

Minutes

Maryland State Commission on Criminal Sentencing Policy
Miller Senate Office Building
Annapolis, Maryland

June 27, 2005

Commission Members in Attendance:

Honorable Raymond G. Thieme
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
Kate O'Donnell
Robert Riddle, Esquire
Delegate Joseph F. Vallario, Jr.
Charles F. Wellford, Ph.D.

Staff Members in Attendance:

Shawn Flower
Gary Locust
David Soulé, Ph.D.
Haisha Thompson

University of Maryland Intern
Colin Bolger

Visitors:

Kevin Pranis, MD Justice Coalition
Jason Ziedenisberg, MD Justice Coalition

1. Call to order

Judge Thieme called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 4:10 p.m. when quorum was reached and roll was taken.

3. Approval of minutes, May 2, 2005 meeting

The minutes were approved as submitted.

4. Report from the Executive Director

- a. Dr. Soulé announced that the initial phases of the correctional population simulation software project have started. The Commission has contracted with Applied Research Services for this project and they have set an estimated completion date of August 15, 2005. More information should be available at the next scheduled Commission meeting.
- b. In a continued attempt to increase the completeness and accuracy of submitted guidelines worksheets, the Guidelines Subcommittee has reviewed the worksheet completion and submission process. Commission staff conducted a survey of county court clerks to find out who completes the various sections of the worksheets within each jurisdiction. The Guidelines Subcommittee asked Commission staff to extend this analysis to determine whether any specific completion pattern is linked to the receipt of more thorough and/or accurate data.
- c. Dr. Soulé reminded the Commission of the upcoming National Association of Sentencing Commissions (NASC) annual conference, which will be held in Washington, DC from August 7th through August 9th. Senator Kelley volunteered to attend and Dr. Soulé invited other Commissioners to consider attending as well. Dr. Soulé will send an e-mail reminder for those Commissioners who were not in attendance.
- d. Dr. Soulé introduced Colin Bolger, a student from the University of Maryland, who has volunteered his services to assist the Commission staff during the summer while he is preparing to attend graduate school.
- e. Dr. Soulé reported that Commission staff has received no additional sentencing scenario exercises since the last Commission meeting in May. Judge Thieme suggested that staff take a different approach to providing Commissioners experience in completing the guidelines worksheets. Patrick Kent stated that the sentencing scenario exercises were very intimidating and suggested that a power point presentation may be more informative and effective. Dr. Soulé reminded Commissioners that the Commission produced a training video three years ago and some Commissioners (especially those new to the Commission) may have never viewed the video. Commission staff will make the guidelines worksheet video available to any interested Commissioners.

5. Report from the Guidelines Subcommittee – Dr. Wellford

- a. Discussion and vote for proposed seriousness category of new/changed offenses passed during the 2005 Legislative session
All of the seriousness categories proposed by the Guidelines Subcommittee were accepted and adopted by the Commission.

- I. SB 488 – Use of or threat of force to coerce participation or prevent leaving gang (CR, §9-802) and Use of or threat of force to coerce participation or prevent leaving gang in school or within 1000 feet of school property (CR, §9-803)
 - By a vote of 11-0, the Commission voted to adopt the suggested seriousness category of VII for CR, §9-802 and a category VI for CR, §9-803.
 - II. HB 663 – Robbery by display of written instrument claiming possession of dangerous weapon (CR, §3-403(a)(2))
 - By a vote of 9-2, the Commission voted to adopt the suggested seriousness category of III for this offense.
 - III. SB 47 – Law enforcement protection act (CR, §3-203(c))
 - By a vote of 9-2, the Commission voted to adopt the suggested seriousness category of V for this offense.
 - IV. SB 122 – Retaliation related to felony violation of a Title 5 offense or COV (CR, §9-303(c)(2)) and Intimidating or corrupting jurors in connection with a felony violation of a Title 5 offense or a COV (CR, §9-305(c)(2))
 - By a vote of 9-2, the Commission voted to adopt the suggested seriousness category of III for both of these offenses.
- b. Re-examination and vote of proposed seriousness category change from May 2nd meeting
 Commissioner Finci moved to table this discussion until the next meeting because he did not receive the packet mailed by the Commission staff. He requested more time to review the materials related to these offenses and the Commission agreed to honor this request.
- c. Continued discussion of drug distribution cell range and re-examination of Commissioner Butler’s Individual Cell Proposal
 The Commission accepted the recommendations from the Guidelines Subcommittee to continue reviewing the individual cell proposal and make no changes to the drug distribution cell range at this time. Commission staff was asked to provide data on what compliance rates for these offenses would be if all ABA pleas were removed. Commissioner Butler noted that the Commission has previously told the judiciary that revisions would be made to the guidelines based on actual practice. Accordingly, he suggested that it was critical for the Commission to notify the judiciary about any decision it makes regarding the guidelines range for any of the three matrices and inform the judiciary about how we came to our decision.

- d. Discussion of “Campaign for Treatment, Not Incarceration” policy brief (distributed at May 2nd meeting)
Dr. Wellford stated that the Guidelines Subcommittee asked the Commission staff to review the CTNI policy brief and determine the impact of their three recommendations. Senator Kelley suggested this topic should be the focal point of the Public Comments Hearing in September.
- e. Public access to court records and Maryland Sentencing Guidelines data
Dr. Wellford reviewed the contents of two recent *Baltimore Sun* articles which discussed public access to court records and specifically the June 15th decision of the Court of Appeals which reiterated that Maryland court data must be made available electronically. The Commission discussed the ramifications of the electronic release of this data and the potential negative impact of making it easier to link the Judicial Information Systems (JIS) data to our own Sentencing Commission data. While the recent Court of Appeals decision may limit our ability to realistically do anything about the electronic availability of the JIS data, the Commission agreed this decision should not prevent the Commission from expressing our concerns. In response, it was agreed that Judge Thieme would send a letter explaining the Commission’s concerns to both the Court of Appeals and to the Administrative Office of the Courts.

6. Proposed offense type re-classifications – June 2005

In the review of comparable offenses for any new and/or changed offenses, the Commission staff identified four offenses which may have been categorized incorrectly in terms of their offense type. The Commission took the following actions on these four offenses:

- a. Impersonating a law enforcement officer
Judge Doory proposed an amendment to make this offense and the comparable offenses listed on the chart a person offense. This amendment was approved by way of a 9-2 majority vote.
- b. Altering the results of a drug or alcohol screening test, 1st offense
The proposal to reclassify this offense as a property offense was adopted by the Commission by way of a 10-1 majority vote.
- c. Altering the results of a drug or alcohol screening test, 2nd offense
The proposal to reclassify this offense as a property offense was adopted by the Commission by way of a 10-1 majority vote.
- d. Visual and camera surveillance, private place
The Commission believed that this offense was appropriately categorized as a person offense and rejected the proposed offense type change.

7. Finalize time and discussion topics for annual Public Comments Hearing to be held on September 12, 2005 at the Judiciary Training Center

The Commission agreed to use the following format for the Public Comments Hearing:

- Start regular Commission meeting at 4:00 p.m.
- Break for a 45 minute dinner
- Start Public Comments hearing at 6:00 p.m.

The Commission agreed to discuss the following topics:

- Continued discussion and examination of the drug distribution cell range
- Recommendations from the “Campaign for Treatment, Not Incarceration” policy brief
- Correctional population simulation model (if ready to demonstrate)

8. Old Business

Dr. Soulé announced the terms of Commissioners Butler, Judson, Riddle, Stanton and Wellford are set to expire on June 30, 2005. As discussed at the previous meeting, Commissioner Butler has asked to not be reappointed for another term. Commissioner Riddle announced that another State’s Attorney has requested to be appointed to the Commission in his place.

Dr. Wellford and Director Stanton have expressed their desire to be reappointed to the Commission. The Governor’s Appointments Office has been notified regarding the status of each of the Commissioner’s terms. The Appointments Office notified Dr. Soulé that a decision regarding these appointments will be made soon.

Judge Doory acknowledged the substantial contributions of these Commissioners and expressed his hope that those seeking reappointment would return and continue their outstanding service to the Commission.

9. Adjournment

The next meeting is set for Monday, September 12, 2005 at 4:00 p.m. in Annapolis at the Judiciary Training Center. The annual Public Comments hearing will follow at 6:00 p.m.

The meeting adjourned at 5:53 p.m.