



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
December 13, 2011

Commission Members in Attendance:

Honorable Diane O. Leasure, Chair
Delegate Curt S. Anderson
James V. Anthenelli, Esquire
Colonel Marcus L. Brown
Joseph I. Cassilly, Esquire
Honorable Arrie W. Davis
William Davis, Esquire, *representing Public Defender Paul B. DeWolfe*
Paul F. Enzinna, Esquire
Richard A. Finci, Esquire
Major Bernard B. Foster, Sr.
Senator Lisa A. Gladden
Senator Delores G. Kelley
Christina Lentz, *representing Secretary Gary D. Maynard*
Megan Limarzi, Esquire, *representing Attorney General Douglas F. Gansler*
Laura L. Martin, Esquire
Honorable John P. Morrissey
Honorable Alfred Nance
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

Marlene Akas
Stacy Skroban Najaka, Ph.D.
David Soulé, Ph.D.

Visitors:

Linda Forsyth, Legislative and Community Liaison for Senator Kelley
Claire Rossmark, Department of Legislative Services

1. Call to order

Judge Leasure called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 5:02 p.m. when quorum was reached.

3. Approval of minutes, September 20, 2011 meeting

The minutes were approved as submitted.

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

Dr. Soulé had four items to review. First, Dr. Soulé recognized Dr. Wellford for receiving two prestigious honors – the Distinguished Achievement Award in Evidence-Based Crime Policy



and the University of Maryland's President's Medal. Dr. Soulé also thanked Dr. Wellford for his continued service to the Maryland State Commission on Criminal Sentencing Policy.

Next, Dr. Soulé introduced Marlene Akas. Ms. Akas was hired as the new administrative and training coordinator for the MSCCSP and started in this position on October 17, 2011. Dr. Soulé noted that Ms. Akas was previously employed as a law clerk for Prince George's County State's Attorney's Office and is already quite knowledgeable on the Maryland criminal justice system. The MSCCSP was fortunate to be able to add her to the staff. Dr. Soulé asked the Commission to join him in welcoming Ms. Akas.

Third, Dr. Soulé provided the Commission with an update on the status of the Maryland Automated Guidelines System (MAGS). Prior to beginning the pilot project in Montgomery County, the Administrative Office of the Courts (AOC) indicated that the MSCCSP would need to get the approval of the Court of Appeals to allow the pilot to proceed. On November 21, 2011, Judge Leasure and Dr. Soulé attended the Conference of Circuit Court judges to brief the Conference on the planned MAGS pilot. At this meeting, Frank Broccolina, the State Court Administrator, expressed concern about user access and potential interoperability with the new case management system being developed by the AOC. Mr. Broccolina advised the Conference to delay acting on approval of the planned pilot in Montgomery County until Judicial Information Systems (JIS) could become more familiar with the MAGS project. Mark Bittner, Executive Director of JIS, requested a presentation of the MAGS pilot project to the Judiciary's Technology Oversight Board on December 19, 2011. Commission staff is optimistic that the presentation will be well received and the Conference of Circuit Court judges will give their approval for the pilot to move forward at their next meeting on January 23, 2011.

Finally, Dr. Soulé reviewed the efforts undertaken by staff to revise the required due date for the Commission's annual report. Pursuant to Criminal Procedure article, §6-209, the Commission is required to submit an annual report on or before December 1st of each year. Commission staff requests an extension of this due date each year for two primary reasons. First, the MSCCSP regularly holds one of its quarterly meetings and the annual public comments hearing in December. As such, it is not feasible for the Commission to submit an annual report that is inclusive of all its activities and changes to the sentencing guidelines during the full calendar year. Second, the December 1st deadline does not allow the Commission sufficient time to accurately and efficiently collect, process and review the fiscal year data to be included in its report prior to submission to the General Assembly. After consultation with a few Commissioners, the staff drafted proposed language to amend CP, §6-209 to change the required due date to January 31st of each year. Senator Kelly has graciously agreed to sponsor this proposed legislation.

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

A. Update on request to seek clarification on offenses identified as *crimes of violence* (COV) as defined in CR, §14-101

Dr. Wellford noted that the first item on the agenda was for information purposes only. At the last Subcommittee meeting, the staff presented a memorandum requesting clarification as to whether select crimes should be classified as crimes of violence (COV) pursuant to Criminal Law Article, §14-101, Annotated Code of Maryland. The Subcommittee felt that since this matter is essentially an issue related to identifying specific crimes that determine when an offender would become eligible for parole, the staff should consult with the



Department of Corrections (DOC) to find out how the DOC identifies these specific offenses. No action was required on this item and staff was asked to follow up on this issue.

B. MAGS update

1) Departure/Submit Feature

Dr. Wellford noted that the MAGS pilot program will take place in Montgomery County. During a preliminary meeting between the staff and a group of criminal justice representatives from Montgomery County, one judge raised an issue concerning the Departure/Submit section of the MAGS application. Specific attention was drawn to the checkbox section where presumably either a judge or judge's designee would check this box prior to submission to confirm their review of the guidelines worksheet. The language in this section previously read as follows:

By checking the box, I agree that I have reviewed this sentencing guidelines worksheet for completeness and accuracy and I wish to now electronically submit...

The Montgomery County judge noted his belief that judges should not be required to affirm that they have reviewed the worksheets for completeness and accuracy. The judge believed the language went beyond the scope of the current paper guidelines worksheet, as no such language exists. After some debate, the Subcommittee agreed that the judge had a fair point and recommended striking the language above and replacing it with the following language:

By checking the box, I wish to now electronically submit...

The checkbox would still be marked by the judge or judge's designee. However, the checkbox would now be included merely as an extra precaution to prevent a worksheet from being prematurely or accidentally submitted to the MSCCSP database.

William Davis questioned why the court should be removed of the obligation of agreeing that they have reviewed the worksheets for completeness and accuracy. Dr. Wellford noted that the Subcommittee felt the assumption is that no judge would knowingly submit an incomplete or incorrect worksheet, thereby making the language unnecessary. Senator Kelley commented that to request that judges attest to the level of intellectual attention given to a worksheet would place the MSCCSP in a supervisory position. She reiterated the Commission's role is administrative and that the MSCCSP is tasked with capturing data for statistical purposes to see the extent to which judges are following the guidelines. Senator Kelley endorsed the proposed change to MAGS, as it removed an inadvertent appearance that judges must attest to the Commission that they are performing their jobs.

Mr. Davis responded by noting the need for both defense attorneys and prosecutors to correctly and accurately complete the guidelines worksheet. He felt it was reasonable to expect a judge to have to agree to the completeness and accuracy of the guidelines when he/she is sentencing someone based on these calculated guidelines. Mr. Davis commented that the proposed language change would remove the assurance that a judge has actually reviewed the document. Senator Kelley responded by suggesting that such an assurance be made to the Chief Judge or Rules Committee. She noted that the Commission is primarily concerned with obtaining the completed guidelines worksheet.



By unanimous vote, the Commission adopted the proposed language change to the check box language for the Departure/Submit section of the MAGS pilot application.

2) Completion versus Submittal of Worksheet

Dr. Wellford called attention to page 4 of the MAGS update Memorandum which provided a table detailing exactly who will have access to various aspects of the automated system. The highlighted portion of the table illustrates the proposed submission capabilities for each user group.

User Group	Stand-Alone GL Calculator Tool	Maryland Automated Guidelines System (MAGS)				
		Create Case	Edit Case Prior to Submission	View Case Prior to Submission	Submit Case	Access Submitted Case
MSCCSP Staff	Yes	Yes	Yes	Yes	Yes	Yes
Judges (Active and Retired)	Yes	Yes	Yes	Yes	Yes	No
Judges' Law Clerks	Yes	Yes	Yes	Yes	Yes	No
Judges' Secretary	Yes	Yes	Yes	Yes	Yes	No
Court Clerks	Yes	Yes	Yes	Yes	No	No
State's Attorneys	Yes	Yes	Yes	Yes	No	No
P&P Agents	Yes	Yes	Yes	Yes	No	No
Public Defenders	Yes	No	No	Yes	No	No
Private Attorneys	Yes	No	No	Yes	No	No
Technical Services Staff	Yes	Yes	Yes	Yes	No	No

The Subcommittee discussed the variances among the jurisdictions regarding who completes the guidelines worksheet. In most jurisdictions, the worksheet is typically completed by the state's attorney. In others, it is completed by the defense attorney or the judge's law clerk/secretary. This discussion led to the question of whether the court clerk should have submission capabilities within the automated system since under current procedures, the court clerks' offices often mail the guidelines worksheets to the MSCCSP office. Some members of the Subcommittee felt it was reasonable for the court clerks to be able to electronically submit completed worksheets using the automated system if a judge provided this authorization.

Judge Nance commented that COMAR indicates that the guidelines worksheets are forwarded by the court clerk. Dr. Soulé noted that the statute reads, "if a court prepares a Maryland sentencing guidelines worksheet the clerk of the court shall deliver a copy of the sentencing guidelines worksheet to the unit that has been ordered by the court to retain custody of the defendant." Dr. Soulé pointed out that the statute does not speak to who specifically should submit a worksheet to the MSCCSP. Judge Nance raised the issue as to



whether the same language interpretation of the statute would apply for the submission of worksheets through MAGS.

Judge Morrissey questioned whether access should be given to the court clerk's office in the automated system because it would add another step in the submission process. He noted that if the MSCCSP attempts to replicate the current paper distribution systems of the various counties with the new automated system, efficiency would be sacrificed. Judge Morrissey indicated that he believes the automated system would be most effective if submission access was limited to judge's staff rather than run the risk of submission errors.

Judge Nance commented that not all judges have access to computers while on the bench and the varying caseloads among jurisdictions would not permit all judges to immediately review and electronically submit worksheets.

Judge Leasure commented that while not all judges have access to computers while on the bench, under current procedures, all judges sign the paper version of the guidelines worksheets regardless of who mails the worksheet. In the automated system, the checkbox would simply replace the judge's signature capture. Whether expanding submission access beyond a member of the judge's staff would lead to an increase in worksheet errors is a possible concern. Additionally, as the clerk of court is a separately elected official, adding on to the clerk's responsibilities may or may not prove to be a challenge in jurisdictions. The goal should be to both get the forms in an expedient manner while ensuring that they are an accurate reflection of the sentence imposed and the guidelines that were considered by the court.

Dr. Soulé further offered that the concept of electronic submission is new. Previously, the discussion included a review of who mailed the paper worksheets to the MSCCSP. The question now is who is going to electronically submit the worksheets to the automated database. In some jurisdictions, under current procedures, the clerk's office is responsible for mailing the worksheets for all judges while in others they are mailed directly from the each judge's office. To keep consistent with those procedures, it may be best to allow each county to determine its own protocol for the electronic submission through the automated system. The Administrative Judge of each county would be responsible for determining whether a judge, judge's law clerk, judge's secretary or clerk of court should have MAGS submission access.

Delegate Anderson asked whether it is correct that the law states that the clerk of court forwards worksheets to MSCCSP. Dr. Soulé restated that the law discusses delivering a "copy of the worksheet to the unit that has been ordered by the court to retain custody of the defendant". The law does not discuss who should send a copy to the MSCCSP.

Mr. Finci made a motion that the MAGS pilot be expanded to include authority for courtroom clerks to submit worksheets through the automated system. Mr. Finci offered that the benefit of the pilot program is that if submission capabilities are expanded during this phase, a sampling of worksheets submitted by clerks can be later assessed for accuracy and/or reliability. The motion was amended to require authorization by the county administrative judge. Judge Nance noted that court clerks will need to be consulted. Judge



Leasure commented that task will be left for the administrative judges and that most likely current practices being employed among the jurisdictions will be continued.

The amendment passed unanimously.

C. Proposed modifications to the victim related questions on the sentencing guidelines worksheet

Dr. Wellford explained that in 2001 the Commission approved the addition of a number of victims' rights related questions to the guidelines worksheet. The items that were added are found on the guidelines worksheets under the headings, "Indigence Established" and "Victim Information". The "Indigence Established" question was added to capture information concerning whether an offender was indigent and therefore the cost required under the victim's act would have been waived. It has been determined by MSCCSP Staff that confusion currently exists among individuals completing guidelines worksheets as to when indigence is actually established. There is a common belief that indigence is established if an offender has a public defender.

The proposal offered by the Subcommittee is to change the "Indigence Established" question to read "Victim Court Costs Imposed". Generally, this revision seeks to clarify the information captured regarding whether the victim related courts costs as defined in Courts and Judicial Proceedings Article, §7-409, Annotated Code of Maryland, were imposed. The other victim related questions are located at the bottom left of the worksheet. The Subcommittee reviewed a series of proposed revisions to the questions. The proposed revisions include:

- 1) The two questions on the guidelines worksheet regarding assessment of victim related court costs are redundant, and the *CICB Cost Imposed* question should be removed from the guidelines worksheet.
- 2) *Victim Unavailable* should be changed to *Victim Non-participation* and the instructions in the manual should indicate that this question should also be answered YES if the victim waived his/her rights. If a victim was identified as a non-participant, then the remaining questions would not need to be answered.
- 3) The *NRF* abbreviation should be changed to *Victim Notification Form*, as this term is regularly used by prosecutors and would be more clearly understood to represent the Crime Victim Notification & Demand for Rights form.
- 4) The *No Contact with Victim* question should be changed to *No Contact Requested* since the description of this item on page 52 of the MSGM indicates this question is asking "Did victim or State make a *request* that defendant have no contact with the victim?"
- 5) Add a question labeled *No Contact Ordered*. The purpose of this question is to distinguish whether a judge ordered no contact with the victim, as opposed to whether a request for no contact was made by the victim or the State.

The Subcommittee discussed whether they would recommend these changes. The discussion led to the broader issue of why victims' rights information is being collected on the sentencing guidelines worksheet. This information is not needed for sentencing purposes, nor is it utilized by the Commission to assess how we are achieving our goals. However, the Commission began collecting the information in 2001 because it was low



cost, there was no pushback and it was thought to be useful information for the State Victim's Board, the victims' community, etc. Dr. Wellford noted that broad issue is not being brought to the Commission today.

The Subcommittee is only bringing the issue as to whether victim related data should be collected accurately. The Subcommittee is recommending the adoption of the changes so that useful and accurate information consistent with what was intended by the Commission and established by the Court of Appeals is collected. The Subcommittee is also asking whether the Commission would like for it to take up the broader issue concerning whether victims' rights information should be captured at all. No position has been taken by the Subcommittee on the broader issue at this time.

Dr. Wellford made a motion that the Committee approves the proposed language changes. Senator Kelly seconded the motion and commented that the Commission should have operational definitions that could be replicated and used in the future to tell us more about the structure of the system that we have. When terms are used in various ways numerous times and/or definitions are not clear, the level of accuracy is lacking.

Judge Nance moved to make an amendment to the motion adopting the proposed language changes, but referring both the proposed changes and the broader issue of inclusion of victim related information on the worksheet back to the Subcommittee for review and recommendation. Delegate Anderson seconded the amendment. The amendment passed, with Judge Morrissey's opposition noted.

Judge Nance commented that the reason for the motion is for the Subcommittee to discuss the broader issue of why victim related information is being collected on the worksheet at a later date and report back to the Commission. The issue before the Committee presently is only whether the information should be collected accurately. Delegate Anderson questioned whether the proposed heading change from "Indigence Established" to "Victim Court Costs Imposed" would accurately reflect the information being sought. Dr. Wellford referenced Rule 4-353(b) which discusses special costs. Delegate Anderson raised the issue as to how an attorney's argument for waiver of costs may potentially spoil the information attempting to be captured. Judge Nance responded and noted that the question raised by the Delegate goes more to the broader issue which the Subcommittee will discuss at a later date.

The motion as amended was passed unanimously.

D. Proposed modifications to the 50% of sentence announced field on guidelines worksheet

Dr. Wellford noted that the data collected on the guidelines worksheets indicates that the 50% of sentence announced field is left blank in 90% of the cases involving a crime of violence (COV). There has been no confirmation that actual announcements are not being made in court, only that they are not being reported. It has been suggested to staff that the intent of the question as it is currently phrased on the worksheet is unclear. As such, the Subcommittee proposes to amend the language on the worksheet from "50% of Sentence Announced" to "50% of Sentence Announced for COVs" to make more clear that in cases where there has been a conviction for a COV, there should be an announcement and this box should be checked on the worksheet.



Dr. Wellford made a motion to adopt the proposed language change. The motion was seconded by Senator Kelley. Judge Morrissey questioned how the language change would assist in the understanding of the purpose of the information being collected. Judge Nance commented that part of this discussion is similar to the victim costs issue. He made an amendment to the motion that the 50% announcement language change be adopted, but that the Subcommittee also further review whether such information should be collected on the guidelines worksheet.

The motion was seconded and passed unanimously.

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

The next meeting was set for Tuesday, May 8, 2012 at 5:00 pm at the Judiciary Education and Conference Center (JECC) in Annapolis, MD. The Commission will provide dinner and it will be made available starting at 5:00 p.m.

Note: The date of the next Commission Meeting was later amended to May 1, 2012 as the Judiciary Education and Conference Center (JECC) is not available on May 8th.

7. Old Business

Judge Leasure informed the Commission that Major Foster will be retiring as Director of the Cecil County Detention Center. Major Foster will be taking a new position as chief of staff for Colonel Brown with the Maryland State Police. Judge Leasure thanked Major Foster for his service to the citizens of Maryland as a member of the MSCCSP. Major Foster was presented with a plaque in recognition of his service.

Major Foster thanked his fellow Commissioners and MSCCSP staff for their dedication and efforts to improve the criminal justice system. He indicated that he is honored to have contributed to the Maryland State Commission on Criminal Sentencing Policy.

8. New Business and announcements

There was neither new business nor announcements.

9. Adjournment

The meeting adjourned at 6:00 p.m.