

**Minutes**

Maryland State Commission on Criminal Sentencing Policy  
Judiciary Training Center  
Annapolis, Maryland

January 3, 2005

**Commission Members in Attendance:**

Honorable Raymond G. Thieme  
Delegate Curtis S. Anderson  
James V. Anthenelli, Esquire  
Russell P. Butler, Esquire  
Honorable Timothy J. Doory  
Richard A. Finci, Esquire  
Robert Gibson  
Senator Delores G. Kelley  
Patrick Kent, Esquire  
Robert Riddle, Esquire  
Barry L. Stanton  
Delegate Joseph F. Vallario, Jr.  
Charles F. Wellford, Ph.D.

**Staff Members in Attendance:**

Gary Locust  
David Soulé, Ph.D.  
Haisha Thompson

**Interns:**

Julia Huang  
Waleska Quiles

**Visitors:**

**Representatives for The Campaign for Treatment Not Incarceration:**

Eric Lotke, Justice Policy Institute  
Kevin Pranis, Justice Strategies  
Ann Ciekot, Maryland Chapter, National Council on Alcohol and Drug Dependency  
Lori Alban, Maryland Criminal Defense Attorneys Association

**1. Call to order**

Judge Thieme called the meeting to order.

**2. Roll call and declaration of quorum**

The meeting began at 4:02 p.m. when quorum was reached and roll was taken.

**3. Approval of minutes, October 4, 2004 meeting**

The minutes were approved as submitted.

**4. Submission of 2004 Annual Report**

Dr. Wellford noted that he believed there was a significant improvement in the annual reported relative to previous years' reports and his sentiments were matched by several other commissioners. The 2004 Annual Report was approved as submitted.

**5. Report from the Executive Director**

Dr. Soulé introduced two new interns from the University of Maryland, Julia Huang and Waleska Quiles, who will work with the Commission during the winter and spring 2005 semesters. He stated that the interns will assist the Commission with data entry and other projects.

Dr. Soulé announced that he completed visits with each of the state's eight circuit administrative judges. His goal was to introduce himself as the new Executive Director, establish an open line of communication with each judge and get feedback on any issues/concerns relative to the Commission. Dr. Soulé also stated that Judge Missouri has invited him to attend the Conference of Circuit Judges on January 24, 2005. At the conference, he plans to discuss the Commission's goals and projects for the next year, review variables on the guidelines worksheet that are often left incomplete or blank and to remind judges that the Commission should also receive worksheets for reconsidered cases.

a. Update on COMAR submissions

Dr. Soulé explained that the Commission's proposed changes to COMAR would be published in the January 21, 2005 edition of the Maryland Register. The proposed changes were to be published for 30 days in order to facilitate public comment. After which, the Commission would submit a transmittal of final action that would be published, and the regulations would go into effect 10 days after publication. As a result, the Commission's proposed changes should take effect near the end of March.

b. Update on worksheet automation project

Just prior to the Christmas holiday, Dr. Soulé and staff met with the University of Maryland's Office of Academic Computer Services (OACS) to discuss progress on the guidelines worksheet automation project. OACS is currently updating the online worksheet based on feedback from the Commission staff. The next step is for OACS to set up the worksheet automation project so that Commission staff can enter the hard copies of the guidelines worksheets that are mailed to the Commission directly into the web-based database. Commission staff will then provide further feedback on any problems or adjustments needed with the system. Finally, Commission

staff will ask for volunteers that work out in the field to come into the Commission office, go through the entry process, and provide feedback on the automated process.

- c. Update on analyses of compliance data within cells for drug offenses  
Dr. Soulé and Gary Locust met with Patrick Kent before the holiday to discuss this project. Gary will finalize a table exhibiting compliance rates within each cell of the drug matrix within the next two weeks. The information will be shared with the Guidelines Subcommittee for review.

## **6. Presentation by The Campaign for Treatment Not Incarceration**

Eric Lotke from the Justice Policy Institute presented on behalf of the Campaign for Treatment Not Incarceration. The Campaign is a coalition dedicated to making Maryland a safer and more just state by reducing its reliance on incarceration and expanding effective treatment programs. The fundamental idea is that prison space should be reserved for serious violent crimes, and that people with substance abuse issues can often receive treatment in the community without threatening public safety.

Last year, the Campaign participated in the passage of legislation which stemmed from bipartisan consensus that treatment can be a viable alternative to prison. The legislation expanded the range of options available to judges, prosecutors and corrections officials for diverting people from prison to treatment. Subsequently, the governor established the Maryland State Drug and Alcohol Abuse Council to coordinate implementation of the initiative.

The Campaign, which believes the Sentencing Commission plays a critical role in the Maryland justice system, would like to explore with the Commission whether steps could be taken to reclassify narcotics distribution within the guidelines in order to better distinguish between substance abusers and major traffickers. Additionally, the Campaign would like to explore whether changes in the method of determining the offender score might help reduce incarceration of drug offenders and release resources to expand treatment.

At present, the Campaign is gearing up to propose further reforms in several different dimensions and looks forward to working with the Sentencing Commission to make greater use of treatment in appropriate cases.

After hearing the Campaign's presentation, Senator Kelley explained that the agenda of the Campaign is an interest of the Commission. However, implementing corrections options in a voluntary guidelines system has proven to be very difficult. Because of various barriers the Commission faces, including limited discretion, the members often use the resources for other projects. Senator Kelley would like to see a study to determine the cost of incarceration versus treatment and based on these costs, define structured corrections options plans.

Judge Doory asked the Campaign which specific cells of the drug matrix they were targeting for revision. Eric Lotke replied that they were not sure, but the Campaign believed the time was right to get together and look at the guideline ranges in these cells.

Robert Riddle pointed out that if you look at the statistics from the Division of Corrections, you will find there are fewer people in the DOC on drug charges than one would expect. He suggested the vast majority of offenders are incarcerated on person offenses. However, Director Stanton reminded the Commission not to forget about local correctional facilities. He pointed out that in the Prince George's County facility, 42% of the offenders are there on drug charges.

Hopefully, a partnership with the Campaign will provide a way for the Commission to figure out how to encourage judges, prosecutors and defenders to efficiently use treatment instead of incarceration in applicable cases.

### **7. Worksheet Revisions**

Dr. Soulé proposed two changes to the worksheet. The first one reflected the “economic loss” addition to the worksheet as a result of House Bill 918. The second change was a recommendation from Dr. Soulé, who noticed that the “indigence established” variable, which was located under the “victim information” box, is often left blank on the worksheet when there is no victim information to report. Therefore, Dr. Soulé proposed moving the “indigence established” field closer to other relevant offender information on the top portion of the worksheet.

Robert Gibson noted that the literal for the “economic loss” field in the minutes needed to be the same as it appears on the worksheet. It was agreed that the example on the revised guidelines worksheet had the correct wording, while the minutes from the October 4, 2004 needed to be amended. The guidelines worksheet revisions were accepted as proposed.

### **8. Discussion of date for annual Public Comments Hearing**

Per enabling legislation, the Commission is expected to hold an annual public comments hearing. Dr. Soulé asked for suggestions on the date and an agenda for this meeting. The Commission decided to discuss the details of the public comments hearing at the next scheduled Commission meeting in May 2005. It was suggested that the Commission should prepare to have another Commission meeting shortly after the May meeting to allow for a timely vote on the proposed seriousness categories for any new offenses or punishments passed during the 2005 General Assembly. Judge Thieme proposed a possible June meeting.

### **9. Discussion of plans for proceeding with Correctional Options inventory survey**

In the past, the Commission has identified the need to inventory what correctional options services are available throughout the state. This project, which focuses on “front-end” corrections options, would comprise of a complete list of correctional options services available. Dr. Soulé asked for feedback from the Commissioners on the best strategy for

proceeding with this project. Commissioner Kelley suggested the Commission start at the local level and sort out the process used by judges to recommend correctional options.

Dr. Soulé clarified his request by stating the project would establish a comprehensive list of all possible alternatives to incarceration that is available in each jurisdiction and would consider how these corrections options could be incorporated into the guidelines. Finally, it was suggested the Commission staff should contact the State's Attorneys and the Public Defenders Office in each county to obtain this information. Patrick Kent said he would assist the Commission staff in obtaining this information.

#### **10. New business and announcements**

Commissioner Anderson offered an idea that he believed would be a good practical experience for the Commission. He wondered how many Commission members have actually completed a guidelines worksheet. He recently completed one and discovered various discrepancies within the process. The Commissioners agreed that staff will create hypothetical scenarios for the members to use while completing a guidelines worksheet. The staff will send out these hypothetical scenarios when they also send out the revised Guidelines Manual. Dr. Soulé predicted this would occur in late March/early April. The Commissioners will then return the completed worksheets to the staff for review.

#### **11. Adjournment**

The next meeting was set for Monday, May 2, 2005 at 4:00 p.m. in Annapolis at the Judiciary Training Center.

The meeting adjourned at 5:16 p.m.