



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Education and Conference Center
Annapolis, MD 21401
September 17, 2018

Commission Members in Attendance:

Honorable Shannon E. Avery, Vice-Chair
William M. Davis, Esquire, *representing Public Defender Paul B. DeWolfe*
Barbara Dorsey Domer
Richard A. Finci, Esquire
Brian D. Johnson, Ph.D.
Honorable Patrice E. Lewis
Honorable Laura L. Martin
Kathleen C. Murphy, Esquire, *representing Attorney General Brian E. Frosh*
Honorable James P. Salmon
Rachel Sessa, *representing Secretary Stephen T. Moyer*
Delegate Joseph F. Vallario

Staff Members in Attendance:

Sarah Bowles
Stacy Najaka, Ph.D.
Katharine Pembroke
David Soulé, Ph.D.
Molly Triece

Visitors: None

1. Call to order

MSCCSP Vice-Chair Judge Avery noted that she would chair the meeting, as Judge Harrell was ill and unable to attend. Judge Avery called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 5:33 pm when attendance reached a quorum. Judge Avery stated that she had two announcements that did not appear on the agenda. First, Judge Avery recognized Ms. Martin who will be retiring from the Commission in December. Judge Avery noted that Ms. Martin has served on the Commission since 2005. Judge Avery presented Ms. Martin with a plaque in recognition of her service.

Second, Judge Avery recognized Delegate Vallario who will also be leaving the Commission in December. Judge Avery thanked Delegate Vallario for his many years of service and his work founding the Commission. Judge Avery presented Delegate Vallario with a plaque in



recognition of his service. Delegate Vallario expressed that it was a pleasure to serve on the Commission and have the opportunity to work with a variety of people from across the State.

3. **Approval of minutes from the May 8, 2018 MSCCSP business meeting**

The Commission approved the minutes as submitted.

4. **Guidelines Subcommittee Report – Judge Shannon Avery**

Judge Avery indicated that Dr. Soulé would present the first item and she would present the second.

a. Descriptive analysis of multiple victim stacking rule (Status report)

Dr. Soulé provided a presentation highlighting the key findings of the report prepared by the staff and distributed to the Commission on the multiple victim stacking rule. Dr. Soulé reminded the Commissioners that the multiple victim stacking rule (hereafter MVSR) was adopted in 2003 and is intended to provide for an enhanced sentencing guidelines range in scenarios where multiple victims are involved. At the May meeting, the Commission voted to adopt revised language to clarify that the MVSR is not limited to single criminal event cases and may be applied in sentencing events involving multiple criminal events. Dr. Soulé noted that during the course of the discussion at that meeting, Commissioner Finci asked the staff to examine whether the wider ranges provided by the MVSR are useful to judges. In turn, the Commission instructed the staff to complete a descriptive analysis on the application of the MVSR.

Dr. Soulé reviewed the findings of the analysis, highlighting the following key takeaways:

- The MVSR was applied to less than 1% of worksheets sentenced in 2013-2017.
- The number of victims involved in MVSR cases ranged from 2 to 15, with 71% of MVSR cases involving 2 victims.
- The majority of both MVSR and non-MVSR cases were guidelines compliant (82% and 77%, respectively). However, when departures occurred, they were more often above the guidelines in MVSR cases and below the guidelines in non-MVSR cases.
- An examination of the distribution of sentences showed that judges are utilizing the wider ranges provided in MVSR cases.

Dr. Soulé concluded by noting that the Guidelines Subcommittee reviewed the MVSR report prepared by the staff and determined that there was no statistical basis for making a recommendation to amend the MVSR. As such, the Subcommittee recommended that the findings of the report should be presented to the full Commission strictly for informational purposes.

Ms. Domer asked whether the MVSR was applied to less than 1% of all worksheets regardless of the number of victims or less than 1% of worksheets involving multiple victims. Dr. Soulé indicated that the MVSR was applied to less than 1% of all worksheets and 1.2% of worksheets that likely involved at least one victim, noting that the sentencing guidelines data do not allow for a determination of the number of victims unless the MVSR was applied. Delegate Vallario asked if the findings are impacted by the ABA



compliance rule (which considers a sentence pursuant to an ABA plea agreement as guidelines-compliant, regardless of whether the sentence falls within the recommended range). Dr. Soulé responded that the figures pertaining to the distribution of sentences are based on strict compliance and thus are not impacted by the ABA compliance rule. Dr. Soulé also noted that the analysis showed that MVSR cases are less likely to be disposed of by a plea than are non-MVSR cases.

Hearing no additional questions, Judge Avery thanked the staff for their comprehensive examination of the multiple victim stacking rule and for expanding the Commission's understanding of the rule. Dr. Soulé extended his thanks to the staff as well.

b. Adults sentenced in juvenile court (Action item)

Judge Avery noted that the second issue that the Guidelines Subcommittee discussed at their September 4 meeting concerned an inquiry the Commission received from an Assistant State's Attorney asking whether a sentencing guidelines worksheet should be completed for an adult being sentenced in juvenile court for a violation of the State's compulsory public school attendance laws.

The Maryland Sentencing Guidelines Manual (MSGM) instructs that a guidelines worksheet shall be completed for all cases originating in circuit court. Judge Avery noted that since the juvenile court is under the auspices of circuit court, one might interpret the current instructions to suggest that a worksheet would be required for cases involving an adult sentenced in juvenile court. Judge Avery also noted that there are offenses under the auspices of circuit court that are excluded from guidelines coverage, including criminal nonsupport and contempt. The MSCCSP previously voted to exclude these offenses from guidelines-eligibility due to the atypical features of criminal nonsupport and contempt cases. Judge Avery indicated that since cases involving an adult sentenced in juvenile court are rare and atypical, the Subcommittee unanimously agreed that they should be excluded from guidelines eligibility.

Hearing no questions or additional discussion, Judge Avery called for a vote. The Commission voted unanimously in favor of excluding from guidelines eligibility cases involving an adult sentenced in juvenile court.

5. Executive Director Report – Dr. David Soulé

Dr. Soulé reported that he had four items to review, one of which did not appear on the agenda. First, Dr. Soulé introduced Molly Triage to the Commission. Dr. Soulé noted that Ms. Triage is working with staff as a graduate research assistant. Ms. Triage is a doctoral student in the Department of Criminology & Criminal Justice at the University of Maryland.

a. Update on recent/upcoming feedback meetings and trainings (Status report)

Dr. Soulé reported that since the last MSCCSP meeting in July, he met with circuit court judges in Baltimore City, Howard County, and Montgomery County. The purpose of the meeting with Judge Greenberg in Montgomery County was to provide feedback on sentencing guidelines data specific to his jurisdiction. The primary focus of the meetings in Baltimore City and Howard County were to discuss preparations for the planned deployment of MAGS in their respective jurisdictions. Dr. Soulé noted that MAGS will be deployed in Howard County on October 1, 2018, and it will be deployed in Baltimore



City on October 1, 2019. While the planned deployment date for Baltimore City is more than one year away, Dr. Soulé noted that staff thought it was prudent to start preparations early in Baltimore City given the large size of the jurisdiction. Baltimore City will be the final jurisdiction to deploy MAGS.

Dr. Soulé reported that he also presented on the sentencing guidelines and provided a training on MAGS during the new law clerk orientation on August 24, 2018.

Dr. Soulé reported that, as suggested at the July meeting, Mr. DeLeonardo and Ms. Martin reached out to Steven Kroll, the Executive Director for the Maryland State's Attorneys' Association, to discuss providing sentencing guidelines training for the many new State's Attorneys that will start in January 2019. Mr. Kroll invited Dr. Soulé to participate in an upcoming training session for this group on November 6, 2018.

Dr. Soulé reported that the MSCCSP's training coordinator, Katharine Pembroke, also conducted several trainings/orientations. Ms. Pembroke provided a training on the sentencing guidelines to the Baltimore City Office of the Public Defender on August 24, 2018, and a training for the Baltimore City State's Attorneys' Office is scheduled for October 10, 2018. Finally, on September 14, 2018, Ms. Pembroke conducted a MAGS orientation session for practitioners from Howard County as they prepare for MAGS deployment on October 1, 2018.

b. FY2020 budget update (Status report)

Dr. Soulé reported that the MSCCSP submitted two over-the-target requests for the FY2018 and FY2019 budget. The first request was to create a dedicated funding source for contractual services to provide information technology support for updating and maintaining MAGS, which is hosted by the Department of Public Safety and Correctional Services (DPSCS). A second request was submitted to increase the budget to support summer hours for the MSCCSP's part-time policy analyst position (staffed by a graduate research assistant) to allow this individual to work 40 hours per week during the 10-week summer period.

Dr. Soulé noted that neither of requests were included in the allowance for the MSCCSP's FY2018 or FY2019 budgets, and the Department of Budget Management could not support the requested increase to cover MAGS programming costs for FY2020. However, Dr. Soulé reported that in late July the Department of Budget Management agreed to provide an increase for the MSCCSP FY2020 budget to help support the graduate research assistant/policy analyst position.

c. Update on the Maryland Automated Guidelines System (Status report)

With respect to the update on MAGS, Dr. Soulé reported that he received good news from the DPSCS. Dr. Soulé noted that the MSCCSP staff maintains an on-going list of requested updates/enhancements for MAGS. The current list includes fixes and updates requested by MAGS users as well as enhancements endorsed by the Commission with respect to how data is collected on the use of alternatives to incarceration. Dr. Soulé reported that the DPSCS's Information Technology and Communications Division (ITCD) reviewed the list of requested updates and agreed to fund the programming costs for this next round of updates. Dr. Soulé noted that the updates would begin in early



2019. Dr. Soulé acknowledged and thanked the DPSCS, Secretary Moyer, and the Director of the ITCD, Kevin Combs, for their continued support of MAGS.

Dr. Soulé reported that Howard County is scheduled for MAGS deployment on October 1, 2018, becoming the 21st (out of 24) jurisdictions to utilize MAGS. Carroll County is next on the deployment schedule with a planned January 1, 2019 launch date.

6. Protocol for annual public comments hearing (Status report with request for input)

Dr. Najaka reported that each year in December, the Commission holds a public comments hearing to give individuals the opportunity to express their concerns regarding sentencing policies throughout the State. Occasionally the Commission invites testimony on proposed or tentatively approved changes to the sentencing guidelines.

Dr. Najaka noted that the public comments hearing is advertised on the Commission's website, the Maryland Register, the Maryland General Assembly's hearing schedule, and through a press release provided by the Maryland Department of Public Safety and Correctional Services. Hearing invitations are also distributed to approximately 35 key criminal justice stakeholders throughout the state.

Dr. Najaka asked for input from the Commission on whether this protocol should be revised before the upcoming public comments hearing. For example, the Commission may want to consider wider distribution of the invitation to include the roughly 1,000 criminal justice practitioners who receive the Guidelines E-News, or the Commission may want to identify thoughtful speakers who can speak to issues within the scope of the Commission.

Mr. Davis asked if the public comments hearing is already announced in the Guidelines E-News. Dr. Najaka indicated that the hearing has not been announced in the Guidelines E-News. Mr. Finci asked if there is a downside to doing so, and the consensus was that there is no downside.

Mr. Finci made a motion to distribute the public comments hearing notice to the Guidelines E-News recipients, and to indicate the announcement in the subject line of the communication. Mr. Davis seconded the motion.



The Commission voted unanimously in favor of the motion to announce the public comments hearing to all recipients of the Guidelines E-News.

7. Old business

Dr. Johnson asked whether there were any updates regarding the Commission's involvement in the ongoing evaluation of the Justice Reinvestment Act (JRA). Dr. Soulé noted that he and Judge Harrell presented to the Justice Reinvestment Oversight Board (JROB) the findings and recommendations from the Commission's Study on Alternatives to Incarceration. Dr. Soulé noted that the JROB is still in the early stages of collecting data. Dr. Soulé stated that he will continue to follow-up with the JROB and that the Commission did implement the four recommended actions from its Study on Alternatives to Incarceration.

Judge Avery noted that she continues to emphasize to the Judiciary the need for a statewide repository of information related to alternatives to incarceration, including program names, locations, eligibility criteria, and effectiveness. Judge Avery suggested that the JROB would need to initiate a partnership, for instance with the Judiciary, State's Attorney's Association, Defense Bar, the DPSCS, and the MSCCSP, in order to create the repository. Judge Avery further suggested that representatives of the various agencies may wish to testify at the Commission's annual public hearing on December 11 regarding the need for a repository.

8. New business and announcements

Dr. Soulé announced that Ms. Pembroke is currently pregnant and due at the end of September. Dr. Soulé congratulated Ms. Pembroke and noted that she would be on leave through the end of the year.

The meeting adjourned at 6:32 pm.