Maryland State Commission on Criminal Sentencing Policy

Maryland Sentencing Report

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Recent Changes in the Sentencing Guidelines

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While the Maryland General Assembly deliberated changing the State's sentencing guidelines system by creating a study commission for recommendations and then creating a permanent commission, many issues and items for action were temporarily put on hold. With its creation by the legislature, the State Commission on Criminal Sentencing Policy spent its first two years making revisions in the system to address those issues and items. This article details the changes that have already been made and then the changes that are currently going through the process for approval into the Code of Maryland Regulations (COMAR).

The Commission made an important set of changes to the Sentencing Guidelines Manual, which had not been revised since the 1980s. Among the changes to the Manual were:

- A revised table of offenses, including the new seriousness level classifications of the offenses created by the General Assembly in the period since creation of the study commission.
- A new table of contents for the offense table to assist search for offense information.
- A list of definitions to provide easy reference for terms used in

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Commission Pilots Deliberative Focus Group

Michael Connelly, Executive Director

In response to the need to develop mechanisms to educate and receive feedback from the public regarding sentencing issues, the Maryland State Commission on Criminal Sentencing Policy (SCCSP) allowed its staff to organize and hold a pilot "Deliberative Focus Group" (DFG) in August 2001, sponsored by State's Attorney Marna McLendon and Howard County. Based on ideas on participative democracy from the academic community and the experience of a few practitioners, the DFG focused on correctional options, a topic of long concern among the state's criminal justice policymakers. Fourteen participants completed a survey and reviewed information about correctional options prior to the meeting. They then came to the meeting to discuss and deliberate among themselves before completing the survey again. Their responses gave SCCSP staff a wide range of views on the important policy topic.

Overall, the participants favored correctional options for appropriate non-violent, non-habitual offenders; some even indicated, after group discussion, willingness to extend the sanctions to minor violent offenders. They believed that the best system of options provision would feature county delivery, funded and overseen by the state. They did not prefer major new revenue sources or increases to pay for the programs; their preferences were for a mix of current sources, including fines, offender charges, and the state lottery. The participants expressed willingness, especially after group discussion, to give the offenders' supervising agents significant powers over their movement "up" or "down" a "ladder of graduated sanctions." They did not enthusiastically embrace a complete divorce of the sentencing judge from oversight of the agents or offenders, however.

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other parts of the manual.

- New computations for offense and offender scores, including the definition of vulnerable victims (someone under 11 or over 65 years of age or someone temporarily or permanently physically or mentally disabled) and the threshold for juvenile record consideration (the age for consideration shifting from 25 to 23).

In addition to the changes to the Manual, the Commission also enacted several significant changes to the sentencing guidelines worksheet, including:

- An expanded list of choices in disposition type;
- A new field for type of defense representation;
- A breakdown of Race/Ethnicity into two fields, as required by law;
- Fields for CJIS codes and Mandatory Minimum sentences;
- Check boxes to indicate if the worksheet refers to a reconsidered sentence or a probation revocation, permitting closer monitoring of those adjustments to previously recorded sentences;
- Fields for information on subsequent offenders, on restitution, and on correctional option sentences;
- A set of questions on victim information, requested by victims' groups and recommended by the study commission; and
- Revisions of notations of reasons for departures from the guidelines, allowing judges to use numerical codes for reasons commonly used rather than having to write them fully.

After the 2001 session of the General Assembly, the Commission had to classify new offenses ranging from an overhaul of state prostitution laws to international child kidnapping. In addition, the Commission needed to address several concerns relating to considerations of departures from the guidelines. For example, the Commission felt that sentences under "ABA pleas," in which all parties agree to the sentence (Maryland Rule 4-243(c)), should not be considered departures even if outside the guidelines since prosecution and defense concurred that the sentence was appropriate for the offender. In addition, in view of its legislative charge to incorporate criteria for offenders to be sentenced to correctional options within the guidelines, the Commission agreed that sentences to "correctional options" should be considered within the guidelines, regardless of the offender's placement on the offense matrix. By "correctional options," the Commission meant (1) home detention; (2) programs established under law which require individuals to participate in home detention, inpatient treatment, or other similar programs involving terms and conditions constituting the equivalent of confinement; (3) inpatient drug or alcohol counseling under Title 8, Subtitle 5 of the Health General Article, Annotated Code of Maryland; or (4) participation in a drug court or HIDTA substance abuse treatment program. These proposed changes are currently undergoing COMAR review and will appear in the Maryland Register in mid-December for public comment. Their implementation is planned for January 1, 2002.

The Commission has established a thorough and constructive system for deliberation and decision on the difficult issues facing Maryland sentencing. As the Commission plans its activities for 2002, it will continue to address concerns about sentence departures, victim information, revoked and reconsidered sentences, and correctional options. In addition, it will continue its public and policy information functions, issuing departure statistics in its third Annual Report in December 2001 and posting research and information on sentencing-related issues on its web site (www.gov.state.md.us/sentencing). For further information about Commission activities, call 301-403-4165. ◈

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The participants also indicated that they would hold correctional options programs to higher standards in terms of recidivism rates than they currently hold probation or prison. Their reasoning was that, as a new approach, correctional options would have to do better in order to justify going beyond the current status quo. Finally, when asked about the inevitable failures of some offenders in correctional options programs, the participants urged officials to be proactive in building support for the programs before trouble arose and to be honest and forthcoming in their reaction to offenders whose failures drew public attention and media coverage.

When asked their views about the DFG itself, the participants stated almost unanimous satisfaction with the process. None said s/he would not participate if asked again in the future, and ratings of various elements of the process all fell well within the "satisfied" range. (→)

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Initial interpretation of the results of the DFG finds promise for the technique in the future on correctional options or other selected topics. The approach appears to offer state or local agencies pressed for resources a viable alternative to the more extravagantly sponsored models offered by academics or public interest organizations. The major problems for SCCSP staff were finding an interested host and deriving an adequate pool of potential participants. With the success of this DFG, it is possible that other jurisdictions will be willing to host them and to assist in finding similar pools of available citizens.

The DFG also showed promise for building greater public confidence in the policy process and for developing useful information and suggestions for particular policies. Participants expressed personal benefit from their involvement, changed their views to some degree after discussion and deliberation with their colleagues, and contributed several valuable ideas and viewpoints for consideration by policymakers and practitioners. While not statistically representative, findings include:

- support for correctional options generally,
- support and opposition to various means of structuring and financing them,
- interest in a "ladder of graduated sanctions" and concern about the authority of those who invoke it,
- conditions under which violent offenders might be considered for the programs, and
- advocacy of a proactive and honest approach from responsible officials if/when offenders publicly fail in the programs.

In addition, the participants offered suggestions for serious consideration if/when statewide correctional options programs are debated, including:

- development of special magistrates with legal authority to "operate" the "ladder,"
- provision of correctional options to violent offenders with mental or chemical problems, and
- holding the programs to a higher standard of success in reducing recidivism than probation or prison historically have been held to.

In conclusion, the piloting of the DFG in Howard County appears to have generated enough positive contribution in terms of both citizen input and public education to justify holding more in other communities around the state. With enough events and enough diversity among the groups, the problem of lacking statistical representativeness can be substantially overcome, and data from those different types of groups should well inform any policy deliberations on the future of statewide correctional options in Maryland. ◈

Ask the Sentencing Commission…

SCCSP Staff

The SCCSP Staff answers frequently asked questions about the Sentencing Guidelines Manual and the Sentencing Guidelines Worksheet.

Why are the offenses in the Maryland Sentencing Guidelines Manual organized under new headings?

The headings that appear in the offense table (Appendix A) were taken from the new Criminal Law Article that will replace Article 27 of the Maryland Code in 2002. The SCCSP wanted to be prepared when the change occurs next year. We understand that the new headings make certain offenses difficult to locate, so please call the staff at (301) 403-4165 if you have any questions.

Where are "reckless endangerment" and "resisting arrest" located in the offense table?

Reckless endangerment is located under the *Assault and Other Bodily Woundings* heading, then under the subheading of *Other* on page 3 of Appendix A.

Resisting arrest is located under the *Harboring, Escape, and Contraband* heading, then under the subheading of *Escape* on page 20 of Appendix A.

What is the difference between Seriousness Categories III-A, III-B, and III-C in the new Drug Matrix?

Seriousness Category III-A is used for marijuana offenses that have a seriousness category III, such as *Importation of marijuana*, more than 45 kilos, 27, §286A(a)(1) or *Manufacture, distribution or deliver of CDS near schools or on school vehicles*, 27, §286D when it is marijuana.

Seriousness Category III-B is used for non-marijuana offenses that have a seriousness category III, such as *Distribution of schedule I or II narcotics* (→)

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(e.g., PCP heroin, cocaine, and LSD), subsequent, 27, §286(c)(1); 27, §286(d)(1); 27, §286(e)(1) or *Distribution of schedule I or II narcotics (e.g., PCP heroin, cocaine, and LSD), large amounts*, 27, §286(f)(3).

Seriousness Category III-C is used for *Importation* offenses that have a seriousness category III, other than marijuana, 27, §286A(a)(1).

When are the old guidelines still used?

If an offender was convicted of a crime before July 2, 2001 but sentenced after July 2, 2001, the old guidelines are used. The new guidelines are used for any case with both a conviction *and* sentencing on or after July 2, 2001.

How do I order more worksheets or additional guidelines manuals?

Contact the SCCSP staff at (301) 403-4165 to order worksheets or manuals. They will be mailed to you the next business day. Worksheets are available in packages of 100, and most people order a maximum of 500 at one time. The guidelines manual is also available in full-text on our web site, www.gov.state.md.us/sentencing.

How can I learn more about sentencing guidelines worksheet preparation?

The SCCSP staff regularly travels across the state to train groups in worksheet completion. Judges, state's attorneys, and parole and probation officers have all participated in some type of training. Call Philip Laffey or Michael Connelly at (301) 403-4165 to schedule a training session.

What authority does the State Commission on Criminal Sentencing Policy have?

The SCCSP can make recommendations and offer interpretations of the manual and the worksheets, but the ultimate authority lies with the sentencing judge. ◈