



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Training Center
Annapolis, MD 21041
September 20, 2011

Commission Members in Attendance:

Honorable Diane O. Leasure, Chair
Delegate Curt S. Anderson
James V. Anthenelli, Esquire
Colonel Marcus L. Brown
Joseph I. Cassilly, Esquire
William Davis, Esquire, *representing Public Defender Paul B. DeWolfe*
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.

Staff Members in Attendance:

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

Visitors:

Honorable Philip Caroom, Anne Arundel County Circuit Court
Linda Forsyth, Legislative and Community Liaison for Senator Kelley
Claire Rossmark, Department of Legislative Services

1. Call to order

Judge Leasure called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 5:30 p.m. when quorum was reached.

3. Approval of minutes, June 28, 2011 meeting

The minutes were approved as submitted.

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

Dr. Soulé presented the Executive Director report. First, Dr. Soulé welcomed Judge Diane Leasure as the new chair of the MSCCSP. Dr. Soulé noted that Judge Leasure is currently the Circuit Administrative Judge for the 5th Judicial Circuit and the County Administrative Judge for the Howard County Circuit Court. Judge Leasure is also the immediate past Chair of the Conference of Circuit Judges. Dr. Soulé indicated that he had the pleasure of interacting with



Judge Leasure in these roles over the past few years and believes the MSCCSP is very fortunate to have her as the new chair of our Commission. Dr. Soulé also indicated that he was pleased to announce that Governor O'Malley reappointed Commissioners James Anthenelli, Marcus Brown, Richard Finci, and Bernard Foster for a term of four years from July 1, 2011. In addition, the Speaker of the House, Michael Busch, reappointed Delegates Joseph Vallario and Curt Anderson for a term of four years from July 1, 2011.

Next, Dr. Soulé reminded Commissioners of the actions of the MSCCSP at the June 28, 2011 meeting to adopt seriousness categories for new and/or revised offenses passed during the 2011 Legislative Session. These newly approved seriousness categories were submitted to the AELR committee after the June meeting and are currently proceeding through the COMAR adoption process. Dr. Soulé indicated that he expects the latest updates to the Guidelines Offense Table to be adopted in COMAR effective November 1, 2011. The staff will send out a Guidelines E-News on November 1, 2011 to all criminal justice practitioners around the state instructing recipients to download an updated Guidelines Offense Table from the Commission's website.

Finally, Dr. Soulé confirmed that Montgomery County has volunteered to serve as a pilot site for the Maryland Automated Guidelines System (herein after MAGS). On August 4, 2011, the staff completed a demonstration of the MAGS application to representatives from Montgomery County including their court administrator Pam Harris, Judge Mason, two representatives from the State's Attorney's Office, two representatives from the Parole and Probation regional office, and a representative from the Public Defender's Office. Dr. Soulé indicated that he thought the demonstration was well received and believes Montgomery County is an excellent choice for the pilot as they have previous experience serving as the pilot site for the electronic transmission of violation of probation (VOP) reports. Dr. Soulé indicated that MSCCSP staff and the Information Technology Staff at the Department of Public Safety and Correctional Services has been working hard to complete the final steps to get the application up and running for the pilot. The MSCCSP was informed by Faye Matthews, the Deputy State Court Administrator, that the MSCCSP must submit a plan for the pilot and get it first approved by the Conference of Circuit Judges, and then reviewed by the AOC before the Court of Appeals will approve any proposed electronic filing projects. The staff drafted a plan that outlines the rationale for automation and the expected benefits. The draft plan also includes specific information on user access and an expected timeframe for the pilot project. Dr. Soulé indicated that the staff is waiting to hear back from Montgomery County to get their input on the draft plan and that a copy of the proposed plan will be sent to all of the Commissioners once the feedback from Montgomery County is received. The staff hopes to submit the proposed plan to the Executive Committee of the Conference of Circuit Judges and get an expedited approval of the plan so the pilot project can begin next month.

5. Report from Judge Philip Caroom, Anne Arundel County Circuit Court and Chair, Judiciary Ad Hoc Committee on Sentencing Alternatives, Re-Entry, and Best Practices

Judge Caroom explained the purpose of the Ad Hoc Committee on Sentencing Alternatives, Re-Entry, and Best Practices. The Committee considers issues relating to best practices for sentencing alternatives and re-entry, and the most effective methods to screen, evaluate, and sentence offenders to ensure rehabilitation and less recidivism while protecting public safety. The Committee researches and proposes strategies to provide adequate funding, resources, and public education for sentencing alternatives, re-entry, and best practices.



Judge Caroom discussed the development of a risk assessment instrument for low risk offenders in Maryland. Given the success of risk assessment instruments in other states, it seems plausible that implementing a risk assessment instrument in Maryland may have the ability to significantly reduce the prison population and cost to taxpayers. Additionally, risk assessment may allow for the implementation of more substantive treatment programs within the current correctional system. Judge Caroom indicated the Ad Hoc Committee has made a preliminary recommendation that the Maryland Sentencing Commission should explore the possibility of incorporating risk assessment into the current sentencing guidelines process.

Senator Kelley voiced a concern about relying on existing data for available predictors. Judge Caroom and Dr. Soulé pointed out the success of existing risk assessment models in both Missouri and Virginia.

Judge Nance inquired about how risk assessment would be incorporated into the current sentencing process. He also inquired about the length of time required to complete the risk assessment instrument. Judge Caroom indicated that completing the risk assessment would be much less labor intensive than completing a Pre-Sentence Investigation and based on feedback from individuals working with the Montgomery County Pre-Release Center, it is his understanding that a risk/needs assessment could be completed in an hour or less. Judge Caroom also indicated that the goal of risk assessment is to provide judges with additional information that could be helpful at the time of sentencing.

6. Report from the Guidelines Subcommittee – Dr. Soulé

A. Proposed classification of new offense: *Possession of Rifle or Shotgun after Having Been Convicted of a Crime of Violence or Select Drug Crimes (SB174/HB 241)*

In the absence of Dr. Wellford, Dr. Soulé provided the report of the Guidelines Subcommittee. Dr. Soulé noted that the first item listed on the agenda was a classification of a new offense, *possession of a rifle or shotgun after having been convicted of a crime of violence or select drug crimes*. This is a new offense passed during the 2011 legislative session. The offense was missed during the Commission's previous review of new and/or amended offenses at our meeting in June. Dr. Soulé referred to the memo which provided penalty information for the new offense, a list of comparables, and a proposed classification for the new offense. Dr. Soulé indicated that the Guidelines Subcommittee reviewed the staff recommendations based on type of offense, misdemeanor/felony classification, maximum penalty and fine and unanimously recommended the offense be classified as category V offense. By unanimous vote, the Commission adopted the proposed seriousness category of V for this offense.

B. Review of proposed classification of new offense: *Criminally Negligent Manslaughter by Vehicle or Vessel (HB 363)*

Dr. Soulé noted that the second item on the agenda was the proposed classification of *criminally negligent manslaughter by vehicle or vessel*. The proposed classification for this offense was initially reviewed by the Commission at the June 28, 2011 meeting. However, the Commission could not reach an agreement on the most appropriate comparables to guide categorization of this offense, voting to table the vote and send it back to the Guidelines Subcommittee for further review. Dr. Soulé noted that the Commission also adopted a new policy for the Subcommittee to consider when there was a lack of agreement of comparable offenses. The new policy established that when categorizing new offenses,



the Guidelines Subcommittee was instructed to first address whether it can agree on comparables for the new offense. If no agreement on direct comparables can be reached, then the Subcommittee was instructed to attempt to reach agreement on the least stringent available seriousness category based on staff-provided comparables or seek judicial comments on the issue and convene again after receiving those comments. When the Guidelines Subcommittee reconsidered the categorization of this offense, the Subcommittee had considerable debate about the comparables offenses and again was unable to reach an agreement based primarily on the substance and elements of this new offense. Based on this lack of agreement and in consideration of the policy adopted at the last meeting, it was noted that the next step might involve a sampling of judges to get their input. However, in order to take that next step, the Subcommittee believed that the Commission must first develop a plan for how to seek input from the judiciary. Dr. Wellford noted that he would speak with the new chair, Judge Leasure, to inform her of the dialogue of the Subcommittee discussions and to get her advice and input on whether and how the Commission should seek judicial input with respect to categorization of this new offense. Dr. Wellford and Dr. Soulé spoke with Judge Leasure on September 12, 2011. It was decided that the discussion should continue with the full Commission. Accordingly, Dr. Soulé asked for comments with respect to categorization of this new offense and for any input on procedure for seeking judicial input.

Rick Finci noted that the Subcommittee had difficulty in determining the classification of this new offense which used to be a \$500 fine and three points on the driving record and is now a criminal offense that carries a three year maximum sentence. Senator Kelley indicated that since the Subcommittee could not agree on comparables, the Subcommittee thought it was appropriate to explore the new policy which suggests that the Commission may look to get judicial input via a survey or some other mechanism. Judge Leasure noted that she was not sure how judges would respond to an inquiry about the proper categorization for a new offense because she believed judges would look to the Commission for that guidance. Judge Nance responded that the sentencing guidelines are supposed to reflect judges' sentencing practices, so he thought it was appropriate to survey judges via phone calls to the eight circuit administrative judges. Judge Leasure indicated that as an administrative judge, her feeling is she may be uncomfortable responding to such an inquiry from the Commission because she is not sure Judge Bell would want judges giving opinions on hypothetical sentencing questions, and she would expect the Commission to make these types of decisions. Judge Leasure further noted that the new policy also offered that when agreement could not be reached, the Commission should consider the most lenient seriousness category among the comparables provided by staff. In this case, the least stringent seriousness category among the provided comparables is a category VI. Judge Leasure suggested that the Commission could set the seriousness category as a VI and then agree to revisit the category at a future date when offense specific sentencing data would be available. Delegate Anderson agreed with the concept of setting the seriousness category now and agreeing to review the categorization in two to three years when data would be available. However, he felt the seriousness category should be set at the lowest possible level to start, so he made a motion to set the seriousness category for *criminally negligent manslaughter by vehicle or vessel* as a VII and to impose a three year review period whereby the Commission would agree to revisit the seriousness category of this offense after three years. By a vote of 11-3, the Commission adopted the proposed seriousness category of VII for this offense, with a designated three year review period.



C. Revisiting the definition of single and multiple criminal events for the purposes of scoring the sentencing guidelines

Dr. Soulé noted that the last item on the Guidelines Subcommittee agenda was the continued review of the definitions of single and multiple criminal events. Dr. Soulé reminded the Commissioners that the Guidelines Subcommittee first reviewed this issue at a Guidelines Subcommittee 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 full Commission discussed this topic at the May 17, 2011 meeting. At that meeting, Dr. Wellford noted that the Subcommittee's primary concern was that those applying the guidelines might differently determine if a case involved a single event or multiple criminal events.

The Guidelines Subcommittee met on September 7, 2011 to continue to review the definition of criminal event to see if they could agree on a more clear definition. Prior to that meeting, Rick Finci sent an email with a recommendation to address the issue. Laura Martin responded with her own email which offered a slight revision. After reviewing the two proposed definitions, the Subcommittee then discussed various sentencing scenarios involving multiple offenses such as: 1) an individual committing multiple robberies at different locations, but on the same date; 2) kidnapping an individual but then committing additional offenses during the course of the kidnap offense; 3) committing an initial offense, but then fleeing the scene and/or assaulting an officer in the course of fleeing. After reviewing these multiple sentencing scenarios, the Subcommittee agreed that the Commission should reach a consensus on how these examples should be scored, and then include these specific examples in the Guidelines Manual if the Commission wants to ensure the consistent application of the guidelines. Consequently, the Subcommittee agreed the first step in this process would be for the staff to set up a database to record specific scenarios based on inquiries received from those applying the guidelines and then present those scenarios to the Guidelines Subcommittee for initial review. The Commission could then decide how these scenarios should be scored and provide those specific examples in the Guidelines Manual.

Judge Nance noted that if the Commission does consider any change to the definitions of a single or criminal event, it should review the Maryland Court of Appeals cases that looked at merger of multiple criminal charges. The staff agreed to work with Judge Nance to identify potentially relevant case law for future consideration of this topic. It was agreed the staff will start to collect data on specific inquiries regarding single versus multiple criminal events and present this information to the Guidelines Subcommittee for further review.

7. Report from Secretary Gary Maynard, Department of Public Safety and Correctional Services

Secretary Maynard delivered a PowerPoint presentation that provided an update on the activities of the Department of Public Safety and Correctional Services (DPSCS). A copy of the presentation was provided to Commissioners and has been archived on the MSCCSP data server. Secretary Maynard briefly reviewed the budget of DPSCS, current population statistics, and general trends in prison reform. He provided a specific example of prison reforms undertaken in Texas. Secretary Maynard also expanded on prison reform efforts in Maryland. He indicated that DPSCS is currently investing in new technology for a case management



system, focused supervision for violent and sex offenders using risk assessment and enhanced monitoring, utilization of drug treatment opportunities, improved healthcare efforts, increased rehabilitation opportunities, and population reduction.

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

The next meeting was set for Tuesday, December 13, 2011 at 5:00 pm at the House Office Building, Judiciary Committee Hearing Room in Annapolis, MD. The Commission meeting will be followed by the annual Public Comments Hearing. The Public Comments Hearing will begin at 6:15 p.m. immediately following a break for dinner at 5:45 p.m.

9. Old Business

There was no old business to address.

10. New Business and announcements

There was neither new business nor announcements.

11. Adjournment

The meeting adjourned at 7:40 p.m.