



Minutes

Maryland State Commission on Criminal Sentencing Policy
House Office Building
Annapolis, MD 21041
December 14, 2010

Commission Members in Attendance:

Honorable Howard S. Chasanow, Chair
Delegate Curt S. Anderson
Joseph I. Cassilly, Esquire
Honorable Arrie W. Davis
William Davis, Esquire, *representing Public Defender Paul B. DeWolfe*
Paul F. Enzinna, Esquire
Richard A. Finci, Esquire
Major Bernard B. Foster, Sr.
Senator Delores G. Kelley
Laura L. Martin, Esquire
Secretary Gary D. Maynard
Honorable John P. Morrissey
Honorable Alfred Nance
Kate O'Donnell, Esquire, *representing Attorney General Douglas Gansler*
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

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

Visitors:

Russell Butler, Maryland Crime Victims' Resource Center
Joanna Diamond, Legislative Associate, American Civil Liberties Union
Linda Forsyth, Legislative and Community Liaison for Senator Kelley
Robert Johnson, Department of Public Safety and Correctional Services
Claire Rossmark, Department of Legislative Services

1. Call to order

Judge Chasanow called the meeting to order.

2. Declaration of quorum

The meeting began at 5:05 p.m. when quorum was reached.

3. Approval of minutes, September 21, 2010 meeting

The minutes were approved as submitted.



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

Dr. Soulé reviewed five items. First, he announced that the staff completed a draft of the Commission's 2010 Annual Report. A hard copy of the draft was provided to the Commissioners at the meeting. Dr. Soulé asked that the Commissioners review the draft and provide feedback to him via email by December 23, 2010.

Second, Dr. Soulé noted that he attended a meeting of the Maryland State Board of Victim Services on November 3, 2010 to review the goals and activities of the MSCCSP and to provide feedback on the data regarding victims' rights that is collected on the sentencing guidelines worksheet. Dr. Soulé indicated that Roberta Roper, chair of the Board of Victims Services had sent a letter to the Commission to follow up on the information reviewed at the meeting. A copy of that letter was provided to the Commissioners. Dr. Soulé also noted that representatives from the State Board would address the Commission at the public comments hearing scheduled for later in the evening.

Dr. Soulé next provided a follow-up on the discussion of the Commission's budget that took place at the September 21, 2010 meeting when Robert Plakty from the Governor's Finance Office presented a proposed restructuring of the MSCCSP budget. At that meeting, the Commission voiced concerns regarding the proposed restructuring and voted to oppose it. After the meeting, Mr. Plakty informed Dr. Soulé that based on this opposition, the Governor's Finance Office decided not to submit the proposal to the Department of Budget and Management (DBM). The FY 2012 budget was submitted to DBM under the Commission's current budget format.

Dr. Soulé next reported that he conducted a training seminar on October 26, 2010 for 11 new circuit court appointees at the New Trial Judges Orientation held in Towson, Maryland. He was informed that the training was well received and the staff hopes to continue to conduct this exercise on annual basis. Dr. Soulé also noted that he has continued to meet with county administrative judges. In November, he attended the 2nd judicial circuit bench meeting and provided data feedback to all of the judges from Caroline, Cecil, Kent, Queen Anne's, and Talbot counties. As previously noted, the meetings have been a great opportunity to review the areas of the worksheet that the judges are responsible for completing and for seeking input from the judges on how to best implement the automated guidelines system.

Finally, Dr. Soulé announced that he attended a meeting for the Judiciary Ad-Hoc Committee on Sentencing Alternatives, Re-entry, and Best Practices on December 7, 2010. At that meeting, Dr. Soulé provided a progress report on the work of the Sentencing Guidelines Subcommittee's Phase I review of risk assessment at sentencing. It was noted that Dr. Wellford would provide an update on this work in his Subcommittee report. The Ad Hoc Committee advised Dr. Soulé that they are eager to hear the recommendations of the Commission once the Phase I review is complete.



5. Impact of recent Court of Appeals decisions on binding plea agreements “within the guidelines”

Judge Chasanow noted that on October 28, 2010, the Maryland Court of Appeals filed opinions in *Cuffley v. State (2010)* and *Baines v. State (2010)* which impact the use of a binding plea agreement that calls for a sentence “within the sentencing guidelines”. Judge Chasanow explained that *Cuffley* and *Baines* found the following:

If the parties to a binding plea agreement agree that the defendant will be sentenced “within the guidelines,” without making clear on the record of the plea proceeding that the guidelines sentence refers only to actual incarceration, then the court may not impose a sentence that includes a suspended portion in excess of the maximum sentence provided by the guidelines.

The Court did recognize that the *Maryland Sentencing Guidelines Manual (MSGM)* states that “suspended time is not considered in determining whether the sentence falls within the recommended guidelines range” and “the guidelines range represents only non-suspended time”. However, the findings in *Cuffley* and *Baines* emphasize that the State or defense counsel must make the terms of the agreement absolutely clear on the record of the plea proceeding and the term must be fully explained to the defendant on the record before the court accepts the defendant’s plea.

Based on discussions with various members of the judiciary after the release of the *Cuffley* and *Baines* opinions, staff felt it may be helpful to distribute a *Guidelines E-News* with the purpose of explaining the impact of these decisions to ensure that all parties are aware of these recent findings and to reconfirm that suspended time is not considered, and has never been considered, when determining whether a sentence falls with the guidelines range. A draft of the proposed *Guidelines E-News* was distributed to all Commissioners for review.

Dr. Soulé explained that the *Guidelines E-News* is a periodic report delivered electronically via email to criminal justice practitioners in the state. Its distribution list includes: circuit court judges, state’s attorneys, public defenders, private defense attorneys, and parole/probation agents who complete the guidelines. Typically, the MSCCSP sends out an *E-News* to announce changes and/or additions to the guidelines, such as when the Commission released an updated Guidelines Offense Table on November 1, 2010 that included new and/or amended offenses resulting from the 2010 Legislative Session. However, in this case, the staff proposed distribution of the *E-News* to serve as an educational tool to raise awareness regarding the impact of these two COA decisions.

Judge Morrissey suggested that the proposed *Guidelines E-News* be revised by striking the second half of the last sentence after, “...shares this information to ensure that all parties are aware of these recent findings”. Judge Morrissey further suggested that a footnote be added to the *MSGM* providing a reference to the *Cuffley* and *Baines* opinions and a brief review of their impact on binding plea agreements. The motion to adopt the revised Guidelines E-News and to insert a footnote reference regarding the *Cuffley* and *Baines* opinions on the relevant page of the *MSGM* was adopted unanimously.



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

Dr. Wellford presented the report of the Guidelines Subcommittee. Since the last Commission meeting, the Subcommittee met in October to continue the Phase I review of the possibility of incorporating risk assessment at sentencing. Dr. Wellford noted that the Subcommittee thought it would be helpful to hear about the risk assessment instruments being utilized by Maryland correctional officials and invited Phillip Pie, Deputy Secretary for Programs and Services at the Maryland Department of Public Safety and Correctional Services (DPSCS) to attend the meeting to review risk instruments being utilized by DPSCS at the various stages of corrections.

Deputy Secretary Pie provided an overview on the various instruments being utilized by DPSCS and the Subcommittee had an opportunity to conduct a thorough discussion with him regarding these instruments. The Subcommittee decided that the next step in the Phase 1 review would be to continue the educational effort with another meeting that will focus on the risk assessment instruments being utilized in Virginia and Missouri. The Subcommittee asked the staff to locate any reports on these instruments and to prepare a thorough briefing on the instruments to include a summary of the research foundation, feedback on how the instruments are being utilized, and a review of how their use differs, if at all, in urban versus rural jurisdictions. This next meeting is tentatively planned for the beginning of 2011, at which time the Subcommittee hopes to complete the Phase I review and provide a recommendation for further action to the full Commission.

Senator Kelley noted that she has some concerns about the research underlying the development of the risk assessment instruments. Particularly, she was concerned that the predictors of risk may be limited to information that is readily available to researchers and may include factors that are prejudicial to certain groups. Dr. Wellford responded that the Subcommittee certainly must gain a thorough understanding regarding the predictors utilized in these instruments. To that extent, it has asked Dr. James Austin, who developed many of the Maryland instruments, to provide any technical reports that explain the development of the various risk assessment instruments. Dr. Austin indicated that he is in the process of completing a report and that he would forward a copy of the report when available. The report is expected to be completed by December 31, 2010.

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

The next meeting was set for Tuesday, May 17, 2011 at 5:30 pm at the Judiciary Education and Conference Center in Annapolis, MD. Dinner will be served starting at 5:00 pm.

8. Old Business

There was no old business to address.

9. New Business and announcements

Mr. Cassilly noted that he had a few recent cases in Harford County which raised some issues for him regarding the sentencing guidelines. In brief, Mr. Cassilly noted that he felt the prior criminal record section of the guidelines may not adequately account for career criminal offenders with major prior records. Second, Mr. Cassilly noted that the guidelines range for one event involving multiple offenses is guided solely by the guidelines range for the most serious offense in the event. He questioned whether the guidelines manual provides adequate instruction on what constitutes a single versus multiple event case. Judge Chasanow asked Mr.



Cassilly to document his concerns in writing and then the issues could be submitted to the Sentencing Guidelines Subcommittee for further review.

10. Adjournment

The meeting adjourned at 5:45 p.m.