

**Minutes**

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

September 12, 2005

**Commission Members in Attendance:**

Honorable Raymond G. Thieme, Chair  
Delegate Curtis S. Anderson  
James V. Anthenelli, Esquire  
Russell P. Butler, Esquire  
Kate O'Donnell, *representing Honorable J. Joseph Curran, Jr.*  
Honorable Timothy J. Doory  
Richard A. Finci, Esquire  
Senator John A. Giannetti, Jr.  
Linda Forsyth, *representing Senator Delores G. Kelley*  
Chief Gary W. McLhinney  
Robert Riddle, Esquire  
Robert Gibson, *representing Sec. Mary Ann Saar*  
Barry L. Stanton  
Honorable John C. Themelis  
Delegate Joseph F. Vallario, Jr.  
Charles F. Wellford, Ph.D.

**Staff Members in Attendance:**

Shawn Flower  
David Soulé, Ph.D.

**Visitors:**

**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, June 27, 2005 meeting**

The minutes were approved as submitted.

**4. Report from the Executive Director**

- a. Dr. Soulé announced the Commission staff has undergone a few changes since the previous meeting. Gary Locust is no longer with the Commission. His position as research director has been filled by Stacy Najaka. Ms. Najaka will start with the Commission on October 1, 2005. Additionally, Shawn Flower began on a part-time basis three weeks ago and will also join the Commission staff on a full-time basis on October 1<sup>st</sup>. Shawn was hired as a policy analyst and her primary responsibility will be to coordinate the Commission's effort to establish criteria to identify offenders who should be eligible for corrections options.
- b. Dr. Soulé indicated that the Guidelines Subcommittee has recommended the Commission reconvene the Guidelines Worksheet Group or Subcommittee in an effort to improve the completeness and accuracy of the data submitted via guidelines worksheets. This group would consist of key participants in the field who complete the guidelines worksheet on a regular basis. This group will be asked to provide feedback to the Commission on the Automated Guidelines Worksheet Submission process. The Commission's training coordinator, Haisha Thompson, will coordinate this effort. The Commission is going to ask for volunteers to participate in this group. Anyone interested in volunteering for this group should contact Ms. Thompson.
- c. As decided at the last meeting, Judge Thieme sent a letter on behalf of the Commission to Chief Judge Bell as well as the Administrative Office of the Courts to express the Commission's concerns regarding the electronic availability of court records.
- d. Dr. Soulé notified the Commission of the staffs' submission of the fiscal year 2007 budget to the Governor's Office. The Commission was asked to submit a reduced budget for the third straight year. In response to concerns regarding these cuts, Dr. Soulé and Senator Kelley met with the Governor's Chief of Staff and former budget Secretary, Chip DiPaula on August 26, 2005. Mr. DiPaula recognized the concerns of the Commission and suggested we should request a budget enhancement from the supplemental budget. Dr. Soulé submitted a draft of this enhancement request to Rob Platky in the Governor's Financial Administration Office and we are waiting to hear from them on the next step.
- e. The Commission staff submitted proposed regulation changes to COMAR based votes taken at the June 27, 2005 meeting on the classification of seriousness categories for new and/or changed offenses passed during the 2005 Legislative Session. These proposed regulations were published in the September 2, 2005 issue of the Maryland Register and are currently in the 30 day period for public review. Assuming there are no proposed changes, the final regulations will be published in the October 28<sup>th</sup> edition of the Register and will go into effect 10 days later on November 7, 2005.

- f. Dr. Soulé thanked Commissioners Russell Butler and Senator Kelley for their participation at the National Association of Sentencing Commissions (NASC) conference in August, 2005. Mr. Butler, Senator Kelley, Dr. Soulé participated in the two day conference and found the conference to be very informative and useful. The 2006 NASC conference will be held in Philadelphia, PA.

## 5. Report from the Guidelines Subcommittee – Dr. Wellford

### a. Review of proposed Seriousness Category changes for Miscellaneous offenses

The Guidelines Subcommittee recommended a seriousness category change for the offense of extortion by false accusation. The Subcommittee recommended the offense should be changed from a VI to a V so that the classification would be in line with the seriousness categories for similar offenses. The maximum penalty for this offense was increased from 2 years to 10 years by the Legislature in 2004 and the Commission had not yet reviewed the relevant seriousness category based on the change in maximum penalty. Accordingly, the Commission voted on the seriousness category for the offense of “extortion by false accusation (CR, §3-704)” and took the following action:

- By majority vote, the Commission voted to change the seriousness category for Extortion by false accusation from a Category VI to V.

### b. Update on continued examination of cell range adjustments for drug offenses

The Guidelines Subcommittee examined the cell guidelines matrices to assess whether higher compliance rates could be attained by adjusting some of the cell ranges. The Subcommittee identified specific cells where guidelines compliance was either above or below the benchmark standard of 65 percent. However, the Subcommittee determined that any change in a single cell would require more wholesale changes throughout the remainder of the grids in order to maintain uniformity and consistency. Dr. Wellford reported the Subcommittee also examined compliance levels by both county and circuit. As previously discussed, there are some jurisdictions where compliance is considerably below the 2/3 benchmark that the Commission has established. The Guidelines Subcommittee decided that further review was necessary before any recommendations for changes could be made.

Dr. Wellford announced that he, Judge Thieme, and Dr. Soulé met with Judge Bell prior to this meeting. Judge Bell expressed his support for the guidelines enterprise, but noted that some judges had concerns about the whole guidelines system. Specifically, some judges were concerned about the possibility of Maryland’s guidelines system becoming mandatory and also whether the guidelines data would become publicly available on a judge-specific basis. Dr. Wellford explained to Judge Bell that the Commission has officially stated our endorsement for the continuance of voluntary guidelines. Furthermore, the Commission has consistently endorsed not making sentencing guidelines information available on an individual judge basis.

Judge Bell stated that as more judges become aware of the Commission's position on these issues, the concerns of some judges may be alleviated. Judge Bell also encouraged Dr. Soulé to meet with the individual county and circuit court administrators to address guidelines compliance issues in those jurisdictions where there is a concern. Judge Bell also suggested that the Commission discuss this issue at the policy level with Judge Missouri and the Conference of Circuit Judges

c. Update on staff examination of Campaign for Treatment, Not Incarceration (CTNI) recommendations

Dr. Wellford reported that the Guidelines Subcommittee reviewed the work the Commission staff completed which examined the potential impact of the CTNI recommendations. While discussing these analyses, the Subcommittee came to the conclusion that implicit in these recommendations is the assumption that drug offenders who are not incarcerated are receiving substance use treatment. Therefore, the Subcommittee decided to further explore this assumption, including what typically is ordered, what treatment is actually provided, what is available, and what are some of the barriers to providing the treatment that is often expected as a condition of treatment. Judge Thieme asked whether the Subcommittee is exploring the services available from the State or at the county level. Dr. Wellford noted the mandate of the Commission is to look at all correctional options and the Commission staff is working on the creation of an inventory of all available options.

Dr. Soulé noted that CTNI asked to speak at today's Public Comments hearing and will present more information on their recommendations for the sentencing guidelines of drug offenses.

d. Update on review of guidelines worksheets submission for reconsiderations, probation revocations, and reviews

The Guidelines Subcommittee considered the work that staff presented to the Subcommittee with regards to problems in the submission of worksheets for reconsiderations, probation revocations and reviews. Staff indicated that they believed one of the major causes of the problem was an inadequate description in the manual for how these cases should be handled when completing the guidelines worksheet. As a result, the staff submitted a revised supplemental chapter for the manual that would make this clearer and hopefully improve the submissions for reconsiderations, probation revocations, and reviews. The subcommittee will review the draft chapter and provide recommendations for the next Commission meeting. Additionally, Chief Judge Bell was open to reviewing the draft chapter and volunteered to send it out under his signature, encouraging judges to use it when completing worksheets for these types of cases.

Judge Doory questioned why the Sentencing Commission was interested in collecting worksheets for violations of probation. He believes that a violation of probation is a type of relationship the offender has with a judge and does not believe that the Commission should standardize these circumstances. Dr. Wellford stated that the Commission originally decided to collect information on reconsiderations, probation revocations, and reviews to help capture a complete picture of sentencing in the State. Judge Doory questioned whether the Commission intends to standardize sentences for violations of probation.

Commissioner Bob Riddle noted that he believes the reason why the Commission decided to collect data on violations of probation was to get figures on the actual amount of time offenders served for the underlying crime. Commissioner Butler reminded the Commission that it was two judges from Baltimore City who encouraged the Commission to track probation revocations to show that while they may sentence under the guidelines at the initial sentence, a violation usually results in a final sentence which is either within or above the guidelines range for the underlying offense.

Bob Gibson asked whether the Commission should encourage judges to place suspended sentences within the guidelines when probation is granted. Delegate Anderson noted that each VOP is so unique that we should not expect judges to be guided by a uniform policy. Judge Themelis agreed with this assessment and stated his belief that it would be difficult to get consensus from the bench to impose suspended sentences that are within the guidelines.

Judge Thieme suggested that the Commission put this discussion on hold for now because the motion to stop collecting data on probation revocations would be a substantial change to our current practice. Consequently, Judge Thieme asked the Guidelines Subcommittee to assess the value of collecting information on probation revocations. The Subcommittee can then provide recommendations for the next Commission meeting.

d. Review of proposed Seriousness Category changes for selected weapon offenses

Prior to the June 27, 2005 meeting, Commissioner Finci requested a review of the seriousness categories for 2<sup>nd</sup> offense wearing, carrying, and/or transporting handguns offenses. In his review of these offenses, Commissioner Finci questioned the rationality of imposing the additional two points for “weapons usage” in these offenses if the offender did not actually use or discharge the weapon. Commissioner Finci suggested the real problem is not the characterization of these offenses as category III offenses, but rather the addition of two points for weapon usage in the guidelines range. Commissioner Finci further noted that he considered the definition of ‘usage’ as active employment of a firearm, therefore ‘simple possession’ should not be allotted the two additional points when calculating the offense score. He moved that the Commission revisit the way offense scores are calculated in

weapon offense cases. Judge Themelis agreed the Commission should clearly define ‘usage’ or ‘weapon usage,’ however the Commission should not change the current seriousness categories for the particular handgun offense being reviewed.

Judge Doory opposed the proposal from Finci, stating that handgun offenders are the main problem and cause of future offenses. He also stated that though the guidelines may seem harsh, the extra two points help to provide more severe guidelines and was created to back up legislature. Judge Thieme noted that the Commission must first address the proposed seriousness categories for the selected weapon offenses listed by the Guidelines Subcommittee in the table provide for review. Accordingly, the Commission voted on each of the seriousness categories proposed by the Guidelines Subcommittee and the following actions were adopted by the Commission:

1. Handgun-unlawful wearing, carrying, or transporting handgun, 2<sup>nd</sup> weapon offense, generally
  - By majority vote, the Commission voted to keep the suggested seriousness category of III for CR, §4-203(c)(3)(i)1.
2. Handgun-unlawful wearing, carrying, or transporting handgun, school property, etc., 2<sup>nd</sup> weapon offenses
  - By majority vote, the Commission voted to keep the suggested seriousness category of III for CR, §4-203(c)(3)(i)2.
3. Handgun-unlawful wearing, carrying, or transporting handgun, more than two prior weapon offenses, generally
  - By majority vote, the Commission voted to keep the suggested seriousness category of III for CR, §4-203(c)(4)(i)1.
4. Handgun-unlawful wearing, carrying, or transporting handgun, on school property, etc., more than two prior weapon offenses
  - By majority vote, the Commission voted to keep the suggested seriousness category of III for CR, §4-203(c)(4)(i)2A.
5. Handgun-unlawful wearing, carrying, or transporting handgun, with deliberate purpose to injure or kill
  - By majority vote, the Commission voted to adopt the suggested seriousness category change from V to III for CR, §4-203(c)(4)(i)2B.

6. Weapons crimes-in general, straw purchase of regulated firearm
  - By majority vote, the Commission voted to adopt the suggested seriousness category change from V to IV for PS, §5-136, PS, §5-140, and PS, §5-141.

In response to Commissioner Finci's proposal, the Commission accepted Judge Thieme's motion to have the Guidelines Subcommittee review the definition of 'weapon usage.' The Subcommittee will make a recommendation to the full Commission regarding any action on this issue at the next meeting.

## 9. Adjournment

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

**Note:** The next meeting was originally set for January 2<sup>nd</sup> which is a State holiday. Accordingly, the meeting was rescheduled for the following Monday, January 9, 2005 at 4 p.m. in Annapolis at the Judiciary Training Center.

The meeting adjourned at 5:15 p.m.