

**STATE SENTENCING AND PARITY  
REVIEW STUDY COMMITTEE**

**FINAL REPORT**

# STATE SENTENCING AND PARITY REVIEW STUDY COMMITTEE

## FINAL REPORT

### INTRODUCTION

#### ESTABLISHMENT

The state sentencing and parity review study committee was established in Laws 1993, chapter 255, section 96. The committee was established to do the following\*:

1. Study the issue of parity review, including the appropriate scope of categories to which parity review should be applied and an appropriate method for achieving sentencing parity for each category of offenders.
2. Recommend the specific categories of crimes or offenders whose sentences should be reviewed.
3. Identify the sentencing statutes which would qualify for initial parity consideration and design a process by which sentences would be reviewed.
4. Review the sentences in the Arizona criminal code and make recommendations regarding their appropriateness.

\*Please See Appendix A for the complete text of Laws 1993, chapter 255, section 96.

#### MEMBERSHIP

The committee was comprised of the following eighteen members:

##### Senate

Senator Patricia Noland, Co-Chair  
Senator Chuck Blanchard

##### House

Representative Ernie Baird, Co-Chair  
Representative Phil Hubbard

##### Public Members

Joe Albo, Jr, Gila County Attorney  
Duane Belcher, Chairman, Board of Pardons and Paroles  
Dr. Michael Block, Professor, University of Arizona  
Audrey Burke (for Sam Lewis, Director, Department of Corrections)  
Raul Castro, attorney  
Kurt Davis, Governor Symington's office  
David Derickson, Arizona Attorneys for Criminal Justice  
Karen Duffy, We the People  
Donna Leone Hamm, Middleground  
Catherine Hughes, Maricopa County Public Defender's Office  
Joe Maziarz, Attorney General Wood's Office  
Stephen Neely, Pima County Attorney  
Russell Pearce (for Joe Arpaio, Maricopa County Sheriff)  
Judge Ronald Reinstein, Presiding Criminal Judge, Maricopa County

## STAFF

The two staff members for the committee were:

Dominica Minore, Legislative Research Analyst  
House of Representatives Judiciary Committee

Joni Hoffman, Legislative Research Analyst  
Senate Judiciary Committee

## MEETINGS

The State Sentencing and Parity Review Study Committee met six times on the following dates:

August 25  
September 15  
October 1  
October 13  
November 4  
December 10

The minutes for each meeting are attached as Appendix C.

## REPORT

Laws 1993, chapter 255, section 96 requires the State Sentencing and Parity Review Committee to submit a report to the Governor, the President of the Senate and the Speaker of the House of Representatives.

## RECOMMENDATIONS

### RECOMMENDATION #1

The committee voted to recommend to the legislature that a bill be drafted with the provisions listed below. The actual draft recommendation is attached as Appendix B.

1. Directs the Arizona Board of Executive Clemency to conduct a disproportionality review of incarcerated inmates who meet all of the following initial eligibility requirements:
  - \* Committed a felony before January 1, 1994.
  - \* Was convicted as a result of a trial, not as a result of a plea agreement.
  - \* Has not been previously denied parole or commutation in connection with the sentence for which the inmate is incarcerated. This does not apply to inmates sentenced to an indeterminate sentence before the 1978 criminal code changes.

- \* Has not been previously denied a disproportionality review.
  - \* Applies for the review within 90 days after the Department of Corrections gives notice of the review process.
  - \* Meets one of the following criteria:
    - A. Was **not** convicted of a serious offense, had **no** historical prior felony convictions and was given a sentence or mandatory consecutive sentences of at least 7 years.
    - B. Was **not** convicted of a serious offense, had **one or more** historical prior felony convictions and was given a sentence or mandatory consecutive sentences of at least 10 years.
    - C. Was convicted of a serious offense, other than first degree murder, had **no** historical prior felony convictions and was given a sentence or mandatory consecutive sentences of at least 15 years.
    - D. Was convicted of a serious offense, other than first degree murder, had **one or more** historical prior felony convictions and was given a sentence or mandatory consecutive sentences of at least 20 years.
  - \* Specifically demonstrates in the inmate's application that the inmate meets the above eligibility requirements.
2. Requires the Department of Corrections to establish procedures to provide notice to the inmates of the availability of the disproportionality review process within 90 days of the effective date of the act.
  3. Requires the Board of Executive Clemency to recommend to the Governor a commutation or reduction of sentence if after a hearing for which the victim, prosecutor and sentencing judge are given notice and an opportunity to be heard, the board finds both the following standards are met:
    - \* The sentence imposed is clearly excessive given the nature of the offense, the record of the offender and the sentence imposed on similarly situated offenders. The board may consider whether an inmate would be subjected to a substantially different sentence under statutes effective January 1, 1994.
    - \* There is a substantial probability that the offender will be law-abiding if released.
  4. Provides that if the Board of Executive Clemency votes unanimously to commute or reduce an inmate's sentence and the Governor does not act on the recommendation within 90 days, it is automatically effective.
  5. Prohibits an appeal from the decision of the Board of Executive Clemency.
  6. Appropriates an unspecified sum of monies to the Department of Corrections and the Board of Executive Clemency to carry out the provisions of the act.

**PLEASE NOTE:** There are two dates and two amounts of money left blank in the draft proposal. The bill may be drafted with blank lines to be filled in during the legislative process.

RECOMMENDATION #2

The State Sentencing and Parity Review Committee recommended that the Committee be extended until December 31, 1994 for the following purposes:

1. Monitoring the disproportionality review process as the review is conducted as provided by law.
2. Reviewing sentences as classified in the Arizona criminal code and making recommendations to the legislature regarding their appropriateness.
3. Considering legislative proposals in relation to sentencing and making recommendations as it deems necessary.
4. Considering the creation of sentencing guidelines and the establishment of a commission for the purpose of monitoring sentencing guidelines.

# APPENDIX A

Sec. 96. State sentencing and parity review study committee

A. A state sentencing guidelines and parity review study committee is established that consists of the following members:

1. The chief justice of the supreme court or his designee.
2. The governor or his designee.
3. One superior court judge who is appointed by the chief justice of the supreme court from a list submitted by the Arizona judicial council.
4. One public defender who is appointed by the governor.
5. One attorney who is appointed by the chief justice of the supreme court from a list submitted by the Arizona attorneys for criminal justice and who primarily practices in the area of criminal defense.
6. One county attorney from a county with a population of less than five hundred thousand persons who is appointed by the governor from a list submitted by the Arizona prosecuting attorneys advisory council.
7. One county attorney from a county with a population of at least five hundred thousand persons who is appointed by the governor from a list submitted by the Arizona prosecuting attorneys advisory council.
8. The director of the state department of corrections or his designee.
9. One member of the board of executive clemency who is appointed by the governor.
10. One sheriff from a county with a population of at least five hundred thousand persons appointed by the governor.
11. The attorney general or his designee.
12. One member from the general public who has worked with victims' programs who is appointed by the attorney general.
13. Two members of the senate who are appointed by the president of the senate, no more than one of whom shall be of the same political party.
14. Two members of the house of representatives who are appointed by the speaker of the house of representatives, no more than one of whom shall be of the same political party.
15. One member from the general public who is appointed by the Arizona attorneys for criminal justice who has worked with prisoners and their families.
16. One member of the public who is not and has never been a prosecutor, attorney, judge or law enforcement official appointed by the governor.

B. The members of the committee shall elect a chairman from the membership of the committee at the first committee meeting.

C. Members of the committee are not eligible to receive compensation but are eligible for reimbursement of expenses pursuant to title 38, chapter 4, article 2.

D. The committee shall review the sentences in the Arizona criminal code and make recommendations to the legislature regarding their appropriateness and any changes to the sentencing statutes to ensure that the punishment for a criminal offense is proportionate to the seriousness of the offense and the offender's criminal history and promotes respect for the law by providing punishment which is just.

E. The committee shall study the issue of parity review, including the appropriate scope of categories to which parity review should be applied and an appropriate method for achieving sentencing parity for each category of offenders. The scope and methods shall be designed to incorporate a limitation that parity review shall be completed within one year from the date of its implementation.

F. The committee shall recommend to the legislature the specific categories of crimes or offenders whose sentences should be reviewed. The purpose of review shall be to achieve parity for offenders sentenced pursuant to statutes that are different from this act.

G. The committee shall request the department of corrections to provide the committee with a list of all inmates convicted and sentenced pursuant to statutes that are different from this act to determine the number of inmates involved in any guidelines that may be established for parity review.

H. The committee shall identify the sentencing statutes which would qualify for initial parity consideration and design a process by which sentences would be reviewed. The committee shall consider the following in the review:

1. The nature and circumstances of the offense or offenses of conviction.
2. The harm the inmate caused to the victim and society.
3. The prior record of the inmate.
4. The inmate's behavior while incarcerated.
5. The sentencing recommendations of the probation officer who prepared the presentencing report.
6. The sentencing recommendations of the prosecuting attorney, the victim and the defense attorney at the time of sentencing.
7. The sentence imposed by the court, including any aggravating and mitigating circumstances found.
8. The sentence and the felony classification for the offense at the time the inmate was sentenced.
9. The sentence and the felony classification for the same offense committed after the effective date of this act.
10. Any charges subsequently dismissed or not filed by the state after the defendant's conviction.

I. The committee shall submit a report including recommendations to the governor, the president of the senate and the speaker of the house of representatives by December 15, 1993.

# APPENDIX B

REFERENCE TITLE: disproportionality review; appropriation

State of Arizona  
Senate  
Forty-first Legislature  
Second Regular Session  
1994

S. B. \_\_\_\_\_

Introduced by \_\_\_\_\_

AN ACT

RELATING TO A DISPROPORTIONALITY REVIEW AND MAKING AN APPROPRIATION.

1 Be it enacted by the Legislature of the State of Arizona:

1 Section 1. Disproportionality review; eligibility; hearing; criteria for  
2 commutation; definitions

3 A. The Arizona board of executive clemency shall conduct a  
4 disproportionality review of incarcerated inmates under the jurisdiction of the  
5 Arizona department of corrections who meet all of the initial eligibility  
6 requirements listed in this subsection. The inmate:

7 1. Was sentenced for a felony committed on or before December 31, 1993.

8 2. Was convicted and sentenced after a trial.

9 3. Unless sentenced to an indeterminate sentence prior to 1978, has not  
10 previously been denied parole or commutation in connection with the sentence for  
11 which the inmate is incarcerated.

12 4. Has not previously been denied a disproportionality review by the  
13 Arizona board of executive clemency.

14 5. Makes an application to the board of executive clemency, within ninety  
15 days after the department of corrections provides the notice required by  
16 subsection B of this section. The application shall specifically demonstrate  
17 that the inmate's eligibility requirements have been met.

18 6. Meets one of the following criteria:

19 (a) Was not convicted of a serious offense, had no historical prior  
20 felony convictions and was given a sentence or mandatory consecutive sentences  
21 of at least seven years.

22 (b) Was not convicted of a serious offense, had one or more historical  
23 prior felony convictions and was given a sentence or mandatory consecutive  
24 sentences of at least ten years.

25 (c) Was convicted of a serious offense, other than first degree  
26 murder, had no historical prior felony convictions and was given a sentence or  
27 mandatory consecutive sentences of at least fifteen years.

28 (d) Was convicted of a serious offense, other than first degree  
29 murder, had one or more historical prior felony convictions and was given a  
30 sentence or mandatory consecutive sentences of at least twenty years.

31 B. The department of corrections shall establish a procedure for providing  
32 written notice to its inmates of the eligibility requirements set forth in this  
33 section, including the application deadline prescribed in subsection A, paragraph

1 5. The notice shall be provided within ninety days after the effective date of  
2 this section.

3 C. If after a hearing for which the victim, prosecutor and sentencing  
4 judge are given notice and an opportunity to be heard, the Arizona board of  
5 executive clemency determines that an eligible applicant meets both the following  
6 standards, the board shall make a recommendation to the governor for commutation  
7 or reduction of sentence:

8 1. The sentence imposed is clearly excessive given the nature of the  
9 offense, the record of the offender and the sentence imposed on similarly  
10 situated offenders. In determining whether a sentence is clearly excessive, the  
11 board, among other criteria, may consider whether an eligible inmate would have  
12 been subjected to a substantially different sentence of imprisonment under  
13 statutes effective January 1, 1994.

14 2. There is a substantial probability that if released, the offender will  
15 conform his conduct to the requirements of the law.

16 D. Any recommendation for commutation pursuant to subsection B made  
17 unanimously by the members present and voting that is not acted on by the  
18 governor within ninety days after the board submits its recommendation to the  
19 governor automatically becomes effective.

20 E. A decision by the Arizona board of executive clemency pursuant to this  
21 section may not be appealed.

22 F. All reviews prescribed by this section shall be completed by [insert  
23 date].

24 F. As used in this section:

25 1. "Historical prior felony conviction" has the same meaning as prescribed  
26 in section 13-604, subsection T, paragraph 1, Arizona Revised Statutes.

27 2. "Serious offense" has the same meaning as prescribed in section 13-604,  
28 subsection T, paragraph 2, subdivisions (a) through (k), Arizona Revised  
29 Statutes.

30 Sec. 2. Appropriation

31 A. The sum of [insert dollar amount] is appropriated from the state  
32 general fund to the Arizona board of executive clemency for the purpose of  
33 carrying out the provisions of this act.

34 B. The sum of [insert dollar amount] is appropriated from the state  
35 general fund to the Arizona department of corrections for the purpose of carrying  
36 out the provisions of this act.

37 Sec. 3. Delayed repeal

38 Section 1, as added by this act, is repealed from and after [insert date].

12/15/93

# APPENDIX C

ARIZONA STATE LEGISLATURE

STATE SENTENCING GUIDELINES AND  
PARITY REVIEW STUDY COMMITTEE

Wednesday, August 25, 1993  
Senate Hearing Room 1 - 1:30 p.m.

Senator Noland called the meeting to order at 1:30 p.m. and attendance of the members was noted. See attached sheet for other attendees.

Members Present

Senator Noland  
Senator Blanchard  
Joe Albo, Jr.  
Dr. Michael Block  
Raul Castro  
Kurt Davis  
David Derickson  
Karen Duffy  
Tom Freestone

Representative Baird  
Donna Hamm  
Catherine Hughes  
J. C. Keeney (for Sam Lewis)  
Joe Maziarz  
Stephen Neely  
Russell Pearce (for Joe Arpaio)  
Judge Ronald Reinstein

Member Absent

Representative Hubbard

Staff

Joni Hoffman, Senate  
Dominica Minore, House

After the Committee members introduced themselves, Joni Hoffman, Senate Research Analyst, provided an overview of the Study Committee's origin, membership and mission as contained in S.B. 1049, the revisions to the criminal code which were passed last session.

Judge Reinstein moved that Senator Noland and Representative Baird be elected to serve as co-chairs of the State Sentencing Guidelines and Parity Review Study Committee. The motion CARRIED by unanimous voice vote.

Ms. Hoffman gave an overview of the trip taken by a group from Arizona to Washington State to gain information on that State's Sentencing Guidelines Commission and the process utilized to accomplish parity review (information filed with original minutes). Senator Noland provided each member of the Committee a copy of the final report of the Texas Punishment Standards Commission for review.

Senator Noland explained to the Committee that a determination was made to consider the issue of parity review on its own during the interim rather than in conjunction with the criminal code review process.

Representative Baird suggested that the issue of reviewing the appropriateness of the sentences currently in statute is an overwhelming responsibility. He commented on his interest in seeing the Committee address parity review, but he

pointed out that although the issue has been placed into a committee it does not mean a decision has been made to conduct parity review. Representative Baird commented on Washington State's indeterminate sentencing system. He noted that the nature of parity review being considered by Arizona is different than that conducted by Washington since that State's parity reviews gave new specific sentences to prisoners under the old indeterminate system. Representative Baird observed that the Study Committee is charged with considering a number of issues in terms of parity review but that the Committee is not obligated to design a system to include all of those elements. He suggested instead that any parity review system designed by the Committee would probably be more limited and would determine whether certain mandatory sentences should be reviewed with a possible consideration to adjustment in accordance with new mandatory sentences.

Senator Noland pointed out that Washington's parity review process involved only a consideration of new minimum sentences and the decision to release prisoners was handled through the regular parole process.

Dr. Block observed that during 1980 to 1991 both Washington and Texas have been among the top ten states in terms of an increased crime rate but among the bottom ten states in the rate of increases in incarceration, adding that Arizona is the opposite. He suggested the Committee weigh the effectiveness of a state's sentencing programs in terms of controlling crime when considering models for Arizona.

Senator Noland acknowledged that the Arizona group did have some concerns with the Washington system, particularly its practice of imposing up to 60 days in the county jail for parole violations rather than revoking the parole. However, she explained the main consideration in looking at Washington's situation was the fact that the State has conducted three parity reviews.

Mr. Neely asked if Washington was engaged in a process similar to that being considered by Arizona and questioned what the term "parity review" means in the parameters of the Committee.

Representative Baird explained that Washington's first two reviews, referred to as the Obert Myer review and the 1400 review, were a different process than is being considered by Arizona. He added that his perception of parity means equality and involves the issue of whether prisoners convicted under the old code for a particular offense should be treated on the same level as prisoners convicted under the new code.

Representative Baird pointed out that an official in Washington made a statement that the Legislature would implement parity review or the courts would order it to be done. He said he does not believe that statement is accurate for Arizona's situation since there is no constitutional principal which indicates that sentences must be changed for prisoners under an old code when sentencing laws are changed.

Senator Noland noted that information will be provided later to the Committee on Washington's third review, referred to as the Murder One review.

Mr. Derickson explained that he learned from Washington officials that the State does not have any studies which demonstrate a correlation between imprisonment policies and the crime rate. He added that Washington has a dynamic economy and borders Canada and the Pacific Rim, which contributes to the State's population pressure and the increased crime rate. He noted that Texas, as another border state, is in a similar situation. Mr. Derickson concluded that both states are faced with some of the same problems as Arizona, which should be taken into consideration when determining their use as examples for efforts by Arizona.

Mr. Derickson said he agreed with Representative Baird that there is no constitutional right for old code prisoners to receive similar sentences as new code prisoners. However, he maintained that the concern of officials in Washington parallels the situation in Arizona in which the overcrowding of prisons is a legitimate public safety concern. He added that a reduction of the pressure on prisons through parity review would be of great service to Arizona.

Judge Reinstein suggested it might be more advantageous to review classifications of crimes as opposed to changing sentences. In addition, he commented that virtually every one of Washington's sentences were changed whereas the only sentences in Arizona that would change on a vast scale would be drug offenses, reducing the number of sentences to be mechanically reviewed.

Senator Blanchard agreed that a parity review in Arizona would involve modest numbers, adding that the sentences most affected would probably be burglary, shoplifting and drug offenses. He also agreed that consideration should be given to a review of classifications of crimes. Senator Blanchard emphasized the need for data on those individuals who would be affected by parity review before having philosophical discussions on the merits of the process. He added that the Washington experience might be most relevant to offenders under the pre-1978 code since the system involved was an indeterminate sentencing. Senator Blanchard observed that Arizona moved to a determinate system in 1978 and someone still in prison under the pre-1978 code is probably there for very serious crimes, adding it is not likely the Legislature would want to implement a process to release those prisoners.

Mr. Albo suggested that when the Committee makes its request for necessary information from the Department of Corrections (DOC) that data also be provided on the number of indeterminate sentences.

Ms. Hamm maintained that people who have been incarcerated for many years on indeterminate sentences for serious crimes should still be considered for parity review, with the parole board making the final decision on release.

Dr. Block reiterated his concern that the only information on parity review comes from states with a failure rate in crime control and asked if there are plans to seek other information. Senator Noland said she would be glad to accept recommendations as to what states may have more pertinent data and asked Dr. Block to submit any information he may have relating to states with a failure rate in crime control.

Judge Reinstein pointed out that Texas is attempting to address the problems in its system as indicated by the recommendations in the report of the Texas Punishment Standards Commission and added that the Committee is not yet aware of what the results of those recommendations may be. He noted that North Carolina and Pennsylvania, as well as a number of other states, are addressing their sentencing structures because they recognize that their systems have not been effective.

Mr. Keeney commented that DOC does not have a great deal of staff to utilize to respond to the Committee's requests for information. Senator Noland indicated that she did not want to place an undue burden on DOC staff and would request information as far in advance as possible, adding that Daryl Fischer of DOC had provided some data relating to parity review during the criminal code discussions.

Representative Baird pointed out that DOC is not being asked to analyze individual files and that the necessary statistical information should be in the computer. He emphasized the need for information in order for the Committee to complete its responsibilities.

Mr. Keeney said he would talk to Dr. Fischer and Senator Noland suggested it might be worthwhile for Dr. Fischer to be present at the next meeting.

Mr. Albo asked for further information on the 40 percent recidivism rate as indicated in the Washington material. Ms. Hoffman explained that is a general recidivism rate and does not necessarily relate to parity review, adding that more specific statistics were not available. Senator Noland indicated that Norm Maleng, the prosecutor in King County, Washington, maintained there has been no significant repeat offender problem. She reiterated, however, that prisoners who have been paroled in Washington are not put back in prison for technical violations of their paroles.

Ms. Hamm said that the impression of Kit Bail, the Chair of Washington's Indeterminate Sentence Review Board, is that the parity review process had not had an effect on the recidivism rate. She reiterated that parity review does not include the release of a prisoner but only determines if a particular sentence will be reduced.

There was discussion on the effect of parity review on the appellate system. Mr. Maziarz stated that although a judge in Washington said there was very little appellate work involved, Kit Bail indicated that the State increased from one-half assistant attorney general position to eight positions. Mr. Maziarz maintained that the legal work and expense are quite extensive and suggested that Arizona consider the issue very carefully before undertaking any type of parity review.

Mr. Keeney noted there are 5,000 people on parole in Arizona and indicated he assumes they would come under the review. He added that individuals on probation were sentenced under the same statute and questioned if they would be involved in the process.

Senator Blanchard said they would probably not be affected by the changes in the statute. He added that parity review would most likely affect only around 500 people, with a number of those on some type of release status. He pointed out that Arizona did not make the same kind of major changes in the criminal code that other states did. Representative Baird suggested that the issue of the effect of parity review on individuals who may have their parole revoked is one that needs consideration.

Mr. Neely said there was no parity review conducted when Arizona changed from an indeterminate to a determinate structure in 1978 and no problems were in evidence as a result. Senator Noland asked Mr. Maziarz to determine the extent of the involvement of parity review for individuals on some form of release, to which Mr. Maziarz explained that individuals whose release is revoked and who were sentenced under the old code would be entitled to parity review. Senator Noland said it might be a good idea to request parole numbers from DOC. Mr. Keeney indicated that DOC does not know how many people are on some type of probation status, adding that is a county function.

Senator Blanchard maintained that individuals on release status would not realistically have a claim to parity review. He suggested that one option is to adopt a philosophy reflected in the legislation which allows commutation review in mandatory sentencing cases. He added that commutation is a sort of parity review and could be utilized rather than creating a special mechanism.

Mr. Derickson suggested that the best way to proceed is to set up a parity review system to deal with those people currently in prison. Mr. Davis indicated that he would not feel comfortable making decisions on a parity review system without a knowledge of the full implications that would be involved.

Senator Noland said she does not feel that individuals on probation would be affected by the changes in the criminal code but suggested that DOC come up with numbers involving parolees, indeterminate sentences and those affected by changes in the burglary, shoplifting and drug statutes.

Jonnie Reasoner, representing herself, asked how Hannah priors relate to the parity review process. Representative Noland indicated there were some changes made within the code which deal with the way charges are handled for two or more offenses. Senator Blanchard agreed there were changes made on Hannah priors but the number of people actually convicted using Hannah priors as opposed to merely charged is very small.

Mr. Neely commented on the earlier discussion between Dr. Block and Mr. Derickson regarding the relationship between crime and incarceration and requested that they submit documentation for their respective positions.

Sylvia Boutilier, representing herself, questioned if the Committee's work will deal with clemency reviews for women who have been convicted of murdering their husbands after years of abuse. Representative Noland noted that legislation was enacted two years ago permitting previous domestic violence as a defense. Judge Reinstein indicated that S.B. 1049 allowed for commutation for review for people

August 25, 1993  
Page 6

MINUTES OF STATE SENTENCING GUIDELINES  
AND PARITY REVIEW STUDY COMMITTEE

currently incarcerated under a flat time sentence and added that a provision for clemency review is the only way the individuals discussed by Ms. Boutilier would be affected.

There were requests by Dr. Block and Mr. Neely for staff to obtain information on instances of crime which can be tied to the issue of parity review. Senator Blanchard noted that two documents the Committee may find helpful include a Bureau of Justice statistics article and the Arizona Prosecuting Attorneys Advisory Council presentation by Dr. Block.

The next meeting will be held on Wednesday, September 15, 1993, at 1:30 p.m., with plans to meet every other Wednesday. The meeting adjourned at 3:00 p.m.

Respectfully submitted,



Janice C. Stell  
Committee Secretary



ARIZONA STATE LEGISLATURE

Minutes of Meeting

STATE SENTENCING GUIDELINES AND  
PARITY REVIEW STUDY COMMITTEE

Wednesday, September 15, 1993  
Senate Hearing Room 1 - 9:30 a.m.

Representative Baird called the meeting to order at 9:38 a.m. and attendance was noted. See attached sheet for other attendees.

Members Present

Joe Albo, Jr.  
Dr. Michael Block  
Audrey Burke (for Sam Lewis)  
Kurt Davis  
Karen Duffy  
Donna Leone Hamm  
Senator Blanchard  
Senator Noland, Co-Chair

Catherine Hughes  
Bob Levy (for Raul Castro)  
Joe Maziarz  
Stephen Neely  
Russell Pearce (for Joe Arpaio)  
Judge Ronald Reinstein  
Representative Hubbard  
Representative Baird, Co-Chair

Members Absent

David Derickson  
Tom Freestone

Staff

Joni Hoffman, Senate  
Dominica Minore, House

Dr. Daryl Fischer, representing Department of Corrections (DOC), in response to a request for statistical information from the Committee, explained that the Department needs some input from the members in order to determine exactly which provisions of S.B. 1049 could potentially be subject to parity review. He emphasized the extent of the resources and manpower that would be necessary to generate the lists of information requested by the Committee, adding that additional resources from the Legislature would be needed to undertake such an effort.

Dr. Fischer explained that approximately 7,000 cases overall would have to be reviewed individually by DOC. He noted specifically that the Department would have to pull the files of 1,600 inmates convicted of theft to review the dollar amount involved and 900 files would have to be reviewed in the area of drug convictions to determine the amount of drugs involved in order to determine which cases would potentially be affected by the parity review process. He indicated those activities would take an estimated 500 to 1,000 manhours and several months of work. Dr. Fischer said he would provide copies of two case studies dealing with drug and burglary/shoplifting thresholds and the possible impact of parity review. He provided a list of inmates incarcerated under the pre-1978 code (filed with original minutes). Dr. Fischer emphasized that parity review is an optional measure which does not necessarily represent a value judgment about the old version of the criminal code.

In response to a question from Representative Baird, Dr. Fischer indicated that the inmate list he provided includes 363 individuals in the prison population who were sentenced under the pre-1978 version of the criminal code. Representative Baird asked if there was any mandatory sentencing before 1978, to which Dr. Fischer answered affirmatively. Representative Baird maintained that most of those people would probably be eligible for parole under the old system and the impetus to change that would not be as great. He also noted the manhours required by DOC to gather the information is an indication of the time and effort which would have to be spent on an extensive parity review program.

Senator Noland asked why the gathering of information would be so time consuming when Dr. Fischer was able to adjust the figures on a week-to-week basis during the criminal code revision process. Dr. Fischer explained that the estimates of potential impact he provided during that process were based on random samples and added that parity review would be based on the entire prison population. Senator Noland pointed out the issue at hand is whether a parity review system should be implemented at all and questioned how long it would take to perform the same type of sampling for a discussion of parity review as was done for the criminal code process. Dr. Fischer responded that he has some preliminary estimates available based on the previous sampling. In response to an earlier remark by Dr. Fischer, Senator Noland emphasized that a potential parity review system would provide adjustments rather than corrections to sentences.

In response to Representative Baird's comment regarding inmates sentenced under the old code, Senator Noland maintained it is important to consider the fairness issue between the old and new codes in determining whether to have a parity review. She also noted that the Legislature mandated DOC to provide certain information to the Committee, and she pointed out the Committee's responsibility does not include the issue of additional funding for DOC to accomplish its tasks. Representative Baird agreed it is necessary to determine if there are situations not provided for under the present code.

In response to a question from Senator Blanchard regarding the preliminary estimates mentioned, Dr. Fischer explained the estimates involve the main areas of S.B. 1049 that could be subject to parity review. He noted that estimates of inmates who would potentially be subject to parity review include 520 individuals for which the amount of drugs involved falls below the new threshold, 804 inmates who would fall into a lower classification based on the new theft thresholds, 355 inmates who were convicted of burglary for an actual shoplifting type incident and 371 inmates who were convicted using Hannah priors.

Senator Blanchard noted that an alternative to parity review is to allow commutation review of inmates who received mandatory sentences under the old code, and he questioned how many inmates that would include. Dr. Fischer explained that most cases of mandatory sentences are not eligible for commutation. Ms. Burke indicated there are a lot of different variations in the new code pertaining to commutation eligibility. She said primarily there are inmates serving flat time sentences who are not eligible for release on any basis until they have served their entire sentences. Another group is not eligible for commutation until a specific amount of time has been served, at which time they

also become eligible for parole. Ms. Burke noted that the numbers involved can be obtained from the computer. Judge Reinstein contended the only cases which would apply are those under Arizona Revised Statutes 13-604, 13-604.01, and 13-604.02, as well as any drug sale, possession for sale of narcotic or dangerous drug and sexual assault. Dr. Fischer maintained that such an assessment would involve about half the prison population or around 8,700 inmates.

Senator Blanchard questioned if the truth-in-sentencing model will be an issue in parity review. Dr. Fischer contended that truth in sentencing represents a fundamental change in the sentencing structure rather than a fine tuning of the older statutes and should not be a concern in the parity review issue. He maintained that parity review should be directed only toward individuals sentenced under the older statutes.

Senator Blanchard asked if parity review will be a complex task since the grid for Hannah priors under the old system represents a philosophy of available release mechanisms while the new grid represents truth in sentencing. Dr. Fischer acknowledged that parity review will be quite a complex task if truth-in-sentencing type criteria is applied to older cases since the new law includes an entirely separate schedule for Hannah priors.

Senator Blanchard asked what percentage of people are in prison under the pre-S.B. 1049 code because of an admission of guilt and those in prison as the result of a trial. Dr. Fischer indicated about 90 percent of inmates in prison are there as a result of plea bargains rather than trials.

Senator Blanchard asked how common stipulated sentencing is in Maricopa County, to which Judge Reinstein explained that over 50 percent of the plea agreements involve some type of a stipulation to prison. He added there is some discussion pertaining to allowing sentencing stipulations to DOC or probation as opposed to a term of years.

Mr. Neely questioned what DOC would rely on to determine the circumstances of an offense if the Department undertakes the type of survey mentioned by Dr. Fischer. Dr. Fischer indicated that DOC would utilize any information in the inmates' files in the central office, which includes the minute entries, presentence investigations and police reports. He added that the counties would be the source of any further information that is needed. Dr. Fischer explained that the issue could arise as to whether certain documents would legally need to be reviewed and may require an attorney to be involved in the process. In further response to Mr. Neely, Dr. Fischer observed that Sam Lewis, DOC Director, is philosophically opposed to parity review.

Ms. Hamm pointed out that S.B. 1049 allows the earned release credits of inmates sentenced to consecutive sentences to roll over to their next sentence. She questioned how many inmates would be impacted by being allowed to count earned release credits in a parity review. Dr. Fischer estimated that approximately 250 inmates have consecutive sentences to which the good time credits cannot be applied the way they would normally be to other types of sentences.

Ms. Burke explained that under the current law inmates have an eligibility for parole to a consecutive sentence. She added that one of the reasons for allowing the release credits to deduct from a sentence if the consecutive sentence is served is to provide a parity difference between current law and truth in sentencing, particularly since there would no longer be that possibility of parole to the consecutive sentence. Ms. Hamm pointed out that the earned release credit is an automatic application whereas parole is discretionary.

Judge Reinstein questioned if it can be determined whether the 371 inmates convicted using Hannah priors had other prior felony convictions that were later dismissed, to which Dr. Fischer answered affirmatively. Judge Reinstein asked if that would be a relatively easier task utilizing the computer as opposed to the number of manhours mentioned earlier. Dr. Fischer replied that obtaining information on Hannah prior cases is rather difficult since there is nothing in the computer system to indicate that a Hannah prior is involved, causing the need to actually pull every repetitive offender case to determine which are actually Hannah prior cases. There was further discussion of the time involved in pulling files in theft cases to determine whether the case involved a shoplifting incident. Judge Reinstein observed that it would not be work intensive on the part of DOC to simply allow an inmate to apply for commutation review, to which Dr. Fischer agreed commutation review could be a viable alternative.

Dr. Block questioned whether DOC could develop estimates on the number of crimes that might be committed by people who were released early through a parity review process. Dr. Fischer responded that studies indicate about 40 percent of released inmates in Arizona return to prison within three years. He added that approximately 28 percent of that number commit new felonies with the balance returning to prison on technical violations. Dr. Fischer explained that many of those individuals have committed technical violations that actually constitute violations of the statutes, such as drug possession or drug use. He further noted that the percentage of individuals actually committing a new offense within three years of release, and not necessarily being caught or convicted, is between 50 to 60 percent. He added that in order to provide cost estimates of crimes, DOC would have to consider how much earlier a particular inmate is released by parity review and perform a risk assessment to indicate the crimes that could be committed during a certain period. Dr. Block asked if it would be possible to provide such a cost estimate, to which Dr. Fischer indicated the task is not insuperable but would take at least an additional 100 to 200 hours of time. Dr. Block emphasized to the Committee the importance of obtaining information on the costs to society of recommending parity review.

Senator Noland said she would like to know how many plea agreements have resulted in lower sentences that have caused people to be placed back on the streets in a lesser degree of time and what the cost was to the public. Dr. Fischer maintained DOC could review the original charges involved and how they were plea bargained, adding that such an effort would be a work intensive item that would require additional resources.

Ms. Hamm expressed concern about discussion of lowering the numbers involved in a potential parity review by utilizing the commutation process. She pointed out

the commutation process provides a great deal of work for the parole board and historically Arizona governors have never used the process as a frequent release mechanism. Ms. Hamm emphasized that the commutation process is an act of executive clemency which is generally reserved for extraordinary cases, whereas parity review should be an equalization of sentences.

Ms. Hamm questioned how it was determined that more than 50 percent of the individuals released from prison commit another felony if a conviction is not necessarily made. Dr. Fischer maintained that he relies on his extensive background over the last 18 years in criminal justice, having been personally involved in the area of recidivism and risk assessment and having seen a number of studies which have indicated variable levels of recidivism. He explained that the most restrictive definition of recidivism would include a conviction of a new felony and returning to prison.

However, Dr. Fischer acknowledged that his discussion of the over 50 percent figure refers to a much broader definition of recidivism. He noted that national studies, as well as studies he has performed, indicate that more than 50 percent of released offenders are rearrested within three years of release. He said he is not presuming they are all guilty, but if it is concluded that a major portion are guilty then it can be projected that over 50 percent have probably committed crimes. Dr. Fischer clarified that studies nationally indicate a much higher rate of recidivism if any kind of rearrest is included.

Ms. Hamm asked what three categories have the lowest rate of recidivism. Dr. Fischer explained that the area with the lowest recidivism rates in terms of actually returning to prison within three years of release involves violent crimes, particularly homicide, rape and child molestation. He added that recidivism rates involving drugs are low for certain types of drugs but high for other drugs.

Representative Baird observed that the criminal code revisions included changes in the theft thresholds for various classifications primarily because of inflation, adding that he does not feel parity review is necessary for theft offenses. He stressed that any kind of comprehensive parity review would be a very complex undertaking and the question is whether justice demands it. He agreed that commutation is a somewhat extraordinary remedy but noted the point of the commutation review proposal is that only those people would be involved who appear to have been treated unequally. He questioned how Senator Blanchard perceives the commutation review process functioning.

Senator Blanchard noted that the commutation process was changed in S.B. 1049 so that Board of Executive Clemency can unanimously recommend clemency, with the commutation becoming effective if the Governor takes no action. He pointed out that such a measure gives the Governor a veto power rather than approval power, which changes the political nature of clemency. Senator Blanchard suggested that a wholesale automatic parity review would create many problems. He contended there are a number of options for commutation review, such as limiting the process to certain crimes or to people for whom there is a great disparity between old and new codes.

Ms. Hughes emphasized the question of parity review involves fundamental fairness. She said she is intrigued with Judge Reinstein's suggestion that an approach could be to allow the inmates to identify themselves since they know better than anyone what time they have remaining and what effect the differences in the criminal code have on their sentences. She suggested one possible solution would be to give inmates a limited remedy under Rule 32 in which they could apply to the sentencing judge to review their sentencing under the new code rather than having one committee or the Governor making the decisions.

Ms. Burke indicated that a number of the issues under discussion were also brought up when the 1978 criminal code was implemented. She noted that at that time an empirical review was performed for a number of cases in each category of theft. It was determined that if the amounts of the items stolen were equated to current day's values there was no change in the actual sentencing structures in most cases. However, she noted it was also necessary to take all the release mechanisms for old code versus new code and calculate eligibility to determine whether a person would benefit. She emphasized the process was a very extensive one and pointed out a total parity review would have taken tremendous research. Ms. Burke acknowledged commutation capabilities might sound easier but she contended the issue is not a simple one. She explained that she has been responsible for the inmate time compensation system for over 15 years and that inmates do not understand how their release dates are calculated.

Mr. Neely emphasized that a plea agreement represents a contract based on the circumstances as they exist at the time. He also indicated that his constituents' concerns about mandatory sentences and alterations of the criminal code relate to disproportionality. He added that there is considerable merit in considering the expansion of the commutation process to deal with those issues and allowing individual inmates to make application to that process. He said he also feels there is a vast distinction between executive clemency and commutation, noting that executive clemency is intended to be an extraordinary remedy for extraordinary circumstances while commutation could be a process by which adjustments can be made to deal with issues of disproportionality.

Ms. Hamm informed the Committee that executive clemency is an umbrella that includes pardons, commutations and reprieves. She noted that the exclusive ability to grant commutation or any act of executive clemency is reserved for the Governor under the State Constitution, which would have to be changed in order to allow some commutation process connected with parity review. She also indicated she is not entirely opposed to a measure that in some way removes the burden from the Governor or reflects that the commutations given were the result of parity review authorized by the Legislature.

Ms. Hamm commented that the number of people on the list of old code inmates provided by Dr. Fischer and their admission dates illustrate the need to review the indeterminate sentences that were given many years ago. She contended the likelihood of those individuals having applied for commutations unsuccessfully ties in with the fact they have been in prison for such a long time or were mentally ill when they entered prison or have become so institutionalized over the years they could not function outside the prison.

Mr. Albo stated he was under the impression that parity review would be considered for those inmates who are in the system on indeterminate sentences rather than the entire prison population. He noted over 90 percent of the cases in Gila County are handled by plea agreement, which constitutes a contract to which both sides should honor.

Mr. Pearce stated he has a cautious approach to parity review, adding that plea bargain cases should not be a part of such a process. He noted 60 to 70 percent of the inmates in the Maricopa County jail are repeat offenders, and he expressed concern about releasing anyone who might commit another crime. He emphasized the Committee's first consideration should be for the public it serves and the second consideration should be for the person who already participated in a fair process and received a sentence.

Senator Blanchard noted four issues should be considered in relation to parity review, namely, who makes the decision, what standard is applied, what cases are eligible and how they are initiated.

Mr. Neely asked if it would be possible to consider particular proposals at the next meeting to enable the Committee to move in a single direction. Senator Noland indicated it is necessary to acquire a sense of direction from the Committee and asked that all the members express their points of view on the issues.

Dr. Block indicated he favors an extremely cautious view, adding that he has some sympathy for focusing on some extreme cases but does not agree with a general parity review process.

Ms. Duffy stated that at this point she does not support parity review since over 90 percent of the people in prison are there under plea agreements. However, she expressed support for the concept of expanded commutation review.

Mr. Davis agreed with the two previous comments and the idea of having a couple of proposals for consideration.

Representative Hubbard emphasized the need for the Committee to consider the types of cases for parity review and the mechanism by which they will be reviewed.

Representative Baird said the Committee should consider a limited number of categories and a limited process as recommended by Senator Blanchard and Mr. Neely.

Senator Noland agreed it is necessary to set parameters with limited categories and consider how exceptional cases are structured within S.B. 1049.

Senator Blanchard reiterated the four questions he posed earlier. He indicated he generally supports some type of clemency process and a threshold that will keep the numbers down. He noted there is a group of individuals in the prison system who would have been probation eligible under the new code, which may be

an area to consider. Senator Blanchard also indicated he is very wary of parity review because of the plea bargaining and stipulated sentencing processes, adding that he would not like to second guess decisions which have already been made in the criminal justice system.

Ms. Hughes maintained there should be a limited parity review and agreed the process should not include people who were convicted by virtue of plea agreements.

Judge Reinstein indicated parity review should pertain to individuals who go to trial, particularly in the area of victimless crimes. He noted his main concern relates to low-level drug cases which received mandatory sentences under the old code but would otherwise receive only probation under the new code. He said other situations to consider include those drug cases below the new threshold and Hannah priors. Judge Reinstein commented that the State of Kansas reached a compromise to review only those offenders in prison who would have been probation eligible at the time of sentencing under the new sentencing guidelines. He also endorsed the concept of a commutation modification process.

Mr. Pearce reiterated his concerns about any parity review process and indicated he is not very sympathetic towards those in prison on drug charges, adding he does not feel those are victimless crimes due to the impact on the community.

Ms. Burke spoke on behalf of Director Lewis, noting that he is philosophically opposed to parity review. She said he is concerned about the recidivism rates and what value the process would have other than putting people back on the streets to commit additional crimes.

Mr. Albo spoke in support of Senator Blanchard's concept and said he hopes to see some way to deal with the inmates who were imprisoned prior to 1978 under indeterminate sentences. He also indicated he prefers to exclude a review of sentences that were arrived at by plea agreements.

Ms. Hamm expressed her support for parity review. She noted that Middle Ground proposed language a couple of years ago for a parity commutation that would allow the Governor to grant a special kind of commutation and indicated she would like to bring that back to the Committee for consideration.

Mr. Levy offered support for the expanded commutation process on a limited scope.

Mr. Maziarz indicated opposition to any form of parity review, adding that any legislative changes in the provisions of the sentencing statute should be applied prospectively. He emphasized fairness dictates that people who committed certain offenses when punishments were set should serve those sentences.

Mr. Neely reiterated his responsibility for plea agreements and that defendants should be required to take responsibility as well. He said he is opposed to parity review conceptually. However, he indicated some process needs to be available to adequately address legislative changes resulting in disproportionate sentences and added that the commutation process is a likely avenue.

**PUBLIC TESTIMONY**

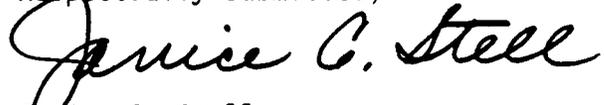
Marilyn Krausch, representing Families Against Mandatory Minimums, advocated the need for parity review of disproportionate sentences (remarks filed with original minutes).

Representative Baird indicated that due to time constraints the discussion of sentence reclassification would be heard at the next meeting. No date was set for the meeting but Representative Baird indicated he and Senator Noland would make a decision on a date and notify the members. It was decided that any proposals from members would be sent to staff in the next week or two and they would make them available for the full Committee.

Also on file with original minutes are memos from staff with attachments of information for the Committee's review.

The meeting adjourned at 11:54 a.m.

Respectfully submitted,



Janice C. Stell  
Committee Secretary

(Minutes and attachments are on file with the Office of the Senate Secretary.)

MEETING OF COMMITTEE ON

SENTENCING GUIDE & PARITY REVIEW

DATE 09/15/93

TIME 9:30 A.M.

NAME

REPRESENTING

BILL NO

Martha Krausch

F.A.M.M.

Sandra Dahlge

Arizonaans for Fair Crim. Just. Sys.

Ron Mayer

DEPT. OF CORRECTIONS

Jennie Reasoner

Public Citizen (if there is an issue that I feel I need to address)

Louise Gilman

Public Citizen

Robert Lee

AOC

ARIZONA STATE LEGISLATURE

Minutes of Meeting

STATE SENTENCING GUIDELINES AND  
PARITY REVIEW STUDY COMMITTEE

Friday, October 1, 1993  
Senate Hearing Room 1 - 9:30 a.m.

Senator Noland called the meeting to order at 9:36 a.m. and attendance was noted. See attached sheet for other attendees.

Members Present

Joe Arpaio  
Audrey Burke (for Sam Lewis)  
Raul Castro  
David Derickson  
Senator Blanchard  
Senator Noland, Cochair

Karen Duffy  
Donna Leone Hamm  
Jay Heiler (for Kurt Davis)  
Stephen Neely  
Judge Ronald Reinstein  
Representative Baird, Cochair

Members Absent

Joe Albo, Jr.  
Dr. Michael Block  
Tom Freestone  
Catherine Hughes  
Joe Maziarz  
Representative Hubbard

Staff

Joni Hoffman, Senate  
Dominica Minore, House

Dr. Daryl Fischer, representing Department of Corrections (DOC), presented numerical information concerning the cases that could be eligible for parity review, including those under Arizona Revised Statutes Section 13-604.02, pertaining to offenses committed while released from confinement; Section 13-604.H., pertaining to Hannah priors; Section 13-1501, pertaining to burglary/shoplifting and Sections 13-3407 and 13-3408, pertaining to drug thresholds. Dr. Fischer explained that the statistics for drug thresholds and burglary/shoplifting include only those cases which went to trial and exclude plea agreement cases.

Dr. Fischer reported that 91 inmates are currently in prison with life sentences for committing offenses while on release from confinement. Dr. Fischer offered a breakdown of the types of crimes that were committed by the offenders while on release in order to provide a view of the seriousness of the cases. He indicated there were six cases of first degree murder (class 1 felony), three cases of first degree attempted murder (class 2 felony), two cases of second degree murder (class 1 felony), two cases of second degree attempted murder (class 2 felony), three cases of manslaughter (class 3 felony), ten cases of kidnapping (class 2 felony), five cases of sexual assault (class 2 felony), one case of sexual conduct with a minor (class 2 felony), one case of child abuse (class 2 felony), 22 cases of aggravated assault (class 3 felony), 22 cases of armed robbery (class

2 felony) and two cases of first degree burglary (class 2 felony), which total 79. Of the remaining 12 offenders, six involved trafficking in narcotic drugs (class 2 felony), five were for possession of narcotic drugs (class 4 felony) and one involved trafficking in dangerous drugs (class 3 felony). Dr. Fischer observed that of the 91 offenders in prison with life sentences for committing offenses while on release, the vast majority involved violent crimes and multiple charges.

Mr. Derickson asked if the 91 offenders were convicted after jury trials or whether plea agreements were involved, to which Dr. Fischer suggested that probably a significant number involved trials. He pointed out that about ten percent of all inmates in the prison system were convicted by way of trials, adding that the figure is probably higher for the cases under discussion.

Judge Reinstein asked if the level of drug possession or trafficking can be determined for the 12 individuals sentenced to life for various drug offenses. Dr. Fischer said he would check on that information. He noted that in most cases a significant amount of drugs was probably involved in order for the prosecutor to pursue that type of penalty. Judge Reinstein questioned whether some situations might involve defendants who proclaim their innocence and are convicted in a trial, to which Dr. Fischer agreed that is possible.

Senator Noland observed that the only real changes made to the criminal code which would affect any of the cases mentioned lie within the matrix for nondangerous, nonviolent offenses and would conceivably only involve the last 12 cases discussed. Dr. Fischer pointed out that the new legislation eliminates the life penalty for crimes committed while released from confinement, which includes all of the violent crimes mentioned. He agreed that the matrix is maintained for the most violent crimes but added that is a separate issue.

Senator Noland noted that a life sentence in this instance is actually 25 years, to which Dr. Fischer acknowledged that the sentence constitutes life with a 25-year minimum. Senator Noland observed that in some cases the new legislation increased the penalties on the matrix for violent crimes to 28 years, and Dr. Fischer responded that various parts of the matrix were kept intact. He pointed out that the new law eliminates parole eligibility and the offender will have to serve 85 percent of the sentence, which will result in more time being served for many violent offenders.

Ms. Burke asked if there are statistics available for inmates sentenced under Section 13-604.02.B since they will be eligible for release on earned release credits to community supervision under truth in sentencing provisions, while under the current criminal code they have to serve a flat sentence. Dr. Fischer estimated that about 600 current inmates were sentenced under that provision.

Dr. Fischer continued his presentation by addressing Section 13-604.H, concerning Hannah priors. He explained that the Hannah prior provision allows for the consolidation for trial purposes of one or more offenses committed on the same occasion and allows one or more of those offenses to be alleged as prior convictions. He indicated that the new law provides an entirely new matrix for

Hannah priors which results in an extension of the normal matrix. He noted that a current conviction using Hannah prior is treated as an actual prior conviction and subject to the provisions of Section 13-604 as a repetitive offense. However, Dr. Fischer explained that under the new law the penalties caused by using Hannah priors are less severe than those for repetitive offenders, which brings about the possibility of parity review to equalize those penalties.

Dr. Fischer observed that there was some question at the last meeting about his estimate of 371 current inmates convicted using Hannah priors, and he added that he checked the files and found that number to be correct. He further noted that the Hannah prior cases amount to about 9 1/2 percent of the total 3,900 offenders currently sentenced pursuant to the repetitive offense statute.

Senator Noland observed that the question at the last meeting concerning the number of Hannah priors pertained to the difference between the number of 371 provided by Dr. Fischer and the number of 160 developed in Dr. Block's study. Dr. Fischer explained that the Block study examined offenders who were sentenced by the court during a one-year period, adding that the number accumulates in the prison system over a period of time and results in a larger number.

Representative Baird asked if the files are complete enough to indicate which offense is the current offense and which are considered to be Hannah priors, to which Dr. Fischer answered affirmatively.

Judge Reinstein asked if it can be determined whether someone had actual prior convictions but the prosecutor decided to utilize Hannah priors because the process is easier. Dr. Fischer replied that it is possible to separate those cases which have actual priors.

Dr. Fischer continued his presentation by addressing the third area of his review, Section 13-1501, which under the new law prohibits the charging of burglary for an incidence of shoplifting. He indicated that his review of the files for possible impact on parity review in this area was isolated on the category of burglary in the third degree in which shoplifting cases are concentrated. Dr. Fischer noted that as of June 30, 1993, there were 1,001 inmates in the prison system convicted of burglary in the third degree, and in 99 of those cases guilt was established by way of trial as opposed to a plea of guilty. Dr. Fischer further explained that 28 of the 99 cases actually involved a shoplifting incident.

Senator Noland asked if the two burglaries mentioned earlier in the discussion of those life sentences for offenses committed while on release were for shoplifting. Dr. Fischer explained that those two burglaries in the first degree were violent instances of inmates on release breaking into homes and injuring the occupants.

Senator Blanchard observed that most of the 79 violent offenders had a dangerous allegation, and he contended that a good percentage of those inmates probably have historical priors. He questioned if a majority of those 79 offenders would be facing new sentences because they would receive the presumptive maximum of 28

to 35 years. Dr. Fischer agreed that in the vast majority of the cases the offenders were sentenced pursuant to the dangerousness provision of the code, which coupled with the maximum would give them a quite lengthy sentence. Senator Blanchard observed that the class one felony offenses would receive life sentences, to which Dr. Fischer agreed. Senator Blanchard questioned whether very many of those 79 violent offenders could realistically argue a case for disproportionality of their sentences. Dr. Fischer indicated there could be some concern with the 22 aggravated assault cases.

Dr. Fischer continued by addressing the fourth area which could potentially be subject to parity review, the drug thresholds for dangerous and narcotic drugs under Sections 13-3407 and 13-3408. It was determined that as of June 30, 1993, a total of 1,164 offenders in the prison system were sentenced pursuant to one of those two statutes in which there was a mandatory sentence, and a sampling of 249 of those cases determined the following breakouts. Of the 249, 106 or 42.6 percent had drug amounts at or above the new statutory threshold amount for the type of drug involved, which Dr. Fischer indicated would obviously not be subject to parity review. He continued by stating that 108 or 43.4 percent had drug amounts below the new threshold but were convicted by way of a plea of guilty, adding that eligibility of these individuals for parity review depends on whether the Committee wants to limit a review to trial cases. In addition, the final 35 or 14.1 percent had drug amounts below the new threshold amounts and were convicted at trial, which according to the interest of the Committee could be subject to parity review. Dr. Fischer indicated that an application of the 14.1 percent to the total of 1,164 offenders results in an estimated 164 inmates in the prison population who fall below the threshold and were also convicted at trial.

Senator Blanchard suggested that the figure represents the upper range of people who might be eligible for reduced sentences, adding that some might not be eligible because of other mandatories running concurrently with their drug sentences, to which Dr. Fischer answered affirmatively.

Senator Noland questioned if any of the figures would be duplicated in the Hannah prior numbers, to which Dr. Fischer stated that his review of individual cases did not reveal any that involve more than one of the provisions under discussion. He acknowledged that there is probably a fairly small overlap which may reduce the total number slightly. Dr. Fischer concluded by reporting that the maximum number of cases which might benefit from some type of parity review is 654 or 3.8 percent of the total prison population, as of June 30, 1993, and he pointed out that the prison population grows at a rate of 1,140 per year.

Senator Noland contended that the numbers which would realistically be included in any type of discussion of parity review would probably be somewhere between 500 and 654. She also clarified that the Committee is not charged with reviewing these cases but rather with recommending to the Legislature whether an entity should perform parity review and how it will be accomplished. Ms. Hamm asked what the total number of inmates would be in the categories under discussion if plea agreement cases are included, to which Dr. Fischer indicated the total would be 885.

There was discussion of proposals submitted by Committee members, beginning with Senator Blanchard's clemency review proposal (filed with original minutes).

Representative Baird questioned if the idea of the proposal involves a technical review of the files to determine eligibility and what the new sentence would be, with the Board of Executive Clemency holding hearings to determine whether an inmate should receive a different sentence. Senator Blanchard answered affirmatively.

Judge Reinstein asked if any of the four eligibility categories in the Blanchard proposal includes inmates convicted solely using Hannah priors, to which Senator Blanchard said he anticipates those cases would be included in the final category listed in his proposal. Judge Reinstein commented on the parity review process being conducted in Kansas, in which offenders in prison who would have been candidates for nonimprisonment sanctions have their sentences reviewed by the prosecutor from the county in which they received their sentences. He contended that such a procedure would eliminate the need for a hearing if the prosecutor does not protest the release determination.

Mr. Derickson commented on Senator Blanchard's proposal which indicates that the standard for recommending a change in a sentence would include whether public safety would not be endangered by the release of the prisoner. Mr. Derickson asked if the public safety issue should be factored into determining whether an individual would be eligible for earlier parole. Senator Blanchard said it might be appropriate to make the ultimate release decision and public safety determination closer to the time of release although some sentencing changes may be significant enough to be dealt with in the same hearing. Mr. Derickson said it appears to be a sense of the Committee that once a decision has been made that a parole eligibility date will be shortened that the actual question of release remain up to the Board of Executive Clemency with the decision to be made closer to the actual time of release.

Mr. Derickson questioned if the categories of cases under discussion for possible parity review should be automatically reviewed rather than using an application process. He contended there are many individuals in prison for sentences longer than what would be expected under the present code, including people who went to trial and those who were forced to take a plea because of the fact they were facing life imprisonment or a large number of years. Mr. Derickson acknowledged that the categories which are generally agreed as eligible for consideration could be automatically reviewed. However, he questioned if there should be a process whereby prisoners can apply to the Board of Executive Clemency on the basis of their own individual circumstances if they can demonstrate that their sentences are longer than what they would be exposed to under the new code.

Senator Blanchard pointed out that he did not specifically set out the four categories which could be eligible for some type of parity review in his proposal, although he acknowledged those categories are useful for determining what the numbers are. However, he emphasized that the one category he would like to exclude involves the changes in the theft statute which were implemented by reasons of inflation and not for reasons of a policy shift. Senator Blanchard

also noted that he was under the impression at the last meeting that there were far more people under the plea bargain cases than it appears there are. He added that the two concerns with plea bargains include the opening of the floodgate and the policy issue of whether the same plea using a different charging system would result in a significantly different bargain, which is why plea agreement cases are excluded from his proposal.

Senator Blanchard noted that one exception includes drug offenses because of the change from a system of mandatory prison time to a position of probation eligibility, in which case the entire bargain probably would change. Another exception includes allegations of offenses committed while on release status since the bargain may be very different. Senator Blanchard suggested that perhaps one way to deal with the issue of plea bargains is to utilize a process similar to the Kansas model whereby a prosecutor could decide that he has no problem with undoing a plea agreement.

Mr. Neely contended that it appears there is a shift in the tenor of the discussion between this meeting and the last, noting that at the last meeting there was no significant support for parity review per se but there was considerable support for the notion of disproportionality review. He emphasized that he has not changed his position about the disproportionality issue even though the numbers appear to be smaller than what was originally thought, stressing that the issue is an ethical one for him and not an issue of numbers.

Mr. Neely reiterated that there are people who have been subject to sentencing laws throughout the last 15 years who have legitimate claims that their sentences are disproportionate to those of like situated offenders, which has nothing to do with the recent alteration of the criminal code. He suggested another approach for consideration should be to ensure that the disproportionality review process, through which applications are forwarded by superior court judges and which currently exists for people sentenced since last year, be applicable to people sentenced prior to the institution of that process.

Mr. Neely also reiterated that the issue of plea bargaining has little to do with numbers but rather with the fact that an agreement was entered into with the defendant. He agreed that some people will take the position that some offenders were probably forced into plea bargains as a result of the awesome consequences. However, he emphasized that the standard of "beyond a reasonable doubt" does not disappear simply because the consequences are awesome, adding that it is clear that people who have chosen to plead guilty have done so because of the probability of conviction. Mr. Neely also noted that disproportionality does not have anything to do with comparisons between sentences under the past code and the 1993 code and that it can be established by the current judicial standard or a standard recommended by the Committee.

Senator Noland questioned how a case would be forwarded to the Board of Executive Clemency if a particular judge is no longer available to review a sentence and she asked Mr. Neely what his recommendation on disproportionality would be. Mr. Neely suggested there be some variation of the method by which a superior court judge refers a case to the Board because of an excessive or

disproportionate sentence. He proposed that any inmate who feels his sentence falls within a defined disproportionality or excessive standard can submit a petition to the trial court, adding that any judge could hear the case based on the records in order to determine whether any further action should be taken.

Senator Noland asked Mr. Neely how he would define disproportionality. Mr. Neely observed that a definition would require considerable thought but he suggested disproportionality should not be defined as a difference between a sentence imposed last year and a sentence imposed this year. He explained that chronology does not have anything to do with disproportionality and noted that there is ample precedent in criminal law for setting a disproportionality standard.

Judge Reinstein said he does not have a problem with the idea of an application being made by an inmate to the sentencing court. However, he suggested that more consistency would exist in a disproportionality review at the Board of Executive Clemency rather than before numerous different judges. He added that under the new provision the judges review the presentence report and have the prosecutor, defense attorneys and the victim available to assist in a recommendation, pointing out that older cases may not have those resources available.

Representative Baird questioned how a disproportionality review could be limited, to which Mr. Neely emphasized the need for a standard. Senator Noland asked Mr. Neely if his proposal also excludes plea agreements, to which he answered affirmatively. However, he suggested that the standard of disproportionality be received by people similarly situated.

Representative Baird said he has a hard time conceiving that a standard can be drafted which will discourage the entire prison population from applying. Mr. Neely noted that while once working for a Federal judge he had to review thousands of applications for civil rights and habeas corpus relief, adding that it did not take long to make a determination whether the applications met minimum standards.

Ms. Hamm expressed concern about the difficulty in understanding the distinct difference between proportionality review and parity review. She maintained that both proportionality and parity review issues would pertain in her example of someone sentenced today to ten years in prison for theft but who could have only received a maximum of five years under the new code.

Mr. Neely indicated he is uncomfortable with the terminology in the Blanchard draft proposal referring to significant disproportionality, particularly in light of Ms. Hamm's position that a five-year disparity between old and new codes is significantly disproportionate. He maintained that a revision of the code, which alters sentences from what the individual was accountable for at the time the crime was committed, is not a compulsion to alter a sentence.

Ms. Hamm commented on the list of inmates incarcerated under the pre-1978 code presented by Dr. Fischer at the last meeting. She pointed out that 60 on the list were convicted of second degree murder and are serving life sentences with two serving death sentences. She observed that under the current criminal code

they could not receive a life sentence for second degree murder nor a death sentence. She commented on Senator Blanchard's earlier statement that not many on the list would be affected, and she asked if 60 constitutes a large number.

Senator Blanchard questioned whether inmates sentenced for second degree murder would realistically be released under any proposal, pointing out that some of those individuals have such strong criminal records involving other crimes. He noted that the issue at the last meeting was that perhaps thousands might be eligible for consideration.

Ms. Hamm emphasized that the decision to release the 60 people on the list at some point is not for the Committee to decide. She noted that in a parity review the decision involves whether these sentences should be made equal to what the offenders would receive today. She pointed out that there is a definite requirement under statute today that an offender convicted of second degree murder would some day be eligible for parole, whereas the people on the list are serving pre-1978 code life sentences with no chance of parole eligibility.

Senator Blanchard pointed out that those individuals would be able to apply as his proposal is currently drafted. However, he indicated that whether they would benefit from a review is another issue. He added that he is opposed to any by-the-numbers process since the concept involves a subjective process with public safety as an issue.

Mr. Derickson agreed with Mr. Neely on the issue of disproportionality and noted that Mr. Neely's proposal addresses the category of people in prison not listed in the Blanchard proposal who may have a disproportionate sentence under the circumstances. He also agreed that a standard would provide a screening mechanism.

Judge Reinstein maintained that inmates cannot be prevented from applying for a review of their sentences no matter what standard is implemented. He agreed with Representative Baird that screening represents a problem and a great deal of time. He informed the Committee that he has already received well over 150 applications indicating eligibility for parity review on the basis of the Legislature's establishment of a Committee on the issue.

Representative Baird asked if limits or threshold tests should be placed on a disproportionate review, to which Judge Reinstein said he believes there should be a threshold.

Mr. Neely commented on the study performed by DOC during the truth in sentencing process pertaining to the average number of years someone would serve in prison for a particular kind of offense. He asked if DOC maintains those numbers, to which Dr. Fischer answered affirmatively. Mr. Neely suggested that the sentence given to an inmate who makes an application could be compared against the numbers compiled regularly by DOC, which could provide a comparative standard to determine whether a petition meets the threshold. Mr. Neely contended that the issue should involve an administrative action that can be accomplished with few man hours. Senator Noland pointed out that a recommendation by the Committee to

the Legislature for a review process should also include a recommendation for the funds to accomplish the task.

Ms. Hamm outlined her proposal for a parity review process (filed with original minutes).

Ms. Burke commented on the disparity for inmates who currently do not have an earned release credit date if there is a consecutive sentence to be served. She indicated there are between 1,000 to 2,000 inmates with consecutive sentences who are eligible for parole to a consecutive sentence, with about 60 percent being granted such parole. Ms. Burke addressed the situation when the criminal code was revised in 1978 and inmates were suddenly given the opportunity for parole to a consecutive sentence. She explained that the Legislature also provided the same consideration for pre-1978 code offenders as an automatic process without the need for parity review, and Ms. Burke contended that such an action might be simpler at the present time.

Judge Reinstein indicated that the denial of earned release credits on consecutive sentences seems to be one of the most controversial issues for inmates as indicated in the applications he receives. Ms. Burke agreed, adding that the inmates can earn the credits but there is nothing to which they can be applied. She noted that the current definition of an earned release credit date means that inmates have to be eligible for release to the community and they cannot have an earned release credit date until they are on their last sentence.

Mr. Burke clarified that prior to August 1986 release credits earned reduced the sentence imposed for an inmate to enable them to begin serving the consecutive sentence. Inmates also had the option from 1978 on for parole to the consecutive sentence as well. She noted that when Section 41-1604.07 was amended in 1986 to state that release credits earned no longer reduced the sentence imposed and an earned release credit date was established for release to the community, the area of consecutive sentences for these inmates was not specifically addressed.

Judge Reinstein maintained that an application of Ms. Burke's suggestion would probably take a tremendous workload off the time computation unit at DOC and the courts.

Ms. Hamm agreed that the revision in the statute in 1986 changed the entire ability for those inmates to apply earned release credits when they rolled over to a consecutive sentence. She suggested that consideration should be given to allowing an inmate who has earned all his release credits to use those credits to reduce the amount of time he would serve in prison.

Representative Baird asked Ms. Hamm to comment on the differences between her approach and that of Mr. Neely's. Ms. Hamm agreed that a proportionality review is appropriate if it includes the consideration of sentences that are different under the new code from the previous codes. Mr. Neely reiterated that the issue should be what sentence was given to similarly situated people and whether the sentence could be characterized as excessive as a result of the circumstances.

Senator Noland summarized the various points brought out by the members, noting that the general consensus involves a process through the Board of Executive Clemency with an initial application review for the proportionality question. She indicated the need for a standard to be set in order to reach another level for review. She added that the process would be the same as established under the Clemency Board for disproportionate sentences, although not necessarily through the recommendation of a judge.

In response to a question from Senator Noland regarding the appeal process, Ms. Hamm indicated that currently there is no appeal of the decision of the Parole Board to deny a commutation and the Board does not even have to give a reason for denial. She maintained that it would be appropriate to provide a reason and added that there is no transferability from a denial at the Parole Board to the judicial system since the determination by the Board is not a judicial one.

Senator Blanchard offered the following language on the issue of a standard:

1. The sentence imposed is clearly excessive given the nature of the offense, the record of the offender and sentence served by similarly situated offenders.
2. There is a substantial probability that when released the offender will conform his conduct to the requirements of the law.

He contended that with that type of standard the Board could determine a threshold along the lines mentioned by Mr. Neely.

Representative Baird maintained that the issue of similarly situated would have to include the difference between a five-year sentence and a ten-year sentence handed out a month apart because of the change in the code. Mr. Neely responded that if a threshold is set then it would not make a difference to him whether disparity was created by a change in the law or by other circumstances. He expressed some concern that the language proposed by Senator Blanchard is too general.

Senator Noland agreed that there is a need to better define the standard.

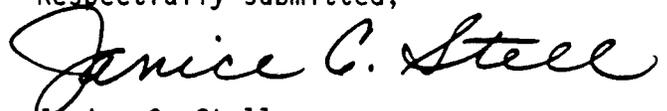
Mr. Derickson suggested that inmates who are not included in the categories that have been identified as possible areas for automatic review by the Board could choose to apply under the standards proposed by Senator Blanchard, which would encompass all the individuals eligible for parole.

Ms. Hamm urged caution in setting too many concrete standards for the Board of Executive Clemency, especially for such standards in one category but not in another. Ms. Hamm noted that Senator Blanchard's proposal suggests that the record of the inmate in prison be considered, which she indicated is fairly subjective. She also commented on the importance of being careful about defining what is excessive, adding that the Board should decide that on its own.

Senator Noland indicated that staff would prepare an outline to include the points she recapped and the language presented by Senator Blanchard. She invited any of the members and the public to submit language for setting and defining the standard. She suggested that the issue of earned release credits could possibly be recommended to the Legislature as a statutory change. She added that a review of the sentencing categories will be discussed at the next meeting. Senator Noland asked Mr. Neely if he plans to submit some language, and he indicated he would work on the issue with Senator Blanchard.

The next meeting will be held on Wednesday, October 13, 1993, at 9:30 a.m. The meeting adjourned at 11:40 a.m.

Respectfully submitted,



Janice C. Stell  
Committee Secretary

(Attachments and tapes are on file in the Office of the Secretary of the Senate.)

CONTRACTING GUIDELINES & PARITY REVIEW

DATE 01/10/93

TIME 9:30 AM

NAME

REPRESENTING

TYPE

Marilyn Knauch

4129 Santa Lucia Pl. Tucson, AZ

Party

Indy D. Pauer

5733 PLACITA BALANORA

U

Drew A. Taylor

1501 N. Oracle Rd #1004 85705 Tucson

Parity

Kon Mayer

ADC

"

CARL NINK

ADC

Parity

Janice Reasoner

public

Parity

Lois A. Wilson

public

Parity

ARIZONA STATE LEGISLATURE

STATE SENTENCING GUIDELINES AND  
PARITY REVIEW STUDY COMMITTEE

Minutes of Meeting  
Wednesday, October 13, 1993  
Senate Hearing Room 1 - 9:30 a.m.

Representative Baird called the meeting to order at 9:35 a.m. and attendance was noted. See attached sheet for other attendees.

Members Present

Joe Albo, Jr.	Donna Leone Hamm
Duane Belcher (for Tom Freestone)	Catherine Hughes
Audrey Burke (for Sam Lewis)	Joe Maziarz
Raul Castro	Stephen Neely
Kurt Davis	Russell Pearce (for Joe Arpaio)
David Derickson	Judge Ronald Reinstein
Karen Duffy	Representative Hubbard
Senator Blanchard	Representative Baird, Cochairman
Senator Noland, Cochairman	

Staff

Members Absent

Dr. Michael Block

Joni Hoffman, Senate  
Dominica Minore, House

Representative Baird asked that members present any proposals for consideration they might have.

Mr. Derickson noted that discussion occurred at the last meeting pertaining to a concept to determine whether a sentence for an offender under the old code is disproportionate to a sentence which would be given to that individual if the crime was committed after January 1, 1994. He indicated that the question was how to define what a disproportionate sentence entails. In addition to the areas discussed previously as those which should be eligible for review, Mr. Derickson proposed the following language for discussion:

A sentence is eligible for review under this section if the parole eligibility, or the earliest release date if parole is not available, is at least 18 months greater than the earliest release date for a person similarly situated but whose offense is committed from and after December 31, 1993.

Mr. Derickson said his view is that the Board of Executive Clemency should review the sentence of any individual whose sentence is distinctly different from the sentence he would have received under the new code. He noted that a threshold for review would provide guidance to the Board and serve those individuals whose sentences really are much longer under the older codes. He contended that the 18-month cutoff is reasonable due to the average length of sentences.

Mr. Derickson explained that the language he chose for his proposal with regard to parole eligibility versus earliest release date under the new code is intended to bring before the Board of Executive Clemency those people whose eligibility for parole under the present code is substantially different than the eligibility for release under the new code. He emphasized that his proposal defines a group that would be considered for review by the Board rather than a group which will be released if the Board determines that individual actually does have a sentence that should come under this section. Mr. Derickson added that his proposal is simply a mechanism for establishing an earlier potential release date for an inmate, and an offender not meeting the test of parole under the present system may not be released at that point.

Representative Baird indicated that his interpretation of the proposal is that it represents a mechanical determination of eligibility by looking at the sentence received under the old code and what it would have been under the new code, with an inmate being eligible for consideration if the criteria is met. He said it appears Mr. Derickson's point is that if such consideration makes an inmate eligible for parole, he would not be automatically paroled but would still have to be considered for parole at that point. Representative Baird indicated that the proposal appears to reflect that if a review makes an inmate eligible for release because his sentence has been served, he would be automatically released.

Mr. Derickson maintained that is not the intent of his proposal. He explained the intent is for the Board of Executive Clemency to first make a determination as to whether the inmate is eligible for an earlier date of release. If that date happens to coincide with parole or it appears the person is eligible for parole under the review, then the Board would make a separate decision as to whether the individual should be released.

Ms. Burke asked for clarification for those inmates under the old code and the pre-1978 code who, although there may be disparity in their sentences, are not only eligible for parole but have had their cases heard by the Parole Board and denied. Mr. Derickson replied that an inmate who has had a parole hearing should not automatically be reviewed under the type of process being considered, adding that he would accept an amendment to his proposal to exclude those individuals.

Mr. Belcher asked what entity would determine the eligibility of inmates, to which Mr. Derickson responded that the Board of Executive Clemency should have that charge. Senator Noland clarified for Mr. Belcher that a review on the disparity of sentences would be a one-time type of review to be accomplished through the Board of Executive Clemency, with legislation also providing the necessary employees.

Senator Blanchard provided an overview of the proposal he and Mr. Neely developed based on the concept of disproportionality (filed with original minutes). He indicated that the issue to be discussed involves the thresholds for eligibility and contended that the 18 months contained in Mr. Derickson's proposal is too low, adding that it would be very difficult for an inmate with only 18 months' disparity to make an argument of excessive disproportionality. Senator Blanchard

offered the following alternative thresholds to determine eligibility to apply for disproportionality:

- \* Violent multiple offender serving a sentence of 20 years.
- \* Violent nonrepetitive offender serving a sentence of 15 years.
- \* Nonviolent multiple offender serving a sentence of 15 years.
- \* Nonviolent nonrepetitive offender serving a sentence of 10 years.

Senator Blanchard acknowledged that these thresholds would limit the number of people who could apply but he contended that these individuals are the ones who could realistically gain release under a "clearly excessive" standard.

Ms. Burke commented on the list of pre-1978 code inmates provided by Dr. Fischer from the Department of Corrections (DOC) at an earlier meeting, which indicates the maximum sentence but does not reflect the minimum. She said, for example, that for an inmate convicted of second degree murder the minimum might have been 45 years with life as the maximum. She indicated that a number of those inmates have been heard by the Parole Board many times and denied. She questioned if Senator Blanchard's proposal would allow the maximum sentence to be commuted so that if the Board did not grant parole those inmates would eventually be released any way. Senator Blanchard responded that if inmates are eligible for some type of release and have been denied, they should not be eligible for review under the type of standard being discussed. Ms. Burke asked if that should be written into the proposal, to which Senator Blanchard agreed.

Senator Blanchard maintained that the population in the prison system which falls below the new drug thresholds should be treated differently as a public policy, outside of a disproportionality or parity review.

Mr. Neely indicated that there is a distinction between his view of the issue and that of Mr. Derickson's proposal. He emphasized that he does not believe there should be any relationship between changes in the code and an evaluation of whether a sentence is disproportionate, which he and Senator Blanchard have reiterated in their proposal. He explained that the standard in the proposal attempts to look at current and historical sentences to determine what is likely to qualify as disproportionate. He added that the threshold is set below that point but at a high enough level to limit the number of applications to those situations in which there is truly a question of disproportionality.

In response to Mr. Derickson's request for clarification of the threshold numbers in the proposal, Senator Blanchard explained that the thresholds pertain to the actual sentence which is imposed. Representative Baird asked if someone eligible for parole would be included. Senator Blanchard indicated that an inmate sentenced under the old system has at least 13 different release mechanisms available, adding that it would be cumbersome for a threshold to include a determination of the earliest release mechanism.

Mr. Derickson disagreed with the concept of simply considering the sentence. He observed that the charge of the Committee is to set up standards under which the Board of Executive Clemency could review those sentences that are substantially

longer than they would otherwise be under the new code. He added that the Legislature made the determination that the sentences imposed under the 1978 and the pre-1978 codes are too long and that the cost to society and the State needs to be taken into account. He emphasized that some inmates probably should remain in prison but there are others who should be considered for review and earlier release.

Senator Noland questioned if the Blanchard-Neely proposal takes historical violent offenses into consideration, to which Mr. Neely explained that the proposal pertains to the offense for which the inmate is currently serving time regardless of the nature of the crime. Mr. Neely maintained that the charge of the Committee is not to specifically create standards for parity review but to determine whether such a measure is appropriate. He added that he thought the general consensus of the Committee is that parity review is not appropriate based on the comments made by members when asked to voice their opinions one-by-one in a previous meeting. He reiterated that the Blanchard-Neely proposal strictly addresses the issue of disproportionality rather than the issue of parity review.

Senator Noland contended that multiple offenses should follow the matrix set up in the new criminal code and consider whether historical priors were violent or nonviolent rather than be categorized according to the latest sentence. Mr. Neely maintained that the Board is capable of determining whether a prior offense was violent or nonviolent and building that into its equation. However, he suggested that for the purposes of a simple threshold the issue should be based on the offense for which the time is being served at the moment, if for no other reason than to avoid a potential administrative nightmare.

Ms. Hamm read the mandate of the Committee from S.B. 1049 which requires the Committee to recommend specific categories of crimes or offenders who should be reviewed in order to achieve parity for offenders sentenced under a different code. She indicated that she recalls the poll mentioned by Mr. Neely showed that most of the members were in favor of some type of parity review.

Representative Baird contended that the proposal submitted by Senator Blanchard and Mr. Neely is not contrary to the intent of the mandate received by the Committee.

Ms. Burke suggested that with the proposal it would still be necessary to consider the form of release eligibility available under a particular code, noting that an old code sentence may have been longer because of the release mechanisms available to the offender. Senator Blanchard said he is sure that by the time a case reaches the Board an analysis of what a sentence actually means is essential in determining disproportionality. However, he maintained that the present discussion deals with a different step, that of attempting to find a threshold which will ensure that everyone who is likely to obtain a release under this standard will be presented to the Board while restricting cases that probably have no realistic chance of meeting the standard.

Representative Baird stated that he has never agreed with Mr. Neely that there should be no consideration given to differences in the codes. He added that

disproportionality is such a vague standard that requires consideration of a variety of issues and for practical purposes the Board will be looking at that as part of the overall question of disproportionality.

Judge Reinstein asked if a person with a consecutive sentence totaling above the threshold would be eligible under the proposal, to which Senator Blanchard suggested that the consecutive sentence is the area in which a disproportionality review is probably most merited. Judge Reinstein observed that the intent of the Legislature in dealing with people who have prior dangerous offenses is evident, adding that such individuals probably received consecutive sentences because of prior violent offenses.

Judge Reinstein commented on areas which he feels constitute disproportionality, such as situations in which old code offenders were sentenced to a flat prison term while provisions under the new code provide the possibility of probation. He said another area of concern deals with those offenders in prison for burglary which under the new code would be designated as misdemeanors. In addition, Judge Reinstein contended that consideration should be given to cases involving drug offenses committed while on probation which have generated a life sentence that would not occur under the present code.

Judge Reinstein questioned if these issues are separate from the discussion the Committee has had pertaining to allowing commutation for certain people who were sentenced prior to January 1, 1994, and who are not eligible for commutation in order to match what will be available to people who commit crimes after that date. He indicated there have been discussions about striking the word "commutation" from certain statutes where commutation is currently not allowed. Senator Blanchard said he has not given much thought to that issue. He added that there was discussion about whether such action would be a simpler solution, but he pointed out that the standard for commutation is lesser. Judge Reinstein maintained that there are many inmates who do not fall under the proposal by Senator Blanchard and Mr. Neely but who should be included. He added that if he makes a statement at the time of sentencing after January 1, 1994, that he feels a particular sentence is clearly excessive and he would not have imposed it except for mandatory sentencing provisions, the offender is eligible for the new commutation review separate from the issue under discussion. He emphasized that type of evaluation should be possible.

Ms. Burke indicated that an area in which DOC has had a difficult time involves the mandatory minimum sentences which prohibit commutation applications of inmates with terminal illness. She suggested that it might be a good idea to recommend to the Legislature to allow an inmate in that type of situation to make an application for commutation.

Representative Hubbard said his recollection of the sense of the Committee at the meeting mentioned earlier is quite different than Mr. Neely remembers. He stated that his feeling at the time was that the Committee should go forward with consideration of a parity review and not necessarily a disproportionality review.

Senator Noland asked Mr. Neely or Senator Blanchard to offer some examples of the type of circumstances which would be reviewed under their proposal. Mr. Neely pointed out that the proposal simply refers to a preliminary threshold as a starting point for discussion. He suggested that examples might include nonviolent crimes, a person who sells drugs and receives a life sentence, consecutive sentences that would dramatically exceed the 20-year standard or a sentence that is disproportionate to like offenders. He emphasized that the intent was to limit rather than to facilitate applications for review, largely as a result of Representative Baird's and Senator Blanchard's concerns about the number of applications which would likely be submitted.

Senator Noland expressed concern that the proposal sets up a mechanism to review the more violent longer-term offenders rather than the less dangerous or nonviolent offenders who have a disproportionate or disparate sentence from others for the same type of crime. Mr. Neely indicated that the proposal represents a threshold level for disproportionate review, which he said has nothing to do with the nature of the offense but rather deals with the level of the sentence. He added that his original proposal involved the fact that the Legislature has created a mechanism whereby a person can have his case reviewed based on disproportionality, and he said he assumes that violent offenders have not been excluded. He emphasized that people convicted under the old code should have the same access to the Board since disproportionality is a matter of public morality. Mr. Neely also noted that the proposal simply represents a mechanism for review rather than facilitating the release of violent offenders. He suggested the need to determine the implications of a nonviolent inmate taking up prison space for 12 to 15 years, and he added that the position of the proposal is that an inmate sentenced to under ten years will not likely be able to make a case for disproportionality.

Senator Blanchard stated that a proportionality review would necessitate being realistic as to who would be eligible. He indicated that the most common eligible situations would include inmates serving life sentences because of an offense committed while on release status and those offenders with consecutive sentences. He commented on an example that was sent to him and which he previously distributed to the other members pertaining to an offender who was sentenced to three consecutive mandatory terms using Hannah prior for three very small drug sales. Senator Blanchard reiterated that the numbers in the proposal are only preliminary and acknowledged that the nonviolent numbers should probably be reduced. He also commented that situations involving the new drug thresholds constitute an issue of whether tax dollars can be used in a more efficient manner than imprisonment, such as drug treatment.

In response to Representative Hubbard's request for clarification between parity and disproportionality, Senator Blanchard explained that parity review reflects a change in the law and a discussion of the extent to which old code offenders would benefit and receive earlier releases. He continued by stating that a disproportionality review involves the consideration of an inmate's sentence, the crime committed and his background as to whether the sentence is disproportionate to the crime and to people in similar circumstances.

In response to a question from Ms. Burke regarding the review of consecutive sentences, Senator Blanchard advised that the examples he presented depicted the types of cases that would meet thresholds and added that some consecutive sentences would not meet those thresholds.

Representative Baird requested that public testimony be heard.

Rhonda Jensen, representing Arizonans for Effective Criminal Justice, offered a handout of her testimony (filed with original minutes), and suggested that parity review include the individuals sentences under the 1956 criminal code. Senator Noland pointed out that Arizona now has three sentencing possibilities for first degree murder, including 25 years to life, a life sentence without the possibility of parole and the death penalty. She noted that many offenders were sentenced to life without parole when there was no death penalty in the State. She agreed that some of the inmates that Ms. Jensen referred to would probably fall under the potential review proposed by Senator Blanchard and Mr. Neely. However, she emphasized the need to consider all the circumstances and the three sentencing options, noting that the life sentence without parole and the death penalty are either consistent with the sentences provided under the old code or even harsher.

Marilyn Krausch, representing Families Against Mandatory Minimums, spoke against mandatory sentencing and noted that the process has needlessly overcrowded the prisons at a high cost to taxpayers (testimony filed with original minutes).

Armando Cocio, representing Families Against Mandatory Minimums, also testified in opposition to mandatory sentencing, commenting on the situation of his brother (testimony filed with original minutes). Mr. Neely pointed out that under the Blanchard-Neely proposal Mr. Cocio's brother would be eligible for commutation review for disproportionality. Judge Reinstein noted that the inmate was charged with a crime while on release status and added that this case has been cited often. He indicated that sentences under Section 13-604.02, relating to offenses committed while released from confinement, cause judges the most concern. He observed that the Blanchard-Neely proposal takes such cases into consideration since those are currently mandatory life terms. Mr. Albo noted that the recent revision of the criminal code substantially modified Section 13-604.02.

In further discussion of the Blanchard-Neely proposal, Senator Blanchard said he is comfortable with the threshold sentence of 15 to 20 years for violent offenders, which would pick up inmates who committed offenses while on release status and inmates with consecutive sentences. However, he recommended that the standard for the two nonviolent categories be reduced to ten and seven years, which would include many of the Hannah prior cases and possibly some of the burglary/shoplifting cases.

Mr. Neely disagreed with the latter part of the recommendation, stating that there are numerous methods by which an inmate can obtain early release under the old code and many offenders will not actually be serving the full ten years of an imposed sentence.

Mr. Derickson indicated that he does not feel that anyone who has committed a violent offense will be eligible for review under his disparity review concept since the new code is harsher than the old code. He said he does not have a quarrel with the concept discussed by Senator Blanchard and Mr. Neely with respect to violent offenders because there are people who have been convicted of violent offenses whose cases should be reviewed. However, he indicated that he does not agree with the threshold for nonviolent offenders, noting that there are so many different categories of offenders affected by the change in the penalty provisions of the code which should not be excluded simply because "there is going to be an administrative nightmare." Mr. Derickson contended that such problems will probably not arise in light of the testimony from Dr. Fischer that there are less than 1,000 people who would be eligible for parity review in the categories the Committee had asked him to look at, including those in prison on plea agreements.

Mr. Derickson continued by stating that an inmate should be required in the petition for clemency or disparity or disproportionality review to specifically set forth the disparity in his case. He also said the inmate should be required to state in the petition that he has not previously been before the Board in a review situation. Mr. Derickson emphasized that such measures would eliminate a number of the 1,000 people under consideration and focus the group to be reviewed in such a way as to prevent an administrative nightmare, taking into account some of the many inmates who are nonviolent offenders. He added that the important point is to at least make this group of less than 1,000 eligible for review in order to determine whether in concert with the concern for public safety some of the bed spaces can be released for those people everyone would agree deserves to be incarcerated.

Representative Baird discussed the manner in which to proceed in order to know the sense of the Committee and emphasized that no action would preclude anyone from bringing in a new proposal to the next meeting. He suggested a vote be taken on the straightforward parity review approach proposed by Mr. Derickson in which every inmate who would receive a different sentence under the new code would be reviewed. Representative Baird questioned if inmates whose sentences resulted from plea agreements are included in that proposal, to which Mr. Derickson answered affirmatively and added that there would be an 18-month difference.

Representative Baird acknowledged that the 18-month figure is included in the proposal but that members can support the approach and still favor another number. Representative Baird indicated that the other measure to be voted upon is the proposal by Senator Blanchard and Mr. Neely, which contains thresholds for eligibility. He noted there is a difference of opinion about the threshold in the nonviolent area and indicated that Senator Blanchard had also mentioned a drug offense issue. Representative Baird also noted that the proposal excludes plea agreement cases.

Representative Hubbard expressed concern about voting on such broad and vague proposals. Senator Noland acknowledged that the two proposals are broad but she emphasized the need to reach a consensus on the route the Committee wants to take

in order to begin refining a proposal into a more view. She also cautioned the members that there is not much time for the Committee to meet its statutory obligation.

Judge Reinstein said he agrees with the Blanchard proposal as far as the thresholds are concerned. He reiterated his for the drug and burglary/shoplifting cases that under the new code they be misdemeanor dispositions, and he indicated that it is difficult to vote without knowing what the parameters are for those situations. Reinstein reiterated that the other cases he is concerned about includes in prison on mandatory sentences by way of plea agreements and which represents a significant number. He explained that he has difficulty going back on plea agreements. However, he commented on a situation that is different than going to trial in which an individual charged with two counts of sales of narcotic drugs has one count dropped by the prosecutor and agreement on the other but the offender still receives the mandatory sentence.

Mr. Neely clarified that he does not believe any irreconcilable differences between his proposal and that of Mr. Der. He added that the two proposals are not mutually exclusive and he does his opposition to parity review to be construed as part and parcel of his proposal on disproportionality. He explained that there are three issues involved. He noted first the issue of disproportionality, where those sentences that historically have shocked the conscience. He second issue of full parity, which is what the Committee originally began, involves every inmate whose sentence is disparate under the old code the new code, which he added was apparently modified by 18 months. Mr. Neely stated that the third issue involves partial parity and includes Senator Senachard's and Judge Reinstein's perspectives on certain drug offenses as the Judge's view of certain burglary/shoplifting situations. Mr. Neely stated that he was not suggesting that because a disproportionality standard exist that it should automatically exclude parity review.

Representative Baird maintained that in the gap between the two proposals there probably needs to be some refinement of drug thresholds, burglary/shoplifting and Hannah priors, adding that these issues can be worked out. In response to Representative Hubbs Judge Reinstein's concerns, he contended that he feels they can vote on two proposals and provide the Committee with a general sense of which they prefer with the understanding that amendments to the thresholds carried and voted on.

Representative Baird called for a show of hands on the Neely proposal for pure parity review. The proposal failed by a vote. The vote on the disproportionality approach in the Blanchard-Neely carried by a vote of 13-3.

Representative Baird asked Senator Blanchard to address concerns with the drug threshold. Senator Blanchard observed that the criminal code deals differently with some drug sales below a threshold that was felt by many judges that there are a number of addict sellers category or people

selling small amounts of drugs in order to pay for small amounts of drugs for their own personal use. Senator Blanchard explained that group is different than the larger drug sales for monetary purposes. He estimated that there are between 150 to 300 offenders in this group currently in prison, depending on whether only trials are considered or plea agreements are included. He suggested that an appropriate public policy which is consistent with public safety would be to identify those offenders who would be amenable to some type of alternative to prison, such as a requirement for intensive residential drug treatment and a conditional release into intensive probation.

In response to a question from Mr. Davis regarding the disproportionality review concept that was just voted on, Senator Blanchard explained that the proposal would probably not handle the drug issue under discussion unless a consecutive sentence was involved. He indicated that some of the inmates in question may be first-time, nonviolent offenders and below any threshold the Committee could devise. He also noted that philosophically the two approaches are different, and he explained that his reason for dealing with the issue is not through a sense of disproportionality but more from a public policy standpoint that this particular population may respond more to treatment than prison.

Mr. Derickson asked if the intent is to include only those offenders in prison sentenced through a trial, to which Senator Blanchard said his idea is to include anyone sentenced to prison under the drug threshold.

Representative Hubbard emphasized that the drug thresholds in S.B. 1049 represented a great deal of discussion with a number of parties involved. He maintained there was a reason why those amounts were set in the legislation and added that any parity review should take those drug thresholds into account. Representative Hubbard added that until there is treatment on demand for addicts there will always be people doing small amounts of drugs who should not be in prison but given alternatives. He noted that his vote will always be contingent upon a real parity review when it comes to drug threshold amounts.

Mr. Neely indicated that he was a member of the original code commission and he noted that an equal amount of consideration went into formulation of those laws when they were first put together. He noted that he does not believe there is a particularly moral compulsion for parity review on the drug question. He added that if the Legislature is concerned about prison overcrowding and chooses the reduction of sentences for individuals in prison because the thresholds change, such an action can be done as a matter of practicality rather than as a matter of moral policy.

However, Mr. Neely maintained that in an equity review there is no particular ethical compulsion to review cases simply because one Legislature sees the laws differently than another. He continued by stating that if the Committee discusses parity review it should look at it strictly from an impact-based perspective and whether such action will save enough money to warrant it. He added that he would consider the question to be whether the Legislature should adopt the issue as a policy. Mr. Neely indicated that serious consideration involves whether the intention of the Legislature is to ease the prison

overcrowding situation by reducing sentences of people involved in lower levels of narcotics.

Representative Baird called for a show of hands on whether to keep the issue of drug thresholds on the table. The measure carried by a vote of 13-2.

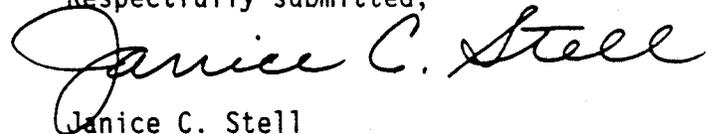
Representative Baird asked Judge Reinstein to address his concerns with the burglary/shoplifting issue. Judge Reinstein explained that under the current law if an individual commits a shoplifting act in a store the crime can either be a misdemeanor shoplifting or a class 4 felony burglary. He noted that the figures presented by Dr. Fischer reflect that 371 offenders are in prison on burglary/shoplifting offenses. Judge Reinstein observed that those offenses would be considered misdemeanors under the new provisions of the code, and he contended that such cases should be reviewed.

Representative Baird called for a show of hands on whether to keep the burglary/shoplifting issue on the table. The measure carried by a vote of 14-3. Representative Baird suggested the need to begin reviewing a specific proposal consisting of the Blanchard-Neely plan at the next meeting, and he recommended that Legislative Council be involved in the process. Senator Blanchard indicated that he would provide an outline to staff and to Legislative Council. Representative Baird emphasized to the members that specific language has not been adopted and that legally any measure is still on the table. He suggested that specific proposals that members may desire on the burglary/shoplifting and drug threshold issues be drafted for the next meeting.

Senator Noland commented on the list of offenses shown by chapter and requested that any suggestions pertaining to classifications be presented at the next meeting. Joni Hoffman, Senate Research Analyst, noted that she provided the members with corrected pages of the classification list (filed with original minutes).

The next meeting will be held on Thursday, November 4, 1993, at 9:30 a.m. The meeting adjourned at 11:44 a.m.

Respectfully submitted,



Janice C. Stell  
Committee Secretary

(Attachments and tapes are on file in the Office of the Secretary of the Senate.)

MEETING OF COMMITTEE ON

DATE OCT. 13, 1993

SENTENCING & PAROLE REVIEW

TIME 9:30 A.M.

NAME

REPRESENTING

BILL NO.

Sandra Douge Arizonans For Effective Criminal Justice SB1049

Rhonda Jensen \_\_\_\_\_ SB1049

MARY MALONEY \_\_\_\_\_ SB1049

Louise Wilson \_\_\_\_\_ SB1049

Marilyn T. Krasak \_\_\_\_\_ \_\_\_\_\_

Abrahamo Coco FAMM \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

\_\_\_\_\_ \_\_\_\_\_ \_\_\_\_\_

ARIZONA STATE LEGISLATURE

STATE SENTENCING GUIDELINES AND  
PARITY REVIEW STUDY COMMITTEE

Minutes of Meeting  
Thursday, November 4, 1993  
Senate Hearing Room 1 - 9:00 a.m.

Cochairman Noland called the meeting to order at 9:12 a.m. and attendance was noted. See attached sheet for other attendees.

Members Present

Joe Albo, Jr.  
Duane Belcher  
Dr. Michael Block  
Audrey Burke (for Sam Lewis)  
Raul Castro  
Kurt Davis  
David Derickson  
Senator Blanchard  
Senator Noland, Cochairman

Karen Duffy  
Donna Leone Hamm  
Joe Maziarz  
Stephen Neely  
Russell Pearce (for Joe Arpaio)  
Judge Ronald Reinstein  
Representative Hubbard  
Representative Baird, Cochairman

Staff

Members Absent

Catherine Hughes

Joni Hoffman, Senate  
Dominica Minore, House

Joni Hoffman, Senate Research Analyst, gave an overview of the draft proposal prepared by legislative staff, which is marked with a large "draft" stamp to distinguish it from the Derickson proposal which is marked with a small "draft" stamp (filed with original minutes). Ms. Hoffman explained that the proposal is based on the Blanchard/Neely outline and other points brought out at the last meeting.

Senator Blanchard noted that his original proposal referred to "violent offenses" whereas the draft on lines 16, 18, 20 and 22 of page one refers to "serious offenses." Ms. Hoffman explained that the term "serious offense" is defined in statute and the language in the draft bill incorporates that definition, except for the last paragraph of the statute which deals with drug issues. Mr. Neely pointed out that the original proposal he offered included the criteria of a 10- to 15-year sentence for nonserious offenses while Senator Blanchard called for criteria of seven to ten years, as reflected in the draft. Senator Noland noted that the issue is presented only for consideration, to which Mr. Neely indicated that the numbers are satisfactory to him.

Senator Noland said she would like to see the language on lines 24 to 28 on page one clarified to ensure that the Board of Executive Clemency will still play a role in the process through the utilization of its guidelines for release, rather than based only on the differing sentence information.

Former Governor Castro recommended that the draft legislation include the continuation of the Committee as an oversight entity. Ms. Hoffman suggested that it would be cleaner to reestablish the Committee in a separate proposal rather than include it with the disproportionality review issue.

Mr. Maziarz recommended that the criteria on page one on lines 20 and 22 be changed to include the words "other than first degree murder" after the phrase "was convicted of a serious offense." He explained that he does not believe that the sentence of anyone convicted of first degree murder would be reduced and the original language would provide a mechanism whereby those individuals, including inmates on death row, could apply for review. Mr. Maziarz added that individuals convicted of first degree murder have their own commutation procedures available to them.

Senator Noland pointed out that the list of pre-1978 code inmates presented at an earlier meeting by Dr. Fischer indicated that a number of prisoners have no set minimum sentence. She added that some cases may not involve a death sentence or a conviction with aggravating circumstances and could be appropriate for review. Mr. Maziarz suggested that a possible alternative might be to add language that reflects "other than persons under a sentence of death," as opposed to his earlier suggestion. Senator Noland agreed that such a change might present a way to look at the various options and still deal with a potential disproportionality in the case of no minimum sentence. Ms. Hamm maintained that the distinction between death row and other persons serving indeterminate old code sentences is very important, adding that she would comment further on the issue when she explained her proposal.

In response to earlier requests from Judge Reinstein and Dr. Block for clarification of the statutory definition of "serious offense," Ms. Hoffman explained that the definition includes all the crimes that are considered serious offenses, which are first and second degree murder, manslaughter, aggravated assault that results in serious physical injury or involves weapons, sexual assault, any dangerous crime against children, arson of an occupied structure, armed robbery, burglary in the first degree, kidnapping and sexual conduct with a minor under 15. She added that the portion excluded from the criteria in the draft legislation involves drug offenses above the threshold level.

Ms. Hamm addressed her proposed amendments to the draft legislation (filed with original minutes). She withdrew item two of her list, noting that she would defer instead to the language included in the proposal to be submitted by Mr. Derickson. Ms. Hamm explained that item one of her proposed amendment requires the Department of Corrections (DOC) to provide actual notice to the inmates of their requirement to apply for review before a certain deadline. She explained that many inmates do not have access to a television or a newspaper or they may be in lock-down status, the infirmary or a location where even a bulletin board notice may not suffice.

Ms. Hamm continued the explanation of her proposed amendments by commenting on item three, which would allow inmates sentenced prior to 1978 and who are serving indeterminate sentences to apply for executive clemency action. She indicated

that most of the people on Dr. Fischer's list who are serving indeterminate sentences have at one time applied for a commutation. She noted that some of those people could be provided with a minimum parole eligibility date if the Board of Executive Clemency feels that is appropriate for them, but she pointed out that the draft legislation would automatically eliminate all of those individuals. Ms. Hamm acknowledged that some of the inmates in question would be entirely inappropriate for such action, but she emphasized that the decision should be up to the Board rather than the result of an arbitrary decision by the Committee. She also acknowledged that the punishment for murder in Arizona now incorporates either a death sentence, life sentence with possibility of parole or life sentence without possibility of parole, distinctions which the Board of Executive Clemency should be able to make.

Ms. Hamm explained that the language presented in item four of her proposed amendments would provide authority to the Board to consider the comparison of a sentence imposed under the current code with that of the code effective January 1, 1994.

Mr. Derickson explained that the language of his draft proposal (marked with the smaller "draft" stamp and filed with original minutes) includes the sense of the Committee in dealing with most of the individuals in the prison population and incorporates the Blanchard/Neely proposal. He noted that one exception adds language to permit disproportionality review for certain individuals who had not gone to trial, namely, inmates sentenced under the drug code if the new code would not require mandatory imprisonment and inmates sentenced for burglary in cases of actual shoplifting that under the new code would not be treated as a felony.

Representative Baird asked if the proposal takes into consideration the fact that some charges may have been dropped in a plea agreement. Mr. Derickson responded that the Board of Executive Clemency would take into account any charges that were dismissed as part of a plea bargain as well as the charges under which an inmate was sentenced. He emphasized that the idea is to provide a means for review for those individuals and does not mean automatic commutation.

Mr. Neely observed that at the last meeting the Committee voted to proceed with the disproportionality review approach rather than parity review, and he expressed concern that some of the suggestions in the Hamm and Derickson proposals appear to be very consistent with the concept of parity review. He added that it would be inappropriate for the Legislature to basically void the contracts that have been entered into through plea agreements.

Judge Reinstein maintained that the Derickson proposal only makes an inmate eligible for review, with the Board and the Governor still participating in the process. He observed that the proposal takes into account that someone sentenced for a shoplifting-type burglary would not have been eligible for a felony conviction if the crime was committed as of 1994, unless the value of the item taken was in excess of \$250, regardless of the offender's criminal history.

Senator Noland said she believes that the proposal would still require notice to be given to the victim, prosecutor and sentencing judge, with an opportunity for them to address the Board. Mr. Derickson agreed.

Representative Baird asked Judge Reinstein if he is in favor of the Derickson proposal, to which he responded affirmatively. Representative Baird questioned to what extent the proposal would open up the potential for review for plea bargain cases. Mr. Derickson reiterated that the only doors open as a result of the proposal to inmates who had entered pleas would include those convictions under the drug code that would not require mandatory imprisonment under the new code, or those convictions under the burglary statutes which would no longer be treated as felonies under the new code.

Senator Blanchard indicated that he had planned to prepare a separate proposal dealing with the drug offenders, not because of any parity or fairness concept, but more as a public policy issue. He explained that some inmates who fall below the new drug threshold can be more effectively handled through drug treatment and a long period of supervision in the community. Senator Blanchard noted that the Derickson proposal incorporates that concept, but he suggested the need to be more specific about conditioning a reduction in sentence or commutation for drug offenders on some type of successful completion of treatment. He observed that last year's DUI bill might be a good model to use.

Dr. Block expressed concern with the idea of opening up the process to plea bargains. He contended that it would be difficult to determine what a sentence would actually correspond to simply from the agreed upon conviction offenses, adding that the process would be much cleaner when looking at a conviction after the trial.

Judge Reinstein commented on a situation in which an individual charged with two counts of sale of narcotic drugs under the new threshold pleads guilty to one count and goes to prison. He maintained that such a situation would be easy to determine in a disproportionality review since the offender would not go to prison under the new code. He added that any prior convictions which may have been dismissed involve a different situation. Judge Reinstein indicated that the same situation exists in the shoplifting issue, noting that the crime is considered a misdemeanor under the new code. He added that other circumstances such as an assault during a shoplifting incident is something that can be considered. However, he emphasized that inmates should not be eligible for review if additional charges were dropped that would have placed them above the threshold.

Mr. Derickson continued with the explanation of his proposal. He noted that lines 17 and 18 on page one indicate a requirement for the inmate to specifically demonstrate in the application for review that the eligibility requirements have been met, which would eliminate some of the paperwork involving people who are ineligible.

Mr. Derickson further explained that lines 22 through 33 of his proposal include the consideration of consecutive sentences with the Blanchard/Neely sentencing

criteria. He indicated that the additional language in his proposal is the result of his concern for situations in which an individual received, for example, a sentence of six years on one offense and a consecutive sentence of six years on another offense, in which case the inmate would not be eligible for review under the seven-year sentencing criteria. Mr. Derickson said he feels it was the intention of the Committee to consider the amount of time an inmate occupies a bed space, which in his example would be 12 years rather than two six-year sentences.

Senator Noland said she feels it was the Committee's intent to consider a specific sentence. Senator Blanchard contended that when the issue was discussed it was generally accepted that consideration would be given to the total time served in the case of two consecutive six-year sentences.

Mr. Derickson continued his presentation by commenting on line 15 of page two of his proposal, noting that the original language appeared to require the Board of Executive Clemency to make a release decision in each case where it made a commutation decision. He maintained that the intent of the Committee was to have the Board make a determination as to whether a sentence was disproportionate and adjust any disproportionate sentences, leaving the release decision to another time. He noted, however, that there may be situations when a proportionality adjustment of a sentence would require immediate release of a prisoner, at which time the Board should also make the release decision.

Mr. Derickson commented on his final change listed on lines 33 to 36 on page two, which allows the Board to consider the differences between the new code and the 1978 code.

Discussion followed on each of the individual amendments that were proposed to the draft legislation prepared by legislative staff. Regarding item one of Ms. Hamm's recommendations pertaining to a notice provided by DOC to the inmates, Senator Noland asked Ms. Burke if the suggested 60-day time period was a reachable goal for DOC. Ms. Burke responded that 60 days would be a reasonable time if DOC would only be required to prepare and send a standardized notice to each inmate specifying the criteria and eligibility for review. However, she recommended that 90 days would be more appropriate to insure proper distribution.

Representative Baird maintained that Ms. Hamm's proposal actually requires DOC to notify the particular inmates who are eligible for review, which would be an altogether different task and require analysis of the records. Ms. Hamm emphasized that the intent of her proposal was for written notice to be provided to each inmate, which would also offer protection for DOC since an attempt to only notify eligible inmates could miss someone who is qualified. She added that the Committee may want to consider whether to require each inmate to sign off upon receipt of the notice and indicated that some provision would have to be made for those inmates who cannot read.

Dr. Block suggested that a 120-day deadline would enable DOC to restrict mailings to those inmates who fit the four categories that have been identified so as to prevent applications from inmates who do not actually qualify.

Representative Hubbard maintained that a combination of a notice in each inmate's mailbox and the normal channel of communications would blanket the entire prison population, adding that the notice should indicate where applications can be found.

Mr. Belcher suggested the need for language to allow exceptions to be made within the time frame for those circumstances in which a mass mailing might not reach some of the inmates who could be affected by parity review.

Mr. Albo emphasized that victims also have to be involved in the process.

Representative Baird suggested that a general notice be provided to inmates to include the eligibility requirements and the deadline to apply. He recommended that the notice not include an application. He noted that the issue of whether to have the inmates sign off upon receipt of the notice is problematic and would probably not be necessary. However, Representative Baird said it would be advantageous to clarify that inmates cannot claim that they did not receive notification and have a cause of action. He acknowledged that the concern raised by Mr. Belcher may need to be considered.

Mr. Maziarz suggested that item one of Ms. Hamm's proposal be modified by striking the word "actual" and inserting the word "constructive," with the understanding that DOC would have to make the best attempt possible to provide a notice to each inmate.

Ms. Hamm emphasized the importance of insuring that each inmate receives actual notice since there will be a deadline in which they can make application for review. She contended that there could be a number of reasons why an inmate could miss the entire segment of time when the notices are being distributed. In addition, Ms. Hamm stated that DOC should be required to make the applications for review readily available to inmates upon request.

Senator Noland asked that the Committee consider Representative Baird's language for the notice, including eligibility requirements, the deadline for application and the provision of the law. She requested that at the next meeting DOC be prepared to comment on the appropriateness of a 60-day or 90-day requirement for notification and how an actual notice to all inmates, including a sign off acknowledging receipt, could be accomplished. Senator Noland added that a provision should be included to indicate that notices and eligibility requirements be available in all of the law libraries at all of the units.

Ms. Hoffman explained that the draft legislation requires inmates eligible for review to make an application and does not designate the preparation of forms. Senator Noland said she does not necessarily feel that forms are being prescribed but rather the actual eligibility requirements and the deadlines.

Senator Noland asked for suggestions on the length of the application process. Ms. Hamm indicated that a year from the receipt of notice would be a reasonable amount of time and would allow the Board of Executive Clemency ample time to schedule the hearings in addition to the hearings they are already mandatorily

required to conduct. Senator Noland clarified that the time frame in question only involves the application process and does not place the responsibility on the Board to finish the review in a particular period of time.

Judge Reinstein questioned why the application process should be set any longer than that of the process of petitioning for post conviction relief, which is set at a limit of 90 days from the time of entry of judgment of guilt or sentencing.

(Note: The following recommendations were drawn from the discussion and the Hamm and Derickson proposals and will be incorporated into another draft document to be considered at the next meeting. In all cases, the page and line references pertain to the draft proposal produced by legislative staff.)

The Committee decided by a show of hands to include in the draft the provision for a 90-day application process following the period of actual notification by DOC.

As suggested by Mr. Maziarz, the Committee decided by a show of hands to include the following language in the draft on page one, lines 20 and 22: after the word "offense" add "except persons under a sentence of death."

In response to Senator Noland's concern for the need to reflect that a different sentence can be recommended by the Board as opposed to commutation, the Committee decided by a show of hands to include the following language in the draft, as suggested by Representative Baird, on page one, line 27: after "commutation" add "or reduction."

The Committee decided by a show of hands to incorporate the following language from Mr. Derickson's proposal into the draft on page one, line 13: after "application" add "which specifically demonstrates that the inmate's eligibility requirements have been met."

There was discussion of Mr. Derickson's proposal to add the words "or consecutive sentences" after the word "sentence" on lines 17, 19, 21 and 23 on page one of the draft. Dr. Block indicated that the issue is a conceptual one and that there is a difference between the disproportionality of a conviction for a specific single act and the disproportionality for an aggregate sentence. Mr. Maziarz agreed, adding that the Committee should not lightly qualify offenders for review in cases where a judge has decided to impose consecutive sentences. Judge Reinstein also agreed but suggested an exception should be made for those instances in which it was mandatory that the judge impose a consecutive sentence, such as in the case of an offender who commits a class 4 crime while on probation and the sentence stacks up to seven years. Senator Noland indicated that staff will devise clarifying language for the next draft to reflect that the reference to consecutive sentences would be based on mandatory sentences.

There was discussion of item four of Ms. Hamm's proposal, which proposed to strike the words "served by similarly situated offenders" on line 30 of page one of the draft and substitute the words "imposed for similar offenses under the criminal code effective January 1, 1994." Senator Blanchard opposed the language

proposed by Ms. Hamm, stating that it changes the entire idea of a disproportionality concept, which the Committee has already agreed on, to a parity concept.

The Committee decided by a show of hands not to include the language in item four of the Hamm proposal.

There was discussion of the proposal by Mr. Derickson to add the words "if commutation would result in an immediate release" at the beginning of the sentence on page one, line 32. Senator Blanchard expressed concern that with the language a reduction in sentence which caused an inmate's release two years in the future would not necessarily offer another opportunity for a review of the public safety issue.

Representative Baird said it appears that Mr. Derickson was stating that public safety should not be an issue where there will not be an immediate release since the inmates will go through the Board of Executive Clemency process.

Representative Hubbard questioned if the language adds additional criteria. Mr. Derickson indicated that with the original language an inmate could lose his chance for commutation because of a possibility of a public safety issue some time in the future, even though the sentence is clearly excessive. He added that the intent of the proposed change is to insure that the Board takes the public safety issue into account in the case of immediate release but does not suggest that the same consideration will not be provided for all other cases.

Senator Blanchard observed that the original draft includes an assessment of public safety in every case and added that the effect of the Derickson proposal is to ensure that the public safety issue would no longer be a requirement if there will not be an immediate release. Senator Blanchard indicated he would be comfortable with the language if there was assurance that a second step would be available to include a consideration of public safety before release.

Mr. Derickson contended there would be a separate decision on public safety somewhere down the line after a commutation. He acknowledged that a drafting problem exists but indicated the problem can be resolved. Senator Noland suggested that Mr. Derickson draft language that better defines his intent. She noted that it appears the Committee consensus is to leave the public safety language as it is in the original draft.

Mr. Derickson commented on language in his proposal which includes the differences between the codes as one of the criteria in determining whether a sentence is fairly excessive, adding that the language does not constitute a requirement for parity review.

Mr. Neely said he does not believe there is anything in the original language that would preclude the Board or anyone else from comparing a sentence under the new code to one under the old code, but he noted that such specification would involve automatic parity review.

Ms. Hamm disagreed and noted that page one, line 30, refers to "the sentence served," in which case the only comparison that can be made is that of the sentence which someone has already served. She explained that is why she attempted in her proposal to make a distinction to reflect the sentence imposed rather than the sentence actually served. Ms. Hamm maintained that the disproportionality issue, particularly under the current language, will not have the effect of rectifying injustices.

As suggested by Senator Blanchard, the Committee decided by a show of hands to strike the words "served by" on line 30 of page one and insert "imposed on." It was decided that Mr. Derickson's proposed language would also be included in the draft for consideration.

Senator Noland indicated that Mr. Derickson's proposals pertaining to drug thresholds and burglary/shoplifting would be held.

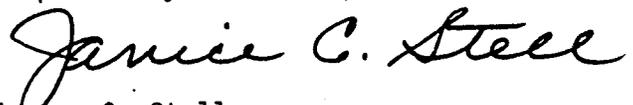
It was decided that the next draft would not include the reinstatement of the Committee as proposed by Former Governor Castro, but it was agreed to separately list the issue as a potential recommendation to the Legislature.

Senator Noland announced that the next meeting would be held around the first of December. Representative Baird suggested that the notice of the meeting include a statement to all members that the Committee will probably be voting on the issues.

Senator Noland indicated that she would like the draft made available for public review the week before the meeting, adding that public testimony would be taken before a final vote of the Committee. She requested that any alternative recommendations be submitted to staff.

The meeting adjourned at 11:00 a.m.

Respectfully submitted,



Janice C. Stell  
Committee Secretary

(Attachments and tapes are on file in the Office of the Secretary of the Senate.)

MEETING OF COMMITTEE ON

GUIDELINES & PARITY SENTENCING REVIEW

DATE 11/4/93

TIME 9:00 A.M.

NAME

REPRESENTING

PHONE

Marilyn Krausek

FAMM

ARMANDO COCIO

FAMM

Diane Taylor

FHAM

Louise Wilson

Kathleen Larson

DKR

Diana Doucette

John Bauman

JOSE S

STATE SENTENCING GUIDELINES AND  
PARITY REVIEW STUDY COMMITTEE

Minutes of Meeting  
Friday, December 10, 1993  
Senate Hearing Room 1 - 9:30 a.m.

Cochairman Baird called the meeting to order at 9:40 a.m. and attendance was noted. See attached sheet for other attendees.

Members Present

Joe Albo, Jr.	Karen Duffy
Duane Belcher	Donna Leone Hamm
Dr. Michael Block	Joe Maziarz
Audrey Burke (for Sam Lewis)	Stephen Neely
Raul Castro	Russell Pearce (for Joe Arpaio)
Kurt Davis	Judge Ronald Reinstein
David Derickson	Catherine Hughes
Representative Hubbard	Senator Blanchard
Representative Baird, Cochairman	Senator Noland, Cochairman

Members Absent

None

Staff

Joni Hoffman, Senate  
Dominica Minore, House

Representative Baird told those present the bill draft would be presented by Staff, followed by a description on amendments, public testimony, and a vote on the amendments and proposals for legislation. Representative Baird also pointed out the Committee had only completed half its designated task and should be recommended for continuation.

Dominica Minore, House Research Analyst, explained the draft before the members was the one that had been worked on in previous meetings and that new language had been added which would be discussed. Language adding to the eligibility requirements excluding from review certain prisoners, requirements for a prisoner to make application within ninety days for review from notification, notification by Department of Corrections (DOC), criteria for mandatory consecutive sentences, and language excluding death sentences from the criteria were all addressed in the bill draft. Ms. Minore explained Mr. Maziarz would be offering language addressing the death sentence criteria. Clarifying language changes were also made in addition to an appropriations section and a delayed repeal section.

Mr. Derickson explained his amendment would permit parity or disproportionality review for all drug offenses which would not result in mandatory disposition to prison if committed after January 1, 1994. It would also affect those who are convicted of shoplifting-type burglaries. Representative Baird asked how one would tell what agreement had been made via plea bargain. Mr. Derickson explained it was possible to distinguish what sentences were for what crimes.

Senator Blanchard explained his amendment was to the Derickson amendment and would add "drug treatment and counseling" to the bill as a more economical option to dealing with those persons convicted of a drug crime who are drug addicts who sold very small amounts to supply their own habits.

Mr. Maziarz explained his amendment would need to be amended verbally to address "those convicted of a serious offense and first degree murder." He explained the amendment was the result of pre-1978 Code. Mrs. Hamm commented a number of people still are not eligible for parole at any time unless they receive commutation of their sentence first which would make them parole-eligible. Mrs. Hamm added she believed the number would be above 160 who would fall under that category.

Ms. Burke stated the only way anyone would be eligible who was sentenced for murder prior to 1973, would be to submit commutations. Senator Blanchard questioned whether parity review would realistically lead to an early release for first degree murder for a person who has been denied commutation and commented on the need to continue to exclude first degree murder in the draft.

Senator Noland explained her amendment would affect only those people under the current criteria and would insert language stating "was offered a plea agreement of less than one-half of the sentence finally imposed." Representative Baird commented on the lack of recorded plea agreements, and explained to the Committee there is usually no record of plea agreements as they sometimes take place over the phone.

Judge Reinstein affirmed Representative Baird's comments on plea agreements, which are not a matter of public record. Mr. Neely added the plea bargain is based on offenses, not time which is based on the assumption all cases cannot be taken to trial. Dr. Block commented that Senator Noland's proposal brings to light some fundamental issues which need to be considered by the Committee.

Governor Castro stated opposition to the bill draft, citing problems he envisioned based on his experience as a prosecutor and as a judge. He also added his comments on the issue of plea bargains, adding plea bargaining is a choice of economics. Representative Baird added he was unsure whether the plea bargain issue can be reasonably dealt with.

**Mr. Neely moved the bill draft be forwarded to the Legislature for further consideration. Mr. Derickson SECONDED the motion.**

#### PUBLIC TESTIMONY

Marilyn Krausch, Coordinator, Families Against Mandatory Sentencing, thanked Governor Castro and Senator Blanchard for their work on the legislation, and read a letter from Renee Yank to the Committee regarding Mrs. Krausch's son, Phillip (filed with original minutes). Representative Baird asked if Phillip would be eligible under the new legislative proposal. Mrs. Krausch said she believed he would fall under page 1, line 28. She further added her disagreement with page 2, line 20 of the bill draft.

MINUTES OF COMMITTEE ON  
STATE SENTENCING GUIDELINES AND PARITY REVIEW

December 10, 1993  
Page 3

Jonnie Reasoner, representing herself, added support for Governor Castro's remarks and told the Committee her husband was currently serving 30 years, and will have served 13 years of his term in January, 1994. Representative Baird asked what her husband had been convicted for. Mrs. Reasoner told the Committee he was serving a term for auto theft.

Senator Noland pointed out Mr. Reasoner would probably be eligible for parity review under this legislation and that the Committee was trying to come up with guidelines to address the disproportionality of current sentences. Senator Noland commented on the amount of people who send letters to members of this Committee, believing them to be the Parity Review Committee. Senator Noland asked Mrs. Reasoner if she approved of the draft legislation. Mrs. Reasoner commented on prisoners and their reactions to the Committee.

Lynn Doucette, on behalf of John Bauman, told the Committee Mr. Bauman had been sentenced to three terms with a total sentence of 33 1/3 years. Ms. Doucette explained the charges were drug related and asked about the possibility of commutation under the draft legislation. Judge Reinstein explained the "Rule 32" process and its possible relation to Mr. Bauman's case.

Mr. Neely pointed out that the three cases testified to would each be affected positively by the proposed legislation.

Louise Wilson, representing himself, told the Committee she had been attending the meetings for her own knowledge and that parity and disproportionality are not the same thing. Ms. Wilson continued her remarks, stating she had hoped for fairness from the Committee, and that the issue is a moral one. She commented on the 1994 Criminal Code and the Committee's attempt to rewrite the laws. Mr. Wilson concluded by stating she was sorry the Committee felt a need to cater to people who fear crime, and the Committee was taking away hope. Representative Bird countered by saying the Committee is well aware of its charge and its attempt to do what was intended by the Legislation forming the study committee.

Representative Noland **WITHDREW** her amendment for consideration by the Committee, adding her concern with the plea bargain process. Mr. Neely and Mr. Derickson compared the ways plea bargains are entered into by Maricopa and Pima Counties.

Mr. Derickson **MOVED** his amendment dated 11/22/93. Representative Hubbard **SECONDED** the motion.

Senator Blanchard moved his amendment to Mr. Derickson's amendment dated 11/22/93, referencing the Derickson amendment.

Mr. Neely stated opposition to the amendments. Senator Blanchard asked for the Committee's support of the amendments, adding it was an issue addressing public safety. Mrs. Hamm stated the amendment fails to consider commutations or reductions of sentences.

The amendment **PASSED** by voice vote.

Mr. Derickson moved his amendment, **AS AMENDED**.

Ms. Hughes stated support for the amendment, asking that factors involved with plea bargains be included for further review.

Ms. Burke listed statistics from a memo prepared by Darrell Fisher of the Department of Corrections, stating 5,323 inmates would be affected by the proposed legislation and that 283 would be subject to parity review under the burglary/shoplifting section. Mr. Belcher asked if a person was allowed to apply for a commutation under the current system. Judge Reinstein answered it was not allowed in a flat-time sentence.

Representative Hubbard pointed out the passage of the recommendations would allow it to be considered by the full standing Committees, and would be subject to further discussion and review. Judge Reinstein added he was in favor of the amendments, and that the Board of Pardons and Paroles may not approve a commutation or the Governor may not approve.

Representative Baird added his support for continuing the study of the parity - disproportionality issue.

The amended Derickson amendment PASSED.

Mr. Maziarz moved to amend subsections C and D to read "Was convicted of a serious offense, OTHER THAN FIRST DEGREE MURDER..." The motion was seconded by Senator Noland. The amendment PASSED by voice vote.

Mr. Derickson moved the draft bill as AMENDED. The bill was SECONDED by Mrs. Hamm.

Ms. Burke stated Mr. Lewis' position of opposition to parity review and his concern for the protection of the public and cited the high recidivism rate as proven by a recent five-year study. Ms. Burke added she had discussed with Mr. Lewis what the Department could do regarding notice to inmates if the legislation passed. It was decided by the Department 90 days was sufficient notice time and it would not be a personal notice to each inmate; rather, it would be posted in areas where inmates would have access to the instructions as well as forms for application.

Mrs. Hamm stated currently in the commutation process, an inmate is only allowed to apply for a commutation of the sentence currently serving and must be two years into the sentence before he can apply. If there is more than one sentence, he must serve two years of each before applying for each commutation. Mrs. Hamm asked if the legislation would include allowing the Board of Executive Clemency to commute the entire package. Representative Baird answered it was his understanding the whole package would be considered.

Mr. Neely cited a study in which Arizona has a lower conviction rate than the national average and that Arizona's sentences are not significantly longer than other states.

MINUTES OF COMMITTEE ON  
STATE SENTENCING GUIDELINES AND PARITY REVIEW

December 10, 1993  
Page 5

Ms. Burke pointed out the commutation of sentences is a Board rule, and not a statutory one. Representative Baird added legislation would take precedence over rules.

The draft recommendation, AS AMENDED, FAILED by a roll call vote of 8-10-0. (Attachment #1)

Senator Noland moved the draft recommendation with only the Maziarz amendment. The motion CARRIED by a roll call vote of 14-4-0. (Attachment #2)

Governor Castro moved his recommendation (filed with original minutes), with language making the Sentencing and Parity Review Committee permanent being struck from the recommendation. Mrs. Hamm SECONDED the motion.

Mrs. Hamm stressed the need for continuing the work of the Committee. Senator Noland added the need to examine the various classifications. Senator Blanchard added support for continuing the Committee for another year, as a permanent Committee should not be in place in light of the two-year legislative terms.

The motion CARRIED by a roll call vote of 12-6-0. (Attachment #3)

The meeting was adjourned at 11:40 a.m.

Respectfully submitted,

  
Arlene Seagraves, Committee Secretary

(Attachments and tapes on file in the Office of the Secretary of the Senate.)

MEETING OF COMMITTEE ON

DATE 12/10/93

SENTENCING GUIDELINES & PARITY REV.

TIME 09:30 AM

NAME

REPRESENTING

3000

Marilyn Krausch

FAMILY

Margaret Bonella

FAMILY

Lynn Doucette

JOHN BAUMAN CASE

Laura Wilson

Self

1049

Christopher Johns

Marianna County Public Defender's Office

VJ Kelson

Self