



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
June 29, 2010

Commission Members in Attendance:

Honorable Howard S. Chasanow, Chair
Shannon E. Avery, Esquire, *representing Secretary Gary D. Maynard*
Chief Marcus L. Brown
Joseph I. Cassilly, Esquire
William Davis, Esquire, *representing Public Defender Paul B. DeWolfe*
Paul F. Enzinna, Esquire
Richard A. Finci, Esquire
Major Bernard B. Foster, Sr.
Senator Delores G. Kelley
Laura L. Martin, Esquire
Honorable Alfred Nance
Kate O'Donnell, Esquire, *representing Attorney General Douglas F. Gansler*
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:

Rebecca Gowen, DPSCS
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 5:35 p.m. when quorum was reached.

3. Approval of minutes, April 27, 2010 meeting

The minutes were approved as submitted.

4. Approval of minutes, December 8, 2009 Public Comments Hearing

The minutes were approved as submitted.



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

Dr. Soulé had five items to report. First, Dr. Soulé noted that an updated Sentencing Guidelines Manual was released on May 1, 2010. A Guidelines E-News was sent to criminal justice practitioners who apply the guidelines to inform them that an updated manual is available for download on the MSCCSP website. MSCCSP staff then followed up with coordinators in statewide agencies such as the State's Attorney's Association, the Public Defender's Office, the Division of Parole and Probation, and the Criminal Defense Attorney's Association, to ask these representatives to make sure the E-News announcing the release of the updated Guidelines Manual was distributed to all of the appropriate individuals in their respective agencies.

Second, Dr. Soulé indicated that he is continuing his efforts to meet with the administrative judges in each of the 24 counties to review sentencing guidelines related information relative to their individual jurisdictions. Dr. Soulé noted that the meetings have been a good opportunity to review the areas of the worksheet that the judges are responsible for completing and to seek input from the judges on how to best implement the Maryland Automated Guidelines System (MAGS).

Third, Dr. Soulé gave a brief status update on MAGS. The MSCCSP staff continues to work with the programmers to correct a few minor, yet key programming errors within the system. Dr. Soulé indicated that he contacted the Advisory Committee to the Judiciary's Technology Oversight Board in order to keep an open dialogue regarding how MAGS might interface with the new case management system being developed for the Judiciary. Dr. Soulé spoke to Mark Bittner, a member of this committee. Mr. Bittner offered that the Judiciary is certainly willing to work with the MSCCSP in this aspect, but by their own estimates, they are 3-5 years away from getting to the point where they can consider how their system will interface with outside criminal justice agencies. Mr. Bittner assured Dr. Soulé that the MSCCSP will be included in the interoperable plan. Mr. Bittner indicated that a separate subcommittee would be created to address how the new judiciary case management system will interface with outside agencies and that subcommittee will contact the MSCCSP at a later date. The Commissioners felt that it would be advisable to draft a letter to Chief Judge Bell indicating the Commission's interest in the ability to have interoperable systems.

Fourth, Dr. Soulé indicated that Commission staff received a status report from the consultants at Applied Research Services (ARS) who are working on the development of the Commission's Simulation Model. Since the report is largely a technical review of the estimation procedures for predicting the impact of proposed changes on future correctional populations, the staff thought it would be appropriate to establish an inter-agency ad-hoc committee to review the model and report back to the full Commission on how and when it should be utilized. Ms. Avery took this opportunity to introduce Rebecca Gowen, Director of Planning and Statistics with the Department of Public Safety and Correctional Services. Ms. Gowen has been working with Commission staff and sharing DPSCS data in order to facilitate the simulation model process.

Finally, Dr. Soulé updated the MSCCSP on the status of the Commission's budget for FY 2011. The MSCCSP made it through the budget hearings unscathed with both the Senate Budget Committee and House Appropriations Committee concurring with the Governor's recommendation to keep our budget at the same funding level. However, a back of the budget



bill provision resulted in a 7% reduction in our FY 2011 budget. Combined with a smaller reduction in the current fiscal year, the Commission's budget was reduced a total of 11% since FY '09. The latest reduction means the Commission will be unable to hire a graduate law student to fill the Commission's policy analyst position for the upcoming fiscal year. Dr. Soulé noted that the budget cut was an unfortunate setback for the MSCCSP because of a previously established agreement to hire a bright third year law student from the UM Law School. Several Commissioners suggested that the Commission look for current law students or recent law school graduates that might be willing to work as volunteers.

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 2010 Legislative Session

Dr. Wellford explained that the Subcommittee makes a recommendation on the classification of seriousness category by examining offenses that are comparable with regard to the nature of offense, the type of offense (person, drug, property), and the statutory maximum penalty.

Dr. Wellford reviewed the table prepared by staff on recommended seriousness categories for new or revised offenses passed during the 2010 Legislative session.

- i. SB 280/HB 473 – Sexual Crimes – Willfully and knowingly violating conditions of lifetime sexual offender supervision, 1st offense (CP, §11-724(b)(1))
 - By unanimous vote, the Commission adopted the proposed seriousness category of V for this offense.
- ii. SB 280/HB 473 – Sexual Crimes – Willfully and knowingly violating conditions of lifetime sexual offender supervision, subsequent (CP, §11-724(b)(2))
 - By unanimous vote, the Commission adopted the proposed seriousness category of IV for this offense.
- iii. HB 778 – Telecommunications and Electronics, Crimes Involving – Unauthorized computer access for sabotage of State government, public utilities, or other energy infrastructure, less than \$50,000 (CR, §7-302(d)(3)(ii))
 - By unanimous vote, the Commission adopted the proposed seriousness category of V for this offense.
- iv. HB 778 – Telecommunications and Electronics, Crimes Involving - Unauthorized computer access for sabotage of State government, public utilities, or other energy infrastructure, \$50,000 or greater (CR, §7-302(d)(3)(i))
 - By unanimous vote, the Commission adopted the proposed seriousness category of IV for this offense.



- v. HB 818/SB 670 – Trespass – Trespass on posted property or private property, 2nd offense within 2 years after first violation (CR, §6-402(b)(2); CR, §6-403(c)(2))
- HB 818/SB 670 – Trespass – Trespass on posted property or private property, 3rd and subsequent offense within 2 years after preceding violation (CR, §6-402(b)(3); CR, §6-403(c)(3))
- Dr. Wellford noted that no action was required for the above two new offenses because the maximum penalty for each is 1 year or less. The Commission has a standing rule that offenses with a penalty of 1 year or less are automatically assigned a seriousness category VII.
- vi. SB 622/HB 254 – Sexual Crimes – Rape, 2nd degree, adult offender with victim younger than 13 years old (CR, §3-304(c)(2))
- The Legislature increased the maximum penalty from 20 years to Life. The non-suspendable minimum penalty increased from 5 years to 15 years.
- By unanimous vote, the Commission decided that the seriousness category should remain a level II offense.
- vii. SB 622/HB 254 – Sexual Crimes – Sex Offense, 2nd degree, adult offender with victim younger than 13 years old (CR, §3-306(c)(2))
- The Legislature increased the maximum penalty from 20 years to Life. The non-suspendable minimum penalty increased from 5 years to 15 years.
- By unanimous vote, the Commission decided that the seriousness category should remain a level II offense.
- viii. HB 365 – Assault and Other Bodily Woundings – Assault on law enforcement officer or parole or probation agent, 2nd degree (CR, §3-203(c))
- The Legislature added parole and probation agents to the classes of law enforcement officers covered by the offense Assault – Law Enforcement Officers.
- By unanimous vote, the Commission decided that the seriousness category should remain a level V offense.
- ix. SB 517 – Criminal Gang Offenses – Participate as member of criminal gang in commission of crime (CR, §9-804(c)(1)(i))
- SB 517 – Criminal Gang Offenses – Participate as member of criminal gang in commission of crime resulting in death of victim (CR, §9-804(c)(1)(ii))
- Dr. Wellford noted that no action was required for the above two revised existing offenses. The Legislature altered the definition of “criminal gang” for purposes of the gang statute and expanded the list of underlying crimes for criminal gang activity. There was no change to the penalty structure of either offense.



- x. SB 517 – Criminal Gang Offenses – Organize, supervise, finance, or manage a criminal gang (CR, §9-805)
- Senator Kelley noted several concerns regarding the above bill, including the removal of all of the generally agreed upon indicators that a person might be in a gang, and the removal of all white collar crimes from the list of underlying crimes. Senator Kelley pointed out that if any three persons are associating and any one of the three is charged for one of several underlying crimes, all could be charged with being a member of a gang.
 - Dr. Wellford noted that the recommended seriousness category for the offense is III.
 - Mr. Cassilly noted that the category for the offense *participate as member of criminal gang in commission of crime resulting in death of victim* is one category more serious than most serious underlying offense -- if no conviction on underlying offense, category=III. Mr. Cassilly questioned why the same category was not proposed for managing a gang. As proposed, someone charged with managing a gang could wind up with lower guidelines than someone charged with participating as a member. Judge Chasanow responded that the difference is with the *participating* offense, there are two sentences that are presumed to be concurrent (sentence for participation and sentence for the underlying offense). They may be consecutive, but they are presumed to be concurrent. With the *managing* offense, there are also two sentences, but they must be consecutive.
 - By unanimous vote, the Commission adopted the proposed seriousness category of III for this offense.

B. Credit for Time Served and Sentencing Guidelines Compliance

Dr. Wellford referred the Commissioners to the memorandum on Credit for Time Served and Sentencing Guidelines Compliance. The memo indicated that in November 2009, the MSCCSP staff held a focus group at the University of Maryland to review the Maryland Automated Guidelines System (MAGS) application. During the focus group, a Montgomery County judge in attendance questioned the inclusion of credit for time served when determining whether a sentence is within the recommended guidelines range. The judge was particularly concerned about cases where a) the recommended range is probation, b) the judge follows the recommendation and sentences the offender to probation only, but c) the sentence is non-compliant because the offender has pre-sentence incarceration time.

As a point of reference, the staff also examined how credited time is handled in the neighboring state of Virginia, as the approach to time served compliance in that state is a more flexible one. In the situation as described by the Montgomery County judge, Virginia would consider that sentence to be compliant. Additionally, in situations where a judge sentences a defendant to probation but also gives credit for time served, Virginia would consider this a compliant sentence as well.

Dr. Wellford indicated that the Subcommittee recommended changing language in COMAR and the Maryland Sentencing Guidelines Manual (MSGM) to reflect updated language for the calculation of guidelines compliance in cases involving credit for time served, but not additional incarceration after sentencing.



Proposed Revisions to COMAR and the MSGM

COMAR 14.22.01.17 – SENTENCES DEEMED TO BE WITHIN GUIDELINES

C. Sentences a defendant to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the case.

MSGM p55 – DETERMINING WHETHER A SENTENCE IS WITHIN THE GUIDELINES

13.2 Credit for time served (p. 55)

Time served *is* considered in determining whether the sentence falls within the recommended guidelines range. If a judge sentences an offender to pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper range, then the sentence is deemed guidelines compliant.

Example 1: If the guidelines range for an event is 3 months to 9 months, and an offender is sentenced to 6 months with credit for 6 months already served, the sentence is within the guidelines range.

Example 2: If the guidelines range for an event is Probation to 3 months, and an offender is sentenced to 6 months with credit for 6 months already served, the sentence ~~is above the guidelines range~~ is deemed to be compliant with the guidelines.

13.7 SENTENCES DEEMED TO BE WITHIN GUIDELINES (p. 57)

Notwithstanding the actual guidelines range, the State Commission on Criminal Sentencing Policy shall deem a sentence within the guidelines range if a judge:

Sentences a defendant to a period of pre-sentence incarceration time with no additional post-sentence incarceration time and the length of credited pre-sentence incarceration exceeds the upper guidelines range for the case.

The motion was unanimously approved.

C. Report on meeting with Judiciary Ad Hoc Committee on Alternative Sentencing and Reentry Programs

Dr. Wellford reported on a meeting attended by himself and Dr. Soulé with a newly formed Ad Hoc Committee of the Judiciary. The Ad Hoc Committee was established in response to feedback from members of the judiciary who attended a national conference where representatives from Missouri and Virginia presented information on their state's effort to implement risk assessment as part of the sentencing guidelines system. In Virginia, risk assessment has been used at the direction of the General Assembly to reduce the prison population by focusing on individuals with low risk who might be considered for community corrections. A similar process has been followed in Missouri. Virginia and Missouri have also developed instruments to assess the recidivism risk of sex offenders.



The Ad Hoc Committee was established to consider whether Maryland should move in the direction of risk assessment at sentencing and also to review what Maryland is doing in the development of alternative sentencing practices more generally and what Maryland is doing to develop an effective reentry program. Dr. Wellford indicated that he and Dr. Soulé were invited primarily to discuss the risk assessment aspect because of their familiarity with the Virginia assessment instrument. The Ad Hoc Committee was given the task of drafting a report for consideration by the Judicial Conference to address the issue of what should be done in the area of risk assessment and how it would impact the sentencing guidelines.

The Ad Hoc Committee asked Dr. Wellford and Dr. Soulé to report back to the MSCCSP and to inquire whether the MSCCSP would be willing to partake in the first step of a proposed three staged approach towards risk assessment in Maryland. This first step would involve a more formal review of the literature on risk assessment, what other states have been doing, and to develop a recommendation regarding risk assessment that could be considered by both the MSCCSP and the Maryland Judicial Conference. Dr. Wellford indicated that he thought that additional steps would include research and development of a risk assessment tool that fits with the current guidelines with possible funding coming from a grant. The final step would be to implement the risk assessment tool throughout the state. This step would require a substantial investment.

Judge Chasanow indicated that he felt that this was a task most appropriate for the Guidelines Subcommittee to undertake. Mr. Cassilly inquired whether the Commission had the resources to take on this project given the recent budget reductions cited by Dr. Soulé. Dr. Soulé replied that given available resources, our close contacts with those who have developed risk assessments in other states and Maryland agencies, and the current level of understanding of risk assessment by the staff and Dr. Wellford, he believed it is feasible for the Commission to undertake the first step outlined above. The MSCCSP agreed to assign the task of undertaking this first step to the Guidelines Subcommittee.

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

The next meeting was set for Tuesday, September 21, 2010 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. [Note: The location of the September 21st meeting was later changed to the House Office Building due to a scheduling conflict at the JECC.]

8. Old Business

There was no old business to address.

9. New Business and announcements

Major Foster distributed a copy of an article that appeared in the Washington Examiner (dated June 28, 2010). He noted that the article indicated Maryland experienced a 4.6% decrease in the state inmate population from 2008 to 2009. Major Foster also noted that the article stated that 30 percent of Maryland's inmate population comes from Baltimore City.

10. Adjournment

The meeting adjourned at 6:52 p.m.