

National Association of Sentencing Commissions

Executive Board

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2007 CONFERENCE

NEW FRONTIERS IN SENTENCING

AUGUST 5-7, 2007 OKLAHOMA CITY, OKLAHOMA

NASC is hosting its 2007 National Conference in Oklahoma during the state's Centennial Year celebration. Oklahoma City, staked out by pioneers during the Land Run of 1889, will roll out the red carpet to show off a reinvented capital city that is the crossroads of the nation, both geographically and culturally.

The NASC conference will be held at the historic Skirvin Hilton Hotel. Re-opened in March 2007 after a \$55 million renovation, the 96-year-old capital city landmark has been restored to its original luster. NASC attendees will enjoy a bison steak dinner at the National Cowboy & Western Heritage Museum on Monday evening, when the entire museum will be reserved just for conferees. Transportation will be provided.



America is steeped in the traditions of the west and the American Indian, and no state boasts a richer heritage of both than Oklahoma. Before statehood, Oklahoma was Indian Territory, the end of the Trail of Tears for the Five Civilized Tribes that were uprooted from the Southeastern states by the Indian Removal Act of 1830. The U.S. doctrine of Manifest Destiny resulted in the relocation of western plains Indians to reservations across the western half of the state, known as Oklahoma Territory. Treaties with Native Americans were dissolved shortly after they fought on the losing side of the Civil War, and white settlement ensued. The state's motto, "The Sooner State," celebrates the land-runners who lawlessly jumped the gun to stake out the best claims for farming, ranching – and cities on the frontier. The 46th state entered the union in 1907 as "Oklahoma," a Choctaw word for "Land of the Red People."



2007 NASC Conference Tentative Agenda and Speakers

Sunday, August 5

3:00-6:00 Registration
 3:30-4:30 Executive Committee meeting
 5:00-7:00 Reception and Entertainment

Monday, August 6

7:30- 8:30 Breakfast
 7:30-12:00 Registration
 8:30-10:00 Welcomes and Introductions

Jack O'Connell, President, National Association of Sentencing Commissions
 K. C. Moon, Director, Oklahoma Criminal Justice Resource Center
 State Sen. Richard Lerblance, Chairman, Oklahoma Sentencing Commission

Plenary: *Frontiers Old and New in Sentencing Guidelines*

Kevin Reitz, University of Minnesota Law School
 Steven Chanenson, Villanova University School of Law
 Kim Hunt, Director, DC Advisory Commission on Sentencing

10:00-10:15 Break

10:15-11:45 Panel Sessions

Revisiting Theories of Sentencing

Laura Appleman, Willamette University College of Law, Moderator
 David Boerner, Seattle University School of Law
 Michael Tonry, University of Minnesota Law School
 David Wexler, University of Arizona College of Law

Issues in Federal Sentencing

Lisa Rich, US Sentencing Commission, Moderator
 John Steer, US Sentencing Commission
 Ken Cohen, US Sentencing Commission
 Glenn Schmidt, US Sentencing Commission

Developments in California Sentencing

Barb Tombs, Vera Institute of Justice, Moderator
 Kara Dansky, Stanford Criminal Justice Center
 Carole D'Elia, California's Little Hoover Commission

11:45-12:30 Luncheon

Welcome
 The Honorable Jari Askins, Lieutenant Governor, State of Oklahoma/Former Chair, Oklahoma Sentencing Commission

12:30- 1:45 *Disasters and Sentencing*

The Honorable Richard Gebelein, Office of the Attorney General, State of Delaware
 Carle Jackson, Louisiana Commission on Law Enforcement

1:45- 3:15 Panel Sessions

Post-Prison Sanctions

Laura Appleman, Willamette University College of Law, Moderator
 Daniel Filler, Drexel University College of Law
 Doug Berman, Moritz College of Law, Ohio State University
 Robert Weisberg, Stanford Law School

Risk Assessment and Sentencing Guidelines

Jake Horowitz, Public Safety Performance Project, Pew Charitable Trusts, Moderator
 Brian Ostrom, National Center for State Courts
 Andrew Wiseman, Wisconsin Sentencing Commission
 Rick Kern, Director, Virginia Criminal Sentencing Commission

Issues in Juvenile Sentencing

Susan Katzenelson, North Carolina Sentencing & Policy Advisory Commission, Moderator
 Gary Waint, Office of State Courts Administrator, State of Missouri
 Lynette Greenfield, Virginia Department of Juvenile Justice
 Steven Aos, Washington State Institute for Public Policy

3:15-3:30 Break

3:30-4:30

Roundtables on Sentencing Issues

How Sentencing Changes after Increases in Legislated Penalties
 Meredith Farrar-Owens, Virginia Criminal Sentencing Commission

Impact of Federal Sentencing Policy on State Sentencing Policy
 The Honorable Linda Ludgate, Court of Common Pleas, State of Pennsylvania

Native American Justice: Crime policies of the First Oklahomans
 The Honorable Dick Wilkerson, former Senator, State of Oklahoma
 Harvey Pratt, OSBI Criminologist, Cheyenne and Arapaho Tribal member

Reentry: Why It Works and Does Not
 Kara Dansky, Stanford Law Center

Specialty Courts

David Wright, Oklahoma Department of Mental Health and Substance Abuse Services

Communicating Research to Policymakers
 Teri Carns, Alaska Judicial Council

6:00-10:00

Bison steak dinner at the National Cowboy and Western Heritage Museum.

Tuesday, August 7

7:30-8:30

Breakfast

8:30-10:00

Remarks

Plenary:

Roundtable on Costs and Benefits in Corrections and Sentencing

Michael Tonry, University of Minnesota Law School
 Steven Aos, Washington State Institute for Public Policy
 David Boerner, Seattle University School of Law
 Justin Jones, Director, Oklahoma Department of Corrections

10:00-10:15

Break

10:15-11:45

Panel Sessions

Developing New Commission

Panelists from new commission states, such as AL, IL, CT
 Mark Bergstrom, Director, Pennsylvania Commission on Sentencing
 The Honorable Richard Gebelein, Office of the Attorney General, State of Delaware
 Robert Ravitz, Chief Public Defender, Oklahoma County, Oklahoma

Community Monitoring of Sex Offenders

Richard Kishur, Ph.D., Oklahoma Sex Offender Management Team
 Kelley Land, US Sentencing Commission
 Paul Stageberg, Iowa Department of Human Rights

Connecting Sentencing Networks through Weblogs

Doug Berman, Moritz College of Law, Ohio State University, Moderator
 Michael Connelly, Oklahoma Department of Corrections
 Corey Yung, John Marshall Law School

11:45-12:00

Break (and checkout)

12:00- 1:30

Business Luncheon

1:30- 2:30

Roundtables on Sentencing Issues
Same Topic Offerings as Monday August 6th, 3:30 Session



Conference Registration

New Frontiers in Sentencing

Name _____

Title _____

Agency _____

Address _____

City _____ State _____ Zip _____

Phone _____ Fax _____

E-mail _____

Special Needs _____

Conference Registration Fee

If paid by July 10 \$275.00 \$ _____

If paid after July 10 \$300.00 \$ _____

TOTAL DUE \$ _____

Special Event - Bison Steak Dinner at the Cowboy and Western Heritage Museum

Monday, August 6 at 6:00 pm

Dinner is free for conference attendees and their guests. (Must register by July 27)

I will attend the Conference Dinner

I will have guests attending the Conference Dinner (Numer of Guests _____)

I and/or guest require a vegetarian meal (Number of Vegetarian Meals _____)

Payment Method

A check or purchase order made payable to NASC for \$ _____ is enclosed.

(NASC Federal ID # 51-0372368)

Make checks payable to National Association of Sentencing Commissions

Send completed registration form and payment to:

Oklahoma Sentencing Commission, Attn: 2007 NASC Registration,

3812 N. Santa Fe, Suite 290, Oklahoma City, Oklahoma 73118



Registration Fees

The conference registration fee of \$275.00 includes reception on Sunday, Dinner on Monday

evening, continental breakfast and luncheon on Monday and Tuesday.

Complete the registration form to the right, enclose payment, and mail it to the Oklahoma Sentencing Commission. Payment should be in the form of a check made payable to NASC or a purchase order number.

Travel Information

Hotel

Skirvin Hilton Hotel

Reservations may be made directly with the Hotel by calling 1-888-490-6546 and referring to the National Association of Sentencing Commissions. When making reservations online (www.hilton.com), please use promotion code NSC to receive the conference rate of \$119 + tax. You must make your reservations by July 10th to take advantage of this special rate.

Area Airport

Will Rogers Airport (OKC)

8 miles from host hotel.

Cab fare about \$20;

Shuttle fare \$17 for 1 person,

\$13 for 2, \$7 for 3

For More Information, please contact:

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NASC August 5-7 2007 Oklahoma City, Oklahoma



President's Message

On August 5 -7, 2007, the National Association of Sentencing Commissions (NASC) will have its annual conference in Oklahoma City at the historic Skirvin Hilton Hotel. Our co-hosts this year are the Oklahoma Sentencing Commission and the Oklahoma Department of Corrections. I extend a particular thanks to K.C Moon, Director of the Oklahoma Criminal Justice Resource Center, and Michael Connelly of the Oklahoma Department of Corrections for all the work they have done to host our conference.

Our theme, New Frontiers in Sentencing, considers the eight or so "new" states that have adopted or are assessing the adoption of sentencing guidelines, as well as the "older" states that deal with evolving issues of improving sentencing so as to balance justice, public safety and costs. Our planning committee has developed a challenging agenda with a point and counterpoint discussion of the proposed Model Penal Code, the latest theories of sentencing, a review of the issues in the Federal Sentencing Guidelines, and special panels on post-prison sanctions, risk assessment and sex offender monitoring. We are featuring our new sentencing guideline states in two panels offering up-to-date views of the direction and the issues these states are facing. For the first time, we are making sure that you, the conference attendee, have a chance to interact with and get to know your peers across the country (be they from the courts, the universities, or commission staff) through round table discussions. Hopefully, the conversations started at these round tables will carry over into the remainder of the conference and well beyond. We also have presentations that address the provision of justice in the most difficult of situations -- in war zones (Afghanistan and Bosnia) and natural disasters (Louisiana) -- that promise to give our daily work a new perspective.

We hope you to see in Oklahoma, a state with a true frontier history and spirit.

John P. "Jack" O'Connell, Delaware Statistical Analysis Center - Office of Management and Budget



A tour of the Oklahoma State Capitol is a must for any history buff. It is the only capitol with a working oil well on its grounds.

State Capitol Interior Photo by Greater Oklahoma City Chamber

PASSAGE OF SENTENCING STANDARDS REQUIRES EXTENSIVE TRAINING

The third time was a charm. After two unsuccessful attempts to obtain the Legislature's approval, Alabama passed the Sentencing Reform Act approving felony sentencing standards that became effective October 1, 2006. The sentencing standards are the major component of the Alabama Sentencing Commission's reform efforts. These standards were developed to eliminate unwarranted disparity in sentences, while maintaining meaningful judicial discretion, and to address prison and jail overcrowding. They are voluntary and nonappealable sentencing recommendations for 26 of the most frequent non-capital crimes, representing 87% of the most frequent crimes of conviction. Although the standards are voluntary, the law does require that judges consider the sentences recommended under the standards for the applicable offenses, and note this fact in the court record. We expect that the sentencing standards will provide judges with the information needed for informed sentencing decisions and will be followed in at least 75% of the cases.

This accomplishment was possible only through the collaborative efforts of all branches of government and the strong support provided by the officials and employees of the various departments and agencies that are actively involved in our criminal justice system. While working to pass the sentencing standards and other reform bills, the Commission noted a collateral benefit rarely achieved in other states - the formation of a cooperative alliance among the criminal justice stakeholders. These relationships have developed through the constant contact and communication stemming from participation in Commission and committee meetings, as well as through daily contact with Commission staff. Working together with leaders from the executive, legislative and judicial branches of state and local government has not only focused attention on the critical issues facing our criminal justice system, but has also created an awareness that these problems are not the responsibility of any one department or agency, but rather, are concerns that can only be resolved through a united state and local effort.

Sentencing Standards Training Begins the Latter part of FY 06 and Continues into FY07

Immediately following passage of Act 2006-312, the Alabama Sentencing Commission members and staff began laying the groundwork to facilitate implementation of the new voluntary sentencing standards that became effective October 1, 2006. Expanding on the sentencing workshops that were conducted around the state in 2004 when the sentencing standards were developed and first presented to the Legislature for approval, another round of 2-day workshops began.

The first two workshops of the 30 scheduled were held in Montgomery on May 4th and 5th, 2006. These were followed by regional workshops held throughout the state during the summer months and into September. Additional workshops were held at various locations during September and into FY 07 at the request of local bar associations and district attorney's offices. The workshops provided members of the bench and bar, court personnel, and criminal justice officials and employees with hands-on experience in completing the worksheets that will lead to more informed sentencing decisions and eliminate unwarranted sentencing disparity. The workshops were co-sponsored by the Judicial College of the Administrative Office of Courts (AOC), and the State Board of Education and were provided free of charge, offering CLE, CEU, and Judicial College, and court referral continuing education credit to participants.

Sentencing Standards Website and Electronic Worksheets

To facilitate completion of the worksheets in a timely and efficient manner, through the technical assistance of the Administrative Office of Courts, electronic worksheets were developed. These worksheets are now available statewide to designated worksheet preparers through the website <http://worksheets.alacourt.gov>. In addition to populating common factors from the In-Out Worksheet to the Sentence Length Worksheet, automatically adding points to arrive at the total scores, and entering the data directly into the Sentencing Commission database, utilizing the e-worksheets also reduces the time required to complete the forms by eliminating the need to complete the actual sentence imposed (this information is pulled in from the State Judicial Information System) and eliminating reference to a separate table for the range of sentencing recommendations. Another incentive to use the e-worksheet system is that it provides judges, prosecutors, probations officers and worksheet preparers ready access to identifying information for offenders through AOC's NameMaster system, Pardon and Paroles' electronic pre-/post-sentence investigation reports, and prior convictions from court records and Alabama arrest records.

Statewide Access of Juvenile and YO Records Now Available to Judges, Prosecutors and Probation Officers for Sentencing Purposes

Because prior Juvenile and Youthful Offender adjudications are factored into the sentencing standards, it was necessary that to judges, prosecutors and probation and parole officers be provided statewide access to these records. At the request of the Sentencing Commission, the Alabama Supreme Court issued an Administrative Order dated August 31st, 2006, effective October 1, 2006, providing that criminal records of persons subsequently charged with a felony offense and previously adjudged a youthful offender or juvenile delinquent would be available statewide to all judges, prosecutors, victim service officers, probation and parole officers and court personnel for the purpose of completing the worksheets required for sentencing standards and that access to these records would be provided without requiring a special hearing or issuing an individual court order.

Plans for the Remainder of 2007

The Sentencing Commission's emphasis for the remainder of FY 07 will be on utilization of the electronic worksheets and compliance with the sentencing standards. Training on the use of electronic worksheets and the standards website has begun; however, additional educational programs will be required to demonstrate the convenience and efficiency of e-worksheets. A direct help line to the Commission staff is provided and an on-line tutorial is also scheduled to be developed and included on the worksheet website, <http://worksheets.alacourt.gov>.

After sentencing, clerks are required to forward a copy of the completed worksheets to the Sentencing Commission. The Commission staff is monitoring the filing of worksheets and following up the 2006 workshops with individual phone calls and visits to counties identified as lagging behind. Individual contact will continue until all counties are appropriately utilizing and filing the worksheets. Only 8 of 67 counties appear to have filing issues at the time of this writing. At least 3 are those are failures in the clerks' offices in filing the completed forms with the Commission.

The Commission also has several projects underway with the Vera Institute of Justice of New York and Applied Research Services of Atlanta Georgia. Vera is working with us to evaluate the use and effectiveness of the worksheets and to increase intermediate punishment options in Alabama by expanding drug courts and more clearly defining community corrections and probation services. Alabama is working with Applied Research Services to expand our simulation model, assist in evaluation of standards compliance and to begin the process of developing truth-in-sentencing guidelines for Alabama.

As always, there is plenty to keep us busy.

Alaska

The Judicial Council carried out the first general study of recidivism in Alaska in 2007 (CRIMINAL RECIDIVISM IN ALASKA, Alaska Judicial Council (January 2007); available on the Judicial Council website at www.ajc.state.ak.us, under "Publications"). Using a sample of 1,798 persons charged with felonies in 1999 and convicted of a felony or misdemeanor (ALASKA FELONY PROCESS: 1999, published in February 2004; available on the Judicial Council web site, www.ajc.state.ak.us under "Publications"), the Council reviewed criminal justice records for three years. Measuring from the date on which the offender was released from custody for the sentence served for the targeted offense, the Council found the date and type of offense, case filed, and conviction for each offense within the next three years. Remands during the subsequent three years also were tallied. The Council modeled its analysis on the Bureau of Justice Statistics study published in 2002 (P. Langan and David Levin, "Recidivism of Prisoners Released in 1994," Bureau of Justice Statistics (BJS), June 2002, Reference number NCJ 193427).

The Council found that Alaska's criminal justice system was turning out offenders who did worse with each successive exposure to it. Overall, 55% of offenders were convicted of a new offense within the first three years after release from serving their sentences. The chances of new convictions increased with each prior conviction, so that offenders were more and more likely to return to longer periods of incarceration. Within the first year after release, 38% of the 1999 convicted offenders had been re-arrested at least once. This represented 65% of all of the re-arrests during the three years after release. The same pattern of timing of recidivism was found in all four of the recidivism measures. Within the first six months after release, 34% of the offenders were remanded to custody at least once. This meant that half (52%) of the remands during the three years after release had already occurred by the end of six months after release.

An offender's age and economic status were the most important factors affecting an offender's chance of coming back to the justice system. Being indigent increased the chance of being remanded to custody, being re-arrested, having a new conviction, or having a new case filed by about 50%. The younger the offender, the more likely to return to the justice system when compared to older offenders. Eighteen-year-olds were 81% more likely to recidivate than were 45-year-olds. The next most important factors were whether the offender had a mental health, alcohol, or a drug problem; whether the offender had a criminal history prior to 1999 (prior criminal histories were categorized as 1) no prior convictions; 2) 1-3 prior misdemeanor convictions; 3) 4 or more prior criminal convictions; 4) 1 prior felony; 5) 2 prior felonies; 6) 3 or more prior felonies); and whether the offender was an Alaska Native. Each factor was associated with a greater likelihood of recidivism; each increased the chance of recidivism by about 15% to 25%.

Offenders whose 1999 convictions were more serious were less likely to return to the justice system. Offenses were categorized (in descending order of seriousness) as Unclassified, Class A felonies, Class B felonies, Class C felonies, and misdemeanors. None of the offenders convicted of Unclassified felonies had been released for as much as three years after serving their sentence for the 1999 offense. Asian-Pacific Island offenders were less likely to have a re-arrest, a new case filed or a new conviction. Offenders whose 1999 felony charges resulted in conviction of a Sexual offense were among the least likely to be re-arrested, have new cases filed, be re-convicted, or return to custody. Offenders convicted of a Drug offense in 1999 were less likely to have a new case filed, or be remanded to custody, but they had about the same chance as other offenders of having a re-arrest, or of being re-convicted.

The Council suggested that policymakers consider treatment, re-entry services, and more community-based programs to reduce the likelihood for recidivism.

Massachusetts

Governor Deval Patrick announced a review of the state's mandatory sentencing laws in order to address issues of public safety, prisoner re-entry, and corrections cost. Governor Patrick also created a new Anti-Crime Council to improve the ability of government agencies to share information, assess the success of current anti-crime efforts, and collaborate on new and innovative public safety strategies. It is hoped that these two initiatives will serve as a catalyst for comprehensive sentencing reform.

The Massachusetts SJC upheld a type of disposition unique to Massachusetts. Dating back to at least 1831, Massachusetts has allowed judges to place convictions on file after a guilty plea and bring them against the defendant for sentencing at a later date. Described as "a predecessor to modern probation," placing convictions on file allowed judges to avoid imposing unduly harsh sentences, and the Commonwealth traditionally removed the indictments from file if the defendant successfully appealed a similar conviction or if the defendant violated an express condition of the filing.

In 1981, Paul Simmons pled guilty to thirteen indictments and was sentenced on six counts of armed robbery, while the others were placed on file with his consent. When Simmons was subsequently arrested on another charge of armed robbery in 1986, the Commonwealth moved for a previously filed armed assault charge against Simmons to be removed from the file, and the trial judge sentenced Simmons to a prison term of 18-20 years for that charge.

While serving the sentence, Simmons challenged the sentence for the assault charge on several grounds, including lack of consent to the filing of charges and that the sentence did not properly account for previous jail time. When those challenges failed, Simmons moved to vacate the sentence in 2003, arguing that the sentence violated due process and the right to a speedy sentencing. Though the Appeals Court denied the motion, it still vacated the sentence, holding that a previously filed indictment could only be removed if a related conviction was reversed or the defendant violated conditions he consented to at the time of filing.

The Commonwealth appealed that decision to the SJC. In its decision, the SJC overruled the Appeals Court, holding that common law placed no restraints on when a filed indictment could be brought, and holding that the practice did not violate procedural or substantive due process rights or the right to speedy sentencing. However, while noting that the "sword of Damocles still properly hangs over a defendant who has consented to placing his case on file," the SJC stated that the sentencing judge "must consider the overall scheme of punishment employed by the trial judge" when the indictments were initially placed on file. Since the original trial judge sentenced Simmons to considerably less than 18-20 years for the earlier charges, the SJC remanded the case for re-sentencing.

Although the practice was never codified in law, the SJC reasoned that since the legislature knew the practice existed and did not discard it, placing convictions on file "enjoys the support of the Legislature." Thus, in upholding the filing of convictions and placing no restraints on removing convictions from file, the SJC ensured that this practice, unique to Massachusetts, will continue to exist.

Oklahoma

Oklahoma Legislature Strikes Balance of Power During Centennial Year

The 2007 legislative session was unique in Oklahoma history because it marked the beginning of the State's Centennial year. Oklahoma became the nation's 46th state on November 16, 1907. Centennial celebrations are planned throughout the state for the entire year. Members of the Oklahoma Sentencing Commission are pleased to be adding the National Association of Sentencing Commissions' annual meeting to the list of the state's many centennial celebrations during 2007.

The NASC 2007 conference theme of "New Frontiers in Sentencing" is appropriate for an event held in Oklahoma -- one of the nation's last frontiers. The

Oklahoma *cont..*

Oklahoma commission and its staff have been overwhelmed by support from the criminal justice and academic communities in hosting the NASC meeting. More than 25 organizations have assisted with the meeting, providing grants, audio-visual and educational materials, presentors for panels, etc. Organizations contributing to NASC's annual meeting are:

Avalon Correctional Services Inc.	Oklahoma Department of Corrections	University of Oklahoma School of Law
Oklahoma City University School of Law	Criminal Defense Section of the Oklahoma Bar Association	Oklahoma Bar Foundation
CDW-G	Global Health	Oklahoma State Bureau of Investigation
Oklahoma Bureau of Narcotics and Dangerous Drugs	Oklahoma Sheriffs Association	Oklahoma Municipal Court Clerks Association
Oklahoma Public Employees Association	Oklahoma Coalition Against Domestic Violence & Sexual Assault	
The GEO Group, Inc., Lawton (Okla.) Correctional Facility	Oklahoma State University Willamette University (Salem, OR)	
University of Central Oklahoma Native American Cultural & Education Authority		

2007 is also a landmark in Oklahoma history because the 51st Legislative session that convened in January had an equal number of members from each party in the Senate. The solution to the dilemma was a power-sharing agreement that gave both parties equal leadership responsibly at all levels. Senator Mike Morgan, the Democratic leader, would serve as President Pro-tempore and Senator Glenn Coffee, the Republican leader, would serve as Co-President Pro-tempore until July, when the titles were reversed for a month. Senator Coffee is distinguished in state history as the first Republican to hold the office of Pro Tem in Oklahoma.

During the 2007 session each Senate Committee was led by two co-chairs, one from each party. Each party also selected a floor leader who equally shared responsibilities for selection of bills to be heard. The arrangement allowed each party to select criminal justice bills prioritized by their members. Legislative members of the 51st Legislature became leaders of a "new frontier" of their own, as the equally-divided Senate, the Republican-controlled House, and the Democratic Governor worked to find bipartisan solutions to issues facing Oklahoma. From these unique political circumstances the criminal justice bills passed by the Legislature in 2007 were very diverse. They ranged from making a false amber alert a felony to adding the crime of aggravated trafficking to the list of crimes requiring offenders to serve at least 85% of their sentences. In a quest to determine more cost-effective ways of improving Department of Correction operations, the Legislature passed legislation authorizing a comprehensive performance study and audit of the agency. The audit will be performed by MTG of America, Inc., a national firm selected by a committee of leaders from each party. Leaders announced that they hope the audit will assist DOC to take the steps necessary to increase the prison system's efficiency.

Each year before the Legislature convenes, the Oklahoma Sentencing Commission deliberates criminal justice and sentencing issues and makes recommendations. This year the Commission suggested a variety of reforms concerning sex offender management, prisoner re-entry and reimbursements to county jails. Commission Chairman Senator Richard Lerblance incorporated the recommendations into a bill that did not receive a committee hearing. However, other bills passed that covered some of the same issues addressed by the Commission. Several bills enacted in 2007 were designed to improve supervision of offenders who commit sex crimes. Oklahoma enacted a law that establishes a mandatory 25-year prison sentence for offenders convicted of serious sex crimes against children under the age of 12. This act is comparable to "Jessica's Law", the nationwide act that has been duplicated by several other states since Florida first enacted it in 2005 in memory of Jessica Lunsford.

Sentencing Commission Co-Chairman Representative Gus Blackwell and Senator Todd Lamb, a commission member, were authors of a major piece of legislation designed to bring the Oklahoma Sex Offender Registration Act into compliance with the registration requirements of the federal "Adam Walsh Child Protections and Safety Act (Public Law 109-248)." The Oklahoma Act created a three-tiered evaluation system to allow the state to identify and categorize sex offenders based on risk rather than simply crime type. This legislation also modified penalties for serious sex crimes to require every offender sentenced two or more years serve to a minimum term of three years of post-imprisonment supervision by the Department of Corrections (DOC).

Another measure passed during last session was created to protect children using the Internet from sexual predators by allowing the court to prohibit registered sex offenders from accessing and using Internet social networking sites available to children. House Speaker Lance Cargill and Co-President Pro-Tempore Glenn Coffee authored the "Transformational Justice Act" to emphasize that a prisoner's successful reentry improves public safety. The measure encourages state prisons to partner with faith-based, community and volunteer organizations to help inmates rejoin society and reduce the rate of recidivism. Another measure sponsored by Commissioner Sen. Lamb was enacted to require the DOC and the Pardon and Parole Board to establish a method for tracking the success and recidivism of violent offense for the first three years after their release from prison or released to parole. Membership of the Oklahoma Sentencing Commission was increased by two to 17, adding the DOC Director and a gubernatorial appointee who is from the faith-based community involved in prison-reentry services.

Pennsylvania

PA Supreme Court upholds constitutionality of Pennsylvania's guidelines

On May 31, 2007 the Supreme Court of Pennsylvania decided in *Commonwealth v. Yuhasz* that Pennsylvania's sentencing guidelines are constitutional. This case involved the Blakely issue as it pertains to Pennsylvania, and addressed whether a sentence imposed under Pennsylvania's indeterminate sentencing structure that exceeded the aggravated range, but not the statutory maximum, was in violation of the sixth amendment. The Superior Court, Pennsylvania's intermediate appellate court, had affirmed the sentence that departed above the guidelines, and the appellant petitioned the Supreme Court to review the constitutionality of a judge imposing such a sentence based upon factors not admitted by the defendant in the plea. Appellant argued that the 'statutory maximum' is the guideline range, not that prescribed by statute, and thus in order to sentence beyond the guideline range the facts must be proven beyond a reasonable doubt in accordance with the sixth amendment. The Commonwealth asserted that under Pennsylvania's indeterminate system of sentencing, the maximum sentence is guided by statute, not the guidelines, and that any increased sentence impacts only the minimum sentence. [Pennsylvania guidelines only make recommendations for minimum sentences, not maximum sentences.] Additionally, the Commonwealth noted that the Supreme Court stated in *Blakely* that the sixth amendment issue did not impact indeterminate sentencing states. Pennsylvania's Supreme Court referenced the *Apprendi*, *Blakely*, and *Booker* decisions in concluding that since Pennsylvania's guidelines are advisory, not mandatory, they do not serve as the 'maximum' sentence, and thus not in violation of the sixth amendment. The Court concluded that "Because the statutory maximum is the polestar for the Sixth Amendment purposes, a judge may impose a sentence outside the Guidelines without unconstitutionally increasing the punishment for a crime base on judicially-determined facts as long as the maximum sentence imposed does not exceed the statutory limit."

The Pennsylvania Commission on Sentencing filed an amicus brief in *Com. v. Yuhasz*, which was referenced in the decision, as was Professor [and Sentencing Commission member] Steven L. Chanenson's *Emory Law Journal* article, *The Next Era of Sentencing Reform*.

Evaluation of Treatment-Based Intermediate Punishments in Pennsylvania

The Commission just released a Research Bulletin summarizing the findings from a study that evaluated Pennsylvania's treatment based Intermediate Punishment option. The evaluation was part of a research partnership that the Sentencing Commission has established with faculty at The Pennsylvania Commission on Sentencing. This project was under the direction of Professor John H. Kramer, who is a professor of Crime, Law, and Justice and was the first executive director of Pennsylvania's Sentencing Commission.

Background of Intermediate Punishment in Pennsylvania. In 1990, the Pennsylvania legislature formally created Intermediate Punishment [IP] as a sentencing option for judges to use as an alternative to incarceration for non-violent offenders. The legislation mandated the Commission on Sentencing to recommend appropriate offenders for this alternative sentencing option.

The guidelines allow for IP to be used in lieu of incarceration for certain offenders, with the requirement that prior to imposing such a sentence, the offender must undergo an assessment for substance abuse dependency by a licensed provider. For offenders found to be drug or alcohol dependent, the guidelines require that the IP sentencing option be consistent with the treatment recommendation.

Funding for IP. In 1994 the legislature allocated \$5.3 million to assist counties in the implementation of IP programs. In 1998, the legislature provided for an additional allocation of \$10 million specifically linked to revised sentencing guidelines, which expanded the targeting of offenders for IP programs involving substance abuse treatment. By 2006, this funding had increased to \$15.8 million, and the proposed 2007/08 budget has increased the allocation for treatment-based IP to \$18 million.

Evaluation of Treatment-Based IP. The IP Project was a multi-stage process that addressed the effectiveness of IP sentences involving drug and/or alcohol treatment in comparison to traditional sentencing options [i.e., probation, jail, and prison]. The study addressed three major questions: 1) Are offenders sentenced to IP treatment programs less likely to recidivate than offenders sentenced to traditional sentencing options?, 2) Are offenders who complete their treatment programs less likely to recidivate?, and 3) Does length of treatment impact recidivism?

The treatment sample consisted of offenders who were sentenced to IP sentences involving Drug and Alcohol treatment during 1998-2001 [n=1,728]. The comparison group consisted of offenders who were sentenced to prison [n=221], jail [n=892] or probation [n=625] during 1997 but would have been eligible for IP D&A had the programs been available.

Major findings from the study were:

Overall, the study found that there was no major difference in the re-arrest rates of offenders who were sentenced to treatment-based IP compared to those sentenced to jail or probation. However, offenders who successfully completed their treatment program were significantly less likely to be re-arrested than those sentenced to jail or probation.

Offenders sentenced to state prison were least likely to recidivate, though a likely explanation for this finding is that a number of offenders are returned to prison on technical violations of parole, and thus are no longer at risk for re-arrest.

The length of treatment is important, with offenders receiving 16 months of treatment being least likely to recidivate.

Full-time employment is a major factor that contributes to both lowering recidivism and completion of treatment

A copy of the Research Bulletin can be obtained by contacting the Commission at 814.863.2797 or by visiting the Commission's website: <http://pcs.la.psu.edu/>

Release of Annual Report

At the end of June, the Commission will be releasing its 2006 Annual Report. The report provides a review of sentencing practices and aggregate statewide sentencing data for the calendar year 2006. A total of 134,119 sentences were reported to the Commission by the courts of common pleas through March 31, 2007, representing 91,790 criminal incidents. A limited number of hard copies will be distributed and the report will be available on the Commission's website: <http://pcs.la.psu.edu/> Subsequent to this, the Commission will also be posting data report for 2001, 2004, and 2005.

United States Sentencing Commission

In April 2007, the United States Sentencing Commission promulgated several amendments to the Federal Sentencing Guidelines. Among the most notable amendments were modification to the guidelines covering crack cocaine offenses, sex offenses, and calculation of the criminal history score. Further details about these amendments are available on the Commission's website, www.ussc.gov.

Crack Cocaine

The Commission updated its 2002 Report to Congress on federal cocaine sentencing policy and affirmed its conclusion that the 100-to-1 drug quantity ratio undermines the objectives of the Sentencing Reform Act. Recognizing that establishing federal cocaine sentencing policy is ultimately Congress's prerogative, the Commission tailored an amendment to fit within the existing statutory penalty scheme for crack cocaine.

The amendment, which is effective November 1, 2007, modifies the drug quantity thresholds in the Drug Quantity Table so as to assign, for crack cocaine offenses, base offense levels corresponding to guideline ranges that include the statutory mandatory minimum penalties. Crack cocaine offenses for quantities above and below the mandatory minimum threshold quantities similarly are adjusted downward by two levels.

The Commission's findings were detailed in a May 15, 2007, report to Congress, which is available on the Commission website, www.ussc.gov. That report included three recommendations for modifications to the statutory penalties for crack cocaine offenses:

- 1) Increase the five-year and ten-year statutory minimum threshold quantities for crack cocaine offenses to focus the penalties more closely on serious and major traffickers as described generally in the legislative history of the Anti-Drug Abuse Act of 1986.
- 2) Repeal the mandatory minimum penalty provision for simple possession of crack cocaine under 21 U.S.C. § 844.
- 3) Reject addressing the 100-to-1 drug quantity ratio by decreasing the five-year and ten-year statutory mandatory minimum threshold quantities for powder cocaine offenses, as there is no evidence to justify such an increase in quantity-based penalties for powder cocaine offenses.

Sex Offenses

The Commission promulgated an amendment implementing the Adam Walsh Child Protection and Safety Act of 2006. The amendment provides a new guideline for failure to register as a sex offender and provides greater penalties if a defendant commits certain offenses after failing to register. The amendment also provides a means of considering defendants' voluntary attempts to correct the failure to register. Further, the amendment provides an additional new guideline for certain aggravated offenses related to the requirement to register as a sex offender. This sentence would run consecutive to any sentence imposed for the failure to register offense or any sentence imposed for an enumerated underlying offense. The amendment also implemented other provisions of the Adam Walsh Act that provided enhanced penalties for sexual offenses.

In evaluating crimes related to sex offender registration, the Commission noted that not all states have implemented the new requirements, and those states are continuing to register sex offenders pursuant to the sex offender registry in place prior to July 27, 2006, the date of enactment of the Adam Walsh Act. Thus, the Commission maintained the language in the guidelines providing for conditions of probation and supervised release for those offenders.

Criminal History

This amendment addresses the use of misdemeanor and petty offenses in determining a defendant's criminal history score.

After conducting a study, analyses led the Commission to make three modifications to the guidelines. First, the amendment changes the criteria for counting certain minor offenses. Previously, minor offenses counted if the defendant had received a probation of 12 months or more; the amendment changed this language so the minor offenses count if the probationary period was more than twelve months. Finally, the amendment resolves a circuit conflict over the manner in which a non-listed offense is determined to be "similar to" an offense. Second, the amendment moves from counted offenses to offenses not counted two classes of offenses: fish and game violations and local ordinance violations (except those violations that are also violations under state criminal law).

Virginia Offers Sentencing Guidelines Ethics Seminar

Since it was created in 1995, the Virginia Criminal Sentencing Commission has provided sentencing guidelines training to the legal and corrections communities. These training seminars have focused on the preparation of guidelines forms for the court, correct scoring of individual guidelines factors, accurate completion of offender risk assessment instruments, and submission procedures. A variety of training classes have been offered over the years. One course is designed specifically for professionals new to the Virginia guidelines system. Another course, for those seasoned professionals, provides information on just the new features or components to the guidelines that will be taking effect for the coming fiscal year. All seminars are approved by the Virginia State Bar for Mandatory Continuing Legal Education (MCLE) credit for attorneys who attend training.

In 2007, the Sentencing Commission introduced a new training course. This year, for the first time, the Sentencing Commission began offering a sentencing guidelines course focused on legal ethics. The ethics seminar was developed in conjunction with the Virginia State Bar. The course is taught jointly by staff of the Sentencing Commission and a legal ethics specialist from the State Bar. The curriculum is designed for prosecutors, public defenders and criminal defense attorneys. The Commission's new ethics course has been approved by the Virginia State Bar for one hour of MCLE ethics credit. Probation officers, one of the two groups authorized by statute to prepare guidelines for the court, also may attend if they desire.

During the seminar, instructors discuss hypothetical cases involving sentencing guidelines and apply the current Rules of Professional Conduct as set out by the State Bar. Case examples focus on issues related to the obligation of the prosecutor and defense attorney to reveal errors and provide missing information to the court, duty of defense counsel to diligently represent his or her client, and negotiation of plea agreements based on sentencing guidelines. Each hypothetical is discussed from the perspective of the prosecutor as well as the defense attorney. A variety of scenarios are discussed in detail. Active discussion between instructors and participants is encouraged.

The sentencing guidelines ethics seminar has received positive feedback from prosecutors and defense attorneys alike. The Sentencing Commission plans to add the course to its training curriculum and expects to offer the course at regular intervals throughout the year.

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OKLAHOMA

Down Home Cookin'



When dining in Oklahoma it helps to know an inside tip or two. When you order tea, it's likely to be served over ice, even in December. And wood smoke curling into the sky and a parking lot full of pick-up trucks usually means you've come across a barbecue "joint." Expect beef, pork and chicken smoked over hickory or mesquite and served up with white bread, coleslaw and tangy sauce. Oklahoma's official state food is chicken-fried steak: Oklahoma beef, batter-fried and smothered in cream gravy.

Cowboy Oklahoma

Oklahoma's cowboy and ranching heritage stretches back to the days after the Civil War, when Texas drovers brought cattle north along the Chisholm Trail, stopping here to fatten the herds on lush prairie grass. The culture is still strong. Oklahoma has more horses than any other state, and there's likely to be a cowboy to go with every horse. Visitors can taste cowboy life and campfire coffee at a variety of rodeos, guest ranches, trail rides and chuck wagon feeds.



Route 66

The fabled "Main Street of America" crosses Oklahoma for 392-plus miles (and in fact was born here; the road's architect, Cyrus Avery, lived in Tulsa). Route 66 enthusiasts will tell you there's no better place to cruise—travelers find neon-lit diners, drive-in theaters, mom-and-pop gas stations and many of the famed Route 66 icons within Oklahoma's borders. The state also is home to the National Route 66 museum and a state Route 66 Museum.

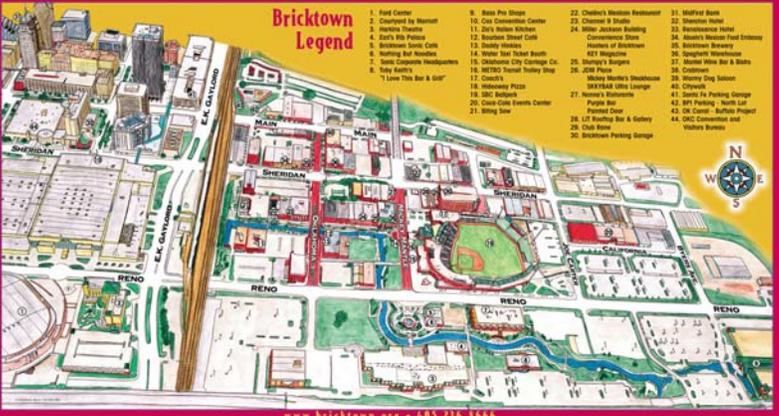
Jurassic Oklahoma



More than five million artifacts—including the largest apatosaurus skeleton ever unearthed and the Cooper skull, the oldest painted object in the New World—are housed at the newly-opened Sam Noble Museum of Natural History in Norman. Part of the University of Oklahoma, the museum is the largest university-based museum of natural history in the world, and contains the most extensive collection of prehistoric artifacts outside the Smithsonian.

Oklahoma City's Historic Bricktown Entertainment District

Bricktown Legend



Bricktown Entertainment District

Not far from the memorial is Oklahoma City's newly-renovated Bricktown Entertainment District, offering restaurants, shopping, night life, a canal with water taxis, and the Southwestern Bell Bricktown Ballpark, home of the Oklahoma City Redhaws, a triple-A affiliate of the Texas Rangers baseball team. New businesses and attractions are in the works.

Oklahoma ranks fourth in the nation in the production of all wheat, fourth in cattle and calf production, fifth in the production of pecans, sixth in peanuts and eighth in peaches.