

Minutes

Maryland State Commission on Criminal Sentencing Policy
Lowe House Office Building
Annapolis, Maryland

October 4, 2004

Commission Members in Attendance:

Honorable Raymond G. Thieme
Delegate Curtis S. Anderson
James V. Anthenelli, Esquire
Russell P. Butler, Esquire
Honorable Arrie W. Davis
Richard A. Finci, Esquire
Robert Gibson
Senator Delores G. Kelley
Patrick Kent, Esquire
Robert Riddle, Esquire
Secretary Mary Ann Saar
Barry L. Stanton
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, PhD

Staff Members in Attendance:

Gary Locust
David Soulé
Haisha Thompson

1. Call to order

Judge Thieme called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 4:45 when quorum was reached and roll was taken.

3. Approval of minutes, June 7, 2004 meeting

The minutes were approved as submitted.

4. Discussion of House Bill 918 and impact on guidelines worksheet

Concerns/Comments:

- A question was asked about how the collected information will be tracked in the database. Dr. Soulé responded that the Commission would add a field in the database in order to record an economic amount per offense.
- Several Commissioners expressed the opinion that House Bill 918 is unclear and may not be able to be implemented.
- It was suggested that the Commission should have testified and objected to this bill when it was presented at the Legislative Hearings. Additionally, this bill is totally outside the scope of what the Commission is mandated to do.
- It was also suggested that this bill does not correspond with sentencing and would provide information that really isn't about sentencing or the impact of sentencing.
- While this bill has already become law, it was agreed that it would serve the Commission well if they responded and testified about the impact of any future bills that directly impact the scope of the Commission.
- Senator Kelley commented that the Commission should try to get this bill reversed, by starting with the Attorney General and discuss how this is outside of the scope of duties and responsibilities of the Commission.
- However, the Commission generally agreed that since the bill was passed and since it is not that difficult to add a field to the guidelines worksheet and the database contained at the Commission offices, we should proceed with more clearly defining economic loss and where to capture this new items on the worksheet.
- Questions were asked about what would be the "Full economic loss," loss because of the crime or the consequential loss to the offender?
- It was noted that most of the offenses this bill addresses (theft and fraud related) are seen in District court.
- It was also noted that in the future, the Commissioners should track information released to a fiscal note writer in legislative services detailing who called and what was reported.
- After much discussion, the Commission decided to specify the definition of "economic loss" relative to the amount of restitution.

Action/Decision:

- The definition for *economic loss* will read as follows:
 - “In all Title VII and Title VIII cases, economic loss is the amount of restitution ordered by a circuit court judge or if not ordered, the full amount of restitution that could have been ordered.”
- The Commission decided to use the first worksheet example (of the 3 examples presented at the meeting) which places the "economic loss" field in each of the "actual sentence" boxes on the form.
- The literal for the "economic loss" field will have two parts:
 1. Economic Loss \$ _____ and,
 2. Unknown amount.

5. Discussion of 2004 Legislative changes to offenses and suggested seriousness categories

- All of the seriousness categories suggested by the Guidelines Subcommittee for the legislative changes to the offenses were accepted by the Commission, except for SB 512 (also classified as HB 929).

Concerns/Comments: In reference to SB 512 – Sexual Solicitation of a Minor

- This particular bill was conceived for the law enforcement officers who are on the internet posing as minors in order to catch adults pursuing minors.
- The person has to think that the person they are pursuing is under age.
- There was much discussion over the proposed seriousness category for this offense.
- Some argued for a more severe seriousness category (IV) since the offense was related to minors, while others argued this offense was NOT an attempt, but merely a solicitation and therefore a less severe seriousness category (V) was warranted.

Action/Decision:

- The Commission voted for the seriousness category for this offense.
 - Seven (7) Commissioners voted to decrease the suggested seriousness category from IV to V.
 - Five (5) Commissioners voted to keep the suggested seriousness category of IV.
- Therefore, the seriousness category for “sexual solicitation of a minor” was set as a V by way of majority vote.

6. Update of the Information Dissemination policy

Concerns/Comments:

- Based on feedback from the Attorney General’s Office, Dr. Soulé clarified that the timeline for requests was adjusted to:
 - Ten (10) days to tell the requestor that they have contacted the wrong agency.
 - Thirty (30) days for the Commission to deny or fulfill the request.
- It was asked if there were any changes to the policy about the availability of data based on judges? The answer was No.
- It was suggested that more qualifiers were needed to avoid denials based on a case-by-case evaluation or court-demanded data requests.
- However, the Commission decided the current draft of the information dissemination policy was better than providing detailed request qualifiers because it prevents objections from the interested person seeking the data.

Action/Decision:

The Commission accepted the adjustments and adopted the proposed information dissemination policy.

7. Discussion /Update of Blakely decision

- The Commission decided to table this discussion until the next meeting at which time the Supreme Court will have heard arguments in two Blakely related cases.

8. Judge Murphy's proposed categorization of offenses – Commissioner Butler

Concerns/Comments:

- Commissioner Butler outlined Judge Murphy's proposal for the categorization of offenses, such as has been done in other states like New York. In general, the categorization would allow similar offenses to have like penalties and would provide standards for defining felony and/or misdemeanor offenses.
- Even though several believed this might be a useful activity, it was agreed that the Commission does not have enough resources to complete such a project. It was suggested that this task would probably be a job for the legislature or for a newly created committee that would be dedicated solely to this task.

Action/Decision:

- The Commission decided the proposed project would require more time and resources than those available to the Commission and therefore the Commission cannot take on such an activity at this time.

9. New Business and Announcements

- It was suggested that there should be notification of changes made to the sentencing guidelines manual and offense table. The Commission agreed and Dr. Soulé noted that the Commission staff hopes to circulate new manuals shortly after the updated changes in seriousness categories have been approved through COMAR.
- Delegate Anderson thanked Dr. Soulé for taking the time to go out and visit with the Commissioners in person and suggested that he should meet with a sample of circuit judges from around the State during their criminal dockets in order to observe the whole process and see exactly how the guidelines worksheet process is handled in different jurisdictions. Additionally, Delegate Anderson suggested some of the Commissioners might want to accompany Dr. Soulé to these meetings.

10. Adjournment

The next meeting was set for Monday, January 3rd at 4:00 p.m. in Annapolis at the Judiciary Training Center.

The meeting adjourned at 6:10 p.m.