

Approved Minutes

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

March 6, 2006

Commission Members in Attendance:

Honorable Raymond G. Thieme
Delegate Curtis S. Anderson
James V. Anthenelli, Esquire
Russell P. Butler, Esquire
Leonard C. Collins, Jr., Esquire
Honorable Arrie W. Davis
Honorable Timothy J. Doory
Richard A. Finci, Esquire
Linda Forsyth, *representing Senator Delores G. Kelley*
Robert Gibson
Patrick Kent, Esquire, *representing Nancy S. Forster, Esquire*
Laura L. Martin, Esquire
Chief Gary W. McLhinney
Hans Miller, *representing Honorable J. Joseph Curran, Jr.*
Secretary Mary Ann Saar
Barry L. Stanton
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

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

Visitors:

Claire Rossmark, House Judiciary Committee
Kevin Pranis, MD Justice Coalition
Richard Rosenblatt, Department of Public Safety and Correctional Services
Jasmine Tyler, MD Justice Coalition
John Spier, Applied Research Services
Claire Souryal, University of Maryland, College Park
Robert Weisengoff, Pretrial Release Services Program for Baltimore City

1. Call to order

Judge Thieme 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, January 9, 2006 meeting

The minutes were approved as submitted.

4. Report from the Executive Director

- a. Judge Thieme introduced Laura Martin as a newly appointed Commissioner. She is one of the two public representatives and her membership is effective January 13, 2006. Ms. Martin replaced former Commissioner Dr. Janis Judson. She served as an Assistant State's Attorney in Prince George's County for nine years and Deputy State's Attorney in Calvert for seven years. Currently, Ms. Martin is a part-time solo practitioner in Prince Frederick and a part-time staff attorney for the Maryland Crime Victims' Resource Center. Ms. Martin is a candidate for State's Attorney in Calvert County in this year's November election.
- b. Dr. Soulé announced a change in the agenda. Rick Kern, the Director of the Virginia Criminal Sentencing Commission, had to cancel his planned presentation due to a change in schedule with his planned testimony for the General Assembly of Virginia. Mr. Kern indicated he would like to reschedule his presentation with the Commission at a later date.
- c. Dr. Soulé noted the latest round of COMAR revisions were adopted on February 27, 2006. This submission reflects changes in the following two seriousness categories to maintain consistency with other similar offenses:
 - Extortion by false accusation [CR, §3-704(a)] - Seriousness category was changed from level VI to level V.
 - Unlawful wearing, carrying, or transporting a handgun with intent to injure or kill [CR, §4-203(c)(4)(i)2B] – Seriousness category was revised from level V to level III.
- d. Dr. Soulé announced that the first and second issues of the new Guidelines E-News were distributed since the last Commission meeting. The Commission staff plans to use this new format to notify all interested people throughout the State of any changes relevant to the guidelines. The Commissioners were asked to contact the Commission staff if they are not receiving the E-News or to provide any comments/recommendations they may have.

5. Presentation from John Spier, Applied Research Services (ARS), Inc. – Update on the development of Maryland's Sentencing/Correctional Simulation Model

John Spier presented on the work currently being completed by ARS on the Maryland Sentencing/Correctional Simulation Model. The purpose of the project is to develop a computer simulation tool that mimics sentencing and correctional populations using different sentencing policies and laws, time-served practices,

and sentence options/alternatives. The simulation, which imitates a real world process or system over time, has advantages such as describing and analyzing the behavior of a system, answering “what if” questions, and eliminating emotions in decision-making. Additionally, simulation can test every aspect of a proposed change without committing resources and can explore new policies or operating procedures without the expense and disruption of experimenting on the real system. The disadvantage of simulation is estimating future decisions about people who do not exist and events that have not occurred.

The Commission simulation model mimics individual offenders as they move through the system, reads data directly from the Maryland Sentencing Commission data file, and will eventually read actual prison population data. The model relies on various Microsoft software including SQL Desktop-engine, MS-Visual Basic.Net and Simul8 Professional. The adjustable policy parameters include range values for all personal, property and drug matrix cells, offense seriousness categories, mandatory minimums, offense seriousness weights, offender scores, and future caseload volume.

The remaining development issues that will be addressed are the estimated length-of-stay (LOS), incorporated stock population (actives), incorporated probation/parole violator admissions, and non-guidelines cases. At the end of his presentation, Mr. Spier demonstrated how the system would work using a few example scenarios.

Commissioner Anderson asked if the simulation model would be able to project changes in prison population based on the potential changes instituted by the Commission. Mr. Spier indicated the model would be able to provide projections on bed space if data on length of stay and the actual population are made available. He indicated that Claire Souyral, who works as a consultant for the Commission on this project, has been working with the Division of Corrections to get length of stay data.

Patrick Kent stated that if the projections are five years out and are an estimate of what the future holds, then there must be some factors that were changed for the projections. He explained that if every factor stayed the same, then the projected number in 2011 would be the same as the number in 2006. Mr. Spier replied that the changes have to be modeled in the simulation model and the model can be adjusted to incorporate policies that change over time.

Mr. Collins asked for clarification on how the model will be applied to Maryland. He asked if it was correct that the model Mr. Spier is developing will need to first identify any “inertia” in the criminal justice system that will impact trends in the State’s prison population. Mr. Spier indicated that was correct. He advised that it would be beneficial for Maryland to develop a group of people or a “projection group” that are familiar with the Maryland correctional population. This group could be comprised of individuals from Corrections, Parole and Probation, individuals from planning and budgets operations, as well as the Commission and any other interested participants.

This group would then identify what assumptions need to be incorporated into the model. Mr. Spier indicated Virginia uses a project model and has established a group such as this.

Robert Gibson introduced himself and indicated he is one of the persons responsible for developing corrections projections. He noted that we should be clear about the potential impact of this simulation model. First, it certainly would be a benefit to DPSCS to have additional modeling on correctional population forecasting. Second, it seems this model will be useful to the Commission in that if there is a proposed change to one of the guidelines matrices to either increase or decrease penalties, the model could estimate the potential impact on prison bed space (regardless of what is happening currently in the Division of Corrections). However, one concern Mr. Gibson has is that the guidelines data does not differentiate for the short-sentence individuals, who is going to the Division of Corrections and who is going to the local jail.

Patrick Kent noted that it seems the next major step is to examine the DOC data and get a sense of what trends are apparent. Mr. Spier replied that this part of the process will be done with the assistance of the Commission staff. Mr. Kent also wanted to know what the approximate time frame would be for the modeling to get to this phase. Mr. Spier answered that the modeling side would not take long, but analysis would take longer. Claire Souryal stated that she believed significant progress can be made within the next couple of months.

6. Presentation from Maryland Department of Public Safety and Correctional Services – Instruments utilized by State for corrections classification and other types of assessment

Richard Rosenblatt, Assistant Secretary for Treatment Services for the Department of Public Safety and Correctional Services (DPSCS)

Mr. Rosenblatt introduced himself and indicated he would discuss some of the assessment tools utilized by DPSCS. The first step DPSCS decided to make in regards to treatment was to figure out what type of offenders were coming into the system. The inmates, which flow in from the Maryland Receptions Diagnostic and Classification Center, were being identified for mandatory and special education needs, but not for general academics. Medical screens were also being conducted to figure out health problems, but little attention was paid to the issue of recidivism. Therefore, the DPSCS embarked on a process of identifying tools, including screens and assessments, to be implemented.

The first area DPSCS wanted to focus on was substance abuse treatment. Secondly, they needed to deal with mental health, mental illness and suicidal offenders. Thirdly, DPSCS wanted to deal with the aspect of mental health that deals with the criminality component, also known as psychopathy.

Lastly, DPSCS wanted to get a grasp on risk assessment, which is different from psychological assessment. Risk assessment, which considers the individual's thought process, also takes into account various static facts including age, family, and criminal history. With all these variables, DPSCS wanted to find a tool that represented all that they were trying to accomplish.

For substance abuse treatment, DPSCS utilizes the Texas Christian University (TCU) drug screen because it offers the following advantages: 1) it can be administered in a group, 2) it requires little time to complete, and 3) it is free to the public. There is also a strong correlation between the TCU drug screen and the Addiction Severity Index (ASI), which is the assessment tool that is mandated by the Alcohol and Drug Abuse Administration. In the area of mental health, there are not many available screens. However, the important step is the follow-up assessment.

To address the area of criminality, DPSCS uses the Lifestyle Criminal Assessment Screening Form (LCSF). The LCSF was chosen because it correlates very strongly with the Hare Psychopathy Checklist (PCL-R). Mr. Rosenblatt indicated research shows that somebody who is psychopathic and their psychopathy is manifested in criminal behavior is not going to be treatable. Therefore, to protect the rest of the offenders in a group, the psychopath is screened out by failing to meet the requirement for eligibility for treatment. The PCL-R is also a great predictor of future criminal conduct.

Another tool used by DPSCS is the Level of Service Inventory-Revised (LSI-R). The LSI-R is an instrument that is not available in the public domain and reflects the needs of the individual who has come into the system. LSI-R is the assessment tool utilized at Proactive Community Supervision (PCS) sites. DPSCS currently has a contract with a private provider to do the front end assessment program which is located at the women's institution and the reception center. They are administering the LCSF, TCU, and the mental health screen.

The contractor is currently using the LSI-R on the women's population. However, it has not been implemented for the men's population because DPSCS is evaluating what the women's population will add to the data and it also depends on the availability of resources.

The previously mentioned tools are also used by the Parole Commission to make their release decisions. It is important to remember that DPSCS provides both prison and jail services. In Baltimore City, there is short term assessment population and pretrial population. Mr. Rosenblatt introduced, Bob Weisengoff, to speak about assessment for pretrial services.

Robert Weisengoff, Director of Pretrial Release Services Program for Baltimore City, Division of Pretrial Detention and Services

Mr. Weisengoff indicated that until recently, the Pretrial Program was using an instrument based on the Vera Institute's model developed in the late 1960s. The Vera Point Scale was cumbersome to use and did not account for public safety factors that the Judiciary demanded. The risk assessment tool currently used is based on four questions dealing with criminal history and one question that addresses stability within the community. Mr. Weisengoff indicated that research shows that stability in the community proved to be a fine indicator for criminal history. In April of 2004, the Pretrial Release Program implemented a new assessment tool. This tool is used to recommend who should be released, but the judge makes the final decision to release the offender. The assessment tool has been very successful so far. The failure to appear rate is approximately 7 percent which is lower than before the instrument was implemented.

Russell Butler questioned whether any of the assessment tools would be viable for Parole and Probation before sentencing. In other words, are resources available so that the court might have the benefit of being able to see the results of these assessments before sentencing? Richard Rosenblatt replied that yes there are huge benefits to the courts to know an offender's psychopathy, likelihood for recidivism, and needs as identified by the LSI-R. The more information available in court, the more tailored the sentence can be to the individual. The reality is that providing assessments for all possible cases is not possible under current available resources. Mr. Butler asked that considering resources would not allow for these types of assessments at pre-sentencing for all offenders, would it be possible to just identify which type of cases the court would most benefit from having this information. Mr. Rosenblatt indicated that possibly a group involving individuals from multiple agencies and backgrounds could develop a criteria for what type of case would most benefit from the availability of this assessment information prior to sentencing.

7. Report from the Guidelines Subcommittee – Dr. Wellford

Dr. Wellford informed the Commission that the Guidelines Subcommittee did meet once since the last general Commission meeting, and although they discussed multiple items, he had no issues to bring forward for action.

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

Per discussion at the last Commission meeting, the Commissioners were asked to consider possible dates and locations for the 2006 Public Comments Hearing. Dr. Soulé suggested a target date consistent with the last Commission meeting of the year, which will probably be in September or October 2006. The Commissioners decided to leave the decision of the place and date for the hearing to the chair person. Once a decision is made, the chair will report back to the Commission.

9. Old business

- a. Language regarding enhancement of points for weapon usage in the Frequently Asked Question (FAQ) section of the Commission website

Commissioners were provided a handout which indicated a proposed minor revision to the language in the FAQ section of the website relative to the enhancement of points for weapon usage when calculating the Offense Score. Leonard Collins reviewed the proposed revisions. Mr. Collins stated that based on the current example on the Commission website, if an offender is pulled over for a motor vehicle offense, and a weapon is found, that offense will not generate a crime against a person. And for the weapon usage to be utilized in the sentencing guidelines, the crime has to be one that is committed against a person. In other words, a motor vehicle offense or a property offense does not score for weapon usage. In regards to the debate at the last meeting where the vote was to continue the practice of awarding two points for weapons not utilized but merely present, Mr. Collins stated that he thought it would be clearer to strike the word “weapon” in the example section and replace it with the word “handgun” and also to strike the word “involve” in the answer section and replace it with the word “present”. It would capture the substance of the debate and the final resolution the Commission had at the end of the meeting.

Mr. Finci raised his objection to the proposed changes. He noted that this issue was brought to the attention of the Guidelines Subcommittee as a result of the last meeting where the discussion regarding this whole issue generated much debate. Mr. Finci indicated that he proposed three motions at the last meeting. His final motion was to remove this FAQ from the website all together. However, Mr. Finci withdrew this motion prior to a vote so that the issue could be returned to the Subcommittee for further debate. At the subcommittee meeting, Mr. Collins made his motion, which is before the Commission now. Additionally, the chairman and the entire Commission received a letter from Delegate Vallario requesting that this weapon issue and subsequent motions that were voted on at the January 9, 2006 meeting be reconsidered because of the absence of Delegate Vallario and a few other Commissioners. Mr. Finci requested based on these circumstances that this issue be deferred to another meeting.

Judge Thieme replied to Mr. Finci that the motions were already passed and carried at the previous meeting. Judge Thieme indicated that dissatisfaction with a vote does not provide justification or give the chair the authority to put a motion back on the agenda after the Commission has already voted it down. However, if Mr. Finci had another motion for the Commission to consider, then he would allow a discussion and vote on the new motion.

Mr. Finci replied that he wanted to make a motion on behalf of Delegate Vallario to reconsider the weapons issues that were brought before the Commission at the last meeting. Patrick Kent seconded the motion.

Before hearing discussion, Judge Thieme clarified the rules on votes by proxy as presented in the Commission bylaws. As stated, there are only four individuals on the Commission who can submit votes by proxy. These include Chief Judge Bell, the Secretary of the Department of Public Safety and Correctional Services, the Public Defender and the Attorney General.

Judge Doory stated that according to Robert's Rules of Order, a suggestion such as Mr. Finci's motion can only be considered by the governing body if it is presented by someone who is on the prevailing side of the vote. Therefore, unless someone who voted against the proposal submitted by Mr. Finci and Judge Themelis suggests a reconsideration, the issue cannot be voted on again.

Delegate Anderson commented that it appeared that the weapons issue had not fully been resolved by the Commission. He indicated that since Delegate Vallario was unable to attend this meeting because of work scheduling conflicts, the Commission should hold off on further discussion until the next meeting when Delegate Vallario would have the opportunity to speak on the issue.

Judge Doory noted that this issue has been considered by the Commission for at least the last two prior meetings so this issue has been on the table in some form of consideration for close to a year. Judge Doory felt that the Commission dealt with this issue and needed to focus on other problems.

Judge Thieme stated that he would follow Robert's Rules of Order for this issue. Since no Commissioner on the prevailing side of vote motioned to reconsider the decisions, Mr. Finci's motion to have this issue deferred to a future meeting was denied.

Mr. Finci stated that there were three motions presented at the last meeting. The third motion dealt with the wording on the FAQ page of the website. He was not sure how Mr. Collins's proposal meshed with his third motion.

Dr. Wellford stated that at the last meeting after the third proposal by Mr. Finci and Judge Themelis was withdrawn, he suggested that the issue of the FAQ language could be referred to the Guidelines Subcommittee where it could be discussed further. The Subcommittee did discuss this issue at its February 21, 2006 meeting (in which Mr. Finci participated as a non-voting representative). The Subcommittee voted 3-1 in favor of Mr. Collins's motion to change the wording of the answer on the website. Dr. Wellford indicated he did not present on this vote during his Subcommittee report because he did not think it was appropriate until this issue was back on the table as a part of Old Business.

Mr. Finci felt that Mr. Collins's motion was not consistent with his own. His suggestion was to completely remove the question from the website because he felt that the answer gave a definitive answer to a question that should be answered by a judge.

Dr. Wellford expressed that he believes Mr. Finci may be confusing the issues of consistency within the guidelines and our use of voluntary guidelines. The subcommittee concluded that although the judge is not required to follow the guidelines, if they do, there should be guidance on this issue so that there is consistency in the application of weapons scoring.

Patrick Kent seconded the motion to completely strike the FAQ regarding enhancement of points for weapon usage from the Commission's website. Judge Doory commented that even though the question can be removed from the website, it will not prevent others who fill out the guidelines worksheet from asking the question. Therefore, the Commission should have an answer to avoid confusion.

Russell Butler stated that the reason why he opposed Mr. Finci's motion was that it goes against the consistency that the Commission has been trying to maintain. He believed that Mr. Collins's motion clarifies what is on the website now and removes ambiguity. Mr. Butler requested that the Commission support the Guidelines Subcommittee to deny Mr. Finci's amendment and adopt Mr. Collins's motion.

Judge Thieme called for a vote on the motion to have the weapon usage FAQ removed from the Commission website. Noting only 4 votes in favor of this motion, Judge Thieme indicated this motion was defeated.

Judge Doory suggested the Commission consider the removal of the word "are" from the answer on the FAQ page and that it be replaced with "may be". Dr. Wellford expressed his opposition to this motion because it works against consistency. He noted that staff analyses indicated that in approximately 1500 weapons cases, the two points for weapon usage was applied in approximately 80 percent of these cases. So, it is important that our language is consistent with actual practice which is what we have tried to do throughout the guidelines.

Delegate Anderson asked for clarification on what judges are doing in 80 percent of the time in regards to gun cases. Dr. Soulé indicated the two point enhancement was being applied in approximately 80 percent of all wearing, carrying, and transporting (WCT) handgun offenses.

By way of 9-4 vote, the Commission denied the proposed amendment to change the word "are" to "may be" in the answer for the weapons usage question on the Commission's website.

By way of 9-4 vote, the Commission adopted the proposed amendment to change the word "weapon" to "handgun" in the example section and to change the word "involve" to "present" in the answer for the weapons usage question on the Commission's website.

10. New business and announcements

The next meeting was set for Monday, June 5, 2006 at 4:00 p.m. in Annapolis at the Judiciary Training Center.

11. Adjournment

The meeting adjourned at 6 p.m.