



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
May 5, 2008

Commission Members in Attendance:

Honorable Howard S. Chasanow, Chair
Delegate Curtis S. Anderson
James V. Anthenelli, Esquire
Shannon E. Avery, Esquire, *representing Secretary Gary D. Maynard*
Chief Marcus L. Brown
Leonard C. Collins, Jr., 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*
Laura L. Martin, Esquire
Honorable John P. Morrissey
Kate O'Donnell, Esquire, *representing Attorney General Douglas F. Gansler*
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

Jessica Rider
Stacy Skroban Najaka, Ph.D.
David Soulé, Ph.D.

Visitors:

Claire Rossmark, Department of Legislative Services
Charles Coughlin, University of Maryland intern

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, November 26, 2007 meeting

The minutes were approved as submitted. Dr. Soulé and Judge Chasanow asked the Commissioners if they agreed that formal minutes from the Public Comments hearing should be kept and posted on the website. The motion was unanimously approved.

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

Dr. Soulé began by introducing Jessica Rider, Administrative and Training Coordinator, who began working on the Commission staff in December 2007. He also introduced undergraduate student intern Charles Coughlin who was observing the meeting. Dr. Soulé informed the Commission that the staff submitted an application for funding of the automation project last month to the Governor's Office of Crime Control & Prevention. Delegate Anderson asked whether the Commission staff had a need for more student interns and suggested that the internship opportunity be open to students from other universities. Senator Kelley indicated that it would be helpful to know the skill set prospective interns need and any other internship criteria. She also questioned whether providing more internship opportunities would be a burden to the Commission staff. Dr. Soulé indicated that the staff is not opposed to providing more internship opportunities, but would need to weigh the benefits against the availability of staff resources.

Judge Chasanow then asked the Commission to consider a request made by a member of the public to speak at the next meeting. The Commissioners felt that it was not necessary for the speaker to address the Commission again as she already spoke at the Public Comments hearing on the same issue. It was suggested that any additional testimony could be submitted in writing and made available on the website as a supplement to her previous testimony.

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

Dr. Wellford presented the report of the Guidelines Subcommittee. Discussion regarding Item A was delayed until Delegate Vallario's arrival.

b. Review of revised information dissemination policy

Dr. Wellford began by explaining that the Commission's current information dissemination policy implies that requests for specialized reports can be done. Due to limited staff resources, the Commission is no longer able to generate custom reports. The Subcommittee proposed revisions to make this point more clearly in the current information dissemination policy. The Annual Report, topical reports, and the complete data set will remain available upon request. The Subcommittee recommends approval of the amendments to the information dissemination policy.

The amended motion was unanimously approved.

Mr. Finci indicated that he has asked for custom reports to be generated and whether the change in policy applied to everyone. Dr. Soulé confirmed that the change in policy would apply across the board.

c. Proposal to categorize Murder, 1st degree, conspiracy*

The Subcommittee revisited the topic of Murder, 1st degree, conspiracy, which at this time is not listed in the Guidelines Offense Table and has not been otherwise categorized. Dr. Wellford reiterated that the default rule in sentencing guidelines calculation instructs one completing the sentencing guidelines to place a conspiracy in the same seriousness category as the substantive offense, which makes Murder, 1st degree, conspiracy a seriousness category I. The Subcommittee recommends categorizing Murder, 1st degree, conspiracy

* Please note, unless otherwise referenced, "murder" refers exclusively to Murder, 1st degree and not Murder, 2nd degree.



separately in the Guidelines Offense Table as a seriousness category I. It is also the recommendation of the Subcommittee to re-categorize Murder, 1st degree, solicitation from a seriousness category II to a seriousness category I.

Delegate Anderson asked for clarification regarding the reason for taking such an action, whether it was solely because people were filling out the worksheets incorrectly. Dr. Wellford indicated that the action was being taken to clearly demonstrate what the Commission expects for the classification of these offenses. Judge Chasanow indicated that Murder, 1st degree, solicitation is treated differently than solicitation to commit any other crime. Judge Chasanow also pointed out that Murder, 1st degree, conspiracy is a misdemeanor and that Murder, 1st degree, solicitation is a felony. Dr. Soulé indicated that because Murder, 1st degree, solicitation is listed on the offense table and Murder, 1st degree, conspiracy is not listed on the offense table, those completing the worksheets are confusing the two and errors in the calculation of the guidelines are being made.

Judge Chasanow asked to clarify the Subcommittee's recommendation. He indicated that conspiracy for other crimes are not listed on the offense table, but that the Subcommittee is recommending that Murder, 1st degree, conspiracy be listed, that the seriousness category for Murder, 1st degree, solicitation be raised from a seriousness category II to a seriousness category I, and that all attempts remain at a seriousness category II. Dr. Wellford affirmed that this was the recommendation of the subcommittee.

Judge Chasanow indicated that this matter could be addressed in three ways. First, the Commission could decide to leave the matter vague and as it stands now. Second, the Commission could address Murder, 1st degree, conspiracy and Murder, 1st degree, solicitation separately and list both offenses on the offense table. Third, the Commission could decide to address conspiracy, solicitation, and attempts. Dr. Soulé pointed out that this could have a ripple effect on other offenses, such as rape and other sex offenses.

Judge Chasanow called a formal vote on the motion to specifically delineate Murder, 1st degree, conspiracy as a seriousness category I and add it to the Guidelines Offense Table. The motion passed with a vote of 12-2.

Mr. Collins indicated that a key difference between conspiracy and solicitation is the lack of a "meeting of the minds" in a solicitation charge. Mr. Collins then pointed out that the Subcommittee did not discuss attempts. A motion was made to move Murder, 1st degree, solicitation from a seriousness category II to a seriousness category I.

A motion was made to table the discussion regarding solicitation and attempts until the next meeting. The Subcommittee was asked to gather more information and specifically look at whether solicitation is a common law misdemeanor and whether there are other conspiracies, solicitations, or attempts that may be impacted. Delegate Vallario suggested that the Commission look to other states to see how they handle this matter. Dr. Wellford asked all Commission members to share any independent research they may do with the other Commissioners, and the staff.



d. Review of worksheet accuracy report.

Dr. Wellford and the Subcommittee wanted to bring the Worksheet Accuracy Report to the Commission's attention. He indicated that the research was done by researchers outside of the Commission and that the findings added support for automation of the guidelines. Dr. Wellford turned the discussion over to Dr. Soulé who presented the findings to the Commission. Dr. Soulé indicated that the researchers developed a program that allowed them to identify true errors in the guidelines calculation and the factors associated with those errors. The researchers found that errors do have an impact on the final sentence. They concluded that most of these errors could be eliminated by automation of the sentencing guidelines calculation process.

The Commission staff reviewed a sample of the errors as identified by the researchers and found that most were simple errors, such as picking the wrong seriousness category, choosing the wrong cell on the sentencing matrix, or simple mathematical miscalculations. The Commission staff felt that the report was helpful in identifying factors that are contributing to errors in the guidelines calculation and also to further illustrate the need for an automated program.

The Subcommittee felt that this information should be shared with the Commission. No action required.

a. Discussion regarding the use of probation before judgment (PBJ) in calculation of prior adult record.

Dr. Wellford reviewed the guidance offered by the Attorney General's Office concerning the use of PBJs in the calculation of the prior adult record. A few Subcommittee members were concerned about the direction offered by the Attorney General's Office because an offender may not know that he/she may apply for expungement of a PBJ, may not have the funds to do so, or may not have access to legal assistance. The Attorney General's Office did not feel that this was a fairness issue. Due to the Commission's concerns, the Subcommittee proposed two options to address this issue. The Subcommittee recommends Option #1. Dr. Wellford did indicate that Commission staff had discussions with a sample of experienced investigators at Parole & Probation regarding the proposed changes and that it seemed likely that there would be some difficulty implementing either of the proposed options. A third option was presented to the Commission at the meeting by Mr. Finci.

Proposed Language for Option #1:

COMAR 14.22.01.10(B)(3)(a)(i):

The prior adult criminal record includes all adjudications preceding the current sentencing event, whether the offense was committed before or after the instant one. ~~[Unless expunged from the record, the individual completing the worksheet shall include probations]~~ Probations before judgment (PBJ) and convictions under the Federal Youth Corrections Act (FYCA) shall not be included as a prior adult adjudication of guilt if the designated probation term has been successfully completed.

Maryland Sentencing Guidelines Manual (MSGM) 7.1, p. 24 (January 2008)

The language in the manual would mirror the language noted in the above COMAR reference.



A vote was called, option #1 did not pass.

Proposed Language for Option #2:

COMAR 14.22.01.10(B)(3)(a)(i):

The prior adult criminal record includes all adjudications preceding the current sentencing event, whether the offense was committed before or after the instant one. ~~[Unless expunged from the record, the individual completing the worksheet shall include probations]~~ Probations before judgment (PBJ) and convictions under the Federal Youth Corrections Act (FYCA) shall not be included as a prior adult adjudication of guilt one year after the designated probation term has been successfully completed.

Maryland Sentencing Guidelines Manual (MSGM) 7.1, p. 24 (January 2008)

The language in the manual would mirror the language noted in the above COMAR reference.

A vote was called, option #2 did not pass.

Alternate Proposal (from Mr. Finci):

COMAR 14.22.01.10(B)(3)

The prior adult criminal record includes all adjudications preceding the current sentencing event, whether the offense was committed before or after the instant one. Unless expunged from the record or proven by the defense to have been eligible for expungement prior to the date of offense pursuant to Criminal Procedure §§10-101, et.seq., Annotated Code of Maryland, the individual completing the worksheet shall include probations before judgment(PBJ) and convictions under the Federal Youth Corrections Act (FYCA).

After a vote, option #3 was adopted.

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

The next meeting was set for Tuesday, July 8, 2008 at 5:30 p.m. at the Judiciary Training Center. The Commission will provide dinner and it will be made available starting at 5:00 p.m.

7. Old Business

There was no old business to address.

8. New Business and announcements

Delegate Anderson asked those Commission members who agreed to sit on the Subcommittee on Sentencing Drug Offenders to remain after the meeting to schedule a teleconference.

9. Adjournment

The meeting adjourned at 7:35 p.m.