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MARYLAND JUDICIAL COUNCIL

MARYLAND JUDICIAL CENTER

580 Taylor Avenue
Annapolis, MD 21401

Meeting Minutes
November 18, 2015

Judicial Council Members Present:

Hon. Mary Ellen Barbera, Chair	Hon. Barbara B. Waxman
Hon. Nathan Braverman	Hon. Eugene Wolfe
Hon. John W. Debelius, III	Pamela Harris
Hon. Thomas C. Groton, III	Carol Llewellyn-Jones
Hon. Susan H. Hazlett	Hon. Sharon Hancock
Hon. Karen Murphy Jensen	Jennifer Keiser
Hon. James A. Kenney, III	Judy Lohman
Hon. Peter B. Krauser	Sally W. Rankin
Hon. Karen H. Mason	Hon. Wayne Robey
Hon. John P. Morrissey	Roberta Warnken

Others Present:

Hon. Christopher B. Kehoe	Jonathan Rosenthal
Hon. Gary G. Everngam	Suzanne Pelz
Hon. Paul Hackner (<i>Retired</i>)	Drew Snyder
Hon. Daniel M. Long	Tracy Watkins-Tribbitt
Hon. Larnzell Martin, Jr.	Kimberly Johnson-Ball
Hon. Nicholas E. Rattal	Stephane Latour
Hon. Thomas G. Ross	Alan Wiener
Hon. Michael J. Stamm	Stacey Saunders
Hon. E. Gregory Wells	Jennifer Moore
Hon. Brett W. Wilson	Melinda Jensen
Faye Matthews	Rachel Dombrowski
Lou Gieszl	Lauren Kitzmiller
Kelley O'Connor	Eliana Pangelinan
Suzanne Schneider	Lynne Wheeler
Jamie Walter	Del. Kathleen Dumais
Gray Barton	Connie Utada, PEW Charitable Trust

A meeting of the Judicial Council was held Wednesday, November 18, 2015, at the Judiciary Education and Conference Center, beginning 9:30 a.m. Chief Judge Barbera began the meeting by welcoming everyone and then called for approval of the minutes of the previous meeting.

Judge Kenney moved for approval of the minutes of the September 16, 2015 meeting, followed by a second to the motion by Judge Hazlett. The motion passed.

1. **Justice Reinvestment Initiative**

Del. Dumais briefed the Council on the work of the Justice Reinvestment Coordinating Council. The United States Department of Justice, the PEW Charitable Trust, and the Council on State Governments have collaborated on a nationwide project to improve the criminal justice systems in the various states. So far, thirty states have participated. The project looks at how to improve the system by saving money currently directed toward incarceration and reinvesting the savings to reduce recidivism, as well as introduce legislation and implement programs to reduce criminal activity and keep offenders of certain non-violent crimes out of prisons and detention facilities.

SB 602 (Chapter 42 of the Acts of 2015) was introduced to establish the Justice Reinvestment Coordinating Council. The Council was charged to “*develop a statewide framework of sentencing and corrections policies to further reduce the state’s incarcerated population, reduce spending on corrections, and reinvest in strategies to increase public safety and reduce recidivism...*” The Council’s findings and recommendations are to be reported to the Governor and General Assembly by December 31, 2015. The Judiciary has one representative on the Council –Hon. Paul Hackner (*retired*).

The PEW Charitable Trust helped Maryland identify its priorities, which include increasing the number of treatment beds (current backlog of 167-180 beds), improving staff training for institutional treatment and improved reentry planning, providing more tools for Public Safety to be effective, transitioning counseling programs, and increasing the number of parole and probation agents. Del. Dumais emphasized that achieving these goals and thus improving the criminal justice system is costly. There has been a bi-partisan effort to introduce legislation to effect change, such as changing the theft statute so that sentences are based on the amount, reducing the sentences for certain drug offenses, increasing diversion and treatment funding, and removing the possibility of incarceration for driving while suspended first offense. She stated that consensus has not been reached on other drug offenses, but they are looking at graduated incarceration levels based on weight-based sentencing. In addition, they are working toward eliminating mandatory minimums and strengthening or clarifying what courts should consider when determining sentences, as well as allowing a look back period where offenders serving minimum sentences in the Division of Correction are allowed to petition to be released.

Connie Utada, PEW Charitable Trust, presented some of the Coordinating Council’s findings to the Council. She commented that the idea is to focus the availability of prison beds on the more violent offenders and refocus the savings on initiatives that reduce recidivism. She noted that because of a decrease in the prison population from Baltimore City, the state has experienced a 5 percent decrease in its prison population over the last decade. During that same time, prison admissions decreased 19 percent. Ms. Utada commented that approximately 28 percent of the prison population is the result of probation revocations. In addition, 58 percent of prison admissions are for non-violent crimes. Over the last decade, the time served by prisoners increased 23 percent, which Ms. Utada noted was attributable to the increase in the length of the sentences.

Ms. Utada stated that more violent offenders are released closer to their parole eligibility

than non-violent offenders. Moreover, violent offenders, who are required to serve at least 50 percent of their sentence, were released after serving between 51 percent and 56 percent of their sentence in Fiscal Year 2014. Comparatively, non-violent offenders, who are required to serve at least 25 percent of their sentence, were released after serving between 37 percent and 40 percent of their sentence.

Ms. Utada commented that the pretrial population makes up approximately 25 percent of the total incarcerated population, with the local jails' and detention centers' pretrial population amounting to nearly two-thirds of their population. She also noted that there are wide variations across the state with respect to the amount of time offenders spend in jail before they receive their prison sentence.

Del. Dumais commented on the Coordinating Council's three subcommittees – Sentencing, Release and Reentry, and Supervision. The Release and Reentry Subcommittee has discussed a number of recommendations, including establishing an administrative parole process for non-violent offenders to permit release without a parole hearing if there are no DOC violations. Other recommendations include expanding geriatric parole to allow offenders 60 years and older or those who have served one-third of their sentence to petition for parole; permitting medical parole for offenders who have a terminal medical disease, but requiring two medical evaluations; addressing inconsistencies in diminution credits so that drug offenders would get the same credits as other non-violent offenders; incentivizing offenders by reducing sentences for participation in certain programs; and requiring offenders to go back to the local detention facility to receive their reentry plan before being released.

The Supervision Subcommittee, which focused on post-incarceration, discussed technical revocation caps whereby the sentence would be capped based on the number of the violation. For instance, the first violation would carry a sentence of 15 days, the second violation a sentence of up to 30 days, etc. In addition, the subcommittee is recommending evidence-based practices using a risk assessment tool. The subcommittee held stakeholder public hearings across the state and determined that the most important concern for victims is receiving restitution and they want to require that restitution is paid before any other court costs.

Chief Judge Morrissey commented that the definition of a technical violation is concerning to him, as well as the discretion that would be taken away from judges. He noted that implementing revocation caps may change how a judge sentences. He referenced the new law on mandatory minimum sentences that went into effect on October 1, which requires the judge to indicate, on the record, the reason for departing from the sentence. Chief Judge Morrissey is concerned that revocation caps may lead to the judge having to put the reason for wanting to impose the sentence on the record. Judge Hackner added that he is concerned about the recommendation having unintended consequences in that shortening the sentence for non-violent drug violations might impact the judge's ability to craft a sentence that includes a suspended portion. He noted that there also was discussion to include suspended sentences in the sentencing guidelines. Judge Hackner added that the recommendation presupposes that someone will violate three to four times before the judge can really act, which places a burden on the court, as well as the Division of Parole and Probation with respect to the available options. Judge Hackner also stated that the Coordinating

Council's definition of a technical violation differs from how it is defined by the Violence Prevention Initiative (VPI). Further, the conditions placed on VPI probationers almost ensure they will violate because of the number of times they are required to report.

Judge Debelius noted that a critical component is supervision by the Division of Parole and Probation. The agents are underpaid, the turnover is high, and the number of people supervised by a single agent is high. By the time the violation comes to court, it is many months later and there is a different agent.

Del. Dumais commented that she will take into consideration all the feedback she has received and will work with the Judiciary and the Division of Parole and Probation in an effort to reach a solution that is amenable to all involved.

Chief Judge Barbera thanked Del. Dumais and Ms. Utada for their presentation, and Chief Judge Morrissey and Judge Hackner for their involvement.

2. Court Operations Update

Judge Wells and Judge Brett Wilson updated the Council on the work of the Court Operations Committee, specifically the Courthouse Equity Subcommittee. Judge Wilson commented that there was a perception of inequity in the distribution of resources from the Administrative Office of the Courts (AOC) to the circuit courts. As a result, the AOC surveyed the circuit court executive teams (the administrative judge, the Clerk of Court, and the court administrator) to gather information around the perceived inequities. Collateral to that effort, a focus group comprising representatives from the various grant-making departments within the AOC was convened to discuss the types of grants funded, the factors considered when awarding grants, and other factors that should be taken into consideration. The workgroup issued a report that identified the number and dollar value of grants awarded over the last five years, as well as the requests for grant funding made by the circuit courts. The subcommittee did not identify any pattern of inequity, but rather that a failure of the courts to apply for grant funds, may be attributable to, among other things, the inability of the local government to supplement the grants where necessary.

Upon review of the survey and the workgroup's report, the subcommittee established three main priorities on which to develop policies to ensure equity – safety and security, access, and services. The priorities were presented to the Court Operations Committee and approved by the Judicial Council. The subcommittee then identified the baseline and goals of the each court in the three aforementioned areas. The subcommittee categorized the Tier I components as the achievable baseline for all courts and Tier II components as goals to achieve beyond the baseline. While the subcommittee identified Tier I and Tier II components, Judge Wilson acknowledged that some components may not be achievable for some courts and some may take time.

A number of initiatives already have been adopted and supported by the AOC. They include effectively publicizing the availability of grant funds; distributing reports on funded grants to the court executive teams; and providing a reference guide to grant applicants and awardees.

A copy of the subcommittee's report containing the Tier I and Tier II components was distributed to the Council. Judge Wilson noted that the subcommittee will conduct an annual review to ensure that funding equities are maintained. Lou Gieszl, staff to the subcommittee, commended Judge Wells and Judge Wilson on their leadership. He then acknowledged and thanked his staff from the Programs Division of the AOC for their hard work in helping to develop the Tier I and Tier II components.

Judge Wilson commented that the report is a good starting point that can be modified as needed. Judge Hazlett noted an inconsistency regarding the customer service model recommendation where employees would work in an open space environment, removing barriers and increasing access to customers compared to the equipment recommendation that calls for bullet resistant barriers at public counters. Judge Wells noted that the report will be reviewed and, where necessary, the recommendations harmonized into a single recommendation. Judge Wilson added that the hope is that security staff will catch any problem when entering through court security.

Chief Judge Barbera asked Judge Wells and Judge Wilson to review the report for any other inconsistencies and bring it back to the next meeting of the Council for review and approval. Judge Debelius moved to approve the report as presented with an opportunity for the subcommittee to refine and make any additional changes. Following a second by Judge Kenney, the motion passed.

3. Court Technology Committee Update

Judge Everngam discussed a concern regarding amended Rule 16-1008 (e), *New Requests for Electronic Access to or Information from Databases*, which requires the Council to consider the Office of Communications and Public Affairs' grounds for denying requests and to do so through a certain lens, including the impact to the Judiciary's electronic systems, the fiscal impact to the court or the judicial system, any potential fraudulent use of the information by the requestor, and any other considerations the Council deems appropriate. Judge Everngam noted that heretofore the former Technology Oversight Board and then the Case Search/Data Request Subcommittee of the Court Technology Committee would consider the requests if they were non-routine. The amended rule removes the Committee and subcommittee from the process.

Angelita Plemmer-Williams explained the process, noting that the Office of Communications and Public Affairs reviews the requests, and if necessary solicits a level of effort from Judicial Information Systems. A determination is made whether her office can address the request or if it has to go before the Committee or subcommittee, usually because of a policy consideration. Judge Everngam suggested that Ms. Plemmer-Williams' office be allowed to submit problematic requests to the subcommittee to craft a solution. If the requestor is dissatisfied with the decision, then the request can be brought to the Chair of the Council, or designee, for further review and to determine if the request merits coming before the entire Council. He added that it is not efficient to bring every data request to the Council.

Chief Judge Barbera suggested that Judge Everngam take the matter to the Rules Committee for consideration and possible amendment to the rule. The Council agreed by general acclaim. Judge Everngam will meet with Judge Wilner and report at the next meeting.

With respect to other work being done by the Committee, Judge Everngam reported that the implementation of e-Warrants is continuing. He added that one issue has been the use of mobile devices, but JIS is testing a number of possible solutions, including ShareFile and OneDrive. Judge Everngam will have an update before the Council at a future meeting.

Judge Everngam noted that he will present the security policy at the next meeting of the Council.

4. Education Committee Update

Judge Hazlett presented the Training Proposal Request Form to the Council for its consideration. She noted that two items were added to the request form, including a question asking whether a similar training is being offered by other groups and, if so, how they are collaborating, and a question asking whether the participants will receive continuing education credits. Judge Hazlett emphasized to the Chairs of the other committees the importance of carefully scrutinizing any grant proposal that includes an educational component.

Carol Llewellyn-Jones suggested that the date and name of submitter be added to the form. With respect to the continuing education credits, Judge Wolfe inquired as to whether the Committee is considering internal or external educational programs. Judge Hazlett responded that it depends on the audience or the body being trained and its continuing education requirements. Judge Wolfe also asked if there is anything being planned that would be accredited for other continuing education requirements. Judge Hazlett responded that she will research whether the Maryland State Bar Association requires different levels of education.

Judge Hazlett commented that the Education Committee is working hard and has adopted as its philosophy proficiency-based education, which emphasizes skills that individuals need to perform their jobs. The commissioners have been identified as the pilot group. As a more long-term project, the committee is exploring a succession planning initiative where the necessary skills will be identified and professional development encouraged.

5. Strategic Plan Update

Ms. Harris noted that her staff is drafting the annual progress report for the strategic checklist. She wants to ensure that all of the work of the committees, subcommittees, and workgroups is included. She asked the committees, if they have not already done so, to provide information on all of their accomplishments during 2015. It is anticipated that the report will be published by January.

Chief Judge Barbera commented that so much work is being done by the committees and she wants to be able to share the good news. She added that everyone should be recognized for all of the work that is being done.

Action Items

- Judge Wells and Judge Wilson will review the Programs, Services, and Access report that outlines the baseline and goals for all circuit courts to ensure there are no inconsistencies and present to the Council at its next meeting for final approval.
- Judge Everngam will present the security policy and an update on the e-Warrants Program to the Council at its next meeting.
- Judge Hazlett will inquire as to whether the Maryland State Bar Association requires different levels of education for continuing education requirements.

There being no further business, the meeting adjourned at 11:30 a.m. The next meeting is scheduled for January 20, 2016, beginning 9:30 a.m.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read 'Faye Matthews', with a long horizontal flourish extending to the right.

Faye Matthews