



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
Sir Walter Raleigh Inn  
College Park, MD  
May 5, 2009

### **Commission Members in Attendance:**

Honorable Howard S. Chasanow, Chair  
Shannon E. Avery, Esquire  
Chief Marcus L. Brown  
Leonard C. Collins, Jr., Esquire  
Honorable Arrie W. Davis  
Paul F. Enzina, Esquire  
Richard A. Finci, Esquire  
Major Bernard B. Foster, Sr.  
Patrick Kent, Esquire, *representing Nancy S. Forster, Esquire*  
Laura L. Martin, Esquire  
Secretary Gary D. Maynard  
Honorable John P. Morrissey  
Delegate Joseph F. Vallario, Jr.  
Charles F. Wellford, Ph.D.

### **Staff Members in Attendance:**

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

### **Visitors:**

Honorable Frederick H. Weisberg, Chairman, DC Sentencing and Criminal Code Revision Commission  
Patrick McGee, Director, Maryland Division of Parole and Probation  
Claire Rossmark, Department of Legislative Services

### **1. Call to order**

Judge Chasanow called the meeting to order.

### **2. Roll call and declaration of quorum**

The meeting began at 5:45 p.m. when quorum was reached.

### **3. Approval of minutes, December 9, 2009 meeting**

The minutes were approved as submitted.



**4. “Building Consensus: The Washington, DC Experience” - Presentation from the Honorable Frederick H. Weisberg, Associate Judge, Superior Court of the District of Columbia and Chairman DC Sentencing and Criminal Code Revision Commission**

Judge Chasanow introduced Judge Weisberg to the Commission. Judge Weisberg indicated that as Chairman of the District of Columbia Sentencing Guidelines Commission, he was most proud of the fact that the guidelines submitted by the Commission were passed by the local legislature unanimously. This was a quite an accomplishment given that in 2001 most of the Commissioners started out in opposition of establishing guidelines and wanted to retain their discretion. Judge Weisberg also cited the diversity of the Commission and the agreement of all members as a reason for its success in passing through the legislature unanimously. He discussed the first District of Columbia Sentencing Guidelines Commission which ended with a fractured group submitting both a majority and dissenting opinion to the legislature. Judge Weisberg felt that it was necessary the second time to produce something credible for the legislature or risk Congress superimposing the federal sentencing guidelines on the District. In order for the second Sentencing Guidelines Commission to be a success, it was imperative for the members of the Commission to reach a consensus on as many issues as they could.

Judge Weisberg cited some advantages that the District of Columbia Sentencing Guidelines Commission has that make it possible to reach a consensus. The District of Columbia has one local court, one local prosecutor, and one public defender. He also indicated that the Sunshine Law was interpreted to mean that all meetings are to be open to the public but do not necessarily have to be advertised/noticed public meetings. There is an official public meeting process that the Commission must comply with only if a vote is to be taken. Judge Weisberg felt that this allowed the Commissioners the opportunity to talk through certain issues without digging in their heels right away. Additionally, he felt that all of the Commissioners were invested in the process and wanted to succeed in producing something credible for the legislature to look at. Another advantage was that the Commission had very modest ambitions. The Commission was simply trying to eliminate the outside twenty-five percent on each side and write guidelines for the middle fifty percent.

Judge Weisberg pointed out that there are some disadvantages as well. The first disadvantage was that trying to reach consensus allowed for a good amount of disparity within the guidelines. The second disadvantage was that some of the compromises that were forged resulted in very labyrinthine rules that were much more complex than they needed to be. The third disadvantage was that it took much longer to get to the outcome because it was necessary to keep people talking long enough to agree.

Additionally, the Commission did not want the guidelines to be embedded in statute as it would be tempting for the legislature to tinker with the guidelines on a case by case basis. As such, the Commission recommends changes and the legislature has the last word on whether those changes are adopted. Judge Weisberg also pointed out that the guidelines have about a ninety percent compliance rate and attributed this to the fact that the practitioners in the system have a vested interest in the system and are comfortable with the guidelines. In addition, he believes that judges are comfortable with the guidelines because they identify a ballpark range or the middle fifty percent, as well as the fact that the guidelines are voluntary.

Judge Weisberg welcomed questions from the Commissioners.



Secretary Maynard asked if there were any changes to the guidelines over the years. Judge Weisberg indicated that they publish a new manual every year with rule changes or other changes in response to issues that the Commission did not anticipate. However, Judge Weisberg noted that the Commission has not made any changes to their basic grids that determine the guidelines range.

Mr. Collins inquired as to how the DC Commission decides where to place a new crime within their grid. Judge Weisberg indicated offenses are ranked by reference to historical sentencing patterns, the maximum sentence established by the legislature, and according to a normative sense of which offenses are more or less serious.

Dr. Wellford asked why the DC Commission decided to separate drug offenses from all other offenses. Judge Weisberg indicated that he thought it was because the District was gaining experience with drug courts and that there was a sense among the Commissioners, the legislature, and the community at large that incarceration of many drug offenders was counter productive. The Commission wanted to separate drug offenders so they could look at treatment opportunities in just that category of cases.

Dr. Soulé asked how judges provide feedback to the DC Commission regarding offenses or offense categories that are not compliant with the guidelines. He asked if the feedback the Commission received was based more on analysis of departure information or anecdotal evidence. Judge Weisberg indicated that it was more anecdotal, oftentimes received during annual trainings for judges.

Mr. Finci inquired as to how the DC Commission came to the consensus that a sentence of probation which includes a suspended sentence is compliant only if the suspended portion of the sentence is within the suggested guidelines range. Mr. Finci noted that in Maryland a similar sentence is considered a departure. Judge Weisberg indicated that a sentence is considered compliant with the guidelines if it is compliant in all respects, noting that not all of the judges are complying in every respect. He also pointed out that none of the judges have indicated that they have changed how they sentence in order to be compliant with the guidelines.

Chief Brown observed that the MSCCSP sometimes reaches a point where a vote must be taken on an issue rather than having the opportunity of discussing it to the point of consensus. Judge Weisberg indicated that his Commission has the advantage of representing a smaller jurisdiction and that reaching consensus on every issue may not be replicable in Maryland. Additionally, he indicated that some of the more contentious issues were sent to committee for discussion and committee members were told not to come back to the full Commission until they had reached some sort of agreement.

##### **5. Report from the Executive Director – Dr. David Soulé**

Dr. Soulé announced that the Commission's website was recently updated. He encouraged the Commissioners to visit the new website and provide feedback/suggestions.

Dr. Soulé also informed the Commission that a handout outlining the working agenda for the NASC conference was available for review. He asked the Commissioners to consider attending the NASC conference.



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

Dr. Wellford presented the report of the Guidelines Subcommittee.

### A. Collection of sentencing guidelines worksheets for sentence reconsiderations

In 2002, the Maryland General Assembly passed House Bill 1143, requiring that the annual report of the MSCCSP “review reductions or increases in original sentences that have occurred because of reconsiderations of sentences imposed under §14-101 of the Criminal Law Article; and categorize information on the number of reconsiderations of sentences by crimes as listed in §14-101(a) of the Criminal Law Article and by judicial circuit.” This mandate was adopted under Criminal Procedure Article, §6-209(iii) and (iv) of the MSCCSP’s enabling legislation. In response, the Commission modified the Code of Maryland Regulations (COMAR) pertaining to the MSCCSP to require the submission of guidelines worksheets for all reconsiderations. The modifications to COMAR do not limit worksheet submission for reconsidered sentences to crimes of violence.

The staff noted that this requirement is inconsistent with the statutory mandate and believes the ability to collect data may be improved if the MSCCSP instead focus on collecting worksheets for crimes of violence only as required by the statute.

It was noted that in February 2009, Chief Judge Bell issued a memorandum to all circuit and county administrative judges to remind them that sentencing guidelines worksheets should be submitted for all reconsiderations of sentences involving a crime of violence.

The Guidelines Subcommittee recommended adoption of revisions to COMAR and the Maryland Sentencing Guidelines Manual (MSGM) to limit the collection of sentencing guidelines worksheets for reconsiderations to sentences involving a crime of violence.

The motion was unanimously approved.

Judge Morrissey suggested that the Commission contact court administrators on a regular basis to remind them that sentencing guidelines worksheets should be submitted for all reconsiderations of sentences involving a crime of violence.

### B. Collection of sentencing guidelines worksheets for violations of probation

Dr. Wellford referred the Commissioners to the memorandum on collection of sentencing guidelines worksheets for violations of probation for a more complete history. The memo notes that in October of 2000, judges from Baltimore City asked the MSCCSP to consider treating violations of probation (VOPs) as sentencing guidelines offenses. It was noted that if VOPs were treated as sentencing guidelines offenses, compliance statistics would change significantly. The judges suggested that while an original sentence may often fall below the guidelines, if an offender violated his/her probation and came back before the court, the VOP sentence would often be within the original guidelines range. However, this issue was largely alleviated by the MSCCSP’s subsequent decision to consider all sentences pursuant to an American Bar Association (ABA) plea agreement as compliant (COMAR 14.22.01.17). Therefore, the staff asked the Guidelines Subcommittee to consider whether the continued collection of guidelines worksheets for VOPs was still warranted. Dr.



Wellford noted that Commission has received a very limited number of guidelines worksheets for these cases since designating VOPs as guidelines offenses.

The Guidelines Subcommittee recommended the permanent suspension of collection of guidelines worksheets for VOPs. The Guidelines Subcommittee recommended adoption of the proposed revisions to COMAR and the Maryland Sentencing Guidelines Manual (MSGM).

The motion was unanimously approved.

Dr. Wellford mentioned Senator Kelley's concerns regarding violations that occur due to structural/systemic issues out of the control of the individual on probation. For example, an individual misses a meeting with his/her probation officer because the meeting is scheduled while he/she is supposed to be at work. Senator Kelley was also concerned about those individuals who are unable to get to the Parole & Probation office because of the limitations of office hours or transportation issues.

Mr. McGee, Director of the Maryland Division of Parole and Probation addressed Senator Kelley's concerns. Mr. McGee indicated that it is not the Division's policy to develop structural/systemic barriers. In fact their policy is quite the opposite. The Division recognizes employment as a protective factor and employment is something the Division supports. Mr. McGee acknowledged that some Parole and Probation agents are very literal but that this was a performance issue not a policy issue. Mr. McGee reinforced that the Division of Parole and Probation values employment and therefore has implemented the use of self check-in kiosks that are open until 11 p.m. The kiosks are available for use by low and moderate risk offenders who are more likely to be employed and perhaps unable to meet with their agent during normal business hours. The hope is to install more kiosks throughout the state.

**C. Proposal to add agenda and supporting materials for MSCCSP meeting to website**  
Former Commissioner, Russell Butler (Executive Director, Maryland Crime Victims' Resource Center) recently requested that the MSCCSP make available the agenda and supporting materials for MSCCSP meetings in advance of meeting dates. Doing so would inform interested parties of the topics the Commission plans to address. It would also give interested parties the option to comment on proposed changes to the sentencing guidelines prior to the Commission's deliberation and vote, rather than after. The MSCCSP staff has received a few similar requests from other practitioners and the public.

The staff researched whether there are any set rules concerning when or how such information is to be communicated to the public and did not identify anything which would prohibit or place limitations on the posting of materials.

The Guidelines Subcommittee recommended that the MSCCSP adopt an informal policy to post the agenda and supporting material for future Commission meetings on the MSCCSP website at the time that these materials are distributed to the Commissioners.

The motion was unanimously approved.

**7. Date, time, and location for the next Commission Meeting**

The next meeting was set for Tuesday, June 30, 2009 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.

**8. Old Business**

There was no old business to address.

**9. New Business and announcements**

Secretary Maynard invited the Commissioners to the Ribbon Cutting Ceremony for the Second Chances Farm. Second Chances Farm is a program in Maryland where inmates care for retired thoroughbred horses. With funding provided by the Thoroughbred Retirement Foundation, an old unused barn was converted into horse stables that will eventually provide shelter to over 30 horses. This project will afford employment and training opportunities to fifteen inmates from the Central Maryland Correctional Facility.

Ms. Laura Martin inquired about guilty, but not criminally responsible pleas and whether they are to be used in the calculation of the prior adult record. Ms. Martin noted that the Sentencing Guidelines Manual does not specifically address this issue. Ms. Martin asked if the Subcommittee would be interested in reviewing this issue. Dr. Wellford indicated that the Subcommittee would consider the issue at its next scheduled meeting.

**10. Adjournment**

The meeting adjourned at 7:25 p.m.