

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Mary Ellen Barbera
Chief Judge

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 272
State Commission on Criminal Sentencing Policy – Annual Report
– Crimes of Violence (The Judicial Transparency Act of 2020)
DATE: February 5, 2020
(2/6)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 272. This legislation expands upon the required reporting that the State Commission on Criminal Sentencing must provide to the General Assembly. The new reporting outlined in the proposed legislation requires that the Commission, for each conviction of a crime of violence as defined in Criminal Law §14-101(a), report: (i) the crime of which the defendant was convicted; (ii) the sentence imposed; (iii) the applicable sentencing guidelines range; (iv) the disposition of the case, as indicated on the sentencing guidelines worksheet; (v) for convictions in which a portion of the sentence is suspended, the amount of time suspended and the percentage of the sentence suspended; (vi) the sentencing events that resulted in a departure from the sentencing guidelines, the departure reason cited; (vii) the court and judicial circuit with jurisdiction over the case; and (viii) the sentencing judge.

The Judiciary agrees with and restates the opposition set forth by the Maryland State Commission on Criminal Sentencing Policy (Sentencing Commission) in its written comments filed this year as well as the more detailed written testimony filed last year in response to SB 179 (2019). The Sentencing Commission states that the Sentencing Guidelines are voluntary and were never intended to impose a limit on judicial discretion or to gather and/or publish judge-specific sentencing information. To the contrary, specific data relating to the sentences imposed by individual judges is irrelevant to the original purpose of the Sentencing Guidelines, which was (and is) to ensure uniformity and fairness across regional, jurisdictional, and racial demographics. In other words, a sentence for armed robbery should not be vastly different based on the race of the offender or whether one is convicted in Washington County or Prince George's County.

The history of the sentencing guidelines in Maryland is helpful in understanding their purpose. To ensure fairness and uniformity, the Judiciary introduced the concept of judicial sentencing guidelines in the late 1970s. After developing and piloting a model to

reflect the sentencing practices, the Judicial Conference voted favorably on (and the Maryland General Assembly approved) the guidelines, adopting them formally statewide in 1983. In 1999, the Maryland General Assembly created the Maryland State Commission on Criminal Sentencing Policy (known as the Sentencing Commission) to oversee sentencing policy and to monitor the State's voluntary sentencing guidelines. The General Assembly established six goals to guide the Commission's work: (1) sentencing should be fair and proportional and sentencing policies should reduce unwarranted disparity, (2) sentencing policies should help citizens understand how long a criminal will be confined, (3) the preservation of meaningful judicial discretion, (4) sentencing guidelines should be voluntary, (5) the prioritization of prison usage for violent and career criminals, and (6) the imposition of the most appropriate criminal penalties.

From its inception, the Sentencing Commission was careful to protect judicial discretion by not collecting judge-specific data. Its purpose was never to sit in judgment of individual judicial decisions, but rather to provide judges with the necessary information for imposing sentences that are in proportion to sentences imposed throughout the state in a fair and impartial manner.

Judicial discretion in sentencing is deeply rooted in the constitutional requirements of due process and the separation of powers. Senate Bill 272 contravenes these Constitutional values by imposing Executive, Legislative, and public scrutiny of individual judicial sentencing decisions, based **solely** on length (or severity) of that sentence. Moreover, judges are uniquely prohibited from publicly discussing or defending the choices they make in the exercise of their discretion. The Maryland Code of Judicial Conduct, Maryland Rule 18.-104.4(a), provides: "A judge shall abstain from public comment that relates to a proceeding pending or impending in any court and that might reasonably be expected to affect the outcome or impair the fairness of that proceeding" In addition, the Judicial Code of Conduct states unequivocally: "A judge shall not be swayed by public clamor or fear of criticism." (Md Rule 18-102.4)

The bill does not capture all the data needed to provide an accurate picture of a sentencing decision. Judges are required to consider a myriad of factors, including, but not limited to an offender's criminogenic needs, amenability to treatment and/or rehabilitation, support in the community, mitigating and aggravating factors, victim safety and statements, and gang affiliation. Unlike its predecessor, this bill does not require reporting the prosecutor's sentencing recommendation. This bill does not account for the vast majority of sentencing events that arise from negotiated plea agreements, where the prosecutor and defense attorney agree to a disposition of a case without a trial. This may result in a disposition that includes a recommended sentence that is lower than the range provided by the sentencing guidelines.

It is important to note that this bill, as drafted, does not promote "transparency," as claimed. Rather it serves to gather data regarding the sentencing decisions of individual judges, based only on the single factor of length of incarceration without taking into account all other considerations. The results would thus be misleading.

cc. Hon. Bill Ferguson
Judicial Council
Legislative Committee
Kelley O'Connor