



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
May 17, 2011

Commission Members in Attendance:

Delegate Curt S. Anderson
James V. Anthenelli, Esquire
Chief Marcus L. Brown
Joseph I. Cassilly, Esquire
Paul B. DeWolfe, Esquire
Richard A. Finci, Esquire
Major Bernard B. Foster, Sr.
Senator Delores G. Kelley
Megan Limarzi, Esquire, *representing Attorney General Douglas F. Gansler*
Laura L. Martin, Esquire
Secretary Gary D. Maynard
Honorable John P. Morrissey
Honorable Alfred Nance
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

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

Visitors:

Linda Forsyth, Legislative and Community Liaison for Senator Kelley
Christina Lentz, Executive Director of the Office of Planning, Policy, Regulations and Statistics, DPSCS
Claire Rossmark, Department of Legislative Services

1. Call to order

Dr. Wellford, acting chairman in Judge Chasanow's absence, called the meeting to order.

2. Declaration of quorum

The meeting began at 5:30 p.m. when quorum was reached. Secretary Maynard introduced his new proxy, Ms. Christina Lentz, Executive Director of the Office of Planning, Policy, Regulations and Statistics, DPSCS. Dr. Wellford introduced Attorney General Gansler's new proxy, Ms. Megan Limarzi, Assistant Attorney General.

3. Approval of minutes, December, 14, 2010 meeting

The minutes were approved as submitted.



4. Approval of minutes, December, 14, 2010 Public Comments Hearing

The minutes were approved as submitted. Senator Kelley asked if it was possible for Commission members to receive written testimony prior to the Public Comments Hearing. Staff indicated that any information received in advance will be disseminated to the Commission. Dr. Wellford suggested asking those who wish to speak at the Public Comments Hearing to submit written testimony in advance.

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

Dr. Soulé reviewed five items. First, Dr. Soulé provided a follow-up on the discussion on the impact of *Cuffley v. State* and *Baines v. State* on binding plea agreements within the guidelines. At our December 14, 2010 meeting, the Commission voted to distribute a *Guidelines E-News* in order to serve as an educational tool to raise awareness regarding the impact of the two recent Court of Appeals decisions. Furthermore, the Commission voted to insert a footnote in the *Maryland Sentencing Guidelines Manual* (MSGM) regarding the *Cuffley* and *Baines* opinions. The staff made the suggested editions to the MSGM and sent out a *Guidelines E-News* on December 20, 2010 that summarized the impact of the opinions and included an attachment of the updated page in the Manual. Dr. Soulé thanked Judges Chasanow and Morrissey for their input on the language for the footnote in the MSGM.

Dr. Soulé next provided an update on the Maryland Automated Guidelines System (MAGS). Judge Leasure, the administrative judge from Howard County, informed the staff that Howard County will reluctantly be unable to participate as the pilot jurisdiction for MAGS due to courtroom renovations beginning this summer which will limit their accessibility to computers necessary for online entry of guidelines worksheets. However, Faye Matthews, the Deputy State Court Administrator, spoke with Judge Debelius and the court administrators in Montgomery County, and they have agreed to serve as pilot jurisdiction for MAGS. The plan is to begin implementation of MAGS on a pilot basis in Montgomery County in July.

Dr. Soulé also noted that he has continued to meet with county administrative judges, with visits most recently to Carroll, Harford, and Prince George's 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.

Dr. Soulé next updated the Commission on a Standing Committee on Rules of Practice and Procedure meeting he attended on May 16, 2011. Judge Alan Wilner, chairperson of the Standing Committee on Rules of Practice and Procedure called the meeting to review the definition of the term "indigency" as defined in the courts. This was not a formal Rules Committee meeting, but rather Judge Wilner invited select members of the Judiciary and Executive Administration to review the matter after he received a request from the State Board of Victim Services for the Rules Committee to consider adopting a formal definition of indigency. Determining whether or not a defendant is indigent has a direct impact on collection of victim related courts costs. Representatives from the State Board of Victim Services presented data indicating that collection of court costs varies tremendously among jurisdictions of similar size and also varies from year to year. A small portion of the funds are directed to victim services, and the State Board expressed concerns that worthy victim services in many jurisdictions are being underfunded because of increased waivers of court costs. It was noted that the court often agrees to waive court-related costs if the offender is represented by a public



defender or if the offender is sentenced to a significant period of incarceration (greater than 1 year). This is routine practice by the judiciary and the court rarely, if ever, requires the defendant to prove indigence to waive courts costs. The general consensus of the meeting participants was that the small amount associated with courts (\$145 in the circuit court, \$45 of which is directed to victim-related costs) should not be automatically waived because of the two reasons noted previously. It was decided that a proposal should be brought to the Court of Appeals to suggest a change to Rule 4-353 that court costs are required upon sentencing and shall not be waived unless it is found, based on evidence, that a defendant is unlikely to be able to pay in the next 12 years. Also, amended language to statute was suggested to indicate that if the money is not collected in 90 days, it should go to Central Collection Unit (CCU). This would potentially require an amendment to the probation order as well, where the 90 day period would be listed and it would be noted that the probation agent must send the collection to CCU if payment not received within 90 days. Delegate Anderson inquired if the Standing Committee on Rules of Practice and Procedure required a response from the Commission. Dr. Soulé indicated he was reporting on this meeting for informational purposes only.

Finally, Dr. Soulé announced that he was invited to participate in a roundtable discussion on the costs and benefits of risk assessment which is being held later this week at Penn State University. The goal of the roundtable is to develop a comprehensive and collaborative approach to research which supports the Pennsylvania Commission's use of risk assessment.

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

Dr. Wellford presented the report of the Guidelines Subcommittee.

A. Review of definition of criminal event

One of the more common questions concerning the Maryland sentencing guidelines involves distinguishing a single event with multiple counts from multiple events. This question is an important one, as the difference in the guidelines calculation is often significant.

In a letter to Judge Chasanow dated December 17, 2010, Commissioner Joseph Cassilly requested that the Commission review the definition of a single criminal event. The Maryland Sentencing Guidelines Manual (p. 4) defines a single event and multiple events as follows:

Single Criminal Event: One or more crimes committed in the course of the same transaction.

Multiple Criminal Events: More than one criminal transaction committed over a period of time. Multiple criminal events being sentenced together may have occurred on the same or different dates. Offenses that occur on different dates are almost always separate criminal events.

In follow-up correspondence with MSCCSP staff, Mr. Cassilly proposed the following revised definition:

A single criminal event consists of those acts which are committed for completion of a crime. Acts committed in preparation or necessarily as part of the commission of the crime are not separate from the principal crime; unless specified by statute. Subsequent crimes that occur after the completion of the main crime (for example



resisting arrest, assault on a police officer - in certain circumstances - witness intimidation, fleeing and eluding) shall be scored as separate criminal events.

The case law is:

If each offense contains an element which the other does not, the offenses are not the same for double jeopardy purposes even though arising from the same conduct of episode. *Anderson v. State*, 385 Md. 123, 131 (Md. 2005)

The Guidelines Subcommittee reviewed Commissioner Cassilly's revised definition at a meeting on May 4, 2011 and agreed that the current definitions of single criminal event and multiple criminal events are somewhat ambiguous and need clarification. The subcommittee asked to hear more from Commissioner Cassilly on the subject, particularly how he's observed the issue play out in practice and the reasoning behind his revised definition.

Mr. Cassilly briefly recounted the case that led him to question the definition of a single criminal event. The case involved guilty findings of *Homicide by Motor Vehicle while Under the Influence, Leaving the Scene of a Fatal Accident with Knowledge of Fatality*, and several less serious driving offenses. The case was treated as one event by the Parole and Probation Agent who completed the guidelines worksheet. Mr. Cassilly noted that this meant that the guidelines for a person who had committed only *Homicide by Motor Vehicle while Under the Influence* would be the same as the guidelines for this individual who had committed *Homicide by Motor Vehicle while Under the Influence, Leaving the Scene of a Fatal Accident with Knowledge of Fatality*, and a number of other driving offenses. Mr. Cassilly felt the guidelines were flawed if they recommended the same sentence for two cases with very dissimilar crimes. The judge in the case agreed with the P&P Agent that the case should be treated as a single criminal event. However, he chose to depart from the sentence recommendation and sentenced the defendant above the guidelines.

Mr. Cassilly noted that he was open to other ideas and suggestions for cleaning up the definitions of single event and multiple events. Mr. Finck recommended clarifying "transaction" – a term that appears in both definitions. He also noted that it sounds like the guidelines worked correctly in Mr. Cassilly's case because there were departure provisions that the judge was able to rely on to sentence significantly above the guidelines.

Ms. Martin stated that the intent of the guidelines is for similarly situated defendants to be treated similarly. In her opinion, a person who hits someone with a car and leaves them to die is not similarly situated to someone who hits someone and stays. Mr. DeWolfe cautioned that the Commission should not change policy based on a single case. Dr. Wellford pointed out that the subcommittee was not concerned with the outcome but rather with the fact that people applying the guidelines might differently determine if a case involved a single event or multiple criminal events. At issue is how to make the definitions clearer, not whether a change to the guidelines is needed.

Dr. Wellford encouraged the Commissioners to send their thoughts and ideas on the matter to either him or Dr. Soulé. The Guidelines Subcommittee will meet again to see if there's anything reasonable they can bring back to the Commission on this issue.

**B. Update on risk assessment review**

Dr. Soulé updated the Commission on the risk assessment review being done by the Guidelines Subcommittee. The Subcommittee recently reviewed risk assessment instruments utilized at sentencing by Missouri and Virginia. After completing their review of both instruments, the Subcommittee felt that the Virginia model would be a more appropriate guide for incorporation of risk assessment at sentencing in Maryland. Dr. Soulé then provided a presentation which reviewed the Virginia non-violent offender risk assessment instrument.

Mr. Cassilly inquired whether among those who were recommended for an alternative sentence, if the Virginia data indicated any significant differences in risk scores between those who actually were given an alternative and those who were not given an alternative sentence. Mr. Cassilly further inquired if the Virginia data indicated whether judges differed in their patterns of use of alternatives because of differences in available services in rural versus urban jurisdictions. Dr. Soulé responded that he was not aware of data from the Virginia reports that measured these differences, but both measures are something our Commission should consider if Maryland was to follow a similar approach.

Senator Kelley noted that if the Commission decided to further study risk assessment at sentencing, we might consider looking at the work being coordinated by the Pew Center in states such as Georgia and Texas where there have been recent strides in cutting prison populations. Furthermore, Senator Kelley suggested that as a preface to any study, the Commission conduct a focus group with interested persons/groups representing a continuum of concerns regarding the inclusion of risk assessment at sentencing.

Judge Nance suggested that our Commission should review assessments being utilized by drug courts in Maryland to help inform our decisions.

Dr. Wellford indicated that the Subcommittee recommendation to the full Commission is to encourage the staff to seek funding to explore the possibility of Maryland utilizing a risk assessment (not a needs instrument) to assist during the sentencing process to determine whether otherwise incarceration bound non-violent offenders could be diverted to community based alternatives without jeopardizing public safety. Dr. Wellford emphasized that this recommendation would not be a definitive commitment that Maryland would start including formal risk assessment in the sentencing guidelines process. However, it is the belief of the Guidelines Subcommittee that there is enough work being done in the risk assessment field by other agencies in Maryland, as well as in other states, that it would make sense for the Commission to take the next step by looking at how risk assessment might be incorporated to augment the sentencing decision. The next step would involve many of the questions that arose during the discussion at today's meeting such as:

- How should we define recidivism?
- To whom should the risk assessment instrument apply?
- Under what circumstances, should a risk assessment instrument be utilized?

Mr. DeWolfe inquired whether the Virginia model would be appropriate given that it was based on the elimination of parole. Dr. Wellford clarified that the parts of the Virginia model that appealed to the Subcommittee were the factors used in identifying incarceration bound non-violent offenders who could be diverted to alternative punishment options.



Senator Kelley made a motion to approve the Subcommittee recommendation to encourage the staff to seek funding to explore the possibility of Maryland utilizing a risk assessment to assist during the sentencing process. Judge Morrissey seconded the motion. The motion was unanimously approved.

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

The next meeting was set for Tuesday, June 28, 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

Judge Morrissey indicated that the Judicial Institute regularly holds courses for judges on topics related to sentencing. He suggested that Dr. Soulé may want to explore this further as an opportunity to present on the sentencing guidelines.

9. New Business and announcements

Secretary Maynard informed that Commission that sentencing reform is among the top five issues facing correctional administrators. Secretary Maynard indicated that he has not been out front in regards to this issue and would like to offer any resources or data from his research department that the Commission would find useful, including data necessary for the development of a risk assessment instrument.

Judge Nance indicated that he thought it would be beneficial for Secretary Maynard to have the opportunity to speak at a future Commission meeting in regards to his thoughts on how the state of Maryland can move forward in a manner that will alleviate some of the budgetary impact on correctional institutions. The Commissioners thought this was a good idea and asked Dr. Soulé to include time in a future agenda for Secretary Maynard to address this topic.

10. Adjournment

The meeting adjourned at 7:23 p.m.