



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
June 28, 2011

Commission Members in Attendance:

Honorable Howard S. Chasanow, Chair
Chief Marcus L. Brown
Joseph I. Cassilly, Esquire
Paul F. Enzinna, Esquire
Richard A. Finci, Esquire
Major Bernard B. Foster, Sr.
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 Alfred Nance
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

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

Visitors:

Robert M. Bell, Chief Judge, Court of Appeals
Ronald Brothers, Chief Information Officer, DPSCS
C. Benjamin Ford, Staff Writer, *Gazette*
Megan Goemann, Legislative Director, ACLU
Claire Rossmark, Department of Legislative Services

1. Call to order

Judge Chasanow called the meeting to order.

2. Roll call and declaration of quorum

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

3. Approval of minutes, May 17, 2011 meeting

The minutes were approved as submitted.

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

Dr. Soulé had three items to report. First, Dr. Soulé informed the Commissioners that there is an opening on the Commission staff for the position of office administrator/training coordinator. Jessica Rider, current office administrator/training coordinator, is stepping down at the end of July to pursue an advanced graduate degree. She will be staying on in a part-time



capacity during the upcoming year as a graduate research assistant. Dr. Soulé asked the Commissioners to contact him if they are aware of anyone who may be a good candidate for this position. There will be a job announcement with further details posted on the Commission's website shortly.

Next, Dr. Soulé informed the Commission that a Guidelines E-News was distributed to criminal justice stakeholders throughout the state yesterday announcing the release of an updated Guidelines Offense Table and instructing users to download a copy via the Commission's website. Updates to offense table reflect a decision made by the Commission at a prior meeting to add *oxycodone* and *methadone* to the list of drugs provided as examples under CDS distribution with a maximum penalty of 20Y and seriousness category IIIB. It also reflects the addition of *buprenorphine* to the list of drugs provided as examples under CDS distribution with a maximum penalty of 5Y and seriousness category IV. The revised Offense Table reflects other minor edits to the table, including updated CJIS codes. Senator Kelley indicated that there may be a rise in the number of individuals charged with these particular drug offenses as the Legislature authorized the implementation of a prescription drug monitoring program.

Finally, Dr. Soulé reminded the Commissioners that this was Judge Chasanow's last meeting. Dr. Soulé thanked Judge Chasanow for his extraordinary leadership over the last four years and presented him with a plaque in recognition of his service. Judge Chasanow thanked the Commissioners and indicated that he has greatly enjoyed working with them for the past four years.

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

Judge Chasanow introduced Ron Brothers, Chief Information Officer of the Maryland Department of Public Safety and Correctional Services (DPSCS) and thanked him for attending today's meeting to address questions regarding access and security for the Maryland Automated Guidelines System (MAGS). Dr. Wellford then presented the report of the Guidelines Subcommittee.

A. MAGS access and security

Dr. Wellford referenced the memorandum distributed to Commissioners and reviewed the proposed security matrix for the pilot deployment of MAGS. Dr. Wellford briefly summarized the various user groups.

Dr. Soulé noted that he met with Ron Brothers and his staff after the memo was distributed to the Commissioners. Therefore, he wanted to summarize the details of the meeting as a follow up to some of the issues identified in the memo. Dr. Soulé first thanked Mr. Brothers for the tremendous support of his team for the MAGS project. Dr. Soulé noted that Mr. Brothers and his team at the Information Technology and Communications Division (ITCD) at DPSCS have been extremely helpful and generous with their time as the Commission plans for deployment of MAGS.

After meeting with the ITCD group, a proposed plan for assignment of user logins and passwords was developed. There are seven proposed users groups who may need access to MAGS. The staff proposes the utilization of individual user logins for the first two user groups which includes MSCCSP staff and judges. Parole and Probation officers already are cleared for access to the DPSCS networks, so they would use their already assigned user



logins to access the MAGS system. The remaining groups noted in the memo, including court clerks, state's attorney's, and public defenders would be assigned one functional (or agency wide) user login for each agency by county. Each agency with a functional user login will need to designate one to two individuals within their agency who will have oversight of the user logins and passwords. These individuals would be responsible for notifying other individuals within the agency when the password is changed. Dr. Soulé explained that the utilization of a functional user login was proposed for the court clerks, state's attorneys, and public defenders because the staff and the Guidelines Subcommittee believed it would be too large of a task to attempt to assign individual user logins for every individual within each of these agencies. Since it would be necessary to monitor staff turnover and remove users promptly whenever they leave an office, the use of a functional user login was proposed so that one or two designated individuals in each agency could handle this task, as opposed to MSCCSP staff.

Dr. Soulé also asked the Commission to consider how to best allow "view only" access to MAGS for private attorney during the pilot deployment. Dr. Soulé explained that since there is no one clear cut agency that has central oversight over all private attorneys and therefore no agency would be able to report when one attorney leaves his/her practice, the private attorney user group presents a problem in terms of assigning user logins and passwords. Particularly, DPSCS would not be able to pass their audit requirements regarding management of secure user logins and passwords if there is no way to determine when an individual is no longer a practicing attorney.

Commissioner Joseph Cassilly asked the Commission and Mr. Brothers if the MSCCSP should consider utilization of a case specific access number that would be automatically assigned by MAGS. This case specific code could be delivered to defense attorneys to enter in to the system and allow them read-only access to a specific case without granting access to other cases in the MAGS system. Mr. Brothers indicated that if the MSCCSP decided it would prefer a case specific access code system, DPSCS could work to create such a system. Dr. Soulé noted if the MSCCSP supports the idea of utilizing a case specific access code for read-only cases, such a system might be a more realistic option to develop beyond the pilot deployment in Montgomery County.

Commissioner Richard Finci emphasized that it was particularly important to make sure that private attorneys are at least able to view the guidelines worksheet in the automated system. Mr. Finci suggested that one solution for the pilot project in Montgomery County may be to identify a small group of active defense attorneys through the Maryland Criminal Defense Attorneys' Association (MCDAA) and work with this small group to assign them individual user logins and passwords. Mr. Brothers indicated that Mr. Finci's proposal was a reasonable solution that could be implemented in time for the pilot project. Dr. Soulé indicated he would work with Mr. Finci to obtain a small list of 20-25 private attorneys who could be assigned individual user logins for the pilot project in Montgomery County. Mr. Finci would work with the County Bar Association and MCDAA to identify this small group of active defense attorneys in Montgomery County.

Judge Nance asked if it would be possible to create a county level functional user login for private attorneys with one representative from the respective county bar association providing administrative oversight. The Commission agreed that Judge Nance's proposal



might be the best solution for when MAGS is implemented statewide. Mr. Brothers noted that the DPSCS ITCD team may also be able to work with an agency such as the MCDAA to tie in to their existing systems and allow users to access MAGS through their assigned user logins and passwords administered by the individual agency. For example, Mr. Brothers noted that DPSCS has used a similar technology to allow law enforcement officers to utilize their existing NCIC user logins to gain access to databases on the DPSCS network.

Senator Kelley noted that the MAGS access and security discussion was very informative as it allowed the Commission to continue to brainstorm regarding the goals and intended applications for MAGS. However, given that most Commission members are not information technology experts, it is probably best to allow staff to continue these discussions with Mr. Brothers and his staff and to trust their guidance for the best approach for providing secure access to the application.

B. Review and classification of new and/or revised offenses from 2010 Legislative Session

Dr. Wellford reviewed the memo regarding categorization of new offenses. He explained that the Guidelines Subcommittee attempts to maintain consistency with previous classification decisions. The Subcommittee makes each seriousness category recommendation by examining currently classified offenses that are comparable with regard to the nature of the offense, the type of offense (person, drug, property), the statutory maximum, and the misdemeanor/felony classification. It has been suggested that the Commission should abstain from setting seriousness categories for new offenses until sufficient data has been collected on the sentences given for these new offenses. This would allow the Commission to assess sentencing trends on new offenses and in turn utilize the data to guide the seriousness category decisions.

However, Dr. Wellford noted two issues with this approach as identified by staff. First, the sample size for individual offenses is often very small from year to year. Therefore, it may take a substantial length of time before the MSCCSP accumulates sufficient data for meaningful analysis of sentencing trends for an individual offense. During this allotted time for data collection, judges would have no guidelines to assist them with determining the appropriate sentence for the new offense. Second, the data utilized by the MSCCSP to inform sentencing policy are collected via the sentencing guidelines worksheet. Sentencing guidelines worksheets are only completed for offenses with sentencing guidelines. If an offense is not a “guidelines” offense (which would be the case for any new offenses that have not been classified), the MSCCSP would not receive a sentencing guidelines worksheet for the offense. The MSCCSP would therefore need to set up a new data collection procedure for capturing data on non-guidelines offenses.

After considerable discussion, it was proposed that when the Guidelines Subcommittee cannot agree on direct comparables for new crimes, the Subcommittee should look at staff provided comparables while exercising the rule of lenity and select the least stringent seriousness category among the comparables. The Subcommittee will also attempt to seek judicial input in these situations by use of an informal survey or focus group. The motion was unanimously approved.

Dr. Wellford reviewed the table prepared by staff on recommended seriousness categories for new or revised offenses passed during the 2011 Legislative session.



- i. SB 178/HB 162 – Abuse and Other Offensive Conduct – Child neglect (CR, §3-602.1)
 - Proposals to categorize this offense as a V and VII did not pass. By a majority vote, the Commission adopted the proposed seriousness category of VI for this offense.
- ii. HB 363 – Manslaughter and Related Crimes – Criminally negligent manslaughter by vehicle or vessel (CR, §2-210)
 - The Guidelines Subcommittee did not provide a recommended seriousness category for this new offense. Given the policy regarding categorization of new offenses adopted earlier in the meeting, the MSCCSP voted to table the vote for seriousness category on this new offense and sent it back to the Guidelines Subcommittee for further review.
- iii. SB 803/HB 1276 – Motor Vehicle Offense – Violation of ignition interlock system participation requirements, 1st offense (TR, §16-113(k); TR, §27-101)
 - By unanimous vote, the Commission adopted the proposed seriousness category of VII for this offense.

HB 1276/SB 803 – Motor Vehicle Offense – Violation of ignition interlock system participation requirements, 2nd or subsequent offense (TR, §16-113(k); TR, §27-101)

 - By unanimous vote, the Commission adopted the proposed seriousness category of VI for this offense.
- iv. HB 1252 – Animals, Crimes Against – Large-scale poaching involving greater than \$20,000 worth of striped bass (NR, §4-1201)
 - By unanimous vote, the Commission adopted the proposed seriousness category of VII for this offense.
- v. SB 655/HB 1225 – Animals, Crimes Against – Commercial fishing violations (NR, §4-1201)
 - 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.
- vi. SB 82 – Illegal sale/distribution of unpackaged cigarettes (CL, §11-5A-02)
 - 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.
- vii. HB 510 – Stalking and Harassment – Harassment, 2nd or subsequent offense (CR, §3-803)
 - Dr. Wellford noted that no action was required for this offense. The Legislature increased the maximum penalty for a second or subsequent conviction to 180 days imprisonment and/or a \$1,000 fine.



- viii. SB 174/HB 241 – 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))
- Dr. Wellford noted that the Legislature expanded prohibitions against the use and possession of handguns and concealable antique firearms in the commission of certain crimes of violence or felonies to include the use of any firearm, whether loaded or unloaded. The legislation also extends the maximum sentence to 15 years for a person previously convicted of a crime of violence or a specified controlled dangerous substance offense who later is apprehended in possession of a regulated firearm. By a majority vote, the Commission voted to maintain a seriousness category V for this offense.
- ix. HB 105 – Motor Vehicle Offense – Driving a vehicle in a specified race or speed contest that results in serious bodily injury to another person under specified circumstances (TR, §21-1116)
- Dr. Wellford noted that the Legislature increased the penalty for illegally driving in a vehicle race or speed contest that results in serious bodily injury to another person by authorizing a maximum penalty of 1 year imprisonment and/or \$1,000 fine. No action required, as this offense is automatically assigned a seriousness category VII since it carries a maximum penalty of 1 year or less.
- x. SB 292 – Falsified transcripts, diplomas, and grade reports at an institution of postsecondary education (ED, §26-301)
- The Legislature added language prohibiting a person from falsely altering a transcript, diploma, or grade report of an institution of postsecondary education. No action required as this offense is automatically assigned a seriousness category VII since it carries a maximum penalty of 1 year or less.
- xi. SB 977 – Freedom of Speech – Picketing at a funeral (CR, §10-205)
- The Legislature increased the distance within which a person is prohibited from engaging in picketing activities at a funeral, burial, memorial service or funeral procession from 100 feet to 500 feet. No action required.
- xii. SB 500 – Identity Fraud (CR, §8-301)
- The Legislature clarified the identity fraud statute by providing that a person may not knowingly and willfully assume the identity of another, including a fictitious person, to avoid prosecution for a crime, to avoid payment of a debt or other legal obligation, or with fraudulent intent to obtain a benefit. No action required.
- xiii. SB 204/HB 1128 – Sexual Crimes – Definitions of sexual act (CR, §3-301)
- The Legislature altered the definition of “sexual act” to include an act in which a part of an individual’s body is used to penetrate specified body parts of another individual; and altering the definition of “sexual contact.” No action required.



- xiv. HB 519 – Weapons Crimes – In General – Possession of regulated firearm or ammunition by person younger than 21 years old (PS, §5-133(d))
- The Legislature repealed the prohibition against the possession of ammunition designed solely for a regulated firearm by a person who is under the age of 21. No change required to the seriousness category for this offense since the legislature simply repealed one provision of the statute and made no other changes regarding the penalty structure of the offense.

C. Proposed classification of *leaving scene of accident with knowledge of serious bodily injury or death*

Dr. Wellford informed the Commission that the following two offenses were missed during a previous review of new legislation. As such, the Subcommittee reviewed the offenses and made seriousness category recommendations for each offense.

- i. Motor Vehicle Offense – Leaving scene of accident with knowledge of serious bodily injury (TR, §27-113(b))
- By unanimous vote, the Commission adopted the proposed seriousness category of V for this offense.
- ii. Motor Vehicle Offense – Leaving scene of accident with knowledge of death (TR, §27-113(c))
- By unanimous vote, the Commission adopted the proposed seriousness category of IV for this offense.

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

The next meeting was set for Tuesday, September 20, 2011 at the Judiciary Education and Conference Center (JECC) in Annapolis, MD. The Commission will provide dinner and it will be made available starting at 5:00 p.m.

7. Old Business

There was no old business to address.

8. New Business and announcements

There was neither new business nor announcements.

9. Adjournment

The meeting adjourned at 7:10 p.m.