



Maryland State Commission on Criminal Sentencing Policy
2011 Public Comments Hearing
House Office Building
Annapolis, MD 21041
December 13, 2011, 6:25 p.m.

Minutes

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.

Speakers:

██████████, ██████████ Enterprise for Rehabilitation
Frank Dunbaugh, Executive Director, Maryland Justice Policy Institute (MJPI)
Lea Green, President, Maryland Cure
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Tracy Velázquez, Executive Director, Justice Policy Institute (JPI)

Other Visitors:

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

The Public Comments Hearing began at 6:25 p.m., when Judge Leasure called the hearing to order. Judge Leasure welcomed the meeting attendees and provided a brief description of the purpose of



the Maryland State Commission on Criminal Sentencing Policy (MSCCSP). She noted that the MSCCSP was created to support fair and proportional sentencing policy, as well as to promote increased visibility and aid public understanding of the sentencing process. Furthermore, the MSCCSP is responsible for oversight of the state's voluntary sentencing guidelines, maintaining the sentencing guidelines database, and adopting changes to the guidelines consistent with legislative intent. Judge Leasure then asked the Commissioners to introduce themselves and to provide their affiliation. Following the Commissioner introductions, Judge Leasure welcomed the speakers to the podium in the order in which they signed up.

Tracy Velázquez, Executive Director, Justice Policy Institute (JPI).

Tracy Velázquez began her testimony by noting that she is the Executive Director of the Justice Policy Institute, a nonprofit organization that seeks to reduce society's reliance on incarceration and the justice system and improve the well-being of all people and communities. Ms. Velázquez explained that she had two reasons for addressing the Commission. The first was to indicate her support of the recommendations that will be provided by Frank Dunbaugh of the Maryland Justice Policy Institute [*note: Mr. Dunbaugh's testimony is summarized below*]. Mr. Dunbaugh's recommendations emphasize the importance of seeking out alternatives to incarceration.

Ms. Velázquez's second reason for addressing the Commission was to discuss the issue of parole for people serving life sentences. She expressed concern that through the Governor's vetoing of paroles and commutations recommended by the Parole Commission, he is in effect changing all life sentences to life-without-parole sentences. Of particular concern is the number of offenders who were juveniles at the time of reception to Department of Public Safety and Correctional Services (DPSCS). Also of particular concern is the fact that three-fourths of those who are serving life sentences in Maryland are black.

Ms. Velázquez concluded her testimony by asking the MSCCSP to join JPI in recommending that the legislature return the authority to parole people serving life sentences to the Parole Commission and remove the Governor completely from the parole process.

Senator Kelley noted that she found the statistics provided by Ms. Velázquez to be very helpful. She also explained that the MSCCSP has a narrow charge to collect and monitor circuit court data. Delegate Anderson thanked Ms. Velázquez for her remarks and asked whether she would expect the decisions of the Parole Commission to be any different than those of the Governor. Ms. Velázquez responded that the Parole Commission has recommended people for both commutation and parole in the past. She believes they are a professional board and would continue the trend of recommending commutation and parole for those who deserve it. Senator Kelley noted that everyone needs to be concerned about whether the person is ready for re-entry, and there are assessment tools for making those determinations. Judge Nance commented that it is important to point out that someone who receives a sentence of "life, suspend all but 100 years" has more probability of parole than someone who has a straight life sentence. Senator Gladden asked if anyone has done a cost analysis of how much the state would save if parole was actually offered to lifers. Ms. Velázquez responded that nationally we spend over 90 billion dollars incarcerating youth for life, and Maryland is average in terms of what it spends on incarceration.



Lea Green, President, Maryland Cure.

Lea Green began by introducing herself, noting that she wears two hats. She is the President of Maryland Cure, and she is also the mother of a lifer. Ms. Green's remarks centered on two topics: (1) the Extra Legalese Group's Peace Initiative and (2) the Second Chance Act. Ms. Green explained that she recently attended a forum at the [REDACTED] where she was introduced to a "think-tank" called the Extra Legalese Group. This group is comprised of incarcerated ex-gang members who have come together, and with the help of [REDACTED] (the mother of a teenager murdered by gang members), have developed a Peace Initiative. The Extra Legalese Group is committed to curbing youth and gang violence. The Peace Initiative rests on the belief that youth gangs are willing to become positive influences in the community if they are given the needed support and guidance.

Ms. Green went on to note that she believes people can be rehabilitated. She hopes that her son one day will be paroled. She urged the Commissioners to consider the Second Chance Act. [Note: The Second Chance Act was signed into law by President Bush on April 9, 2008, and it primarily authorizes federal funding for state and federal reentry programs.] Ms. Green asked that Maryland be on record as one of the states that is trying to do the right thing for those who prove that they deserve a second chance.

Judge Nance thanked Ms. Green for her comments. Senator Kelley noted that it was strategic of Ms. Green to note President Bush's signature on the Second Chance Act. Change requires working with people along the whole continuum; sometimes when individuals believe that their position or ideology does not allow for consideration of a particular issue, to find out that someone they respect has made a move in support of the issue can be quite helpful. Christina Lentz informed the Commissioners and Ms. Green that the DPSCS is in the process of looking into various initiatives related to the Second Chance Act, including applying for funds that would assist with reentry.

[REDACTED]

[REDACTED] started by noting that he is a retired sociologist, a volunteer at the [REDACTED], a supporter of the Extra Legalese Group, and a member of Maryland Cure. He explained that his testimony would address the felony murder rule. Prior to becoming aware of the felony murder rule, [REDACTED] had always thought that to be convicted of first degree murder the prosecution had to prove premeditation. But, for many states in the US that isn't true. If you are just present at the commission of a felony in which someone dies, all that are present can be charged with first degree murder and serve a life sentence. [REDACTED] explained that he is interested in researching how frequently this conviction is used in Maryland. He's willing to do the research if the information is available and accessible. [REDACTED] noted that the felony murder rule is from English common law, and most states still have it in some form or another with some variations. He'd like to also research the variations of the use of the charge.

[REDACTED] noted that the most egregious case of felony murder to his knowledge involved a man in [REDACTED] who lent his car to a friend. The friend then used the car to drive others to a house in order to rob a drug dealer. During the robbery, a murder was committed. The man who loaned the car to the friend was offered a plea deal by the prosecutor, but he unwisely turned it down. He is now serving a sentence of life without parole for lending his car to a man who killed someone.



██████████ concluded by noting that agencies should be on guard against what he calls “sentence creep” – whereby, if you have a rule in place there’s a natural tendency to fill it up or to use it, and there are too many cases where it’s not appropriate.

Joseph Cassilly stated that he appreciated ██████████ offer to study the felony murder rule. He noted that he did not think ██████████ would find much information in court records, as most of the cases are from the 1970s. He suggested that ██████████ might have more luck reviewing records in the institution where he volunteers. Mr. Cassilly noted that delegates and senators who are looking at areas where parole reform is needed should consider those instances where someone has been convicted of a felony murder where they did not actually kill anyone. He went on to state that part of the issue is that when a lot of these offenders were sentenced in the 70s and 80s, there was an expectation among the judges, prosecutors, and defense counsel that they would be paroled.

Senator Kelley asked if ██████████ knew of any states that had done reform in this area. ██████████ responded that he only knew of three states (Hawaii, Michigan, and one other that he was unable to recall) that had gotten rid of the felony murder rule. Senator Kelley noted that in 2007, Maryland passed a law that juveniles can’t waive their right to counsel. She explained that it’s likely that some of the older cases that Commissioner Cassilly referred to were cases involving juveniles who waived their right to counsel.

At the conclusion of the discussion, Judge Leasure noted that there were no other individuals signed up to provide testimony. She then asked if there was anyone else present who wished to speak. Two individuals responded, and their testimony is summarized below.

Frank Dunbaugh, Executive Director, Maryland Justice Policy Institute (MJPI).

Frank Dunbaugh began by introducing himself. He stated that he is a human rights attorney, retired from the ██████████. He explained that Maryland has two major problems related to sentencing and prison use: (1) we incarcerate too many people and (2) there is racial disparity in the prison population. According to Mr. Dunbaugh, we need to figure out how to use prisons less and how to use the criminal law less. Mr. Dunbaugh stressed that if we want to prevent crime, we must expect and believe that every child can succeed, and we must provide them with the resources to do so. Mr. Dunbaugh further noted that we should invest in children, not in prisons. Additionally, we should limit the use of imprisonment to the few, really dangerous people. We need to consider alternative means of dispute resolution. Mr. Dunbaugh concluded by noting that it would be better to resolve many criminal matters either civilly or outside of the court system altogether.

Judge Nance thanked Mr. Dunbaugh and the other speakers for their testimony and for representing a group of people who are often not heard. Senator Kelley noted that in the statute that created the MSCCSP, there is a provision directing the MSCCSP to develop a system of correctional options. However, the MSCCSP has limited funds and limited staff. Senator Kelley advised that if people think alternatives are important, they may wish to remind the Governor of that statute and ask him to fund it.

Senator Kelley requested that any written testimony from the public comments hearing be included in the appendix of the MSCCSP’s annual report. Dr. Soulé noted that in the past, written testimony has not been included in the annual report but it has been included (in summary form) in the



minutes of the hearing and posted on the MSCCSP website. Senator Kelley then made a motion to include the written testimony from the hearing in the appendix of the annual report. The motion was seconded. There was some questions as to whether a motion could be entertained during the public comments hearing and whether the Commission was still considered to be “in session”. Before the discussion continued further, one final speaker was brought to the attention of the Commissioners.

██████████, ██████████ *Enterprise for Rehabilitation.*

██████████ noted that she is a juvenile ex-offender with a life sentence. She was sentenced in ██████████ and commuted in ██████████ by Governor Ehrlich. Since that time she has worked to help ex-offenders return to society. ██████████ noted that she spent 32 years in prison and is now an example of redemption. She received her Bachelor’s degree; she speaks to students in schools about bullying; she promotes alternatives to violence; and she has only learned from her past. ██████████ explained that not every prisoner is deserving of release. But there are prisoners who have been repeatedly recommended for release by the parole board, and those recommendations have been disregarded. ██████████ stated that she is concerned that the people who make the laws don’t always understand how the laws impact people on a daily basis. The laws need to be applied as the lawmakers intended. ██████████ noted that currently there are three types of life sentences: (1) LIFE, suspend all but some term of years; (2) LIFE with parole; and (3) LIFE without parole. But in actuality, everyone is doing LIFE regardless of their specific type of sentence. ██████████ noted that she believes the work of the Commission is important and that she would be willing to advocate on behalf of the Commission.

At the conclusion of her testimony, ██████████ was applauded by the Commissioners and others in attendance. Joseph Cassilly commented that ██████████ story was inspiring and he wished others outside of the public comments hearing could hear it.

Judge Leasure asked if there were any additional speakers present who wished to address the Commission. There were no additional requests to speak. Judge Leasure thanked all of the speakers for attending and voicing their concerns. She then noted that there was a motion pending that the written testimony from the evening be included as an appendix to the annual report. Judge Leasure asked if there was any further discussion; noting none, the vote was taken and the motion passed. The meeting was adjourned at 7:25 p.m.