New York’s New Commission on Sentencing Reform

While the federal bar patiently awaited the next chapter in the U.S. Supreme Court’s recent focus on federal sentencing, Governor Eliot Spitzer quietly brought New York State into the sentencing reform debate.

On March 5, 2007, by executive order, he established the New York State Commission on Sentencing Reform and on April 20, he appointed its first members. While sharing some of the same goals as its federal counterpart, the U.S. Sentencing Commission, this new commission brings an entirely new structure and approach to the task of sentencing reform. The distinction between the two bodies reflects the changing face of American sentencing law and the world in which it is being written.

Commission on Sentencing Reform

The Commission on Sentencing Reform is charged initially with conducting “a comprehensive review of New York’s current sentencing structure, sentencing practices, community supervision, and the use of alternatives to incarceration.” In conducting this review, the commission is specifically directed to explore:

- the current structure of New York sentencing law;
- the uniformity, certainty and adequacy of the sentences it produces;
- the lengths of imprisonment that the system produces and the incentives and barriers to alternatives to incarceration;
- the ability of education and job training to ease reentry and reduce recidivism;
- the impact of current sentencing practice on state resources;
- the relationship of sentencing to public safety and recidivism; and
- future trends in sentencing.

At the completion of its review, the commission is directed to produce a report of its findings, setting forth the impact that current sentencing practice has had on the length of sentences and post-release supervision and recommending alternatives to incarceration. In addition to reporting its results, the commission is directed to propose legislative amendments aimed at maximizing the uniformity, certainty, consistency and adequacy of sentencing in a manner that addresses the traditional sentencing goals of retribution, deterrence and rehabilitation. In doing so, the commission is to take into consideration crime victims, their families and the community. Finally, the commission is directed to analyze the fiscal impact of its recommendations.

The commission is composed of 11 members. The commissioners of the Department of Correctional Services and the Division of Criminal Justice and the chairs of the Parole Board and Crime Victims Board serve ex officio. Four members are appointed on the recommendation of the legislative leaders, one each by the majority and minority leaders of Senate and Assembly. The remaining three members are selected by the governor and must consist of one judge with criminal experience, one prosecutor and one defense attorney.

The commission is directed to issue an initial report of its findings and recommendations to the governor, chief judge of the Court of Appeals and the four legislative leaders by Sept. 1, 2007, with a final report to follow by March 1, 2008. In undertaking its review and preparing its report, the commission is empowered to request documents, conduct public hearings, take testimony, and “take any other actions it deems necessary to carry out its functions.”

New York’s Sentencing Guidelines

This is not New York’s first foray into sentencing reform. In 1983, as Congress was creating the U.S. sentencing commission (USSC), then-Governor Mario Cuomo created the New York State Committee on Sentencing Guidelines. The USSC, the Committee on Sentencing Guidelines was created in response to concern that judicial discretion had led to unwarranted sentencing disparities. Also like the USSC, the committee’s charge was to create a determinate sentencing system akin to what became the federal Sentencing Guidelines.

The committee proposed such a system on March 29, 1985 in Assembly Bill 7027. Mirroring the federal Sentencing Guidelines, the proposal included a table with crimes set forth on one side, criminal history on the other, and a sentencing range for any given combination in each cell. Although the bill was never enacted, there is little in the record reflecting why. In a 1994 editorial, New York Supreme Court Justice Thomas M. Stark mused that it was “put on a shelf and forgotten.” In response to a reporter’s question about it, Governor Cuomo once quipped that it “was a fine effort which was not enacted because of conflicting political winds.”

A Different Approach

The new commission differs markedly from its predecessor and, in at least two respects, from its federal counterpart. First, it differs in composition. The USSC is comprised of seven voting members, up to three of whom can be judges and no more than four of whom can come from the same party. They are appointed by the president with the advice and consent of the Senate. As a result, the executive holds the lion’s share of power over the USSC’s composition. The newly formed Commission on Sentencing Reform, in contrast, effectively splits the appointment power between the executive and the Legislature. In addition,
Although New York did not adopt the defendant’s offense and criminal history. The judges were granted a narrow range from 37 a system of determinate sentencing where 37 proposed to reduce disparity by enacting 37 on Sentencing Guidelines. Both bodies 37 USSC and the New York State Committee 37 Act of 1984 and the creation of both the 37 enactment of the Sentencing Reform 37 contributed to an appearance of unfairness 37 arisen that disparities did exist and that they 37 sentencing disparity, a consensus had 37 over both the extent and causes of 37 justice community was locked in debate 37 struggling with its crime rate, the criminal 37 were demands for increased punishment 37 motor vehicle theft, that is a frightening 37 “incident” is defined as murder, non-negligent 37 100 residents in New York. 37 a crime wave. 37 much of the nation, was in the throes of 37 were coming into existence, New York, like 37 the Committee on Sentencing Guidelines 37 duties reflects the context in which these 37 the commission’s aim is to reduce prison 37 populations while still maintaining 37 public safety and the traditional goals of 37 criminal punishment.

A State of Transition

The distinction between the bodies’ duties reflects the context in which these two bodies developed. In 1983, as the USSC and the Committee on Sentencing Guidelines were coming into existence, New York, like much of the nation, was in the throes of a crime wave. According to the Federal Bureau of Investigation, in 1983 there were 5.9 reported incidents of crime per 100 residents in New York. Given that an “incident” is defined as murder, non-negligent manslaughter, forcible rape, robbery, aggravated assault, burglary, larceny, or motor vehicle theft, that is a frightening statistic. It was not long before there were demands for increased punishment and mandatory minimum sentences.

At the same time as New York was struggling with its crime rate, the criminal justice community was locked in debate over the causes and remedies for disparities in sentencing. While there was disagreement over both the extent and causes of sentencing disparity, a consensus had arisen that disparities did exist and that they contributed to an appearance of unfairness in the criminal justice system.

The concern over disparity led to the enactment of the Sentencing Reform Act of 1984 and the creation of both the USSC and the New York State Committee on Sentencing Guidelines. Both bodies proposed to reduce disparity by enacting a system of determinate sentencing where judges were granted a narrow range from which to choose a sentence, based on a defendant’s offense and criminal history. Although New York did not adopt the proposed sentencing scheme, it has since developed its own complex web of “definite” and “indeterminate” sentences where, depending on the charged offense, the judge is limited to sentencing within set maximum and minimum terms.

These schemes did not come without a cost. The prison population in the federal system has increased nearly 700 percent over the past 25 years. The Bureau of Prisons attributes that rise largely to the Sentencing Guidelines and mandatory minimum laws enacted in the late 1980s and early 1990s. New York has seen a similar rise, with prison populations soaring more than 300 percent over the past 25 years. In 1980, the state prison population was 21,815. By 1983 it had reached 30,489. Today it stands at approximately 66,000 prisoners.

While housing an ever-increasing population of prisoners is expensive, it was a cost that, at the time, the state was willing to bear. As former Mayor Edward I. Koch stated in 1985, “The two top priorities for us are education and law enforcement. If I had to deal with only one, if I had to make a choice, it would be to punish the criminals.”

By 2004, however, New York’s crime rate had dropped 56 percent, to 2.6 incidents per 100 residents. At the same time, the prison system was having an increasing impact on the state budget. While the federal government can easily absorb the cost of its prisons—the Bureau of Prisons’ budget, at $5.9 billion, is only 0.2 percent of the federal budget overall—New York cannot. New York’s correctional services cost $2.5 billion a year to run and, at 14.3 percent of the state’s operational expenditures, are behind only the SUNY system and the Department of Mental Hygiene in state spending.

A New Path

Combined with a separate proposed program to consolidate and close state prisons, cost may have been a motivating factor behind the creation of the new commission. With the political freedom to experiment that comes with lower crime rates, Governor Spitzer appears to be seizing the opportunity to explore ways to reduce crime and improve the state budget at the same time. Although not abandoning the goal of limiting sentencing disparity, he has effectively charged his new committee with the difficult task of finding ways to reduce crime and dampen recidivism while still protecting the community at reduced costs.

By focusing on alternatives to incarceration, the commission has an opportunity to achieve this goal. In a sense, Governor Spitzer’s answer to Mayor Koch is that the state may not need to choose between education and incarceration. Through re-entry programs, education programs and alternatives to sentencing—such as the Drug and Community Court systems—the state may be able to reduce crime while simultaneously reducing incarceration.

This approach has placed New York on a new path of sentencing reform. It is one that, we hope, leads to that elusive balance between the victims’ and community’s need for punishment and the state’s need to reduce crime in a fair, effective and affordable way.

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