



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
May 14, 2013

Commission Members in Attendance:

Honorable Diane O. Leasure, Chair
Delegate Curtis S. Anderson
James V. Anthenelli, Esquire
Colonel Marcus L. Brown
Honorable Joseph I. Cassilly
LaMonte E. Cooke
William Davis, Esquire, *representing Public Defender Paul B. DeWolfe*
Paul F. Enzinna, Esquire
Richard A. Finci, Esquire
Debbie K. Gonzalez, *representing Secretary Gary D. Maynard*
Senator Delores G. Kelley
Megan Limarzi, Esquire, *representing Attorney General Douglas F. Gansler*
Honorable John P. Morrissey
Honorable Alfred Nance
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

Marlene Akas
Stacy Skroban Najaka, Ph.D.
David Soulé, Ph.D.
Christina Stewart

Visitors:

Linda Forsyth, Legislative and Community Liaison for Senator Kelley
Claire Rossmark, Department of Legislative Services
Webster Ye, Assistant to Delegate Vallario

1. Call to order

Judge Leasure called the meeting to order. Judge Leasure introduced Debbie Gonzalez, Special Assistant to Secretary Maynard. Judge Leasure noted that Ms. Gonzalez has been appointed as the new proxy for Secretary Maynard and she asked the Commission to join her in welcoming Ms. Gonzalez to the Commission.

2. Roll call and declaration of quorum

The meeting began at 5:34 p.m. when quorum was reached.

3. Approval of minutes, December 11, 2012 meeting

The minutes were approved as submitted.



4. Approval of minutes, December 11, 2012 Public Comments Hearing

The minutes were approved as submitted.

In light of the upcoming conclusion of Dr. Wellford's term on the Commission on June 30th, Judge Leasure thanked Dr. Wellford for his years of service. Dr. Soulé then gave a brief history of Dr. Wellford's time on the Commission, thanking him for all of his contributions. Delegate Anderson presented Dr. Wellford with a citation from the Maryland House of Delegates on behalf of Delegate Vallario, who was unable to attend the Commission meeting. Senator Kelley spoke about the various projects that she and Dr. Wellford had worked on together throughout his tenure, and subsequently presented him with a Senate resolution, a citation from the Governor, and a Maryland flag that had been flown in his honor in Annapolis. Expressing his gratitude, Dr. Wellford emphasized how much he has learned from the Commission on sentencing in Maryland.

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

Dr. Soulé began the Executive Director's report by mentioning the April 15th release of the new Maryland Sentencing Guidelines Manual, which included an updated Guidelines Offense Table as well as reflected the latest version of the sentencing guidelines worksheet that was introduced on that date.

Next, Dr. Soulé provided an update on the Commission's proposed conference to celebrate the 30th anniversary of the statewide implementation of sentencing guidelines in Maryland. Dr. Soulé recapped that at the December 11, 2012 Commission meeting, MSCCSP staff had requested permission to explore possible funding opportunities for the conference. He explained that unfortunately the targeted funding source for the conference is no longer available, but that he hopes to potentially pursue funding to have a conference in 2014 in recognition of the 35th anniversary of the year that the sentencing guidelines were piloted in Maryland under a grant from the National Institute of Justice.

The third item that Dr. Soulé reported on was the recent approval by the Governor's finance office for a budget increase that will allow the MSCCSP to hire a full-time program analyst for the sentencing and correctional simulation model. Dr. Soulé emphasized the model's potential utility, but noted that the MSCCSP currently lacks the necessary resources to maintain and operate the model. The authorization to hire a new program analyst will become effective July 1st, and the MSCCSP is beginning the initial process of searching for a candidate to fill the position.

Senator Kelley recommended notifying Legislative Services that the MSCCSP has received this authorization, so that they are aware that the MSCCSP will be able to assist in the preparation of impact statements.

Senator Kelley suggested the MSCCSP had consider the Pew Charitable Trust as a possible funding source for the anniversary conference. Colonel Brown inquired about the approximate cost of the conference and Dr. Soulé responded that the cost estimates were \$10,000 to \$15,000.

**6. Update on the Maryland Automated Guidelines System Pilot Project – Dr. David Soulé**

Dr. Soulé discussed the progress that had been made on the Maryland Automated Guidelines System (MAGS) since the December 11, 2012 Commission meeting. Dr. Soulé explained that in February, the Montgomery County Circuit Court completed an evaluation of MAGS, the results of which were presented to the Conference of Circuit Judges (CCJ) on March 18, 2013. The evaluation noted that MAGS had achieved many of its stated goals, including more accurate and efficient calculation of the sentencing guidelines. The evaluation also revealed a few implementation issues, namely that sentencing guidelines worksheets were not being created for all eligible cases, that duplicate worksheets were being created for some cases, and that worksheets were being initiated in the system but not completed and submitted to the MSCCSP. Dr. Soulé noted that these issues are not unique to MAGS; rather, MAGS allowed for better detection of these issues. At the March 18th meeting, the CCJ agreed to extend the MAGS pilot project in Montgomery County for an additional six months so that the MSCCSP may work with the Montgomery County Circuit Court to develop an improved MAGS protocol and implement a data sharing plan.

A second major development that Dr. Soulé mentioned was the release on April 15, 2013 of the newest version of MAGS. Dr. Soulé noted that in conjunction with the release, a revised version of the MAGS User Manual together with “What’s New in MAGS” and “Frequently Asked Questions” documents have been made available. Furthermore, updated training videos for MAGS will be posted on the MSCCSP website by the end of May. Dr. Soulé reiterated the usefulness of the training videos, as they allow for instruction to be provided on the user’s own time.

Mr. Finci commented that an issue with MAGS for defense attorneys is that the sentencing guidelines worksheet is not being forwarded by the Parole & Probation agent when a presentence investigation report (PSI) is prepared. Dr. Soulé said that from MAGS, it would be possible for a Parole & Probation agent to save an electronic copy of the worksheet and e-mail the worksheet to defense counsel together with the PSI report. Judge Leasure remarked that a follow-up with Parole & Probation on this matter is warranted.

Delegate Anderson suggested that it might be beneficial to notify State’s Attorneys and Parole & Probation agents in Maryland generally about the availability of the Guidelines Calculator Tool, given that the hope is to expand the use of MAGS throughout the state. Dr. Soulé and Judge Leasure discussed the possibility of communicating this in a Guidelines E-News.

7. Report from the Guidelines Subcommittee – Honorable John P. Morrissey

Judge Morrissey presented the report of the Guidelines Subcommittee.

A. Retroactive completion of sentencing guidelines worksheets

Judge Morrissey indicated that the first item on the Guidelines Subcommittee’s agenda was the issue of what position the Commission should take with regard to instances in which a sentencing guidelines worksheet was not completed for a sentencing that has taken place. Judge Morrissey referenced proposed new language to the Maryland Sentencing Guidelines Manual (MSGM) that read, “If it is determined that a guidelines worksheet was not completed for a guidelines-eligible case at the time of the sentencing hearing, the judge or judge’s designee is encouraged to complete and submit the guidelines worksheet



retroactively to ensure that data analyzed by the MSCCSP is a comprehensive sample of guidelines-eligible cases.”

Senator Kelley mentioned that the consensus of the Guidelines Subcommittee was that the Commission needs the sentencing information in order to have an accurate understanding of sentencing practice in Maryland, yet at the same time the Commission does not want to imply that it has the authority to require judges to complete worksheets retroactively. Judge Nance cautioned that a consideration in approaching this issue is that encouragement of retroactive completion of worksheets may be interpreted as a requirement.

Dr. Wellford suggested that the proposed language be amended to change “sample” to “enumeration”, since the aim of the Commission is to collect information on all guidelines-eligible cases. The motion was seconded.

Senator Kelley mentioned the possibility of adding a qualifying clause to the language that would emphasize the statutory responsibility of the Commission to collect sentencing information. Judge Morrissey responded that this was implied by the first sentence of Section 3.1 in the MSGM. The proposed language with the amendment suggested by Dr. Wellford was unanimously approved.

B. Worksheets for cases where the original sentence was changed

The next issue that Judge Morrissey discussed was whether a new sentencing guidelines worksheet should be completed when there is a modification to an existing sentence that is not the result of a reconsideration or review. Judge Morrissey reported that the Guidelines Subcommittee discussed the difficulty in conceiving of all possible permutations in which this could occur, and thus it would not be feasible to come up with a definition that could precisely specify when a new worksheet is required. Judge Morrissey noted that he felt that it was inherently the responsibility of the judge to make this determination. Therefore, the Guidelines Subcommittee had concluded that the decision to create a new worksheet in such instances should be left to the discretion of the individual judge.

Senator Kelley moved to accept the recommendation of the Guidelines Subcommittee and the motion was seconded.

Delegate Anderson asked about the importance of these changes in sentences to the Commission, and whether this meant that the Commission should attempt to formulate some wording on the matter. Judge Morrissey replied that the MSGM already requires a sentencing guidelines worksheet for a new trial, a reconsideration for a Crime of Violence, or a review, and thus it is up to the judge to decide whether the particular case is considered a reconsideration, for example. Mr. Cassilly explained that these sentence modifications are based on developments that occurred after the original sentencing, and therefore they do not reflect what the judge knew at the time of sentencing. He further noted that as the guidelines are used to inform judges about the sentencing practices of other judges, including these modifications does not provide an accurate assessment of how judges are sentencing. Senator Kelley agreed that the Commission should consider the original sentence to be what the case merited.

The motion passed unanimously.



C. Defining a sentencing event

Judge Morrissey noted that the third item reviewed by the Guidelines Subcommittee was prompted by an earlier discussion about instances in which multiple criminal events were sentenced by the same judge on the same day. In this regard, the question arose as to whether the current language in the MSGM provides adequate guidance on how these cases should be handled. Judge Morrissey reported that the Guidelines Subcommittee proposed to include the definition of a sentencing event to be “A sentencing disposition or hearing for an individual defendant conducted in front of the same judge on the same day.” Judge Morrissey clarified that when a defendant is sentenced by two different judges on the same day, that situation should be treated as two separate sentencing events. He explained that this issue generated confusion particularly in entering cases in MAGS, as users were unsure as to whether to make separate entries in MAGS for each sentencing event. Judge Morrissey then discussed a related concern brought up by Mr. Finci, who had noted in the Subcommittee meeting that some practitioners have questioned whether, for multiple event cases, the first sentencing event is included in the calculation of an offender’s prior adult criminal record for the second or subsequent sentencing event. Judge Morrissey explained that when multiple criminal events are being sentenced by the same judge at the same time, the Offender Score should be the same for each criminal event.

Delegate Anderson inquired as to whether creating a new definition for a sentencing event would alter the way in which an offender’s prior adult criminal record is calculated as part of the Offender Score. Dr. Soulé emphasized that the proposed language to the MSGM does not alter the calculation of the Offender Score or any of the guidelines rules. Judge Nance asked if MAGS is able to accommodate entries of two different sentencing events that occurred on the same day. Dr. Soulé replied that it can. Judge Nance asked if the MSCCSP had changed, in compliance with the request of the judges in Montgomery County, the manner of how the sentence is recorded in MAGS. Judge Nance indicated that he believes the complaint was that MAGS requires judges to find information, such as the number of days of credit for time served and that is information they do not currently have to provide at sentencing. Judge Morrissey and Judge Leasure indicated that they do confirm the length of credit for time served at sentencing. Judge Nance indicated that some judges may calculate the length of time served, but not all judges do so. Dr. Soulé noted that the paper worksheet also instructs that the length of time served should be provided, as credit time is included in the calculation of whether a sentence is a departure from the guidelines.

Dr. Wellford made a motion to accept the Guidelines Subcommittee’s proposed definition of a sentencing event. Senator Kelley seconded the motion, and it was approved unanimously.

D. Proposed classification of dispersing pollutants into state waters-falsification

Judge Morrissey explained that the final item reviewed by the Guidelines Subcommittee was the proposed classification of the offense *pollutants-dispersing into state waters, falsification*, for which the maximum penalty was amended from 6 months of imprisonment and/or a fine of \$10,000 to 2 years of imprisonment and/or a fine of \$50,000. Judge Morrissey referenced the offenses *pollutants-dispersing into state waters, 1st offense* and *pollutants-dispersing into state waters, subsequent*, which have a seriousness category of VII. Judge Morrissey reported that the Guidelines Subcommittee unanimously agreed that



pollutants-dispersing into state waters, falsification should remain a seriousness category VII offense, as it was in line with the other two comparable offenses.

Senator Kelley moved that the Guidelines Subcommittee's recommendation be adopted. The motion was seconded and approved.

8. Date, time, and location for the next Commission meeting

The next meeting was set for Tuesday, June 25, 2013 at 4:30 p.m.

9. Old business

There was no old business to address.

10. New business and announcements

There was no new business to address.

11. Adjournment

The meeting adjourned at 7:16 p.m.