



Minutes

Maryland State Commission on Criminal Sentencing Policy
Miller Senate Office Building
Annapolis, MD 21401
December 9, 2014

Commission Members in Attendance:

Honorable Diane O. Leasure, Chair
Delegate Curtis S. Anderson
James V. Anthenelli, Esquire
Colonel Marcus L. Brown
LaMonte E. Cooke
William Davis, Esquire, *representing Public Defender Paul B. DeWolfe*
Kieran Dowdy, *representing Acting Secretary Carroll Parrish*
Paul F. Enzina, Esquire
Richard A. Finci, Esquire
Honorable Patrice E. Lewis
Megan Limarzi, Esquire, *representing Attorney General Douglas F. Gansler*
Honorable Alfred Nance
Honorable Andrew L. Sonner

Staff Members in Attendance:

Sarah Bowles
Stacy Najaka, Ph.D.
David Soulé, Ph.D.

Visitors:

Claire Rossmark, Department of Legislative Services; Linda Forsyth, Community Liaison for Senator Kelley

1. Call to order

At the request of Judge Leasure, Dr. David Soulé called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 4:42 p.m. when quorum was reached.

3. Approval of minutes, September 30, 2014 meeting

The minutes were approved as submitted, with one minor revision requested. Judge Lewis requested that her middle initial be added, to read Honorable Patrice E. Lewis.

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

Dr. Soulé reported that he had three items to review. First, Dr. Soulé provided an update on the new Guidelines Offense Table, which went into effect on December 1, 2014. At the July 15, 2014 Commission meeting, seriousness categories were adopted for new and/or revised offenses passed during the 2014 Legislative Session. These newly approved seriousness categories were submitted to the AELR committee and approved through the COMAR adoption



process effective December 1, 2014. A Guidelines E-News was distributed to criminal justice stakeholders throughout the state on December 1, 2014 announcing the release of an updated Guidelines Offense Table and instructing users to download a copy via the Commission's website.

In addition, Dr. Soulé noted that at the September 30, 2014 MSCCSP meeting, the Commission adopted changes to the Guidelines instructions. Specifically, the Commission approved language instructing that prior convictions for marijuana possession of less than 10 grams should not be scored as part of an offender's adult prior record. These changes were submitted to the AELR committee and are currently being promulgated through the COMAR adoption process. Dr. Soulé reported that the changes are expected to be adopted effective February 1, 2015. Delegate Anderson asked why it would take such a long time for this change to be adopted if the Commission approved this action at the September 30, 2014 meeting. Dr. Soulé explained that it takes three to four months for the proposed regulations to be adopted through COMAR. First, the proposed changes must be submitted to the Administrative, Executive, and Legislative (AELR) Committee for review. Next, the proposed changes must be sent to the Division of State Documents (DSD) and published in the Maryland Register. Then, 30 days must be allowed for public comment and on the 46th day, the proposal for final action can be submitted to DSD for publication in the Maryland Register. The earliest the regulations can go into effect is 10 days after the notice of final action is published.

Mr. Davis asked what the Commission's position is with respect to the new rule and the approval process. Dr. Soulé stated that the MSSCCP's enabling legislation in the Criminal Procedures Article states that guidelines changes must be promulgated through COMAR. Therefore, the new rule regarding the treatment of prior convictions for marijuana possession of less than 10 grams, would not go into effect until the language is adopted by COMAR. Dr. Soulé noted that, when the proposed changes are approved by COMAR, an announcement would be publicized via a Guidelines E-News. Judge Lewis noted that it would be reasonable for a litigant to make the argument to a judge now that prior convictions for marijuana possession of less than 10 grams should be excluded from the calculation of the adult prior record. Judge Lewis questioned how the state Bar would know to make this argument if the new rule has not yet been announced. Mr. Davis noted that the inclusion of prior convictions for marijuana possession of less than 10 grams in the calculation of the adult prior record could be a reason for departure from the guidelines. Mr. Finci noted that the abundance of marijuana possession convictions in the past make this new rule important. Mr. Finci further stated that he had sent information about the new guidelines rule regarding marijuana possession of less than 10 grams to members of the Maryland Criminal Defense Attorneys' Association (MCDAA). Mr. Davis stated that he would discuss the new rule at the next meeting of the Office of the Public Defender (OPD). Mr. Davis also noted that it is important for courts to be aware of the new rule, as the courts may not hear arguments for guidelines departures if they are not specifically stated in the guidelines. Judge Lewis noted another issue may arise in cases in which the marijuana quantity is unknown. Delegate Anderson stated that the quantity will always be unknown for convictions that occurred prior to 2012 when the legislative distinction was made for marijuana possession of less than 10 grams.

Next, Dr. Soulé provided an update on the Maryland Automated Guidelines System (MAGS). Dr. Soulé reported that, last month, with input from the Administrative Office of the Courts and the county administrative judges, a proposed deployment schedule for MAGS was developed



for the remaining jurisdictions. Dr. Soulé presented the proposed deployment schedule at the Conference of Circuit Judges meeting on November 17, 2014, and it was circulated to all of the county administrative judges. Dr. Soulé reported that it was determined that it made sense to deploy MAGS by judicial circuit. Dr. Soulé noted that MAGS is currently utilized in Montgomery and Calvert Counties and plans are being finalized for MAGS deployment in the Frederick County Circuit Court, in order to complete the 6th Circuit in conjunction with Montgomery County. Frederick County will be the third jurisdiction to utilize MAGS. Dr. Soulé reported that since MAGS was already deployed in Calvert County, the next step will be to deploy MAGS in the remaining jurisdictions in the 7th Circuit (Charles, Prince George's and St. Mary's Counties). Dr. Soulé noted that MAGS would be rolled out in the remaining jurisdictions in three-month intervals, with the plan that MAGS would be implemented statewide in four to five years. Dr. Soulé further noted that Judge Adams, the administrative judge for the 7th Circuit invited him to attend their circuit conference meeting last month in order to get their bench acclimated with MAGS.

Finally, Dr. Soulé provided an update on staffing at the MSCCSP. As Dr. Soulé noted in an earlier email distributed to the Commission, the MSCCSP currently has an opening for the Administrator/Training Coordinator position. Marlene Akas, who worked in that position since October 2011 stepped down to take a position at another agency. Dr. Soulé noted that the Administrative/Training Coordinator position is a critical position for the office, as the individual serves as the primary point of contact for the helpdesk, conducts trainings on the application of the guidelines throughout the state, and is also the office manager. Dr. Soulé asked the Commissioners to please refer candidates for the position to the job listing on the MSCCSP website and encourage them to apply through the University's job application system. Delegate Anderson asked if there is an educational requirement for the position. Dr. Soulé stated that the position requires a Bachelor's degree or a paralegal certificate with four years of criminal law related experience.

Mr. Davis noted that the Maryland Electronic Courts (MDEC) had recently been implemented in Anne Arundel County Court's Civil and Juvenile Divisions. Mr. Davis asked if MAGS would interface with MDEC. Dr. Soulé noted that the goal is to one day be able to collect information from MDEC for input into MAGS and that staff has had conversations with the Judiciary about the two applications interfacing in the future. However, at present, MDEC and MAGS are two separate and independent applications. Mr. Davis noted that MDEC will be deployed in Anne Arundel County's Criminal Division in the spring of 2015. Dr. Soulé noted that, at their request, Anne Arundel County Circuit Court would be the last jurisdiction to implement MAGS because they will be implementing MDEC in 2015.

5. Report from the Guidelines Subcommittee – Dr. David Soulé

Dr. Soulé presented the report of the Guidelines Subcommittee on behalf of Judge Sonner.

A. Continued Review of Sentencing Guidelines Compliance, by Matrix and Cell.

Dr. Soulé referred the Commissioners to the memorandum with the subject "Update #2 on Review of Guidelines Compliance for Individual Matrix Cells" and the accompanying documents referenced therein. He reviewed their background and content. At the May 6, 2014, Commission meeting the MSCCSP authorized staff to conduct analyses of judicial sentencing compliance for fiscal years 2009-2013. At the September 30, 2014, Commission meeting the report from the Guidelines Subcommittee contained the first part of the



analyses. The current memorandum and documents updated the Commission on the continued work of the Guidelines Subcommittee relating to the compliance review.

The documents discuss individual sentencing matrix cells with compliance rates below 65% and at least 50 single-count cases sentenced in fiscal years 2009 through 2013. The documents analyze changes the MSCCSP would need to make to the guidelines to achieve the MSCCSP's 65% compliance benchmark and identified the most common offenses falling within the cells with lower compliance rates. Dr. Soulé explained that the Guidelines Subcommittee's next step of the compliance review process will be to focus on the ranges in the two rows of the Sentencing Matrix for Drug Offenses corresponding to Offense Seriousness Categories IV and V. At the direction of the Guidelines Subcommittee, in advance of the next Subcommittee meeting staff will draft a proposal for proportionate revised ranges for these two rows of the drug matrix, to help inform this next step of the review, recognizing that the ranges of the in-compliance cells may need to be adjusted along with the ranges of the low-compliance cells in order to preserve proportionality.

B. Instructions for Analogous Offenses.

Dr. Soulé referred the Commissioners to the memorandum with the subject "Proposed instructions for analogous offenses." He reviewed its background and contents. At its November 24, 2014 conference, the Guidelines Subcommittee reviewed how offenses that are not listed in the Guidelines Offense table are scored when calculating the Prior Adult Criminal Record for the guidelines. The MSGM and COMAR instruct persons completing guidelines worksheets to use the seriousness category of the closest analogous offense for crimes that have not been assigned a seriousness category, but do not provide guidance for determining the closest analogous offense. The Guidelines Subcommittee members discussed how best to address this issue and recommended adding new language to Section 7.1.C of the MSGM and to the General Rules section of Appendix A, as well as their corresponding locations in COMAR. That new language would read:

If there is a question as to an analogous guidelines offense for an out of state conviction, that question should be brought to the attention of the judge at sentencing.

The Commissioners discussed whether the proposed language provided sufficient guidance. Mr. Davis suggested that the Commission should give more directive guidance. Judge Nance, joined by other Commissioners, indicated that while the attorneys are free to make arguments regarding, for example, comparable elements of an offense or the rule of lenity, the guidelines should not tell judges how to decide whether an offense is analogous.

Following the discussion, the Commission adopted the language as presented in the memorandum, with one vote by Mr. Davis in opposition.

6. Date, time, and location of the next meeting

The next Commission meeting will take place on Tuesday, May 19, 2015, at the Judiciary Education and Conference Center.



7. Old business

Dr. Soulé updated the Commission on the risk assessment feasibility study. He referred to a memorandum with the subject “Update on Risk Assessment Feasibility Study” and to comments Dr. James Lynch provided following the presentation by the University of Maryland research team at the MSCCSP’s September 30, 2014 meeting. Dr. Soulé outlined the next steps in the study for both the research team and the Commission, as discussed in the documents.

Judge Nance asked whether the Judiciary Risk Assessment Advisory Group still exists given the recent realignment of Judiciary committees. Judge Leasure indicated she would contact Chief Judge Barbera to confirm.

Mr. Finci asked about the status of the Governor's Commission to reform Maryland's pretrial system. Delegate Anderson stated that discussions in the General Assembly are ongoing. Dr. Soulé added that Pretrial Commission had received an extension on the December 1, 2014 deadline for their final report. Dr. Soulé further noted that he had attended the Pretrial Commissions last two meetings and based on what he observed, it seemed likely the Pretrial Commission would recommend proceeding with the development of a pretrial risk assessment.

Mr. Davis asked about the status the Juvenile Delinquency and Adult Recidivism Study. Dr. Soulé indicated that the researchers from the University of Maryland’s Department of Criminology and Criminal Justice had submitted a grant application and that he expected to know by March whether and when the study can begin.

8. New business and announcements

Judge Leasure noted, with respect to the Public Comments Hearing to follow the Commission meeting, that the MSCCSP had received many form letters concerning parole policies, matters over which the MSCCSP did not have jurisdiction. She indicated that at the Public Comments Hearing, she would acknowledge that the MSCCSP had received the letters, provide background about the MSCCSP to help people better understand its role, and that the Commission would forward the letters to the Parole Commission. Most of the letters did not indicate an intention to speak at the Public Comments Hearing.

Mr. Dowdy announced that with Secretary Hershberger’s retirement, Carroll Parrish will be Acting Secretary until the Governor appoints a new Secretary for the Department of Public safety and Correctional Services.

9. Adjournment

The meeting adjourned at 5:37 p.m.