



Minutes

Maryland State Commission on Criminal Sentencing Policy
2019 Public Comments Hearing
House of Delegates Office Building
Annapolis, MD 21041
December 10, 2019, 5:00 p.m.

Commission Members in Attendance:

Honorable Brett R. Wilson, Chair
Honorable Shannon E. Avery, Vice-Chair
Delegate Luke H. Clippinger
Honorable Brian L. DeLeonardo
Richard A. Finci, Esquire
Secretary Robert L. Green
Melinda C. Grenier
Brian D. Johnson, Ph.D.
Senator Delores G. Kelley
Molly Knipe
Honorable Patrice E. Lewis
Kathleen Murphy, *representing Attorney General Brian E. Frosh*
Honorable James P. Salmon
Lisa M. Spicknall-Horner
Delegate Charles E. Sydnor III

Staff Members in Attendance:

Sarah Bowles
Sean Houlihan
Stacy Najaka, Ph.D.
Katharine Pembroke
David Soulé, Ph.D.

Speakers:

One Maryland Resident
Jennifer Zito, Maryland Alliance for Justice Reform
Two Maryland Residents

Note: The views expressed in the Public Hearing testimony are those of the speaker(s) and do not reflect the official policy, position, or opinions of the Maryland State Commission on Criminal Sentencing Policy (MSCCSP). The MSCCSP does not endorse the content of the testimony, nor does it guarantee the accuracy, reliability, or completeness of the information.

The Public Comments Hearing began at 5:01 pm when Judge Wilson declared a quorum and called the meeting to order.



Jennifer Zito, Maryland Alliance for Justice Reform

Testifying on behalf of the Maryland Alliance for Justice Reform (MAJR), Ms. Zito addressed two areas that the organization urges the Commission to consider revisiting. These areas are improved education of judges about corrections options and the implementation of risk-needs assessments.

Speaking first about corrections options, Ms. Zito cited pages 19-22 of the Commission's 2018 Study on Alternatives to Incarceration, which concluded with actions to encourage Maryland judges' use of alternatives to incarceration, when appropriate, given research that incarceration per se does not promote rehabilitation or reduce recidivism. Ms. Zito mentioned that the MSCCSP planned to collect new data on corrections options. MAJR hopes that corrections options data collected in Maryland and other states can be reviewed in order to encourage corrections options that promote rehabilitation and reduce recidivism. Ms. Zito noted that MAJR believes it is currently too easy for judges to remain uninformed as to the evidence-based principles of behavioral science and addictions treatment, among other things in relation to sentencing.

Ms. Zito then spoke about the second area of MAJR's concern, risk-needs assessment. Ms. Zito noted that, between 2014 and 2016, the Commission conducted a study of risk-needs assessment to consider whether these might provide useful tools to Maryland sentencing judges. Ms. Zito further noted that two 2016 documents prepared by the University of Maryland Criminology Department are attached to the email version of her testimony.

Ms. Zito stated that after much discussion in 2016, MSCCSP members decided that the science of risk-needs assessment's use at sentencing was not well enough established to warrant further study. At the time, the MSCCSP voted to take no further action. Ms. Zito further stated that since risk-needs assessments were first studied by the Commission, there have been considerable advances in the methodology and tools used in risk-needs assessments. Since 2016, other sister states have pursued the use of risk-needs assessments at sentencing. Ms. Zito gave Pennsylvania and Virginia as two examples of states that have incorporated assessments into their guidelines. Pennsylvania is implementing their risk assessment effective July 2020, and Virginia incorporated risk-needs assessments into their guidelines a few years ago. Ms. Zito noted that Virginia reports a recidivism rate approximately 15 percentage points below Maryland's most recently reported rate. Virginia's guidelines have reportedly helped divert as many as 3,000 low risk drug and property offenders annually to their corrections options programs, with judges asking for more sentencing alternative resources.

Ms. Zito stated that in light of these sister states' progress, MAJR urges the MSCCSP to revisit its 2016 decision and, perhaps, to establish a study group to analyze other states' progress since that time. Ms. Zito thanked the Commission for considering her comments.

Judge Wilson thanked Ms. Zito for her comments and noted that Dr. Soulé would give a prepared response to Ms. Zito's submitted testimony.



Dr. Soulé thanked Ms. Zito for her comments and stated that the Commission appreciates her testimony. Dr. Soulé stated that the Commission thought it would be useful to prepare a response to Ms. Zito's testimony because there were multiple steps that the Commission did take with respect to alternatives to incarceration, corrections options, and risk assessment. Dr. Soulé noted that several of the Commissioners present at the meeting were not with the Commission when these issues were previously addressed, and so it would be beneficial to describe some of the steps that the Commission took in regard to these topics in the past.

Dr. Soulé listed the efforts that the MSCCSP has made, the first being the adoption of a policy statement in April 2018 that encourages the use of alternative to incarceration, where appropriate. Dr. Soulé stated that the Commission also made corrections options a required field in the Maryland Automated Guidelines System (MAGS) in February 2018. Dr. Soulé added that in February 2018, the MSCCSP also revised MAGS to automatically inform users when a sentence is considered consistent with the guidelines due to the selection of a specified corrections option.

In addition to these three steps, Dr. Soulé stated that the Commission also expanded the list of guidelines-compliant corrections options on two separate occasions in October 2017 and July 2019. Dr. Soulé further noted that the MSCCSP continues to educate judges and legal practitioners, at regularly held training sessions, about guidelines-compliant sentences with respect to corrections options. Dr. Soulé noted that efforts to improve data collection on corrections options began on July 1, 2019, and statistics describing the types of corrections options and how often they are being implemented will be available in the future.

Dr. Soulé then presented a timeline of MSCCSP activities in regard to risk assessment in order to inform those in attendance of the various steps that the Commission has taken to address this topic. The MSCCSP's efforts in assessing the use of risk assessments dates back to 2010 when the Judiciary Ad-Hoc Committee on Sentencing Alternatives, Reentry, and Best Practices invited the Commission to study the topic. Dr. Soulé noted the MSCCSP worked with the University of Maryland to produce two research reports on the feasibility of risk assessment, which are available for viewing on the MSCCSP's website. Dr. Soulé further noted that, in 2016, the Commission voted to further study and reevaluate risk assessment at a later date, rather than make a decision on how risk assessment might be used in sentencing at that time.

Dr. Soulé noted that risk-needs assessments were implemented by Maryland's Department of Public Safety and Correctional Services as part of the Justice Reinvestment Act. The Act requires that a validation study be conducted every three years, with the next study due on October 1, 2020. Dr. Soulé also mentioned that the Pennsylvania Commission on Sentencing will implement a new risk assessment sentencing tool beginning July 1, 2020. Dr. Soulé stated that, moving forward, the Pennsylvania Commission on Sentencing and the Department of Public Safety and Correctional Services will provide useful sources of information that could be used by the MSCCSP to assess the viability of risk assessment tools within the Maryland sentencing guidelines.

Ms. Zito thanked Dr. Soulé for his thorough reply and requested that the slides from Dr. Soulé's presentation be made available. Dr. Soulé stated that this request could be fulfilled. Judge Wilson



again thanked Ms. Zito for her testimony, and asked if any Commissioners had questions or comments in regard to her testimony. Senator Kelley commented that she often works with MAJR and that she appreciated Ms. Zito's efforts to bring these topics to the attention of the Commission. Senator Kelley also thanked Dr. Soulé for the informative presentation on the Commission's past efforts to address these issues.

One Maryland Resident

A Maryland resident stated that she wanted to address the felony murder rule.¹ The resident stated that many individuals serving life sentences were sentenced under the felony murder rule and have already served more than 25 years. The resident stated that before she started her testimony, she wanted to commend Governor Hogan and the state of Maryland for their role in advancing criminal justice reform.

The Maryland resident stated that as a result of the death penalty being abolished in Maryland, life without the possibility of parole is the harshest sentence a person can receive, and murder in the first degree is the most serious form of homicide. She noted that the United States is the only country in the world where the felony murder rule still exists, though some states, such as Hawaii, Ohio, and Kentucky, have abolished it. The resident stated that the felony murder rule does not deter crime and that a large portion of the incarcerated population comes from disadvantaged backgrounds. She further noted that those incarcerated are mostly men under 40, disproportionately minorities, poor, uneducated, and suffering from addiction, mental health, physical, and developmental issues. They also lack job training, experience, and strong mentors.

The Maryland resident went on to outline her main concerns with the felony murder rule. The Maryland resident stated that her first concern was that the sentencing guidelines appear to use a one-size-fits-all model for defendants convicted under the felony murder rule and allow for codefendants to serve the harshest sentences even when they did not pull the trigger. She further stated that she believes it is unfair that the State must only prove a felony was committed during a murder to convict an entire group. The resident continued to state that she is not advocating that individuals convicted under the felony murder rule do not deserve any form of punishment, but that those who actually commit the murder should be the only individuals subject to the harshest sentence.

The Maryland resident stated that her second concern was in regard to the granting of parole to individuals sentenced to life in prison. The resident stated that the Parole Commission often recommends for parole, after twenty-five or thirty years, individuals convicted under the felony murder rule who did not commit the murder. The Maryland resident noted that she is very confident that the people selected for the Parole Commission are placed in their positions

¹ For reference purposes, the felony murder rule is defined in Criminal Law Article, § 2-201(a)(4) as a murder that occurs during the perpetration of or attempted perpetration of any of the following felonies: Arson (1st degree only); Burning a barn, stable, tobacco house, warehouse, or other building that is not parcel to a dwelling and contains cattle, goods, wares, merchandise, horses, grain, hay, or tobacco; Burglary (all but 4th degree); Carjacking; Escape from custody (1st degree only); Kidnapping; Mayhem; Rape or 1st or 2nd degree sexual offense; Robbery; Sodomy; Manufacture, possession, etc. of destructive devices. In cases where the felony murder rule applies, the defendant(s) can be charged with first degree murder.



because they are both fair and of sound mind. The resident expressed concern with the requirement that the governor sign off on parole for inmates sentenced to life. Citing the American Civil Liberties Union, the resident stated that Maryland is one of only three states with this requirement. The Maryland resident stated that granting the ability to grant parole to individuals serving life sentences solely to the Parole Commission would allow the Governor's office to focus on more pressing matters.

The Maryland resident stated that she believes there is a solution to the problem. The resident expressed that she hopes changes can be implemented to allow the parole board to grant parole to individuals serving life sentences or that changes to the sentencing guidelines could be made for codefendants that did not commit the murder. The Maryland resident stated that these changes need to be retroactive, to allow resentencing for inmates who meet the criteria for an affirmative defense. The Maryland resident stated that she believes the felony murder rule to be archaic, illogical, and unfair. The resident stated that the sentencing guidelines, like other laws, need to consider an affirmative defense. She continued to say that denying a defendant a defense is cruel and unusual, especially if the crime was committed in a group and he or she was not directly linked to the commission of the crime and had no reason to believe that another participant intended to engage in conduct likely to cause death or serious bodily injury.

The Maryland resident concluded by stating that she understands changing this part of the law is a difficult request. The resident noted that she empathizes with the immense amount of work that would have to be done to change the sentencing guidelines and to resentence those that have an affirmative defense. The Maryland resident continued to note that, in the long run, the state would save tax payers' money on medical expenses and housing for the aging population sentenced under the felony murder rule. The Maryland resident requested that, in the future, the Commission consider any bill introducing a solution to the denial of an affirmative defense or allowing the Parole Commission to grant parole to individuals serving life sentences.

Judge Wilson thanked the Maryland resident for her testimony and for the work she is doing in the community. Judge Wilson then asked if any Commissioners had questions or comments for the guest speaker. Mr. Finci noted that there exists an ad-hoc committee formed to make proposals to the legislature in regard to the felony murder rule in Maryland. Mr. Finci stated that he could connect the speaker with the leader of the ad-hoc group if she were to leave her email with him. Mr. Finci suggested that the Maryland resident might be able to provide her input to the ad-hoc committee. The Maryland resident thanked Mr. Finci for his help.

Judge Wilson asked if there were any more questions or comments. Senator Kelley stated that she lives in Baltimore County and that the speaker's testimony resonates with her due to her knowledge of the case involving the murder of Officer Amy Caprio. Senator Kelley stated that although it was a terrible outcome, it was unfortunate that the three youths who were burglarizing a home, but were not aware that a murder was occurring, were also charged with murder. Senator Kelley mentioned that the outcome might not have even been inside the mind of the juvenile who killed Officer Caprio, citing *Miller v. Alabama*, in which the Supreme Court recognized that the synapses of juveniles are not fully formed in the brain, which leads them to be impulsive. Senator Kelley stated that while there ought to be consequences, they ought to be reasonable and a juvenile's immaturity needs to be taken into consideration. The Maryland



resident responded by thanking Senator Kelley for Senate Bill 121 that would allow parole after 30 years.

Judge Wilson declared the hearing concluded at 5:34pm.

Two Maryland Residents

The final two speakers arrived after the public comments hearing concluded. To allow the guests to speak, Judge Wilson reopened the public comments hearing, following the Commission's business meeting, at 6:40pm.

The first Maryland resident stated that he wanted to review the State's pardon policy, specifically the collateral consequences of nonviolent drug conviction pleas. The resident expressed concern with the "double-digit year redemption period" for governor's pardon applications, stating that it obstructs the restoration of rights for many trouble-free offenders. He noted that the Maryland governor's pardon requires that individuals convicted of certain non-violent offenses, including controlled dangerous substance violations, cannot apply for a pardon for 20 years after they are released from incarceration or from parole, whichever first occurs. During this time, the individual must also remain crime free. The Maryland resident further noted that the Parole Commission has some discretion after 15 years has lapsed. Essentially, non-violent offenders are required to wait 20 years before applying for a governor's pardon. The Maryland resident emphasized that these individuals could have been convicted of possession of a controlled substance or theft.

The Maryland resident indicated that a petition has been generated to raise awareness about this matter. The Maryland resident indicated that many individuals view this policy as a form of disenfranchisement that can have long lasting effects on individuals and families, including lack of employment opportunities, broken family structures, and increased recidivism rates. Further, during this 20-year span of time, individuals are more likely to be investigated and flagged by officials.

The Maryland resident asked the Commissioners to express whether they were in agreement that this 20-year waiting period is too long. In response, Mr. Finci stated that while he was sympathetic to the speaker's concerns regarding the pardon waiting period, he believed it to be more a complicated question.

Senator Kelley responded by stating that while the Commission did not have the authority to change the law surrounding pardons in Maryland, she suggested that they talk to members of the House Judiciary Committee and Senate Judicial Proceedings Committee. Senator Kelley further stated that it was the individuals on these committees that had the authority to make changes to the law and that the Maryland residents should start by contacting them if they hoped to change the length of time that non-violent offenders are required to wait in order to apply for a governor's pardon.

The Maryland resident thanked Senator Kelley for her advice. The resident again asked the members of the Commission if they supported the petition and if he could distribute the petition.



Judge Wilson responded that it would be best to, first, conclude the meeting and then the residents could speak to the members of the Commission individually.

Judge Wilson declared the hearing concluded at 6:59 pm.