



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
December 9, 2008

Commission Members in Attendance:

Honorable Howard S. Chasanow, Chair
Delegate Curt S. Anderson
James V. Anthenelli, Esquire
Shannon E. Avery, Esquire, *representing Secretary Gary D. Maynard*
Chief Marcus L. Brown
Leonard C. Collins, Jr., Esquire
Paul F. Enzinna, Esquire
Richard A. Finci, Esquire
Major Bernard B. Foster, Sr.
Senator Lisa A. Gladden
Senator Delores G. Kelley
Patrick Kent, Esquire, *representing Nancy S. Forster, Esquire*
Honorable John P. Morrissey
Kate O'Donnell, Esquire, *representing Attorney General Douglas F. Gansler*
Honorable John C. Themelis
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

Jessica A. Rider
Stacy Skroban Najaka, Ph.D.
David A. Soulé, Ph.D.
Karlyn A. Sweetman

Visitors:

Honorable C. Philip Nichols, Associate Judge, Prince George's County Circuit Court
Linda Forsyth, *Legislative Assistant to Senator Delores G. Kelley*

1. Call to order

Judge Chasanow called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 5:30 p.m. when quorum was reached.

3. Approval of minutes, September 23, 2008 meeting and Public Comments Hearing

The minutes were approved as submitted.

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

Dr. Soulé informed the MSCCSP of a change to the agenda. Dr. John Spier was to provide an update on the development of Maryland's Sentencing/Correctional Simulation Model at today's meeting. Unfortunately, Dr. Spier is ill and unable to attend. Dr. Soulé will give the Commission a brief overview in his place. Dr. Soulé also informed the Commission that staff are working on drafting the 2008 Annual Report and will send the draft out for their review via e-mail. Dr. Soulé updated the Commission on the recent training that was held for new circuit court judges. Finally, Dr. Soulé indicated that the National Association of Sentencing Commissions (NASC) Annual Conference will be held at the Baltimore Renaissance Harborplace Hotel August 2-4, 2009. Dr. Soulé noted that he is interested in hearing from Commissioners on ideas for panel topics to be included in the conference.

5. Presentation from the Honorable C. Philip Nichols, Associate Judge, Prince George's County Circuit Court

On invitation by the MSCCSP, Judge Philip Nichols spoke about dual sentencing procedures for juvenile offenders. Judge Nichols was asked by the Commission to give an informative presentation based on his op-ed in the *Washington Post* on this topic.

Judge Nichols indicated that Missouri is considered a forerunner in the area of sentencing juvenile offenders. Missouri is a similarly sized state, faces the same problems, and spends about as much as Maryland in the sentencing of juveniles. The Missouri dual sentencing model targets juveniles convicted of very serious offenses (e.g., murder, rape) at a young age. Juveniles who receive dual sentencing are transferred from adult facilities to juvenile confinement. Missouri houses these offenders in barracks of forty in several locations throughout the state. At the age of 21, offenders are re-sentenced, and a determination is made as to whether the offender's adult sentence will be imposed. The concept is to give rehabilitated juveniles a second chance upon reaching adulthood. Judge Nichols recommends that Maryland consider adopting the Missouri dual sentencing model.

There was some discussion regarding the flexibility of the model. Judge Nichols indicated that the Missouri system is very flexible, in that an offender can be re-sentenced to serve his adult sentence at any time before the age of 21 if he is not making satisfactory progress. Shannon Avery asked whether there is any data to measure the effectiveness of the model. Judge Nichols indicated that he did not currently have any research, but he would contact the Missouri coordinators and report to the Commission on any data he received.

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

Dr. Wellford indicated that the Subcommittee had three items to review with the Commission.

A. Review of Victim Psychological Injury

Dr. Wellford indicated that there are two issues regarding the definition and scoring of victim injury. The first issue was whether clarification is needed regarding whether an injury is permanent or non-permanent. After some discussion, the Subcommittee concluded that clarification on this issue was not needed at this time and that the current language is sufficient.



The second issue was a concern raised by the Montgomery County State's Attorney's Office regarding the definition of psychological injury, and specifically, the inability of an indigent individual to access the resources needed to classify an injury as psychological in nature. In general, research by the Commission staff found that most states determine whether to assign points for psychological injury based on documented proof of treatment. However, some states prevent discrimination against indigent victims who cannot afford professional treatment by allowing victims to provide proof of receipt of free psychological counseling or treatment, such as rape crisis hotlines or counseling from a clergy member. Based on the information obtained in these reviews, the Guidelines Subcommittee recommended the following revisions to the definition of Victim Injury on page 19 of the MSGM (language to be added is underlined):

Victim Injury

Victim injury means physical or psychological injury to the victim of a crime, the cause of which is directly linked to the conduct of the defendant in the commission of the convicted offense. Victim injury, whether physical or psychological, shall be based on reasonable proof. Psychological injury shall be based on confirmed medical diagnosis or psychological counseling or treatment. Rape crisis hotlines, clergy conferences, and other similar services are considered psychological counseling or treatment, but the contact with a counselor must be verified by someone other than the victim. Psychological injury is presumed not permanent unless otherwise demonstrated. Physical injury shall be more than minimal. Physical injuries such as lasting muscle damage or amputation are permanent.

Note: These proposed revisions would be mirrored in the applicable language at COMAR 14.22.01.09.B(3)(a).

The Subcommittee recommended adding the word "counseling," as well as a non-exhaustive list of alternative mental health services including "rape crisis hotlines and clergy conferences," to broaden the scope of mental health treatment under the definition of victim psychological injury. Contact with a counselor in this instance would require verification by someone other than the individual, and the court would have discretion as to whether victim injury point(s) should be added to the offense score.

Rick Finci suggested looking to the DSM IV (Diagnostic and Statistical Manual of Mental Disorders), which provides the clinical definition of psychological injury for victims of criminal acts. Senator Kelley suggested that the definition should not be too specific at risk of excluding other types of alternative mental health treatment. The Commission discussed possible modifications to language of the proposed definition of psychological injury.

Judge Chasanow recommended replacing the word "verified," as it signifies that the individual is testifying under oath. Judge Themelis suggested that the word be replaced with "confirmed in writing or otherwise." The Commission considered tabling the issue until a sample of mental health providers mentioned in the new language (including a psychologist, a psychiatrist, and a pastoral counselor) could be consulted. However, a motion to table the issue failed 7 to 8.



The Commission considered whether to accept the following modifications to the language in the proposal:

...contact with a counselor must be ~~verified by someone other than the victim~~ confirmed in writing or otherwise by the counseling or treatment provider.

A motion to revise the proposal as indicated above passed. Following this change to the language, the Commission again considered tabling the issue until a sample of mental health providers could be consulted. However, a motion to table the issue failed 8 to 9. The Commission then considered whether to accept a second modification to the language in the proposal as follows:

Rape crisis hotlines, clergy conferences, and other similar services provided by a licensed, professional are considered psychological counseling or treatment, but the contact with a counselor must be confirmed in writing or otherwise by the counseling or treatment provider.

A motion to revise the proposal as indicated above failed 7 to 9. Senator Kelley made a motion to adopt the proposed language based on the first suggested modification. The motion was approved 9 to 7, thus amending the definition of victim injury to include the following language:

Victim injury means physical or psychological injury to the victim of a crime, the cause of which is directly linked to the conduct of the defendant in the commission of the convicted offense. Victim injury, whether physical or psychological, shall be based on reasonable proof. Psychological injury shall be based on confirmed medical diagnosis or psychological counseling or treatment. Rape crisis hotlines, clergy conferences, and other similar services are considered psychological counseling or treatment, but the contact with a counselor must be confirmed in writing or otherwise by the counseling or treatment provider. Psychological injury is presumed not permanent unless otherwise demonstrated. Physical injury shall be more than minimal. Physical injuries such as lasting muscle damage or amputation are permanent.

B. Review of Seriousness Category for Miscellaneous Motor Vehicle Offenses

In reviewing the Guidelines Offense Table, the staff discovered that the maximum penalty for *Conducting the business of an automotive dismantler and recycler or a scrap processor without a license, subsequent* (TR, §27-101(i)(2); TR, §15-502(a)) was incorrectly recorded as 2 years rather than 1 year. The table has been corrected to reflect the maximum penalty of 1 year, and the revised table will be adopted December 1, 2008. In light of this correction, the subcommittee recommends that the seriousness category be changed to a seriousness category VII. The offense is currently assigned a seriousness category VI. This categorization is inconsistent with comparable motor vehicle offenses, as well as with most offenses with a maximum penalty of 1 year.

The motion was unanimously approved.

**C. Review of memorandum from Montgomery County State's Attorney's Office regarding sentencing guidelines for felony theft and related offenses**

Dr. Wellford indicated that the Guidelines Subcommittee reviewed a letter from the Montgomery County State's Attorney's Office requesting that the MSCCSP consider adjusting the sentencing guidelines to reflect the dollar value stolen in theft and fraud offenses. Instead of treating all felony financial crimes as category V offenses, the Montgomery County State's Attorney's Office proposes establishing three categories based on the amount of loss. The letter also notes that a more complex alternative would be to develop a point system for property offenses similar to that used for an offense against a person. Dr. Wellford indicated that the Subcommittee wanted some direction from the Commission as to whether or not this is an issue that the Subcommittee should address.

Mr. Finci inquired as to how often worksheets include the amount of loss for theft offenses. Dr. Soulé indicated that this information is received approximately 22% of the time and that reporting of this information will increase with automation. Delegate Anderson noted that the legislature has already made a determination as to the severity of the sentence for theft offenses by creating two separate statutes, Theft under \$500 and Theft over \$500. Judge Morrissey suggested forwarding the issue to the Legislature. Mr. Collins noted that Montgomery County is not requesting a change to the statutory maximum for felony theft but rather that the sentencing guidelines take into account the amount of loss. Mr. Collins recommended that the Guidelines Subcommittee be instructed to further examine this issue. Delegate Vallario indicated that he thought that a legislative change would be needed to address this issue. Judge Chasanow suggested that the Guidelines Subcommittee collect data to see how judges are sentencing and then revisit the issue to see whether a change needs to be made to the guidelines to increase compliance.

7. Report from the Subcommittee on Sentencing Drug Offenders – Delegate Curt Anderson

Delegate Anderson began by reiterating that the Subcommittee on Sentencing Drug Offenders was tasked with looking into the disparity among sentences for drug offenders. As a first step, the Subcommittee decided to update the MSCCSP's inventory of corrections options in order to assess the resources currently available for drug offenders. With assistance from staff, the Subcommittee developed a survey instrument to gather information about the type of drug treatment programs available in each jurisdiction and the target population.

After distributing the survey instrument, Subcommittee members personally contacted the circuit and district court administrative judges in each county to explain the purpose of the inventory. Contact responsibilities for the twenty-four jurisdictions were divided among the seven Subcommittee members. Staff mailed the survey instrument to all the circuit and district court administrative judges in late November, and the judges have been asked to complete one questionnaire for each program available in their county. The Subcommittee will provide an update on the inventory once all survey responses have been received by staff.

8. Maryland Sentencing/Correctional Simulation model – Dr. David Soulé

Dr. Soulé informed the MSCCSP that printouts of Dr. Spier's presentation were available for review. The presentation gives a brief overview of how the simulation model is expected to work when revisions to the guidelines are proposed. Dr. Soulé explained that the simulation model would be used to estimate the impact the proposed changes would have on the



correctional population. Dr. Soulé also informed the Commission that Dr. Spier will train Commission staff on how to use the simulation and then use the upcoming Legislative Session as a practice session for estimating the impact on proposed legislative changes. The Commission would then share those projections with the Department of Public Safety and Correctional Services (DPSCS) to verify that the model estimates are in line with the DPSCS's expectations.

Senator Kelley indicated that the enabling statute for the Commission provides that the simulation model is to be used to estimate the impact on State and local resources and that the Commission is required to provide the legislature with these projections. Shannon Avery indicated that the DPSCS already must report these projections in a fiscal note for proposed legislative changes.

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

The next meeting was set for Tuesday, May 5, 2009 at 5:30 p.m. at the Judiciary Training Center in Annapolis, MD. The Commission will provide dinner and it will be made available starting at 5:00 p.m.

10. Old Business

There was no old business to address.

11. New Business and announcements

Delegate Vallario mentioned that he would like the Commission to consider giving a credit when calculating the adult prior record score section of the guidelines to those offenders that do not have a prior record. Judge Chasanow asked Delegate Vallario to draft a proposal for the Commission to consider.

12. Adjournment

The meeting adjourned at 7:30 p.m.