



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Education and Conference Center
Annapolis, MD 21401
May 19, 2015

Commission Members in Attendance:

Honorable Diane O. Leasure, Chair
Delegate Curtis S. Anderson
Honorable Joseph I. Cassilly
LaMonte E. Cooke
William Davis, Esquire, *representing Public Defender Paul B. DeWolfe*
Paul F. Enzinna, Esquire
Richard A. Finci, Esquire
Senator Delores G. Kelley
Honorable Patrice E. Lewis
Megan Limarzi, Esquire, *representing Attorney General Brian E. Frosh*
Honorable Laura L. Martin
Rachel Sessa, *representing Secretary Stephen T. Moyer*
Colonel William M. Pallozzi
Honorable James P. Salmon
Delegate Joseph F. Vallario, Jr.

Staff Members in Attendance:

Justin Bernstein
Sarah Bowles
Stacy Najaka, Ph.D.
Katharine Pembroke
David Soulé, Ph.D.

Visitors:

Linda Forsyth, Chief of Staff for Senator Kelley; Honorable John P. Morrissey, District Court of Maryland; Casey Pheiffer, Pew Charitable Trusts; Claire Rossmark, Department of Legislative Services; Christopher B. Shank, Governor's Office of Crime Control & Prevention; Zoë Towns, Pew Charitable Trusts; Connie Utada, Pew Charitable Trusts

1. Call to order

Judge Leasure called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 5:39 p.m. when attendance reached a quorum.

3. Approval of minutes, December 9, 2014 meeting

The Commission approved the minutes as submitted.



4. Approval of minutes, December 9, 2014 public comments hearing

The Commission approved the minutes as submitted.

5. Report on Justice Reinvestment Coordinating Council

Chapter 42 of the 2015 Laws of Maryland (Senate Bill 602, cross-filed with House Bill 388) creates the Justice Reinvestment Coordinating Council. The law directs the Council to use a data-driven approach to develop a statewide framework of sentencing and corrections policies to further reduce the state's incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism. It also directs the Council to request assistance from the Council of State Governments Justice Center and the Public Safety Performance Project of the Pew Center on the States.

Ms. Utada and Ms. Towns from the Public Safety Performance Project gave a presentation titled "Protecting Public Safety and Containing Corrections." The goal of the Project is to help states get a better return on public safety dollars using research on national trends and what works and by providing technical assistance. The presentation reviews trends in the growth in correctional spending and population beginning in the 1970s and the more recent turn towards trying to reduce the population under correctional supervision and reign in expenditures without sacrificing public safety by redirecting savings towards programs and practices that reduce recidivism. The presentation reviewed Oregon as a case study, emphasizing however that the Project does not pursue a one size fits all approach as each state's situation is different.

Senator Kelley asked about type of probation or parole supervision, noting that in some cases the emphasis is on catching violations and revocations while in others the emphasis is on helping supervisees to adapt and reintegrate. Ms. Towns replied that we know now that incentives are a better way to change offender behaviors than sanctions, though best practices are to couple both.

Senator Kelley asked about structural problems and technical violations, for example requiring parolees to have a job but also requiring meetings with parole and probation agents during work hours. Ms. Towns responded that having conditions based on defendants' specific risks and needs was part of the reforms in Oregon.

Mr. Cooke asked how much of the reforms are about drug treatment. Ms. Towns stated that it is a big part of it. The Project identifies what is driving costs, looking for ways to reduce spending while keeping public safety paramount. If you can reduce that spending, based on the data, by for example removing mandatory incarceration for certain drug offenders, redirecting that spending to things that research supports, like drug treatment, can yield large public safety dividends.

Judge Morrissey asked where the savings come from if a state is not planning to build a prison that it can cancel, as was the case in Oregon. Ms. Towns indicated that reducing operational and marginal prison costs can still save a lot, particularly if a state reduces incarceration to the point where it can close prisons.

Mr. Cassilly asked about effects on crime rates and recidivism from the reforms. Ms. Towns answered that crimes rates have continued to decline at the same rates as before, though not enough time has elapsed (referring to Oregon) to study recidivism. The justice reinvestment



efforts in Texas have a longer track record and recidivism and crime rates have both decreased. The Project tries to ensure that reforms include the infrastructure to be able to evaluate policies to know whether they are working.

Mr. Cassilly asked about drug treatment success rates, noting concerns about quality of treatment and providers. Ms. Towns stated that Utah found large differences in quality of treatment between public and private providers and a lack of accountability. Utah adopted best practices and standards for correctional drug treatment.

Dr. Soulé asked how justice reinvestment has worked in states with sentencing guidelines and the role (if any) for the Commission. Ms. Towns stated that the Project surveys the policies driving prison populations, including sentencing guidelines. In states with guidelines the Project has worked with sentencing commissions to understand the guidelines, compliance, and historical context. Sentencing guidelines are also a policy lever to which the Coordinating Council can look. In Utah, for example, a reform involved the legislature directing the sentencing commission to adjust the guidelines, taking into account particular guidance. Mr. Shank stated that the GOCCP would keep the Commission updated. The timeline calls for the Coordinating Council to complete its work as quickly as possible.

Delegate Anderson asked that the Coordinating Council be mindful of recently changed laws and policies that may have affected incarceration. Mr. Shank stated that the Coordinating Council will look at the data and let the data be the guide.

6. Executive Director report – Dr. David Soulé

Dr. Soulé reported that he had three items to review. He first introduced Katharine Pembroke, who joined the Commission staff on March 9 as the new Administrative and Training Coordinator.

Next, Dr. Soulé provided an update on the Maryland Automated Guidelines System (MAGS). Commission staff, working with the Administrative Office of the Courts, has developed a deployment timeline for MAGS on a circuit-by-circuit basis. The entire Sixth Circuit uses MAGS as of March 2, 2015, when Frederick County began using MAGS. As Calvert County currently uses MAGS, the Seventh Circuit will be next. Charles County is scheduled to deploy MAGS on July 1st. A new county will deploy MAGS approximately every three months after that. The deployment timeline is available on the Commission's website.

Lastly Dr. Soulé provided an update on the juvenile delinquency study. The intent of the study is to determine the most appropriate way to assess juvenile offending in the calculation of the offender score. The Commission has been collaborating with the Department of Criminology and Criminal Justice at the University of Maryland on this project. The Department initially applied for funding from the Bureau of Justice Statistics for the project. The Department has since received a grant from the Laura and John Arnold Foundation to support creating a state-of-the-art criminal justice data center at the University of Maryland, College Park. This Maryland Data Analysis Center will compile data from various criminal justice agencies across the state and will integrate those records into a centralized database. The Center has agreed to conduct the juvenile delinquency study as its first research project. The University's legal department and Internal Review Board are now reviewing the project. Once approved the



Commission will submit a data request to Maryland's Department of Juvenile Services to obtain the data required for this study from the Automated Statewide System of Information Support Tools. The Center expects to receive the requested data from the Department of Juvenile Services and complete work on this project over this summer. The Center plans to report to the Commission at the September 2015 meeting.

7. Guidelines Subcommittee report – Dr. David Soulé

Drs. Soulé and Najaka presented the report of the Guidelines Subcommittee on behalf of Judge Sonner.

a. Review of seriousness category for Criminally Negligent Manslaughter by Vehicle or Vessel (CR, § 2-210)

Dr. Soulé noted that Effective October 1, 2011, individuals convicted of criminally negligent manslaughter by vehicle or vessel (CR, § 2-210) face a maximum penalty of 3 years and a maximum fine of \$5,000. When the Commission initially categorized this offense following its creation by the General Assembly in 2011, there was considerable debate as to the appropriate seriousness category. At the time, the MSCCSP considered comparable offenses with seriousness categories ranging from IV to VI, but the Commission ultimately decided to adopt the lowest possible seriousness category (VII) and to revisit the seriousness category in three years. Criminally negligent manslaughter by vehicle or vessel was added to the Offense Table on March 1, 2012, and thus March 1, 2015 marked the end of the three year follow-up period.

The average sentence from the 25 sentencing guidelines worksheet received for criminally negligent manslaughter by vehicle or vessel was 2.8 years, with an average of 1.3 years not suspended. This was slightly higher than the 1 year average sentence (not including suspended time) for all other seriousness category VII offenses (not controlling for the offender score). Most sentences (68%) were within the recommended guidelines range while 20% were below; and 12% above. The components of the Offense Score for the 25 instances of criminally negligent manslaughter by vehicle or vessel were very similar: all offenders received 1 point for the seriousness category VII; all received 2 points for the death of the victim; none received any additional points for weapon presence; and only one received 1 point for special victim vulnerability.

The Guidelines Subcommittee reviewed the information concerning criminally negligent manslaughter by vehicle or vessel at its April 27, 2015 meeting. The Guidelines Subcommittee did not have a recommendation for the full Commission and requested that the Commission consider whether to change to the seriousness category. The Commission discussed the matter.

Mr. Cassilly asked why criminally negligent manslaughter by vehicle or vessel would have a seriousness category VII if causing a life threatening injury by motor vehicle or vessel while under the influence of alcohol and negligent homicide by motor vehicle or vessel while impaired by alcohol, drugs, or CDS are both seriousness category VI. All three are person offenses with a 3 year/\$5,000 statutory maximum penalty. The first two are both misdemeanors.

Mr. Finci noted that the latter two offenses each involve aggregating elements of drugs or alcohol. And because seriousness categories V-VII all entail 1 point in the Offense Score the actual guidelines would not change if the Commission recategorized the offense. Mr. Finci further noted that the offense inherently involves the death of a victim, offenders automatically



receive an additional two points as a component of the Offense Score. Finally the categorization appears consistent with how judges are sentencing these offenders.

Ms. Martin disagreed about drugs or alcohol being aggravating factors; the guidelines do not consider them. She noted that the difference with seriousness category VI and VII would be in calculating the prior adult criminal record if the person reoffended.

Senator Kelley recommended that given the data do not show enough difference to make a change that the Commission keep the seriousness category the same.

There was no motion to adopt a new seriousness category for this offense.

b. Update #3 on review of guidelines compliance for individual matrix cells.

Dr. Najaka referred the Commission to the memorandum with the subject line “Update #3 on Review of Guidelines Compliance for Individual Matrix Cells” and to the materials referenced therein. Dr. Najaka summarized the potential revisions to the guidelines ranges for the two rows of the drug matrix corresponding to seriousness categories V and IV considered by the Guidelines Subcommittee at its April 27, 2015 meeting. She noted that there was general agreement among Subcommittee members that that the proposed revisions were warranted, but before calling for a vote on the revisions, the Subcommittee would like to consider the potential impact that the revisions would have on Maryland’s correctional population. As such, the Subcommittee has requested that staff conduct the relevant impact analyses using the recently developed sentencing/correctional simulation model. Dr. Najaka stated that these analyses are expected to be completed in advance of the Commission’s next meeting and that no action by the Commission was being requested.

Delegate Vallario inquired as to the necessity of using the correctional simulation model. Dr. Soulé explained that the Commission’s governing legislation requires that it use a correctional simulation model to project the effects of proposed changes and also that this will be a good opportunity to test the model. The Commission has been developing the simulation model for several years but has not had a specific proposed change to the guidelines with which to use it. Commission staff had asked the Guidelines Subcommittee for additional time to run the model before returning to this issue at the next meeting. Senator Kelley added that when the General Assembly is in session, the model is also to be made available upon request.

Mr. Cassilly asked if drug courts or other diversions are driving the apparent high levels of departures. Dr. Soulé noted that drug court or other diversions are not departures, as long as the sentencing guidelines worksheet indicates a drug court commitment.

8. Date, time, and location of next meeting

The next Commission meeting will take place on Tuesday, July 14, 2015, at the Judiciary Education and Conference Center.

9. Old business

None.

10. News business and announcements



Mr. Finci acknowledged former Commissioner Anthenelli's work and contributions to the Commission, expressed his hope for recovery from his illness, wished him well, and encouraged the other Commissioners to thank him when they have an opportunity to do so.

Delegate Anderson stated that the Speaker of the House and President of the Senate had appointed a task force on public safety and police practices in Maryland. He asked about the availability of sentencing guidelines data to assist this effort. Dr. Soulé indicated that Commission staff would be happy to comply.

The meeting adjourned at 7:06 p.m.