



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
September 18, 2012

Commission Members in Attendance:

Honorable Diane O. Leasure, Chair
James V. Anthenelli, Esquire
Colonel Marcus L. Brown
William Davis, *representing Paul B. DeWolfe*
Paul F. Enzinna, Esquire
Richard A. Finci, Esquire
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
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

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

Visitors:

Linda Forsyth, Legislative and Community Liaison for Senator Kelley
Pamela Harris, Montgomery County Court Administrator
Martha Kumer, Deputy Director, Division of Parole & Probation

1. Call to order

Dr. Wellford called the meeting to order, as Judge Leasure's arrival was delayed until the middle of the Executive Director's report.

2. Roll call and declaration of quorum

The meeting began at 5:36 p.m. when quorum was reached.

3. Approval of minutes, June 25, 2012 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 introduced new staff members Christina Stewart and Cassandra Tripp. Christina Stewart was hired as the new staff policy analyst effective August 20, 2012. Dr. Soulé noted that Ms. Stewart is a graduate research assistant and



Ph.D. student in the Department of Criminology and Criminal Justice at the University of Maryland (UMD). Ms. Stewart previously worked as a research assistant at the Pennsylvania Commission on Sentencing. Cassandra Tripp, a former undergraduate intern, is working on a part-time basis as a data entry specialist and plans to apply to the Ph.D. program at UMD to begin next fall. Dr. Soulé asked the Commission to join him in welcoming Ms. Stewart and Ms. Tripp.

Next, Dr. Soulé informed the Commission on updates to the Guidelines Offense Table to be adopted in the COMAR effective November 1, 2012. At the June 25, 2012 meeting, the MSCCSP voted to adopt seriousness categories for new and/or revised offenses passed during the 2012 Legislative Session. These newly approved seriousness categories were submitted to the Administrative, Executive and Legislative Review committee after the June meeting and are currently proceeding through the COMAR adoption process. MSCCSP staff will send out a Guidelines E-News on November 1, 2012 to all criminal justice practitioners in the state instructing recipients to download an updated Guidelines Offense Table from the Commission's website.

Lastly, Dr. Soulé gave an update on the MSCCSP sentencing/correctional simulation model. Dr. Soulé recapped the work of the MSCCSP in conjunction with consultants at Applied Research Services (ARS) to develop a sentencing/correctional simulation model. The Commission's enabling legislation mandates the development of a simulation model to help project the potential impact of proposed changes to the sentencing guidelines on the correctional population. Dr. Soulé reported that the initial model development is complete and nearly ready for use. In anticipation of the availability of the completed model, an interagency simulation model committee was created to review the technological features of the model and to help guide its use. Judge Leasure appointed Dr. Wellford along with staff as the MSCCSP representatives for the committee. Dr. Soulé noted that the Department of Public Safety and Correctional Services (DPSCS) was asked to provide representatives for DPSCS who are knowledgeable regarding the Department of Corrections time-served data and who also have experience with population forecasting. The committee held its first meeting on August 21, 2012. During the meeting, Dr. John Speir from ARS, the primary developer of the model, conducted a presentation on the model's capabilities. The meeting was an opportunity for the committee to hear about the technical capabilities of the model and to share feedback.

Senator Kelley commented that it may be beneficial to have a Department of Legislative Services (DLS) representative added to the committee. Dr. Soulé thanked Senator Kelley for the suggestion and indicated that he would follow up with DLS on this suggestion. Dr. Soulé noted that while the committee was impressed with the capabilities of the model, a few issues were raised regarding additional assumptions the model could incorporate to help increase the precision of the forecasts. Assumptions such as changes in policies for diminution credits for certain subsets of the population and correctional classification risk scores which predict the likelihood of early release are presently being considered. Dr. Soulé stated that the MSCCSP and ARS are working with DPSCS to obtain data to see how these additional assumptions can be incorporated into the model to improve precision.

Secretary Maynard suggested that Ron Brothers or another DPSCS IT representative participate in the next committee meeting. Secretary Maynard noted that when DPSCS implements its electronic management system, DPSCS may be able to provide useful data for the projections.



Secretary Maynard stated that he would talk to Mr. Brothers and have him contact Christina Lentz to arrange his participation at the next meeting. Senator Kelley commented that a letter referencing the legislation that required the development of the simulation model and noting the current progress on its development should be sent from Secretary Maynard's office or the Commission to the presiding officers of the Maryland Senate and House of Delegates. She noted that a time frame for the availability of the model should be included in the letter.

Dr. Wellford commented that he believes the simulation model will be a very powerful tool, and once it is made available, the MSCCSP will be pleased with the time that has been dedicated to its development. He also noted that because of the model's power and capabilities, there will likely be a demand for its use outside of the MSCCSP. Dr. Wellford recalled discussion in the committee meeting concerning how the model will work, particularly whether the MSCCSP will have sufficient staff and resources to respond to all requests regarding the model. A particular concern that was noted was whether disputes between competing groups could be prevented as there are multiple groups/agencies that do forecasting, particularly on legislation. Dr. Wellford noted that the committee was concerned with the appearance of the Commission providing what could be perceived as conflicting information to the General Assembly. He advised that these resource and policy issues would need to be addressed by the Commission, hopefully in a manner that takes advantage of the investment placed in the model's development.

Senator Kelley noted that since the model is nearing the implementation stage, the Governor should be made aware of the need for additional human resources to fulfill the statutory mandate. Senator Kelley suggested that the Commission may want to consider a meeting with the Governor and key members of the legislature. Dr. Soulé reiterated Dr. Wellford's comment regarding the usefulness of the model, but noted that anyone who wished to use the model would need substantial training in order to complete projections. Senator Kelley added that a request for additional resources should be made to assist with proper utilization and determination of the scope of use of the model. Senator Kelley noted that while the Commission is statutorily required to report to the General Assembly, a phased rollout approach may be the best plan, and the Commission should begin creating awareness now for the 2014 Legislative Session. Dr. Soulé agreed with Senator Kelley's points and stated that from a resource and staffing perspective, attempting to use the model during the 2013 Legislative Session would be an overly cumbersome process. He stated that due to the model's complexities, it must first be determined how the model can be used, the scope of its use and whether it could be used in conjunction with DPSCS.

Secretary Maynard inquired about the current location of the model. Dr. Soulé stated that the model is installed on computers located at the MSCCSP office. Secretary Maynard questioned how the model would access DPSCS data with the future case management system. Currently, the model utilizes annual data updates from the active population, intake, and release files from the OBSCIS information system maintained by DPSCS. Dr. Soulé responded that data updates should be able to occur more frequently with the new offender case management system being developed by DPSCS.



5. Report on the Maryland Automated Guidelines System (MAGS) pilot project – Pamela Harris, Montgomery County Court Administrator

Judge Leasure welcomed and introduced Pamela Harris, Court Administrator for Montgomery County. Ms. Harris was asked to report on the status of the MAGS pilot project in Montgomery County. Ms. Harris began her presentation by noting that the Montgomery County courts have implemented many technology initiatives over the years, including the Electronic Violation of Probation reports and electronic pre-sentence reports; however, she believes MAGS has been the easiest application to adopt. She noted that there were a few issues reported during the pilot period, but these issues were addressed and she believes that the program is ready for statewide implementation. Ms. Harris noted that approval by the Conference of Circuit Judges and possibly the consent of the Judicial Council and Cabinet as well would be needed. Ms. Harris stated that Faye Matthews, the Deputy Court Administrator, requested that a study be conducted to evaluate the effectiveness of the MAGS application. Ms. Harris offered the services of two Ph.D. research staff members to assist with conducting the study in order to prevent a delay in the deployment of the MAGS application. Ms. Harris reported that the study will be completed two weeks prior to the next Conference of Circuit Judges' meeting, which is scheduled for November 19, 2012.

Dr. Soulé thanked Ms. Harris for offering the support of her staff to assist with conducting the study to evaluate the effectiveness of MAGS. Dr. Wellford inquired whether Ms. Matthews had indicated what the study would evaluate. Ms. Harris explained that the parameters of the study have not been defined, but the Chief Judge has an Administrative Order that states that any pilot initiative should be evaluated prior to moving forward. Dr. Soulé commented that possible areas the researchers could be asked to evaluate are the improved timely submission of sentencing guidelines worksheets and improved accuracy. Judge Leasure thanked Ms. Harris for her time and report to the Commission.

Dr. Wellford questioned if MAGS would enable the Commission to address the issue of whether sentencing guidelines worksheets are submitted for all relevant guidelines cases. Dr. Soulé noted that this issue has been ongoing as the MSCCSP has been unable to obtain the necessary data from the Judiciary to assess this issue. Judge Morrissey noted that the new judiciary case management system, Maryland Electronic Courts (MDEC), should have the capability to create flags to prevent a case from being closed without a guidelines worksheet being completed. Dr. Soulé asked at what point a case is considered closed and whether MDEC has similar flags, such as for whether a commitment order was filed. Judge Morrissey responded that a case is considered closed at completion of sentencing and that while he believes the new system is capable of creating this type of flag, the Judiciary would need to authorize the addition of this function.

Dr. Wellford suggested that the Commission send a letter to Judge Clyburn, Chair of the Maryland Electronic Courts Advisory Committee, regarding the sentencing guidelines worksheet completion issue. Judge Morrissey commented that major decisions on access and costs are presently being made on MDEC, so the MSCCSP should request any features/functions that they would like to see added in the near future. Senator Kelley moved that the Commission request that MDEC include a means of tracking whether a guidelines worksheet has been completed for a case where completion is statutorily required. The motion was approved unanimously.



6. Report from the Guidelines Subcommittee – Laura Martin, Esq.

Judge Leasure noted that Judge Morrissey was appointed as the new chair of the Guidelines Subcommittee in August 2012. However, Laura Martin would present the report of the Guidelines Subcommittee on his behalf for this first meeting with the newly constituted Subcommittee.

A. Next steps for MAGS after completion of pilot project

Ms. Martin referenced the memorandum titled “Draft plan for MAGS after completion of pilot”. She reported that the Subcommittee considered and discussed the MSCCSP staff proposal to seek permission from the Judiciary to continue use of the MAGS application in Montgomery County after the pilot and to begin a gradual rollout to the remaining jurisdictions. The Subcommittee recommended moving forward with the staff proposal to seek Judiciary permission to continue with permanent use of the MAGS application. She noted that the Subcommittee requested that Commission members receive a copy of the log of feedback received from the users of the application in Montgomery County prior to moving forward and that log had been distributed with the meeting materials.

Dr. Wellford moved that the Subcommittee’s recommendation be adopted. The motion was approved unanimously.

B. Access to submitted MAGS worksheets

Ms. Martin reported that during the MAGS pilot, judges in Montgomery County requested the ability to view sentencing guidelines worksheets after submission. Presently, only MSCCSP staff can view a guidelines worksheet after submission through the automated system. Ms. Martin noted that the request stemmed from judges’ desire to see guidelines worksheets for reconsideration and post-conviction hearings, particularly when a judge inherits a case. Staff suggested two solutions for the Subcommittee to consider in response to this request. The first solution would take a broad access approach by providing all judges and judges’ designees the ability to access all cases within their jurisdiction. Alternatively, the second solution would take a conservative approach by requiring judges to request a PDF copy of a submitted guidelines worksheet via e-mail to staff.

Ms. Martin noted that the Subcommittee had concerns about the first solution. The Subcommittee discussed the potential that access would not be limited to judges. It would very likely be a staff person (e.g., clerk or judge’s secretary) that would access the guidelines worksheet. Due to access concerns, the Subcommittee did not recommend adoption of the broad access approach. The Subcommittee instead recommended the conservative approach with the provision that the MSCCSP require that the e-mail request from the judge cite the specific case and their role in the case.

Judge Leasure clarified that the conservative solution would only allow access to someone connected to the case. Ms. Martin confirmed that only the judge hearing the case would be granted access to the guidelines worksheet. Dr. Wellford questioned why judges cannot have access to their own guidelines worksheets in MAGS. Dr. Soulé responded that the Commission had previously decided for MAGS to mirror the paper system. With the paper system, a copy of the guidelines worksheet is retained by the judge, and additional copies are kept within the case file and mailed to the MSCCSP. In MAGS, judges are able to print or save a PDF version of the guidelines worksheet prior to its submission to the MSCCSP.



Judge Morrissey noted that the Commission should be a secondary source for submitted guidelines worksheets, as a copy should be kept in the actual case file. Dr. Soulé further commented that with the current MAGS application, all open cases can be seen by anyone with access; however, once a case is submitted it is no longer available for editing or viewing except by MSCCSP staff. Judge Morrissey noted the concern among circuit court judges regarding potential misuse of data and suggested that the MSCCSP obtain the input of the Conference of Circuit Judges on this issue.

Senator Kelley moved to accept the Subcommittee's recommendation for the conservative approach requiring an e-mail request from a judge for a submitted guidelines worksheet. The motion was approved unanimously.

C. Continued review of records retention and disposal

Ms. Martin reported that the Subcommittee revisited the proposed MSCCSP records retention policy as initially reviewed at the June meeting. She prefaced her report with the caveat that the information contained in the guidelines worksheets is maintained in an electronic database that would be transferred to the Maryland State Archives on an annual basis for permanent retention. MSCCSP staff consulted with the State Archivist to determine whether the MSCCSP's policy could mirror that of the circuit courts. The staff reviewed the retention policy for the circuit courts and determined that most court records are kept for at least ten (10) years or longer based on the length of sentence. The MSCCSP has always based its records retention on the date of sentence, and thus amending this method would be too arduous a task for staff. Accordingly, the staff again recommended a seven (7) year retention schedule, which would allow staff more than ample time for data verification procedures and would meet storage capabilities. Ms. Martin noted there was a concern in the Subcommittee that the seven (7) year time frame would be insufficient due to the fact that post-conviction felony cases can extend beyond seven years. However, it was noted that the guidelines data would continue to be available in the permanent electronic data file, and therefore the Subcommittee recommended that the proposed retention schedule be adopted.

Judge Morrissey commented that the Subcommittee discussed the possibility of the electronic file not being an accurate reflection of the sentence information recorded on the guidelines worksheets. He noted that because the Judiciary is tasked with keeping a copy of the guidelines worksheet in the case file, the Subcommittee felt that discrepancies with the electronic file should not be an issue. Senator Kelley reiterated that the Commission should not be the source of data for appellate considerations.

Senator Kelley moved to adopt the Subcommittee's recommendation to move forward with the seven (7) year data retention policy. The motion was approved unanimously.

D. Review of seriousness category classification for duplicate entries in the Guidelines Offense Table

Ms. Martin reported that MSCCSP staff identified a duplicate entry for an individual surveillance-related offense in the Guidelines Offense Table. The entries come from the wiretap statute found in the Courts and Judicial Proceedings Article, §10-412, Annotated Code of Maryland. Though worded slightly differently, both entries in the Table refer to



the same offense, yet they have different seriousness categories. The staff offered comparable offenses and asked the Subcommittee to reclassify the offense based on its comparability to a category V offense. The Subcommittee recommended the reclassification as presented by staff.

Senator Kelley moved to adopt the Subcommittee's recommendation. The motion was approved unanimously.

7. Date, time, and location for the next Commission meeting and Public Comments Hearing

The next meeting was set for Tuesday, December 11, 2012 at the Judiciary Committee Hearing Room in the House Office Building in Annapolis, MD. The meeting will start at 5:00 p.m. with a dinner break at 5:45 p.m. The Public Comments Hearing will begin at 6:15 p.m.

8. Old business

There was no old business to address.

9. New business and announcements

Senator Kelley noted that as Dr. Wellford's tenure with the Commission will be ending, a committee should be assembled to coordinate a celebration. The committee will be headed by Senator Kelley and Mr. Finci.

10. Adjournment

The meeting adjourned at 6:23 p.m.