



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
June 25, 2012

Commission Members in Attendance:

Honorable Diane O. Leasure, Chair
Delegate Curt S. Anderson
Joseph I. Cassilly, Esquire
LaMonte E. Cooke
Paul B. DeWolfe, Esquire
Paul F. Enzina, Esquire
Richard A. Finci, Esquire
Senator Delores G. Kelley
Christina Lentz, *representing Secretary Gary D. Maynard*
Megan Limarzi, Esquire, *representing Attorney General Douglas F. Gansler*
Laura L. Martin, Esquire
Honorable John P. Morrissey
Honorable Alfred Nance
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

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

Visitors:

Monica Bradley, Parole & Probation
Russell Butler, Maryland Crime Victims' Resource Center
Ashanty El Hajj Lau, MSCCSP intern
Rhea Harris, Assistant Secretary/Chief of Staff, Department of Public Safety & Correctional Services
Claire Rossmark, Department of Legislative Services
Griffin Varner, MSCCSP intern

1. Call to order

Judge Leasure called the meeting to order. Judge Leasure introduced Mr. LaMonte E. Cooke, Director of Correctional Services for Queen Anne's County Department of Corrections. Mr. Cooke was appointed by the Governor as the new local correctional facility representative for the MSCCSP.

2. Roll call and declaration of quorum

The meeting began at 5:32 p.m. when quorum was reached.

**3. Approval of minutes, December 13, 2011 meeting**

The minutes were approved as submitted.

4. Approval of minutes, December 13, 2011 Public Comments Hearing

The minutes were approved as submitted.

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

Dr. Soulé had three items to report. First, Dr. Soulé informed the Commissioners that the MSCCSP was able to successfully amend the required due date for the Commission's annual report when Senate Bill 59 was signed into effect by the Governor on April 10, 2012. The MSCCSP is required to submit an annual report on or before December 1st of each year. Senate Bill 59 proposed a relatively minor two month extension on this due date each year for two primary reasons. First, the Commission regularly holds one of its quarterly meetings and public comments hearing in December. As such, it is not feasible for the Commission to submit an annual report that is inclusive of all its activities and changes to the sentencing guidelines during the full calendar year. Second, the December 1st deadline did not allow the Commission sufficient time to accurately and efficiently collect, process and review the fiscal year data to be included in its report prior to submission to the General Assembly. For these reasons, the MSCCSP requested to change the required due date for the annual report to January 31st of each year to provide a more appropriate deadline to report to the General Assembly on the activities of the preceding calendar year. Dr. Soulé expressed his gratitude to Senator Kelley for sponsoring SB 59 and testifying on its behalf. Senator Kelley thanked Delegate Vallario for co-sponsoring the bill in the House.

Dr. Soulé introduced Ashanty El Hajj Lau and Griffin Varner, two undergraduate student interns who are working with the Commission staff this summer.

Finally, Dr. Soulé provided an update on the status of the Maryland Automated Guidelines System (MAGS) pilot project. The pilot project started on May 8, 2012 in the Montgomery County Circuit Court. Dr. Soulé provided a brief demonstration to illustrate how the application is accessed and the supporting tools available to MAGS users. Dr. Soulé indicated that the MAGS application has been well received through the first seven weeks of its use. Commission staff will continue to collect feedback and suggestions for changes to improve the operation of the automated guidelines system. Minor changes and maintenance updates have been implemented on an immediate basis. More in-depth changes will be tracked and reviewed with the full Commission prior to the completion of the pilot project. At that point, staff will also ask the Commission, with feedback from the Montgomery County Circuit Court and the AOC, to assess the effectiveness of MAGS and make a recommendation for additional pilot sites and/or the eventual statewide deployment of the automated system. Senator Kelley suggested that Commission staff may want to consider the addition of a Frequently Asked Questions section to the MAGS User Manual. Delegate Anderson asked whether the MAGS application could be made available for Commissioners to review prior to the next Commission meeting. Dr. Soulé responded that he thought that was a good idea and indicated he would check with the information technology division of the Department of Public Safety and Correctional Services to inquire about setting up test user access for Commissioners.



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

Dr. Wellford presented the report of the Guidelines Subcommittee.

A. Review and classification of new and/or revised offenses from 2012 Legislative Session

Dr. Wellford referenced the memorandum labeled, “Proposed Classification of New/Revised Offenses, 2012 Legislative Session” and proceeded to review those offenses with new and/or revised criminal penalties, as identified by MSCCSP staff.

- i. SB 214/HB 350 – CDS and Paraphernalia – Possession of Marijuana <10g (CR, §5-601(c)(2)(ii))
- Dr. Wellford noted that no action was required, as this offense is automatically assigned a seriousness category VII since it carries a maximum penalty of 1 year or less. Dr. Wellford noted that MSCCSP staff recommended adding this offense to the Guidelines Offense Table so that the guidelines worksheet can properly distinguish this lesser offense from the general possession of marijuana offense which carries a 1 year maximum penalty. The Subcommittee agreed with the staff recommendation and the Commission unanimously adopted the motion to add the new offense to the Guidelines Offense Table.
- ii. SB521/HB 604 – Abuse and Other Offensive Conduct – Child Abuse – Physical, 1st Degree Resulting in Death of Victim (CR, §3-601(b)(2)(ii))
- Dr. Wellford noted that *Child Abuse – Physical, 1st degree resulting in death of victim* currently has a 30 year maximum penalty and is a seriousness category II offense. The Legislature increased the maximum penalty for this offense to 40 years. Despite the increased penalty, the Subcommittee recommended no change to the current seriousness category, as the most stringent seriousness category (category I) has always been reserved for offenses with a maximum penalty of Life. The Commission adopted the Subcommittee recommendation for no change to the seriousness category.
- iii. HB 1334 – Assault and Other Bodily Woundings – Injury by motor vehicle or vessel while impaired by a controlled dangerous substance (CR, §3-211(f))
- The Legislature increased the maximum penalties for the offense from a fine of \$3,000 and/or two years imprisonment to a fine of \$5,000 and/or three years imprisonment. Dr. Wellford noted that the Subcommittee recommended no change to the current seriousness category, as the seriousness category for its most directly comparable offense, *injury by motor vehicle or vessel while under the influence of alcohol*, has the same 3 year statutory maximum and is also a category VI offense. The Commission adopted the Subcommittee recommendation for no change to the seriousness category.
- iv. HB 589 – CDS and Paraphernalia – Schedule I CDS (CR, §5-402)
- Dr. Wellford noted that the Legislature added mephedrone and specified similar chemical compounds (commonly referred to as “bath salts”) to Schedule I for purposes of designating controlled dangerous substances. Dr. Wellford indicated that the staff and Subcommittee felt no action was required for this offense or any of the 7 subsequent offenses as there were no changes to the penalty structure for these offenses.



- v. HB 111 – Unlawful Use of Goods – Fraud – abandoning or refusing to return leased motor vehicle (CR, §7-205(c))
- The Legislature added language to prohibit a person from being prosecuted for abandoning or failing to return a rental vehicle if the person returns the motor vehicle or accounts for the motor vehicle with the person who delivered the motor vehicle within a specified five-day grace period. The Commission accepted the recommendation for no required action for this offense.
- vi. HB 545 – Burglary and Related Crimes – Breaking and entering – motor vehicle (rogue and vagabond) (CR, §6-206)
- The Legislature added language prohibiting a person from being in or on the motor vehicle of another with the intent to commit theft of property that is in or on the motor vehicle. The Commission accepted the recommendation for no required action for this offense.
- vii. SB 175/HB 8 – Telecommunications and Electronics, Crimes Involving – Sending lewd, lascivious, and obscene material by electronic communication to harass (CR, §3-805(b))
- The Legislature altered the current prohibition against the use of electronic mail with the intent to harass to prohibit a person from maliciously engaging in a course of conduct through the use of electronic communication. The Commission accepted the recommendation for no required action for this offense.
- viii. SB 640/HB 209 – Weapons Crimes – In General – Possession of regulated firearm after having been convicted of a crime of violence or select drug crimes (PS, §5-133(c))
- The Legislature added language prohibiting a person from possessing a regulated firearm, rifle, or shotgun if the person was previously convicted of an offense under the laws of another state or the United States that would constitute a crime of violence or a violation of specified provisions of law if committed in Maryland. The Commission accepted the recommendation for no required action for this offense.
- ix. SB 421/HB 875 – Destructive Devices – Explosives – sale or possession without a license (PS, §11-114)
- x. SB 421/HB 875 – Destructive Devices – Explosives – sale or possession without a license with intention to use in violation of various statutes (PS, §11-116)
- Dr. Wellford noted the Legislature expanded the definition of the term “explosives” under provisions relating to licenses to engage in business as a manufacturer or dealer of explosives or to possess explosives. The Commission accepted the recommendation for no required action for these offenses.
- xi. SB 650/HB 631 – Fraud, Miscellaneous – Impersonating a law enforcement officer (PS, §3-502)
- The Legislature added members of the Washington Metropolitan Area Transit Authority (WMATA) Metro Transit Police under the definition of the term “police officer” applicable to prohibitions against impersonating a police officer and other related prohibitions. The Commission accepted the recommendation for no required action for this offense.

**B. Proposed classification of miscellaneous election laws**

Dr. Wellford referenced a memorandum labeled, “Proposed Classification of Miscellaneous Election Laws,” which identified two election law related offenses that were not previously classified by the MSCCSP. The offenses under review for classification are not new offenses. Rather, these offenses have never been classified by the MSCCSP. The offenses were identified by a Parole & Probation agent as missing from the Guidelines Offense Table.

- i. Election Offenses – Violate election laws as defined in EL, §16-201
-By unanimous vote, the Commission adopted the proposed seriousness category of VII for this offense.
- ii. Election Offenses – Failure to include name of finance entity and treasurer on campaign material (EL, §13-602)
-By unanimous vote, the Commission adopted the proposed seriousness category of VII for this offense.

C. Review of maintaining victim related questions and announcement of 50% of sentence served question on the sentencing guidelines worksheetVictim Related Questions

Dr. Wellford summarized that at the December 13, 2011 MSCCSP meeting, the MSCCSP agreed to adopt the Subcommittee’s recommendation for changes to the questions regarding the rights of victims at sentencing located on the bottom left section of the sentencing guidelines worksheet. These questions were revised so that the data would be more useful, accurate, and consistent with what was intended by the Commission. However, these changes were adopted with the caveat that the MSCCSP would revisit the broader issue of the relevancy of collecting the victims’ rights information on the sentencing guidelines worksheet. The Guidelines Subcommittee was asked to come back to the full Commission with a recommendation for the broader issue of whether the victim questions should remain on the sentencing guidelines worksheet.

Dr. Wellford noted that Russell Butler, Executive Director of the Maryland Crime Victims’ Resource Center, was both in attendance at the Commission meeting and had been invited to participate in the Subcommittee discussion on the issue of retention of the victim related questions on the guidelines worksheet. Dr. Wellford noted that Mr. Butler had informed the Subcommittee that the victim questions were added based on the recommendation of the Study Commission and adopted by the Commission in the summer of 2001 as an amendment to the Guidelines Worksheet. During the discussion of this issue, a concern raised by members of the Subcommittee was that given the limited resources, budget and small size of the Commission staff, did it make sense to utilize such limited resources to collect information not directly related to calculation of the guidelines? Dr. Wellford noted that Dr. Soulé commented that data entry of the victim related information on the worksheet has a de minimis impact on staff and that elimination of the victim related questions from the Guidelines Worksheet would not free up a substantial amount of time, especially for senior staff.

A second concern raised by the Subcommittee was the “slippery slope” concern. Dr. Wellford explained this as meaning that if the Commission gathers this information for



victims' groups, then it may be difficult to deny other groups' requests for the addition of information to the guidelines worksheet. Dr. Wellford reported that during the Subcommittee's discussion it was noted that since 2001, no other group had made such a request and that the Commission is in a position to make their own judgment should such a request ever be received.

Dr. Wellford reported that the final concern raised by the Subcommittee was that the victim related questions are not part of sentencing and perhaps not consistent with the Commission's mandate. It was generally concluded by the Subcommittee that because the Commission is responsible for increasing the public understanding of sentencing, the victim related information would assist in better explaining to the public the victim notification requirements and how it relates to fairness to victims. The Subcommittee discussed who uses the victim information and the possibility of whether another entity is currently collecting or could collect this information in the future. The discussion resulted in the conclusion that this information was not being collected by another entity and that perhaps victim related service groups in some, but not all, jurisdictions could assume responsibility for gathering this information. Dr. Wellford noted the Maryland Victims' State Board had recently used the information in their consideration of changes to victim notification as reported by Russell Butler.

Dr. Wellford reported that based on the discussion of these issues, the Subcommittee recommended that the victim related questions be retained as amended. Senator Kelley commented that she believes the victim information is very important, but that the collection of the information is beyond the Commission's mission. Judge Leasure inquired whether judge's compliance with completion of this information has increased since the MAGS pilot project began. Dr. Soulé commented that the victim information is primarily completed by state's attorneys, rather than judges. Furthermore, Dr. Soulé noted that it was too early to report on whether automation has increased the likelihood that the victim related questions are completed, but his own observation of a limited sample suggests the information is being completed more frequently by MAGS users. Additionally, his staff has not received any complaints from MAGS users about the victim related questions. Finally, Dr. Soulé noted that the issue about whether the victim related questions should be required fields in MAGS is a broader issue that he anticipated the Commission would address at a future date.

Judge Nance commented that the lack of compliance speaks to why the Commission does not need to collect victim related information. Judge Nance further stated that the victim related questions had no calculable input on guidelines calculations and that mandatory collection burdens should not be placed on a voluntary procedure.

Judge Leasure recommended that collection of the victim related information continue in its current capacity until the MSCCSP can assess how the use of the new automated system impacts compliance with completion of these questions on the guidelines worksheet. Mr. Cassilly questioned the purpose of victim related information collection on the guidelines worksheet in light of the requirement that state's attorney's offices file a certification with court files showing that victim notification information was mailed. Additionally, Delegate Anderson questioned what is specifically being done with the victim related information that the MSCCSP collects. Mr. Butler was asked to respond and stated that the



recommendation to gather victim related information came from the Study Commission that created the permanent Commission and the overall purpose of this information was to address the requirement that victims be heard and considered as a part of the sentencing process while providing good statistical information.

Mr. Finci proposed a compromise of both scaling back and simplifying the questions listed on the Guidelines Worksheet so victim services needs could be met and the Commission resources not unduly burdened by collection. Dr. Wellford noted that elimination of the victim related questions would create an initial burden on resources by creating the need to restructure the MAGS program. Judge Nance commented that the burden of collection should be on state's attorneys and reiterated his belief that the lack of compliance in filling out the victim related questions is a reason to eliminate the questions from the guidelines worksheet. Ms. Martin noted that since staff indicated that compliance may be increasing with the use of MAGS, she agreed with Judge Leasure's recommendation to await MAGS data to re-evaluate compliance.

Ms. Martin moved that the victim related questions discussion be tabled until the impact of using MAGS can be assessed.

The motion passed unanimously with Senator Kelley's strict constructionist position noted.

50% of Sentence Served Announcement

At the December 13, 2011 MSCCSP meeting, the MSCCSP agreed to adopt the Subcommittee's recommendation to amend the language on the worksheet from "50% of Sentence Announced" to "50% of Sentence Announced for COVs" to make more clear that in cases where there has been a conviction for a COV, there should be an announcement and this box should be checked on the worksheet. The issue was sent back to the Subcommittee to discuss whether such information should be collected on the guidelines worksheet. Dr. Wellford reported that the Subcommittee recommended no change in the inclusion of this question on the worksheet as it is a statutory requirement. Dr. Soulé commented that the Commission is legislatively required to collect information on this issue as it relates to crimes of violence. Mr. Cassilly and Delegate Vallario questioned the accuracy of data collection and whether judges were stopping during the course of a sentence hearing to make this required announcement, or simply answering the question post-sentencing based on recollection. Judge Leasure noted that often judges may neglect to complete this information but that MAGS should increase compliance. She moved that the Subcommittee recommendation be accepted.

The motion passed unanimously.

D. Proposed guidelines scoring for medical marijuana convictions

Dr. Wellford noted the passing of Senate Bill 308 (2011), which revised Criminal Law, §5-601 and §5-619, Annotated Code of Maryland, to indicate that patients whose doctors have diagnosed them with a debilitating medical condition (including a condition that is "severe and resistant to conventional medicine") are subject to arrest, but can assert the medical use of marijuana as an affirmative defense at trial. The defense is not available to anyone in possession of more than one ounce of marijuana or who uses marijuana in a public place. For patients who don't qualify for the full affirmative defense, there is also a sentencing



mitigation whereby, upon conviction, they can present evidence of “medical necessity.” If the court agrees, the maximum penalty that can be imposed is a \$100 fine.

Due to the penalty reduction, the Subcommittee recommends the modification of the adult prior record calculation procedures. Dr. Wellford noted the memo referencing the proposed changes to both COMAR and the Guidelines Manual to reflect that marijuana possession or marijuana paraphernalia possession convictions that qualify for a non-incarceration penalty due to evidence of medical necessity are not included in the adult prior record calculation. Dr. Wellford moved to accept the Subcommittee’s recommendation to modify COMAR and the Guidelines Manual accordingly. Mr. Cassilly questioned the need for the changes in light of the infrequency of such cases. Mr. Finci responded that he has encountered these cases fairly frequently and provided several examples.

The motion passed with Mr. Cassilly opposing.

E. Data records retention and disposal

The MSCCSP assumed the responsibility of collecting sentencing guidelines worksheets beginning in July 2000. With roughly 11,000 worksheets submitted each year, the staff is running out of space to physically store the paper worksheets in its office. The staff researched the process for disposal of old guidelines worksheets given the lack of storage space and since the data collected on the guidelines worksheet will still be available via the digital file maintained by the MSCCSP.

MSCCSP staff contacted Stuart Nathan, Assistant Attorney General, for advice on whether the MSCCSP can dispose of old guidelines worksheets. Mr. Nathan indicated that State Government Article, sections 631-634 and COMAR 14.18.02 guide the records management process. The above require every State, county or local government agency to develop a program to efficiently manage its records, inclusive of a Records Retention and Disposition Schedule. A retention schedule is an official document created by a government agency and approved by the State Archivist that lists the type of records that the agency generates and gives the agency authority to transfer permanent records and destroy non-permanent records at specified times. Mr. Nathan directed MSCCSP staff to the Maryland State Archives website for information on the procedures for establishing a retention schedule. MSCCSP staff spoke with Kathryn Baringer, Deputy Director of Appraisal & Description at the Maryland State Archives for further guidance. Ms. Baringer explained that the MSCCSP does not currently have a retention schedule. She noted that this is not uncommon for a small agency, especially one that has not disposed of any records. Ms. Baringer indicated that the MSCCSP will need to develop a schedule and submit it to the Archives for approval prior to disposing of any guidelines worksheets.

Based on these conversations, the staff requested permission to draft a Records Retention and Disposition Schedule. Dr. Wellford reported that the Subcommittee recommends that the staff draft a schedule to be reviewed by Maryland State Archives and finally by the Commission for adoption. Judge Nance questioned why a 7 year retention time frame was proposed and felt that the system should run parallel to the court system, which is 12 years. Dr. Soulé commented that the Archivists stated that the retention time frame could be as low as 1 year, however, the staff believed 7 years was a more appropriate and conservative approach. Senator Kelley inquired about the possibility of digital storage. Dr. Soulé



explained that the process of scanning individual worksheets dating back to 1999 and saving the individual files would be too onerous a task for staff. Judge Leasure suggested checking with the Judiciary's storage requirements and moved that the staff consult with Archivists and develop a policy for the Commission to review.

The motion passed unanimously.

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

The next meeting was set for Tuesday, September 18, 2012 at the Judiciary Education and Conference Center (JECC) in Annapolis, MD. The meeting will start at 5:30pm with dinner available starting at 5:00pm.

8. Old Business

There was no old business to address.

9. New Business and announcements

Judge Nance informed the Commission that he recently attended the Cross Governmental Sentencing and Corrections Policy Forum in Denver, Colorado and found it very informative. He also indicated that he would share any conference materials as soon as they are available.

10. Adjournment

The meeting adjourned at 6:55 p.m.