

Draft Minutes

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

January 9, 2006

Commission Members in Attendance:

Delegate Curtis S. Anderson
Russell P. Butler, Esquire
Leonard C. Collins, Jr., Esquire
Kate O'Donnell, *representing Honorable J. Joseph Curran, Jr.*
Honorable Arrie W. Davis
Honorable Timothy J. Doory
Richard A. Finci, Esquire
Senator Delores G. Kelley
Patrick Kent, Esquire, *representing Nancy S. Forster, Esquire*
Robert Gibson
Secretary Mary Ann Saar
Barry L. Stanton
Honorable John C. Themelis
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

Shawn Flower
Stacy Najaka, Ph.D.
David Soulé, Ph.D., Acting Chair
Haisha Thompson

Interns:

David Dembnicki
Ann Law

Visitors:

Claire Rossmark, House Judiciary Committee
Kevin Pranis, MD Justice Coalition and Campaign for Treatment Not Incarceration
Jasmine Tyler, MD Justice Coalition and Campaign for Treatment Not Incarceration

1. Call to order

Dr. Soulé, acting chair, called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 4:05 p.m. when quorum was reached and roll was taken.

3. Approval of minutes, September 12, 2005 meeting

The minutes were approved as submitted.

4. Report from the Executive Director

- a. Dr. Soulé began the Director's report with the introduction of Mr. Leonard Collins, Jr., State's Attorney for Charles County. Mr. Collins was appointed by the Governor's Office to replace Commissioner Robert Riddle whose term expired. Mr. Collins has also assumed Mr. Riddle's place on the Guidelines Subcommittee. Dr. Soulé also noted that Mr. Riddle was recently appointed to the bench for the District Court in Calvert County. The Governor's Appointments Office reappointed Dr. Wellford and Director Barry Stanton to new four year terms.

Dr. Soulé introduced Stacy Najaka, Ph.D. who joined the Commission staff in October of 2005 as the new research director. Finally, Dr. Soulé introduced two student interns from the University of Maryland, Ann Law and David Dembnicki, who will work with the Commission during the upcoming Spring semester.

- b. Dr. Soulé noted that copies of the 2005 annual report were mailed to all Commission members, the President of the Senate and Speaker of the House, all circuit court judges, each county's State's Attorney and Public Defender, and Parole and Probation field offices prior to the holiday. Senator Kelley suggested sending copies of the report to all members of the General Assembly. However, Dr. Soulé replied that he was advised not to send the report to all members to help control the amount of material members received. Senator Kelley noted that the report should at least be sent to members of the Senate Judicial Proceedings Committee and to members of the House Judiciary Committee. The Commission agreed and Dr. Soulé noted that copies will be forwarded to these members of the General Assembly. Judge Doory suggested that the Commission contact the General Assembly via e-mail to notify them of the annual report and where it can be downloaded from the website. The annual report was approved as submitted.
- c. Dr. Soulé announced that he is in the process of meeting with a selected group of county and circuit administrative judges in jurisdictions where compliance rates for specific offense types fall below the 2/3 benchmark. Dr. Soulé noted that to date, most judges have been very receptive to feedback on their individual jurisdictions. Additionally, the meetings have proven to be a useful opportunity to discuss the guidelines worksheet submission process, alternatives for correctional options as well as the overall guidelines process.
- d. Dr. Soulé noted the latest revisions to the guidelines offense table were adopted by COMAR on November 24, 2005. These revisions reflect the Commission's categorization of seriousness categories for new and revised offenses passed by the Legislature in 2005. The Commission staff has produced an updated Offense Table to reflect these changes. A print-friendly version of the updated offense

table, which is Appendix A in the Guidelines Manual, has been posted to the Commission's website.

Commissioner Butler noted the offense table was missing CJIS codes for several offenses. He suggested the Commission staff obtain a copy of the latest Commissioner's Manual with the updated CJIS codes so that the Guidelines offense table could be updated. Commissioner Butler also noted that the staff could contact the District Court to request CJIS codes for any guidelines offenses that do not yet have a CJIS code. Dr. Soulé agreed that the Commission staff would work to revise the offense table with updated CJIS codes.

- e. Dr. Soulé gave a progress report on the status of the Commission's statewide inventory of correctional options. He noted that for this project, the staff has adopted a broad definition of correctional options to include all possible "alternatives to confinement". To date, approximately 50% of Parole and Probation offices have responded to the request for information. The staff will proceed with the inventory process and plan to have a report ready for the Commission prior to the next scheduled meeting. Commissioner Stanton noted that it was important for the staff to also contact local correction offices since most options are available at the local level. Commissioner Stanton recommended the staff also obtain the statewide list of capital construction from the Department of Budget and Planning because each local jurisdiction needs to annually submit a list explaining what correctional options are being utilized in each county. The staff agreed to contact the necessary officials to obtain this information.
- f. Finally, Dr. Soulé announced that the Commission staff is in the process of updating their contacts database. Due to increasing costs for printing and the time efficiency of e-mail, the staff will set up an e-mail list serve which can be used to update individuals on any changes to the guidelines. Within the next month, the Commission staff will start sending out a periodic newsletter entitled "Guidelines E-News". The Guidelines E-News will be sent electronically to all individuals and state officials involved in the guidelines process. The E-News will advise of any changes to the guidelines or the guidelines worksheet. Finally, the Guidelines E-News will also replace its predecessor the "Sentencing Fax" and will continue to provide periodic reports on sentencing issues and other topics of interest.

5. Report from the Guidelines Subcommittee – Dr. Wellford

- a. Dr. Wellford, chair of the Guidelines Subcommittee, introduced the first Subcommittee topic for discussion. The Subcommittee recommended that the Commission officially adopt a policy to categorize all offenses with a maximum penalty of 1 year or less as seriousness category VII offenses. This has traditionally been the unofficial policy of the Commission, but the Subcommittee agreed that we should officially document this rule in COMAR and subsequently in the Guidelines Manual. The rationale for this rule was that it would prevent the Commission from having to go through the time consuming process of submitting

- all minor offenses to COMAR before they would be categorized. Additionally, it would prevent the Guidelines Offense Table from becoming too cumbersome by listing every offense with a one year period or less. A motion to adopt the rule was made and a unanimous vote led to its adoption. The Commission staff will submit this rule to COMAR for adoption and will add it to the Guidelines Manual after the policy has been adopted by COMAR.
- b. Dr. Wellford discussed the Subcommittee's review of the continued collection of sentencing worksheets for probation revocations. At the previous meeting, the Commission discussed the lack of compliance in submitting worksheets for these cases and debated the value of collecting worksheets for these cases. The Subcommittee reviewed this issue and advises that the Commission hold off on any change in policy regarding the collection of worksheets for revocations until we are able to determine how the automated submission process will improve the overall collection of worksheets and subsequently implement a simplified submission process for collection of worksheets for probation revocation cases, as well as reconsiderations.
 - c. The next Subcommittee topic reviewed by Dr. Wellford was how the Commission staff should handle guidelines worksheets that are submitted with obvious errors (such as a miscalculated guidelines range or an incorrect seriousness category for a specific offense). The Subcommittee noted that the automated submission process would eliminate most, if not all guidelines errors and therefore the Subcommittee recommends that no action be taken until the Commission can assess the effectiveness of the automated system in eliminating these errors. Further, the Subcommittee advised that Commission staff should proceed to data enter worksheets "as received" in the interim with the rationale that the court made a ruling based on the guidelines as calculated even if there was an error in calculation.
 - d. Dr. Wellford concluded his report by summarizing the Subcommittee's review of how weapon usage is scored in the guidelines. The Subcommittee held two meetings since the last full Commission meeting on September 9th which addressed the weapon usage issue. At the first Subcommittee meeting it was decided that more information was needed including a list of offenses where 2 points are currently being applied for weapon offenses, specifically with respect to the wearing, carrying, and transporting (WCT) offenses (since this is where the whole weapon usage discussion began). The Commission staff supplied the Subcommittee with a report on this information which indicated 2 points for weapon usage was currently being applied in approximately 80% of WCT offenses. After much Subcommittee debate on the issue, a proposal was made to modify how weapon usage is defined to bring it closer to how it is defined in a series of federal and State cases. The Subcommittee voted on this proposal and was deadlocked in a 3-3 vote so no specific recommendation could be made to the full Commission.

6. Weapon Use Definition Amendment Proposal – Commissioners Richard Finci and Judge Themelis

Commissioners Richard Finci and Judge Themelis presented three proposed amendments regarding the definition of “weapon use” for the calculation of offense scores and the instructions given to individuals who complete the worksheets. The main premise of the proposed amendments was that two points should not be assigned to the offense score when a firearm is not actually employed or utilized. Mr. Finci reviewed how the weapon usage debate began and outlined the impact of adding the additional points for weapon usage on the guidelines range. Additionally, Mr. Finci cited case law that has affirmed that “use of a handgun” is not the same as handgun possession.

Judge Themelis added that he was also a member of the original Guidelines Committee and at no time was an enhancement for weapon usage considered for mere possession WCT offenses. Judge Themelis further noted that he does not believe Baltimore City has ever included an enhancement for weapon usage in the guidelines calculation for mere possession offenses.

Senator Kelley expressed her agreement with the position held by Commissioners Finci and Judge Themelis. She added that the case law in Maryland has consistently defined use as the active employment of a weapon and she would again suggest that we need to follow the lead established by the Appellate Courts.

Leonard Collins noted he believes the guidelines go beyond the law because they look at other elements. For instance they look at the age of the victim to establish whether additional points should be added for special vulnerability. This factor is not a matter of law, but rather a matter of policy established by the Commission.

Judge Doory expressed his opposition to the proposed amendments. Specifically, Judge Doory noted his opposition to ever making any policy change that would reduce sentences for offenses involving handguns. He stated that the guidelines should reflect the policy as established by the legislature which clearly distinguishes between possession of a handgun and wearing, carrying, or transporting a handgun.

Mr. Collins stated that since the definition of weapon usage appeared unclear, maybe the Commission should consider changing the phrase “weapon use” to “presence of weapon”.

After an extended debate on the issue, Dr. Wellford commented that although the proposed amendments were stirring up more issues that needed to be addressed by the Guidelines Subcommittee, the Commission needed to vote on the current proposal.

By way of 7-6 vote, the Commission denied the proposed amendments to change the definition of weapon usage and the answer to its respective “Frequently Asked Question” on the Commission’s website. The Guidelines Subcommittee will discuss these issues further and provide feedback for the Commission at the next meeting.

7. Suggestions for date and location of 2006 Public Comments Hearing

Senator Kelley suggested that the Judiciary Training Center may not be the best location for a public meeting since its location is not well known. Delegate Anderson suggested hosting the meeting in Upper Marlboro in Prince George's County. Other suggestions included Baltimore City or one of the larger hearing rooms in the Senate building. The Commissioners were asked to consider possible dates and locations for the 2006 Public Comments Hearing and be prepared to offer suggestions at the next meeting.

8. Old business

An editorial published in the January 9, 2006 edition of *The Baltimore Sun* was distributed to Commission members and discussed. The editorial discussed the role of the Commission in regards to sentencing of drug offenders in Maryland and further stated that the Commission needed to acknowledge the value of ABA pleas and correctional options while emphasizing treatment instead of incarceration for drug offenders.

Dr. Wellford noted it was his belief that the editorial was misleading by failing to discuss the actions the Commission has already taken in regards to ABA pleas, as well as correctional options. It was agreed that the staff would ask Judge Thieme to submit a response to the editors of *The Baltimore Sun* detailing the Commission's efforts to promote ABA pleas and correctional options. Additionally, it was suggested the response should highlight that the Commission does recognize that many drug offenders would benefit from options such as substance abuse treatment and that the Commission is in the process of assessing the availability and effectiveness of correctional options in Maryland.

Delegate Anderson voiced his concern regarding the guidelines for offenders convicted of low-level drug offenses. He suggested the Commission should consider how the guidelines could distinguish between high-level drug dealers and low-level drug users. Patrick Kent stated it was his belief that the Commission should develop a system of diversion from incarceration for low-level drug offenders and that the Commission should consider developing a subcommittee to specifically explore this issue.

Judge Doory suggested the Commission might want to consider revising the offender score for non-violent drug offenders by providing a system that would offer a subtraction of points for individuals who are amenable to treatment. The Commission would need to establish criteria for who is amenable to treatment. Secretary Saar noted that the Department of Public Safety and Correctional Services (DPSCS) does use a screening instrument during the corrections phase but was not sure how such an assessment instrument would be applied during the sentencing phase and who would be responsible for completing the assessment instrument at sentencing. Secretary Saar agreed DPSCS could provide a presentation on assessment tools currently being used in Maryland at the next Commission meeting.

It was suggested that the Commission would benefit from hearing from how other states have utilized assessment instruments during sentencing. Dr. Soulé agreed that he would contact the director of the Virginia Sentencing Commission to see if an individual from their staff would present on the Virginia risk assessment instrument for non-violent offenders at the next Commission meeting.

9. New business

Dr. Soulé announced that the National Association of Sentencing Commissions (NASC) 2006 annual conference will be held in Philadelphia this year from August 6-8, 2006. Commissioners who are interested in attending should contact the Commission staff for further information.

The next meeting was set for Monday, March 6, 2006 at 4:00 p.m. in Annapolis at the Judiciary Training Center. Dr. Soulé indicated that he hoped this meeting would include a presentation on the correctional population simulation model which should be ready for review by the next meeting.

Kevin Pranis from Justice Strategies and the Campaign for Treatment Not Incarceration distributed a handout which included a copy of legislation from Washington State. The legislation focused on diverting non-violent drug offenders from prison and diverting the cost savings to treatment. Mr. Pranis thought the legislation might be of interest for referral to the Commission.

10. Adjournment

The meeting adjourned at 6:17 p.m.