

Maryland State Commission on Criminal Sentencing Policy
Wye River Conference Centers
Queenstown, Maryland
June 25-26, 1998

Announcements

The meeting was called to order at 10:00 AM, June 25, 1998.

The Chairman requested the Commission members to review the minutes from the May 27, 1998 meeting and make comments by the following week.

The Chairman then previewed the agenda for the two-day meeting. During the course of the meeting, the Chairman expected the Commission to examine the following issues: (1) two variations of truth-in-sentencing (federal definition of truth-in-sentencing and fifty-percent, across the board truth-in-sentencing); (2) the implementation of community options (front-end versus back-end; expansion through probation/parole or by means of a new agency); and (3) the creation of a permanent sentencing commission.

The Chairman emphasized the need to approach each problem from the perspective of a citizen of the State of Maryland and to focus on what is best for the system as a whole.

Next, the Chairman asked Dr. Wellford, the Chair of the Subcommittee on Guidelines Development, to present the recommendations of the Subcommittee.

Proposed Revisions to the Offender and Offense Score to the Offender and Offense Score

Dr. Wellford presented the proposed revisions to components of the Offender score and the Offense score. The initial subcommittee recommendations had been presented to the full Commission at the May 27th meeting. The proposed revisions presented here reflected concerns expressed by the full Commission on May 27th.

Dr. Wellford's overview began with the proposed revisions to the Juvenile Delinquency component of the Offender score.

Upon deliberation, the Commission conducted four votes with regard to the Juvenile Delinquency component:

Reduce present age at which juvenile record expires from 26 to 23. The motion was approved (10 in favor, 2 opposed).

Add a decay period. Crime-free offenders would not be scored on juvenile record. The motion was approved (10 in favor, 2 opposed).

Add the phrase A Crime free for five years since last adjudication. The motion was approved (10 in favor, 3 opposed).

Use date of adjudication rather than date of offense. The motion was approved (8 in favor, 2 opposed).

Dr. Wellford noted that the Commission could make a recommendation that the Department of Juvenile Justice (DJJ) and the juvenile court standardize records to reflect the seriousness of the offense. The Commission voted unanimously to recommend that the DJJ make a prospective change to standardize juvenile record keeping to reflect the seriousness of offense at adjudication in juvenile court.

The discussion then turned to suggest revisions of the Offense Score. Dr. Wellford explained the proposed changes to the Victim Injury and Victim Vulnerability components of the Offense score.

Dr. Wellford moved to adopt the revisions to the Victim Injury component of the Offense score. The motion passed unanimously.

Dr. Wellford moved to adopt the revisions to the Victim Vulnerability component of the Offense score, substituting the original wording "handicapped" for "disabled" The motion passed unanimously.

Mrs. Roper introduced the subject of documenting the application of Victim's Rights provisions on sentencing guidelines worksheets. Such documentation would help to provide much needed information on the extent to which Victim's Rights provisions are applied (e.g., victim present in court; victim received a hearing in court; victim restitution was applied; victim compensation was applied). Judge McAuliffe noted that the sentencing guidelines form could include many of these items, though actual payment of restitution would not be known at time of sentencing.

The Commission suggested that Mrs. Roper's associates provide the language to be included on the sentencing guidelines worksheet.

Seriousness Categories under Guidelines

Proposed revisions to the seriousness category assigned to particular crimes was the next subject of discussion. The appropriateness of the seriousness category attached to twenty-six crimes was questioned by several members of the Commission and revisions were suggested. In addition, eleven crimes had not yet been assigned a seriousness category.

Discussion centered around the following: (1) whether the existing study Commission should recommend changes to the seriousness categories for existing crimes or leave this to a permanent sentencing commission; (2) whether to recommend changes to the Guidelines Advisory Board of the Judicial Conference; and (3) whether to recommend seriousness categories only for crimes that had not yet been assigned a seriousness category.

Subsequent to much discussion, a motion was approved to allow the Guidelines Advisory Board of the Judicial Conference to select the appropriate seriousness category for crimes that had not yet been classified. The motion passed (8 in favor, 1 opposed).

Permanent Sentencing Commission

Judge McAuliffe proposed a motion recommending the General Assembly to establish a permanent sentencing commission with staff. The motion passed (10 in favor, 1 opposed). See second day for more detailed information on commission membership.

LUNCH BREAK

Voluntary Guidelines

The Commission meeting resumed beginning with a discussion of whether sentencing guidelines should

continue to be voluntary or whether Maryland should move toward a more structured sentencing scheme.

The discussion began with Dr. Wellford's presentation of the objectives of the Commission:

Promote sentencing that more accurately reflects time served;

Concentrate prison space for violent and repeat offenders;

Reduce unwarranted disparity;

Preserve meaningful judicial discretion;

Ensure most appropriate penalties are available, including correctional options.

Dr. Wellford then reviewed the current Maryland Sentencing Guidelines commentary regarding sentencing outside of the guidelines (i.e., departures). According to section 1.4 of the Sentencing Guidelines manual, departures are justified only under compelling circumstances. Further, specific reasons for departures must be delineated in written form by the sentencing judge.

Dr. Wellford then reminded the Commission of the low judicial compliance rate and noted that compliance rates have decreased over time, particularly in the last few years.

Dr. Wellford advised the Commission that the Guidelines subcommittee had voted to maintain a voluntary system (which likely maximizes the 4th and 5th objectives of the Commission).

The following means for increasing judicial compliance under a voluntary system were then suggested (some perhaps included in the Guidelines manual as commentary):

Substantial and compelling standard for departures;

Judicial identification in sentencing database;

Written report submitted by judge;

Appeal;

Expanded judicial training; and

Systematic review of noncompliance.

Commission members were asked for their opinions regarding the voluntary nature of the current sentencing system and the possibility of adopting a more structured system. Discussion focused primarily on maintaining a voluntary system or adopting some form of a "hybrid" model. A hybrid model would combine voluntary sentences with presumptive sentences for the most serious, person offenses only. An alternative hybrid model would combine voluntary sentences with presumptive sentences for the least serious offenses.

Members voted on one of three options:

Full voluntary system, with judges having discretion to go outside guidelines (7 votes in favor).

Full presumptive system, with judges having no discretion to go outside guidelines (0 votes in favor)

Mixed (or hybrid) system, with judges having discretion to go outside guidelines for some cells or

crimes, but not all cells or crimes (8 votes in favor).

Drug Matrix

Following the discussion of a voluntary versus more structured system, Dr. Wellford introduced the last major topic discussed by the Guidelines Subcommittee -- revisions to the drug matrix. Dr. Wellford reported that the Guidelines Subcommittee had decided that revisions to the drug matrix initially proposed in 1994 by the Guidelines Advisory Board of the Judicial Conference warranted further investigation. It was suggested that the Guidelines Subcommittee investigate revisions to the drug matrix that are neutral with respect to prison/jail bedspace capacity as well as proposals that would require greater prison/jail bedspace capacity.

Members voted unanimously to continue study of the drug matrix.

Wye River Meeting Summary -- June 26th

The focus of the second day of the meeting was on Correctional Options and the work of the Correctional Options Subcommittee co-chaired by Senator McCabe and Ms. Quattrocki. Senator McCabe introduced the discussion, followed by a summary of the work of the Subcommittee provided by the Executive Director, Dr. Hunt.

Discussion ensued at the outset about the proper terminology for the concept of "intermediate sanctions" Judge McAuliffe decided to use the term "Corrections Options" as specified in the enabling legislation of the Commission.

Correctional Authority

The Commission then discussed the possibility of creating a Correctional Authority for purposes of administering a system of correctional options. Many questions arose. For example, who has final authority (the sentencing judge or the Correctional Authority)? Would a particular correctional program have veto power if judges sentence to the Correctional Authority (e.g., if no room in program or if person does not meet eligibility criteria)?

The issue of equity also arose. For example, persons sentenced before Circuit court (but appeal from District court or Prayer for Jury Trial) would not have access to Correctional Authority programs because guidelines would not be applicable.

The concept of a "staircase of sanctions" was also discussed. Within this context several important questions arose. For example, should Correctional Authority have ability to administer sanctions? If so, how will due process protections be applied (e.g., in cases of technical violations)? If judges sentence to Correctional Authority, would they give up control over the case (similar to sentencing to the Department of Public Safety)? If so, the executive branch and the judicial branch would not overlap.

Issue of Netwidening

Lastly, the issue of netwidening was discussed. Commission members raised a number of issues. For example, if the Correctional Authority offers a full array of programming not available elsewhere judges may sentence offenders who would have otherwise received probation to the Correctional Authority in order to ensure that they will receive adequate services. In order to avert such netwidening, probation-based programs would have to be equally as strong.

Several potential ways to control netwidening were proposed: (1) presumptive sentencing guidelines; (2) charge-back provisions; and (3) eligibility criteria accompanied by recommendations from both judicial and

executive branch representatives.

Senator McCabe asked for permission to further explore the expansion of correctional options, the possibility of local and state partnerships, and the possibility of creating a Correctional Authority. The Commission approved the motion unanimously.

Truth-in-Sentencing Discussion

Following the Correctional Options discussion, the Commission turned its attention to truth-in-sentencing policies. Two forms of truth-in-sentencing were under consideration: (1) 85% truth-in-sentencing for federally-identified, serious, violent offenses; and (2) guidelines subcommittee proposal of 50% truth-in-sentencing for all offenses.

Simulation model results forecasting the impact of such truth-in-sentencing policies were presented and, by and large, revealed a significant increase in prison/jail bedspace needs.

A major topic of discussion was how to offset the increase in prison bedspace need. While the expanded use of correctional options programs may help by diverting short-term, nonviolent offenders from serving time in prison, their expanded use is very unlikely to completely offset the increase in prison bedspace need. Another alternative is to reduce the length of the judicially imposed sentence. In order to surmount political difficulties associated with a reduction in imposed sentence length (even though time-served would remain the same or increase), a good public information system would have to be in place.

The imposition of truth-in-sentencing policies raised the issue of the effect of such policies on prison discipline since good-time credits would likely have to be amended.

Members also discussed the "Absolute 85%" versus "Average 85%" in order to qualify for federal funds.

The additional "carrying" costs associated with housing long-term inmates (e.g., health care costs, transportation) were also examined.

The Commission voted to continue inquiry into truth-in-sentencing (85% for violent offenses + 50% across the board, geriatric exception, etc).

Creation of Permanent Sentencing Commission

The Commission continued exploration of the possibility of creating a permanent sentencing commission. Members discussed the issue of commission membership (e.g., number of members, background of members) as well as the authority of a permanent commission. It was suggested, for example, that a hypothetical, permanent commission should have the power to adjust cells in the sentencing matrixes.

The Commission voted recommend creation of a permanent Commission consisting of 19 members. The current composition would be revised by removing 2 legislators and adding 2 individuals from the general public.

The meeting adjourned.