STATE LEGISLATURE

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FINAL REPORT
OF THE
MAINE SENTENCING GUIDELINES COMMISSION
ESTABLISHED BY THE 11TH LEGISLATURE

November 30, 1984

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I. INTRODUCTION

The Maine Sentencing Guidelines Commission was established by Private and Special Law 1983, Chapter 53 to study and recommend sentencing guidelines to better enable the Maine judiciary to properly fulfill their responsibilities at the sentencing stage of the criminal justice system.

The members of the commission were appointed and held their first meeting in December, 1983. The commission is composed of 9 members as follows: the State Court Administrator or his designee, the Commissioner of Corrections or his designee, a representative of the Corrections Advisory Committee, 2 members of the joint standing committee having jurisdiction over judiciary, a criminal defense attorney, a district attorney and 2 members of the public. In addition, two members of the Judiciary served in an advisory capacity to the commission.

At their deliberative sessions, the commission reviewed the evidences of disparity in sentencing, discussing both the nature of the disparity and what an acceptable amount of disparity might be. They also reviewed a large quantity of current literature on the philosophy of punishment and sentencing, sentencing reform, and evaluations of various sentencing schemes including the Anspach report, Maine Rejects Indeterminacy: a case study of flat sentencing and parole abolition. Model sentencing guideline laws already enacted in other states were reviewed and the Matrix Model and the Point Model (Base Model) were discussed extensively.

The commission met at the Maine State Prison in Thomaston to discuss the issue of disparity with a concerned prisoners' group and to establish cross-sectional case study data of disparity in sentencing. Representatives of the commission also met with the Maine Prosecutors' Association and Superior Court Justices.

II. FINDINGS AND RECOMMENDATIONS

As a result of the data-gathering meetings, the case study evaluations, and the deliberative sessions, the commission makes the following findings and recommendations concerning the establishment of sentencing guidelines in Maine:

1. In order to effectively evaluate the various sentencing guideline models and to choose the most appropriate method for Maine to establish a sentencing guideline system, it is necessary to establish a philosophy of punishment and sentencing. This philosophical base serves as the standards and the criteria which are used to develop the sentencing guidelines scheme. The commission finds that a system of just punishment for the offense reinforces and promotes respect for the law and, in so doing, reinforces and promotes public safety. Accordingly, the commission recommends that Maine adopt a philosophy of just punishment or "just deserts" to serve as the basis for formulating sentencing guidelines. The commission finds that this basis for sentencing guidelines is consistent with the requirement in Article I, section 9 of the Constitution of Maine which provides that punishment shall be proportioned to the offense.

It is noted that punishment is a broad term and does not exclude any of the traditional modes of punishment in use today, such as incarceration, probation, restitution, and public service.

2. The commission found evidence of disparity which supported the leg. finding of disparity in the enabling legislation.

3. The commission has found two common methods of sentencing guidelines in use in other states today: the matrix system and the point (or base) system. The commission recommends the point system be adopted in Maine as the model for sentencing guidelines.

4. The commission has reviewed Minnesota's sentencing guidelines, which are advisory, and those of other states which are mandatory guidelines. The commission has found that those states with mandatory guidelines have not been successful in accomplishing their goals. Minnesota, on the other hand, has had much success in implementing its advisory guidelines. Accordingly, it is recommended that Maine's sentencing guidelines be advisory only.

5. The commission finds that many factors enter into a sentencing decision other than culpability for the specific offense. These factors may be aggravating factors, such as the severity of the criminal conduct, the offenders previous criminal behavior, and the particular vulnerability of the victim on account of age or infirmity, or they may be

mitigating factors, such as any assistance the offender may provide law enforcement authorities in his case or other cases, the degree to which the offender actually participated in the offense, and the likelihood of a reoccurrence of criminal conduct by this offender. In view of the wide diversity of circumstances attendant upon criminal violations; even for the same offense, the commission recommends that judges and justices be allowed the maximum degree of discretion appropriate to a guideline scheme of sentencing.

III. CONCLUSION

The members of the commission have devoted much time to this study. The establishment of a sentencing scheme is an extremely important undertaking. It affects those convicted of criminal conduct, the public's and victim's sense of justice, and the responsibility of the state to establish a fair and just criminal justice system. The issue itself is complex and not to be studied haphazardly.

The commission was hampered by the fact that all of the appointments were not made until 6 months after the enactment of the enabling legislation. Although much progress has been made, the commission feels that the task of the commission is incomplete.

Appendix C contains a proposed draft of legislation implementing the recommendations of this commission. This is the fourth in a series of working drafts reviewed by the members. We do not recommend that this draft be enacted. It is included in this report to advise those interested of the direction this commission is taking and to solicit comments on that draft.

In view of the complex nature of the subject sits importance to the criminal justice system, and the fact that the commission was unable to start its deliberations until December, 1983, we recommend that a new commission be created to continue the responsibilities of this commission. Specifically, we feel that a new commission would be able to:

1. Resolve the remaining issues concerning sentencing guidelines such as:
 - a. a more detailed exploration of the advantages of a base sentence system versus a matrix system,
 - b. the establishment of advisory sentences, and
 - c. further refinement of appropriate sanctions for offenders;
2. Gather more information from affected groups such as judges and prosecutors. The response of these groups to this report and to the draft legislation is essential to resolve the remaining issues. The Sentencing Institute, which is to meet in December, will devote most of one day to this issue. This valuable information will not be available prior to the expiration of this commission; and

3. Develop a system to monitor the operation of the sentencing guidelines, when established, and evaluate their effectiveness. The commission feels that it is critical to provide a maintaining system because of the impact this legislation will have on the policy of the state and its citizens.

The commission has submitted legislation in Appendix D to establish a new commission. It is recommended that several members of this commission be reappointed to the new commission to maintain a necessary continuity and avoid repetition of the efforts already made by this commission. Several members, including the chair and the judicial consultants have expressed a willingness to serve on a new commission, if created.

APPROVED

CHAPTER

STATE OF MAINE

JUN 30 '83

53

BY GOVERNOR

P & S LAW

IN THE YEAR OF OUR LORD
NINETEEN HUNDRED AND EIGHTY-THREE

H.P. 1270. - L.D. 1684

AN ACT to Create a Maine Sentencing
Guidelines Commission.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. Purpose and findings. The Legislature finds that appropriate sentencing of persons convicted of crimes, including the imposition of alternative sentences and probation, is of substantial importance to the people of this State in that appropriate sentencing reflects the proper balancing of punishment, deterrence, public protection and rehabilitation, the cornerstones of our penal system. The Legislature further finds that disparate sentences for similar crimes by similarly situated defendants continue to occur and undermine the principles of the penal system. It is the Legislature's purpose to create a commission to study and recommend sentencing guidelines to better enable the Maine judiciary to properly fulfill their responsibilities at the sentencing stage of the criminal justice system.

Sec. 2. Establishment of commission. There is created the Maine Sentencing Guidelines Commission which shall be comprised of 9 members, including the State Court Administrator or his designee, the Commissioner of Corrections or his designee, a representative of the Corrections Advisory Committee, 2 members of the joint standing committee of the Legislature having jurisdiction over judiciary to be appointed by the President of the Senate and the Speaker of the House of Representatives, a criminal

defense attorney, a district attorney and 2 members of the public to be appointed by the Governor.

Members are to serve for the duration of the 111th Legislature. Vacancies shall be filled for the unexpired portion of the term of the member being replaced.

Sec. 3. Study of sentencing practices; recommendation of sentencing guidelines.

1. Scope of investigation. The Maine Sentencing Guidelines Commission shall investigate sentencing practices in this State and shall make recommendations of sentencing guidelines in accordance with the following criteria:

A. The guidelines shall be for Class A, Class B and Class C crimes;

B. The circumstances under which imprisonment of an offender is proper;

C. Appropriate presumptive fixed sentences for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The guidelines may provide for an increase or decrease of up to 15% in the presumptive fixed sentence;

D. The commission shall address appropriate sanctions for offenders for whom imprisonment is not proper, including, but not limited to, the following noninstitutional sanctions: Payment of fines; day fines; restitution; community work orders; work-release programs in local facilities; community-based residential and nonresidential programs; incarceration in a local correctional facility; and probation and the conditions thereof;

E. The commission shall address the appropriateness of statutory or constitutional changes to facilitate expanded judicial authority for post-conviction resentencing or modification of sentence;

F. The commission shall address the appropriateness of expanded judicial discretion to sentence to intermediate correctional facilities; and

G. Such other matters and considerations as the Maine Sentencing Guidelines Commission shall deem appropriate in providing to the Legislature a full and accurate picture of the subject matter of sentencing and sentencing alternatives.

In establishing the sentencing guidelines, the commission shall take into substantial consideration current sentencing and release practices and correctional resources, including, but not limited to, the capacities of local and state correctional facilities.

The commission may solicit reports, data and other assistance from the Criminal Law Revision Commission. The commission may also seek the assistance of any other persons or organizations.

The commission shall meet as often as necessary to fulfill its mandate and shall provide for publicized public hearings to garner maximum public participation in its decision making.

Sec. 4. Compensation. Each member of the commission not an employee of the State shall be allowed the sum of \$40 a day plus his necessary traveling expenses for actual attendance at commission meetings or proceedings.

Sec. 5. Staff and facilities. The commission may employ a research director who shall perform the duties which the commission directs, including the hiring of any clerical help and other employees the commission may require. The research director and other staff shall be in the unclassified service of the State and their salaries shall be established by the commission.

The Department of Attorney General shall provide adequate office space and administrative services for the commission for which the department shall be reimbursed. The commission may also utilize services, equipment, personnel, information and resources of

other state agencies, with their consent; and may accept voluntary and uncompensated services, contracts with individuals, public and private agencies, and request information, reports and data from any agency in the State or any of its political subdivisions, to the extent authorized by law.

Sec. 6. Additional funds. When any person, corporation, the Federal Government or any other entity offers funds to the Maine Sentencing Guidelines Commission to carry out its purposes and duties, the commission may accept the offer by majority vote and, upon acceptance, the chairman shall receive the funds subject to the terms of the offer, but no money may be accepted or received as a loan nor may any indebtedness be incurred, except in the manner and under the limitations otherwise provided by law.

Sec. 7. Report on findings and recommendations. The Maine Sentencing Guidelines Commission shall make an interim report of its findings and recommendations with respect to the criteria indicated in section 3 on or before January 5, 1984, to the Second Regular Session of the 11th Legislature. A final report shall be submitted to that Legislature prior to December 1, 1984. The report shall also include, in proper draft form, any suggested implementing legislation or amendment to the Constitution of Maine proposed to implement the commission recommendations.

Sec. 8. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

	<u>1983-84</u>
<u>MAINE SENTENCING</u>	
<u>GUIDELINES COMMISSION</u>	
Personal Services	\$ 7,000
All Other	3,000
	<hr/>
Total	\$10,000

In House of Representatives, 1983

Read twice and passed to be enacted.

..... Speaker

In Senate, 1983

Read twice and passed to be enacted.

..... President

Approved 1983

..... Governor

Appendix B

MEMBERS - MAINE SENTENCING GUIDELINES COMMISSION

Public Members

Hugh J. Phillips, Ph.D., Chairperson
Michael Seitzinger

District Attorney Member

Janet Mills

Criminal Defense Attorney Member

Marshall Stern

State Court Administrator

Dana Baggett
Designee
Debby Olken

Commissioner of Corrections

Donald Allen
Designee
Peter Tilton

Corrections Advisory Committee

Robert J. Wright

Legislative Appointments

Senator Samuel Collins
Representative Martin Hayden

Judicial Advisors

Supreme Court Justice Daniel E. Wathen
Superior Court Justice William S. Brodrick

FOURTH DRAFT

§ 1151. Purposes of Advisory Sentencing.

The Court, in determining the particular sentence to be imposed, shall consider:

1. The need for the sentence to reflect the seriousness of the offense and to provide just punishment for the offense, recognizing that just punishment reinforces and promotes respect for the law and, in so doing, reinforces and promotes public safety.
2. The need for the sentence to provide punishment that is commensurate with the criminal culpability of the offender.
3. The need for the sentence to deter future criminal conduct and protect the public through predictable, reasonably certain punishment.
4. The need to eliminate unjustifiable inequalities in sentences.
5. The need to impose no more punishment than is necessary to meet the four sentencing objectives listed above.

§ 1253. Application of Advisory Guidelines.

The Court is encouraged to give consideration to an advisory, base sentence for each Class A, B or C crime as referred to in Subsection 1254. To recognize the differences in criminal conduct and the differences in individual offenders, the Court, pursuant to Subsection 1255 may consider adding to the advisory sentence for identifiable aggravating circumstances, and may consider subtracting from the advisory sentence for identifiable mitigating circumstances.

§ 1254. Advisory Sentences.

(To be established by the Legislature upon recommendation by a Commission.)

§ 1255. Aggravating and Mitigating Circumstances.

- (A) The Court, in its discretion, may consider increasing the advisory

sentence if it finds that, under all the circumstances, the aggravating factors outweigh the mitigating factors. Aggravating factors may include one or more of the following:

- (1) the victim was particularly vulnerable on account of age or infirmity;
- (2) the degree of severity of the criminal conduct, including the presence of particularly brutal or cruel behavior;
- (3) the offender held a position of public or fiduciary trust at the time of the crime, and the crime was in violation of that trust;
- (4) the offender played a leading role in the crime;
- (5) the offender's prior criminal record, including juvenile adjudications, and the seriousness of the offenses on that record; Prior convictions used to prove an element of the offense shall not be used again as an aggravating sentence factor.
- (6) the commission of multiple crimes or a series of crimes;
- (7) the offender shows no remorse;
- (8) Any other similar identifiable factor.

(B) The Court, in its discretion, may consider decreasing the advisory sentence if it finds, under all the circumstances, that the mitigating factors outweigh the aggravating factors. Mitigating factors may include one or more of the following:

- (1) the offender's conduct was the result of circumstances unlikely to recur;
- (2) the offender assists law enforcement personnel in his case or in other cases;
- (3) the offender played a minor role in the commission of the crime;

- (4) the offender was suffering from a mental condition that does not constitute a defense to the crime but that is appropriate for consideration at sentencing;
- (5) the offender is young and inexperienced and the court is satisfied that little imprisonment or no imprisonment is necessary for the offender's rehabilitation and there is an alternative sentence available that will preserve respect for the law and public safety;
- (6) the offender shows sincere remorse;
- (7) Any other similar identifiable factor.

§ 1255-A

The base sentencing guidelines contained in §1255 are advisory only. A judge or justice who does not use these guidelines shall not be required to explain why. However, any sentencing judge or justice who deviates more than 20% from the base sentence is encouraged to explain his reasoning either on the record or in writing.

APPENDIX D. LEGISLATION TO CREATE A NEW COMMISSION

AN ACT to Create a Maine Sentencing
Guidelines Commission.

Be it enacted by the People of the State of Maine as follows:

Sec. 1. Purpose and findings. The Legislature finds that appropriate sentencing of persons convicted of crimes, including the imposition of alternative sentences and probation, is of substantial importance to the people of this State in that appropriate sentencing reflects the proper balancing of punishment, deterrence, public protection and rehabilitation; the cornerstones of our penal system. The Legislature further finds that disparate sentences for similar crimes by similarly situated defendants continue to occur and undermine the principles of the penal system. The One hundred and eleventh Legislature created a commission to study and recommend sentencing guidelines to better enable the Maine judiciary to properly fulfill their responsibilities at the sentencing stage of the criminal justice system. It is the Legislature's purpose to continue the study undertaken by that commission.

Sec. 2. Establishment of commission. There is created the Maine Sentencing Guidelines Commission which shall be comprised of 8 members, including the Commissioner of Corrections or his designee; 2 members of the joint standing committee of the Legislature having jurisdiction over judiciary to be appointed by the President of the Senate and the Speaker of the House of Representatives; a criminal defense attorney, a district attorney and 2 members of the public to be appointed by the Governor and the Attorney General or his designee. In addition, Supreme Court Justice, a Superior Court Justice and a District Court Judge, to be appointed by the Chief Justice of the Supreme Judicial Court, shall serve in an advisory capacity to the commission.

Members shall be appointed in January, 1985 and shall serve for the duration of the 112th Legislature. Vacancies shall be filled for the portion of the term of the member being replaced.

Sec. 3. Study of sentencing practices; recommendation of sentencing guidelines.

1. Scope of investigation. The Maine Sentencing Guidelines Commission shall investigate sentencing practices in this State and shall make recommendations of sentencing guidelines in accordance with the following criteria:

A. The guidelines shall be for Class A, Class B and Class C crimes;

B. The circumstances under which imprisonment of an offender is proper;

C. Appropriate advisory sentencing guidelines for offenders for whom imprisonment is proper, based on each appropriate combination of reasonable offense and offender characteristics. The guidelines may provide for an increase or decrease of up to 15% in the base sentence;

D. The commission shall address appropriate sanctions for offenders for whom imprisonment is not proper, including, but not limited to, the following noninstitutional sanctions: Payment of fines; day fines; restitution; community work orders; work-release programs in local facilities; community-based residential and nonresidential programs; incarceration in a local correctional facility; and probation and the conditions thereof;

E. The commission shall address the appropriateness of statutory or constitutional changes to facilitate expanded judicial authority for post-conviction resentencing or modification of sentence;

F. The commission shall address the appropriateness of expanded judicial discretion to sentence to intermediate correctional facilities;

G. The commission shall address the need for a system to monitor the application of the advisory sentencing guidelines and the most effective system to accomplish that function; and

H. Such other matters and considerations as the Maine Sentencing Guidelines Commission shall deem appropriate in providing to the Legislature a full and accurate picture of the subject matter of sentencing and sentencing alternatives.

In establishing the sentencing guidelines, the commission shall take into substantial consideration current sentencing and release practices and correctional resources, including, but not limited to, the capacities of local and state correctional facilities.

The commission may solicit reports, data and other assistance from the Criminal Law Revision Commission. The commission may also seek the assistance of any other persons or organizations.

The commission shall meet as often as necessary to fulfill its mandate and shall provide for publicized public hearings to garner maximum public participation in its decision making.

Sec. 4. Compensation. Each member of the commission not an employee of the State shall be allowed the sum of \$50 a day plus his necessary traveling expenses for actual attendance at commission meetings or proceedings.

Sec. 5. Staff and facilities. The commission may employ a research director who shall perform the duties which the commission directs, including the hiring of any clerical help and other employees the commission may require. The research director and other staff shall be in the unclassified service of the State and their salaries shall be established by the commission.

The Department of Attorney General shall provide adequate office space and administrative services for the commission for which the department shall be reimbursed. The commission may also utilize services, equipment, personnel, information and resources of other state agencies, with their consent; and may accept voluntary and uncompensated services, contracts with individuals, public and private agencies, and request information, reports and data from any agency in the State or any of its political subdivisions, to the extent authorized by law.

Sec. 6. Additional funds. When any person, corporation, the Federal Government or any other entity offers funds to the Maine Sentencing Guidelines Commission to carry out its purposes and duties, the commission may accept the offer by majority vote and, upon acceptance, the chairman shall receive the funds subject to the terms of the offer, but no money may be accepted or received as a loan nor may any indebtedness be incurred, except in the manner and under the limitations otherwise provided by law.

Sec. 7. Report on findings and recommendations. The Maine Sentencing Guidelines Commission shall make a final report of its findings and recommendations with respect to the criteria indicated in section 3 on or before January 5, 1986 to the Second Regular Session of the 112th Legislature. The report shall also include, in proper draft form, any suggested implementing legislation or amendment to the Constitution of Maine proposed to implement the commission recommendations.

Sec. 8. Appropriation. The following funds are appropriated from the General Fund to carry out the purposes of this Act.

1985 - 86

MAINE SENTENCING
GUIDELINES COMMISSION

Personal Services	\$1,200
All Other	<u>\$3,800</u>
Total	\$5,000

STATEMENT OF FACT

The 111th Legislature establishes a commission to recommend sentencing guidelines in order to reduce disparity in sentencing and to establish just, uniform sentencing practices throughout the State in terms of length of incarceration, as well as incarceration versus probation. In developing the guidelines, the commission was to examine appropriate combinations of reasonable offender and offense characteristics, giving substantial consideration to current sentencing and releasing practices and to available correctional resources.

The final report of that commission recommended that a new commission be created to continue the study in order to:

1. develop further input from affected parties,
2. focus more fully on appropriate sanctions for offenders;
3. develop advisory sentences, and
4. provide a system to monitor the operation of the guidelines.