



## **Statehouse may reform 'Big House'**

### **Commission works to increase safety, reduce costs**

By [Bill Davis](#), Editor

JAN. 15, 2010 -- Fingers are crossed in the Statehouse and beyond that all of the hard work and meetings that have gone into the Sentencing Reform Commission will result in legislation that will save the state money and better protect its citizens.

With a little luck, observers say the commission's recommendations will avoid the political graveyard that's snared several "sure thing" bills over the past few years. A future bill could be debated as early as March, sources say. A draft report will hit members' desks next week with a full public report to follow Feb. 1.

Without a little luck, the recommendations might become a political football in an election year in the House, where candidates could kick recommendations around as a series of soft-on-crime mistakes.

The commission was formed in 2008 by state Sen. Glenn McConnell (R-Charleston,) the president pro tempore of the Senate who chairs the chamber's Judiciary Committee. It was to craft recommendations to change the state's guidelines for felonies, reform its parole system and offer alternatives to incarceration.

While some hoped the commission would begin the process of rolling back what have been described as overzealous legal reactions to crack cocaine, the impetus behind the commission's creation was more financial than empathetic.

### **Financial background for recommendations**

Over the past three decades, the state has seen its criminal justice system become increasingly more expensive and expansive. In 1983, the state spent just over \$63 million on prisons, according to state Sen. Gerald Malloy (D-Hartsville), who McConnell named to chair the commission.

In 2008, by contrast, the state spent more than \$394 million, a 500-percent increase. Malloy, the former president of the state's association of trial lawyers, said that annual per-inmate spending climbed from \$14,000 to \$29,000 over that time.

Prison population has more that tripled, too, from 7,526 in 1978 to 24,460 this past summer.

Currently, the state's total corrections budget is \$487 million, but the Department of Corrections has regularly exceeded its allotment, carrying a hefty deficit for several years.

### **Preview of recommendations**

Malloy said many of the recommendations would center on how the state handled non-violent drug offenders. The rise of crack and mandatory sentencing, he said, has added to the overcrowding and increased expense.

Expected recommendations in next week's draft report will include revisions to mandatory

sentencing rules, a reassessment of “three strikes and you’re out” sentencing, and potentially new alternative sentencing options.

Judges, argued Malloy, should have clearer sentencing guidelines that allow them the flexibility take into account the true nature of a crime.

Victoria Middleton, the executive director for the state ACLU chapter, said a wrinkle in state law has been that a person carrying drugs in their car gets a heightened sentence if they happen to be stopped in front of a school.

She said they were often not dealing or using at a school setting, but ended up getting a “proximity” charge added to their woes, and the state gets added prison expenses.

### Alternatives take on importance

Malloy said the recommendations would not go easier on dealers, traffickers or manufacturers. But they would push for cheaper, and some argue, more effective sentencing alternatives, such as treatment and supervision.

“If we can take a drug offender through ‘drug court’ and treatment for \$5,000, it’s much better than the \$15,000 we’re spending to incarcerate them,” said commission member and workgroup leader State Rep. Murrell Smith (R- Sumter).

Smith, an attorney and former public defender, said the push for alternative sentencing in the recommendations could “dovetail easily” with state Attorney General Henry McMaster’s proposed middle court system that seeks to divert non-violent crime away from costly incarceration.

A fan of treating addicts versus just punishing them, the ACLU’s Middleton criticized the middle court plan because it would create extra cost and, under gubernatorial candidate McMaster’s proposal, be housed under his office and not the judicial branch.

### Election year pitfalls

Changing sentencing guidelines, according to several sources interviewed, could become the most problematic -- especially in an election year -- and pose the most obvious obstacle to influencing legislation.

For example, if a legislator advocates diverting first-time, non-violent drug offenders to treatment, such a position could easily become “putting druggies back on the street” in the hands of a political challenger.

And what would be said to those already serving longer sentences for similar drug charges? Malloy shrugged. “The best we can do is put the state in a better position for the future.”

Additionally, there has been a push across the state and the Statehouse for other controversial recommendations, such as warrantless searches for parolees that could create further obstacles to sentencing reform.

Middleton decried what she said was the obvious unconstitutionality of warrantless searches. Smith said libertarians didn’t like the idea of the police being allowed to rifle through people’s private homes without a warrant because they had a parolee over for a visit.

**Crystal ball:** That McConnell tabbed a minority member of the opposition party to head up the commission speaks to the bipartisan support any resulting bill will likely have. All of the players seem to be on board with the idea of reserving precious prison beds for the truly dangerous. Now, with positive reviews and buzz around the Statehouse, the only thing that could muck up the works, is politics.