



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
July 8, 2008

Commission Members in Attendance:

Honorable Howard S. Chasanow, Chair
Delegate Curtis S. Anderson
James V. Anthenelli, Esquire
Shannon E. Avery, Esquire, *representing Secretary Gary D. Maynard*
Chief Marcus L. Brown
Leonard C. Collins, Jr., Esquire
Honorable Arrie Davis
Richard A. Finci, Esquire
Major Bernard B. Foster, Sr.
Senator Delores G. Kelley
Patrick Kent, Esquire, *representing Nancy S. Forster, Esquire*
Laura L. Martin, Esquire
Honorable John P. Morrissey
Ilene Nathan, Esquire, *representing Attorney General Douglas F. Gansler*
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

Jessica Rider
Stacy Skroban Najaka, Ph.D.
David Soulé, Ph.D.

Visitors:

Claire Rossmark, Department of Legislative Services
Shoshanna Plotkin, University of Maryland intern

1. Call to order

Judge Chasanow called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 5:35 p.m. when quorum was reached.

3. Approval of minutes, May 5, 2008 meeting

The minutes were approved as submitted.

4. Report from the Executive Director – Dr. David Soulé

Dr. Soulé thought it would be useful to describe the efforts of Commission staff to maximize the accuracy of the data maintained within the sentencing guidelines database. Dr. Soulé noted



that Commission staff spends a considerable amount of time checking and cleaning the data which allows for increased confidence in the accuracy of the data and permits more reliable offense-specific analyses of the data. He reviewed examples of recent data checking and cleaning activities. Dr. Soulé indicated he was reviewing these procedures for information purposes only and that no action was required by the Commission.

Dr. Soulé next reviewed the COMAR process and reminded the Commissioners that once a proposed change or update to the guidelines has been approved by the Commission, it needs to be promulgated through COMAR prior to adoption. This process usually takes three to four months from the time a proposed regulation is approved by the Commission until it is officially adopted through COMAR.

Dr. Soulé also informed the Commission of the United States Sentencing Commission (USSC) symposium on alternatives to incarceration on July 14-15, 2008. Dr. Soulé asked that if any of the Commissioners were interested in attending to please contact him so that he could inform the USSC staff.

Dr. Soulé introduced undergraduate student intern Shoshana Plotkin, who was observing the meeting. He also informed the Commission that information regarding internship opportunities with the Maryland Sentencing Commission has been posted on the website as requested by some of the Commissioners at the last meeting.

5. Report from the Guidelines Subcommittee – Dr. Charles F. Wellford

Dr. Wellford presented the report of the Guidelines Subcommittee.

- a. Review and classification of new and/or revised offenses from 2008 Legislative Session.
Dr. Wellford explained that the Subcommittee makes a recommendation on the classification of seriousness category by examining offenses that are comparable in the nature of offense, the type of offense (person, drug, property), and the statutory maximum penalty.

Dr. Wellford reviewed the table prepared by staff on recommended seriousness categories for new and/or revised offenses passed during the 2008 Legislative session.

- i. SB 211 – Statewide DNA data base system. Willfully testing DNA for information not related to identification of individuals (PS, §2-512(c))
- By unanimous vote, the Commission adopted the proposed seriousness category of V for this offense.
- ii. SB 211 – Statewide DNA data base system. Improper disclosure of DNA information to a person/agency not entitled to receive the information (PS, §2-512(a))
- By unanimous vote, the Commission adopted the proposed seriousness category of V for this offense.



- iii. SB 211 – Statewide DNA data base system. Fraudulent obtaining of DNA information from the statewide DNA database/repository (PS, §2-512(b))
 - By unanimous vote, the Commission adopted the proposed seriousness category of V for this offense.
- iv. HB 550 – Counterfeiting. Forge, falsify, or counterfeit the signature of a judge, court officer, or court employee (CR, §8-606.1(a)(1))
 - By unanimous vote, the Commission adopted the proposed seriousness category of VI for this offense.
- v. HB 550 – Counterfeiting. Use a document with a forged, false, or counterfeit signature of judge, court officer, or court employee (CR, §8-606.1(a)(2))
 - By unanimous vote, the Commission adopted the proposed seriousness category of VI for this offense.
- vi. SB 217 – Commercial Fraud. Commission of mortgage fraud (RP, §7-407(a))
 - By unanimous vote, the Commission adopted the proposed seriousness category of V for this offense.
- vii. SB 217 – Commercial Fraud. Commission of mortgage fraud – involving victim who is a vulnerable adult under CR, §3-604 (RP, §7-407(b))
 - By unanimous vote, the Commission adopted the proposed seriousness category of V for this offense.
- viii. SB 217 – Commercial Fraud. Commission of mortgage fraud, engaging in a pattern of mortgage fraud (RP, §7-407(c))
 - By unanimous vote, the Commission adopted the proposed seriousness category of IV for this offense.
- ix. SB 218 – Commercial Fraud. Failure to obtain a real estate broker's license (RP, §7-318.1(a))
 - By unanimous vote, the Commission adopted the proposed seriousness category of VI for this offense.
- x. SB 218 – Commercial Fraud. Violation of any provision of Title 17 of the Business Occupations and Professions Article (RP, §7-318.1(b))
 - By unanimous vote, the Commission adopted the proposed seriousness category of VI for this offense.
- xi. HB 626 – Commercial Fraud. Violation of certain provisions of the Maryland Real Estate Brokers Act, 1st violation (BO, §17-613(a))
 - By unanimous vote, the Commission adopted the proposed seriousness category of VII for this offense.



- xii. HB 626 – Commercial Fraud. Violation of certain provisions of the Maryland Real Estate Brokers Act, 2nd violation (BO, §17-613(d)(1))
 - By unanimous vote, the Commission adopted the proposed seriousness category of VII for this offense.
- xiii. HB 626 – Commercial Fraud. Violation of certain provisions of the Maryland Real Estate Brokers Act, 3rd or subsequent violation (BO, §17-613(d)(2))
 - By unanimous vote, the Commission adopted the proposed seriousness category of VI for this offense.
- xiv. HB 1113 – Identity Fraud. Use a re-encoder or skimming device for purpose of identity theft. Benefit \$500 or greater (CR, §8-301(d))
 - By unanimous vote, the Commission adopted the proposed seriousness category of V for this offense.
- xv. HB 1113 – Identity Fraud. Use a re-encoder or skimming device for purpose of identity theft. Benefit less than \$500 (CR, §8-301(d))
 - By unanimous vote, the Commission adopted the proposed seriousness category of VII for this offense.
- xvi. HB 1113 – Identity Fraud. Possess or obtain, or help other obtain a re-encoder or skimming device for purpose of identity theft (CR, §8-301(e))
 - By unanimous vote, the Commission adopted the proposed seriousness category of VII for this offense.
- xvii. HB 1113 – Identity Fraud. Possess, obtain personally identifying information or willfully assume the identity of another. Benefit \$500 or greater (CR, §8-301(b) or (c))

The Legislature increased the statutory maximum for this offense from 5 to 15 years.

 - By unanimous vote, the Commission decided that the seriousness category should remain a V.
- xviii. HB 1113 – Identity Fraud. Intent to manufacture, distribute, or dispense personally identifying information (CR, §8-301(g)(3))

The Legislature increased the statutory maximum for this offense from 5 to 15 years.

 - By unanimous vote, the Commission decided that the seriousness category should remain a V.
- xix. HB 719 – Animals, Crimes Against. Attending a Dogfight or Cockfight (CR, §10-605)

The Legislature increased the statutory maximum for this offense from 90 days to 1 year and increased the fine from \$1000 to \$2500.

 - By unanimous vote, the Commission adopted the proposed seriousness category of VII for this offense.



xx. HB 550 – Counterfeiting. Counterfeit, or write, sign or possess a counterfeit public document (CR, §8-605)

The Legislature added *order for release, or other court document* to the list of public documents in the statute. Additionally, the revised statute adds *possession* of counterfeit public documents to the list of prohibited actions.

- By unanimous vote, the Commission decided that the seriousness category should remain a V.

xxi. HB 1171 – Fraud, Miscellaneous. Altering the results of a drug or alcohol screening test, 1st violation (CR, §10-111)

The only change to this offense is that the Legislature altered the definition of bodily fluid adulterant to include synthetic urine.

- By unanimous vote, the Commission decided that the seriousness category should remain a VI.

xxii. HB 1171 – Fraud, Miscellaneous. Altering the results of a drug or alcohol screening test, subsequent (CR, §10-111)

The only change to this offense is that the Legislature altered the definition of bodily fluid adulterant to include synthetic urine.

- By unanimous vote, the Commission decided that the seriousness category should remain a V.

xxiii. HB 348 – Assault. Assault on a law enforcement officer (CR, §3-203)

The Legislature altered the definition of a law enforcement officer to include WMATA Metro Transit Police for specified crimes against law enforcement officers.

- By unanimous vote, the Commission decided that the seriousness category should remain a V.

b. Review classification for conspiracy and solicitation to 1st degree murder.

Dr. Wellford reviewed a memorandum that was presented to the Commission which outlined the Commission's previous discussions regarding this topic and offered new research done by Commission staff. As previously noted by Mr. Collins, the memo suggested that a key difference between conspiracy and solicitation is the lack of a "meeting of the minds" in a solicitation charge. Additionally, in cases involving solicitation and attempt, these offenses commonly "merge" with the completed crimes while conspiracy generally does not merge with the completed crime. Therefore, defendants who conspire to commit a crime and who then actually commit the crime can be convicted of both the conspiracy and the completed crime.

After reviewing the research of the Commission staff which included a summary of how other states rank these inchoate offenses, the Subcommittee recommended that the current seriousness categories remain for solicitation and attempts.

The Subcommittee further recommended that conspiracy to murder, 1st degree be added to the guidelines offense table so that it is clear that it is a seriousness category I offense. The motion was approved unanimously.



c. Update on Maryland Automated Guidelines System (MAGS).

Dr. Wellford reported that the Subcommittee reviewed the proposed procedures for electronic submission of sentencing guidelines worksheets via the automated system which is currently in development. Dr. Wellford noted that the Subcommittee was not presenting any proposed recommendation at this time. The Subcommittee agreed that staff should be given time to work with the programmers to develop a proposed protocol for submitting sentencing guidelines worksheets. There was some discussion regarding the concern that automation may increase the likelihood of someone obtaining unauthorized access to judge specific data. Judge Chasanow asked the Commission to delay further discussion on this topic until the next meeting, as Judge Themelis had indicated that he would like to be present to review this topic.

d. Review of report of average sentences for common offenses.

Dr. Wellford noted that when the Commission approved changes to our information dissemination policy at the last meeting, the Commission agreed that custom reports could be produced to be posted to the website. Since the Commission staff often receives requests for information regarding the average sentence for various offenses, the staff drafted a custom report entitled, "Maryland Sentencing Guidelines Compliance and Average Sentence for the Most Common Person, Drug, and Property Offenses". The Subcommittee reviewed the report and agreed to recommend posting the report to the Commission's website. Hearing no objections, it was agreed the reported noted above would be accepted and posted to the Commission's website.

6. Report from the Subcommittee on Sentencing Drug Offenders – Delegate Curtis S. Anderson

Delegate Anderson presented the report of the Subcommittee on Sentencing Drug Offenders.

Delegate Anderson noted that he believes one of the primary reasons why this Subcommittee was established was to examine the sentencing of drug offenders which has garnered a lot of publicity in regards to racial disparity. Delegate Anderson stated that the Subcommittee has a couple of options regarding recommendations it may submit to the full Commission for review including: 1) make recommendations to the Governor's Office; 2) make recommendations to the Legislature about possible legislation; and 3) propose changes regarding the sentencing guidelines for drug offenses.

Delegate Anderson also identified what he sees as two potential goals of this subcommittee:

- 1) What can we do (or recommend) as a subcommittee that will decrease the cost of incarceration to the state of Maryland? Is there a group of drug offenders who typically would go to prison who can be diverted into drug treatment?
- 2) Examine potentially racially disparate sentencing of drug offenders.

Senator Kelley noted that she believes the Subcommittee is on target by looking at the fiscal impact of providing alternatives to incarceration for drug offenders. She added that part of the mission of the Commission is to inform the General Assembly of the estimated impacted on correctional resources using a population simulation model for any proposed changes to the guidelines. Senator Kelley noted that the Commission may want to recommend to the General Assembly that fiscal notes for proposed legislation be modified to include a correctional population impact statement from the Commission.



Shannon Avery stated that the Department of Public Safety and Correctional Services (DPSCS) does provide an estimate of the impact on correctional resources for all proposed legislation and this is included in the fiscal and policy note completed by the Department of Legislative Services (DLS).

Patrick Kent indicated he believes that while fiscal impact statements have done a good job quantifying the estimated potential increase in the correctional population for proposed increases in penalties, the estimates have not done a good job quantifying what costs could be saved by utilizing alternatives to incarceration.

Leonard Collins noted Department of Corrections (DOC) projections do not account for potential societal costs for a reduction in incarceration of drug offenders. Mr. Collins added that he believes his jurisdiction, Charles County, has a lower homicide rate because they have a higher incarceration rate for drug offenders who have a strong propensity for violence. Mr. Collins believes the Subcommittee will need to look beyond what is simply the most cost effective solution for dealing with the drug offender population and must also consider the societal cost of lower incarceration rates.

Delegate Anderson responded that alternatives to incarceration may be just as effective from a public safety perspective for the drug offender population and the Subcommittee should be willing to look at these alternatives. He indicated that some members of the Subcommittee have informally discussed ideas such as a drug prison, which would be a facility that provided treatment and possibly allowed offenders to look for a job while still confining them at night. Delegate Anderson suggested this is just an example of the type of idea the Subcommittee should consider.

Senator Kelley noted that the Commission is authorized to recommend a series of correctional options for qualified (non-violent) offenders. She reminded the Commission that the Study Commission spent a considerable amount of time exploring the possibility of creating a corrections options authority. The problem was judges in various jurisdictions did not have the same availability for various corrections options programs and therefore the Commission was unable to complete the work for developing guidelines for corrections options.

Patrick Kent noted that there is some frustration that this has not been pursued further considering there is clear evidence from research that certain populations of offenders can be identified for alternatives to incarceration and this can be completed without concerns for public safety.

Judge Morrissey agreed stating the key issue is how we define the low-level or non-violent population. He added that there are many variables that need to be considered such as prior record, whether the individual has a job, supports a family, etc.

Dr Wellford indicated he felt it was necessary to note that the Commission did do something with regards to corrections options that he felt was very important. In 2001, the Commission built into our rules that any corrections options sentence is a guidelines compliant sentence. Dr. Wellford noted he felt this rule change has been helpful in some jurisdictions. He suggested it appropriately put the burden on the General Assembly to provide corrections options (with funding) and on judges to take advantage of the options when they are available. Dr. Wellford



added that anything else the Commission would do in this area would at least partly constrain the discretion the judges currently have in imposing a sentence. Accordingly, Dr. Wellford encouraged the Subcommittee to look back at what the Commission has already done and recognize that correctional options, as defined in our rules, are compliant sentences.

Delegate Vallario asked the Commission to take note of the differences in the way good time credits are earned for DOC inmates versus local detention center inmates. He recently attended a parole hearing for a Prince George's County Detention Center inmate. Delegate Vallario noted that the Prince George's County Detention Center currently has 1576 inmates, but had not one parole hearing in the prior year. The lack of parole hearings for local detention center inmates exacerbates the discrepancy in how good time credits are awarded. Delegate Vallario noted that DOC inmates are given 10 days good time credit (unless they are violent offenders) whereas local detention inmates are only given 5 days good time credit. Delegate Vallario noted that he believes the discrepancy between the calculation rate for good time credits for the DOC versus local facilities is unfair and therefore he thinks the Commission should consider recommending to the General Assembly that all inmates should earn good time credits at the same rate. Judge Chasanow indicated that Delegate Vallario should feel free to present a specific proposal on this topic for Commission review.

7. Date, time, and location for the next Commission Meeting

The next meeting was set for Tuesday, September 23 at 5:00 p.m. at the House Office Building, Judiciary Committee Hearing Room in Annapolis, MD. The regular meeting will be immediately followed by the annual Public Comments Hearing. The Public Comments Hearing will begin at 6:30 p.m. immediately following a break for dinner at 5:45 p.m.

The final meeting for 2008 was scheduled for Tuesday, December 9, 2008 at 5:00 p.m. at the Judiciary Training Center in Annapolis, MD.

8. Old Business

There was no old business to address.

9. New Business and announcements

Dr. Wellford notified the Commission of a Washington Post Op-ed written by Judge C. Philip Nichols, Jr., Prince George's County, regarding dual-sentencing procedures for juvenile offenders. The Commissioners agreed that it would be informative to learn more about this topic and would like to invite Judge Nichols to speak at the December 9, 2008 Commission meeting.

Delegate Anderson asked those Commission members who comprise the Subcommittee on Sentencing Drug Offenders to remain after the meeting to schedule the next teleconference.

10. Adjournment

The meeting adjourned at 7:00 p.m.