



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
2017 Public Comments Hearing  
House of Delegates Office Building  
Annapolis, MD 21041  
December 11, 2017, 5:00 p.m.

### **Commission Members in Attendance:**

Honorable Glenn T. Harrell, Jr., Chair  
Honorable Shannon E. Avery, Vice-Chair  
Delegate Curtis A. Anderson  
Senator Robert G. Cassilly  
William M. Davis, Esquire, *representing Public Defender Paul B. DeWolfe*  
Honorable Brian L. DeLeonardo  
Elizabeth Embry, Esquire, *representing Attorney General Brian E. Frosh*  
Richard A. Finci, Esquire  
Brian D. Johnson, Ph.D.  
Senator Delores G. Kelley  
Honorable Patrice E. Lewis  
Honorable Laura L. Martin  
Colonel William M. Pallozzi  
Delegate Joseph F. Vallario

### **Staff Members in Attendance:**

Sarah Bowles  
Jennifer Lafferty  
Stacy Najaka, Ph.D.  
Katharine Pembroke  
David Soulé, Ph.D.

### **Speakers:**

Honorable Joseph Cassilly, Harford County State's Attorney  
Kim Y. Oldham, Deputy State's Attorney for Howard County, Maryland State's Attorneys' Association  
Melanie Shapiro, Esq., Director of Juvenile Justice Policy, Office of the Public Defender  
Two Maryland Residents

**Note: The views expressed in the Public Hearing testimony are those of the speaker(s) and do not reflect the official policy, position, or opinions of the Maryland State Commission on Criminal Sentencing Policy (MSCCSP). The MSCCSP does not endorse the content of the testimony, nor does it guarantee the accuracy, reliability, or completeness of the information.**



The Public Comments Hearing began at 5:12 pm when Judge Harrell declared a quorum and called the meeting to order.

Judge Harrell began the meeting by stating that an individual who provided testimony at a previous Public Comments Hearing had included his contact information in his testimony. This information became part of the public record and was subsequently included in the Public Comments Hearing minutes posted to the MSCCSP's website. After the fact, this individual requested that their testimony be removed from the website in order to protect the individual's personal information. Judge Harrell noted that it was highly likely that the Commission would adopt a new policy to redact personal identifying information unless individuals were testifying on behalf of an organization, as an expert, or as a public official, in which case limited contact information would be included in the Hearing minutes posted on the MSCCSP's website.

***Melanie Shapiro, Esq., Director of Juvenile Justice Policy, Office of the Public Defender***

Ms. Shapiro testified about the newly adopted changes to the juvenile delinquency scoring component of the Maryland sentencing guidelines. Ms. Shapiro indicated that juvenile brains are different from adult brains, especially those of young men. Young men's brains continue to develop until they are 25 or 26 years old, while female's brains develop slightly faster. Based on this finding, Ms. Shapiro noted that certain states are including individuals up to 21 in their juvenile courts and removing them entirely from adult courts and sentencing. Ms. Shapiro further noted that there have been several United States Supreme Court cases recognizing that courts should treat juveniles differently.

Ms. Shapiro noted that the Office of the Public Defender (OPD) did raise the initial concern that prompted the study of the juvenile delinquency score (i.e., that the term "*commitment*" was not being used consistently throughout the state). However, the OPD had hoped the response would be to better define the term commitment or implement consistency throughout the state, not to retreat from use of the term and broaden the number of youth who receive a point on the juvenile delinquency score.

Using the Data Resource Guide from the Department of Juvenile Services (DJS) for the 2016 fiscal year, Ms. Shapiro estimated that under the previous scoring system, 870 youth would receive a point on the juvenile delinquency score. However, under the new scoring system an additional 2,820 youth who have been adjudicated and ordered to probation will receive a point. Ms. Shapiro referenced these figures to estimate that approximately 3,690 youth will be impacted by the implementation of the new scoring system. Ms. Shapiro further noted that these figures refer to just one year of data. The inclusion of a five-year lookback window in the juvenile delinquency score means that there could be five times this number of potentially impacted youth. Ms. Shapiro also noted that the number of youth adjudicated in Maryland, consistent with national trends, is decreasing every year, making the 3,690 potentially impacted youth from the 2016 fiscal year the smallest number out of the previous five years.

Ms. Shapiro stated that the OPD is also concerned about the volume of mitigation research. As juvenile records are confidential, the OPD will have to file a motion to divulge in every case where the OPD wants to use the underlying facts of juvenile cases for mitigation. Ms. Shapiro



reminded the Commission that the purpose of juvenile court is rehabilitation and the purpose of adult court is punishment. Ms. Shapiro argued that the new scoring system is essentially punishing young people for things they did when they were even younger and their brains were less developed. Ms. Shapiro further reminded the Commission that by using the term “*adjudication*,” juveniles could be adjudicated for something as minor as a misdemeanor trespass and that the new scoring system is counting against a 20 year old an offense they could have committed when they were 15 years old.

Judge Harrell asked the members of the Commission if they had any questions for Ms. Shapiro. Delegate Anderson stated that the Commission initially undertook the task of revising the juvenile delinquency score because the term “commitment” was being interpreted differently across the State. In some jurisdictions, it was interpreted to mean an individual committed to a secure juvenile facility, while in other jurisdictions it was interpreted to mean an individual committed to non-secure community-based detention as well. Delegate Anderson indicated that the Commission wanted to change what they saw as an inequity. Delegate Anderson questioned whether Ms. Shapiro believed that the changes being made were actually making the inequality worse. Ms. Shapiro indicated that by revising the juvenile delinquency score to count adjudications rather than commitments, the Commission was capturing all youth found delinquent as well as those in need of services. This revision could result in even more than the (previously cited) 3,690 additional youth scoring a point on the juvenile delinquency score, as 10-15% of juvenile cases may not have been resolved. Ms. Shapiro reiterated that the revisions to the scoring system broaden the number of youth who could potentially receive a juvenile delinquency score.

Delegate Anderson asked Ms. Shapiro if the 870 youth committed (and impacted) under the old scoring system would still also be impacted under the new system. Ms. Shapiro indicated that they would and that she obtained her numbers by adding the 2,820 individuals who would not have previously been impacted under the old system to the 870 (committed) individuals who would have been impacted under the old system.

Delegate Vallario indicated that juveniles do not have access to a jury trial, so juveniles only have the judge’s opinion as to whether they need services and this may greatly impact the juvenile in the future. Delegate Vallario asked Ms. Shapiro if the OPD was opposed to any change to the juvenile delinquency scoring system. Ms. Shapiro indicated that the OPD is opposed to the current change. Further, the OPD would ask the Commission to take a policy approach that juvenile records should not be used in scoring the sentencing guidelines. Ms. Shapiro further asked the Commission to have faith in the juvenile court system and its capabilities. Ms. Shapiro indicated that the OPD would like the Commission to take the position that the actions of a 15- or 16-year old should not be held against them five years later.

Delegate Vallario asked Ms. Shapiro whether she believed juvenile commitments should be used against a juvenile. Ms. Shapiro stated that she would like the Commission to take the position that commitments should not be used against a juvenile, but in the event that the Commission is not prepared to take that position, the OPD would rather work with the smaller number of juveniles affected under the old scoring system and not use adjudications as the definition of delinquency. Delegate Vallario asked whether the judge could take juvenile delinquency into



consideration even if the information was not included on the guidelines worksheet. Ms. Shapiro stated that the information provided on the guidelines worksheet would be dependent on what the Commission decides but that the OPD believes that information regarding juvenile delinquency should remain in the juvenile court and confidential. Ms. Shapiro also indicated that if this information was not a part of the guidelines worksheet, the juvenile court would have to grant a motion to divulge to access information concerning the underlying facts of a juvenile case.

Delegate Vallario further asked whether a juvenile who has a violation of probation would receive an additional point on the juvenile delinquency score (one for the violation of probation and one for the initial adjudication). Ms. Shapiro indicated that this would be dependent on how the juvenile system captured the violation and whether the violation resulted in further probation or a commitment.

Senator Kelley stated that the Commission had not considered that they may be increasing, to the degree stated by Ms. Shapiro, the number of defendants who score a point on the juvenile delinquency score. Senator Kelley asked Ms. Shapiro how the new scoring system would impact youth who were initially charged as adults but were subsequently waived back to juvenile courts. Ms. Shapiro indicated that it would depend upon the outcome of the individual case. If the case was dismissed entirely, there would be no impact. However, if there was an adjudication, the individual would score a point. Senator Kelley indicated that there are collateral consequences for individuals initially charged as adults, especially when their information is sent to the FBI, in that they may have a hard time getting work, they cannot get a Pell Grant, and they cannot live in public housing. Ms. Shapiro indicated that, once charged as an adult, a youth's fingerprints remain part of the FBI database and is it very difficult to get these fingerprints expunged, even when the youth's case is sent back to the juvenile court.

Senator Cassilly questioned whether those responsible for awarding Pell Grants have access to the FBI database. Ms. Shapiro noted that just being charged with an offense does not disqualify an individual from the Pell Grant. Senator Cassilly questioned whether judges currently have access to juvenile records. Ms. Shapiro stated that judges have access to a printout that provides basic information for facts sustained, however they do not have access to the underlying facts of a juvenile case, reports completed by DJS, or evaluations done by experts. Senator Cassilly reiterated that Ms. Shapiro indicated that the approximately 3,000 additional individuals would be affected by the newly adopted revisions to the juvenile delinquency scoring system. Ms. Shapiro clarified that this figure was for only one year and that the Commission needed to essentially multiply this number by five to account for the five-year lookback window.

Mr. DeLeonardo asked Ms. Shapiro if she read the study from the Maryland Data Analysis Center (MDAC) because her numbers differed from those presented in the study. Ms. Shapiro indicated that she briefly looked at this study and that her numbers came from DJS's Data Resource Guide for the most recent fiscal year (2016), which is publically available on the DJS website. This guide has information on all juvenile cases filed in the State, including outcomes. Ms. Shapiro indicated that she calculated from this data the lowest possible number of individuals who could be impacted by the new scoring system.



Mr. Finci read from the draft minutes of the September 17, 2017, Commission meeting to clarify that, “Judge Lewis obtained DJS statistics from staff and stated that in 2016, there were 5,932 adjudicated delinquents, 789 of whom were committed.” Mr. Finci noted that the Commission has frequently raised two concerns. One, judges need the big picture and a sentencing guidelines worksheet excluding the juvenile delinquency score may not allow the judge to know everything about the individual they are sentencing. Two, the Commission has raised concerns with violent youthful offending. Mr. Finci questioned whether the OPD had any suggestions as to how to deal with these two concerns.

Ms. Shapiro stated that while she cannot speak for judges, the purpose of the adult court proceeding is different from that of the juvenile court. She also indicated that the prosecutor could obtain information regarding juvenile delinquency for the judge to review and determine whether the information should be divulged. Ms. Shapiro acknowledged Mr. Finci’s concerns regarding violent juvenile offenders but noted that the purpose of juvenile court is different from that of adult court and that the offenses referenced by the juvenile delinquency score could have been committed five years ago. Ms. Shapiro noted that a 15-year old is not comparable to a 20-year old the way that a 30-year old is comparable to a 35-year old. Ms. Shapiro further indicated that in 2016, only 12.4% of juvenile intake charges were for a crime of violence.

Mr. Finci asked Ms. Shapiro what the position of the OPD would be if the definition of delinquent act included only violent crimes. Ms. Shapiro indicated that anything that would narrow the definition of delinquency would be an improvement, but that the OPD would still disagree with the policy of including a juvenile’s records in the calculation of the sentencing guidelines. Even with individuals who are adjudicated as delinquent for crimes of violence, judges should be allowed to differentiate between youth who were accomplices and those who may have used a weapon. Ms. Shapiro also noted that a juvenile court may commit a juvenile because their home life is not a suitable place to receive needed services. Thus, individuals may be committed to receive said services. The OPD requested that the Commission recognize the goals of the juvenile court to be different from those of the adult court and, thus, not use juvenile records in the scoring of the guidelines.

Senator Kelley reminded the Commission that the neurobiological arguments pertaining to juvenile delinquency come directly from the United States Supreme Court and that the goal of the juvenile court is rehabilitation. Senator Kelley then asked Ms. Shapiro if a home study is done when a child is charged with something egregious. Ms. Shapiro noted that every jurisdiction is different, and the decision to order a home study may depend on whether the State is seeking a waiver to adult court. If a court is weighing a disposition, an investigation and report may be completed. The DJS has a tool called the MCAS which provides a recommendation for the level of services needed, but this assessment is not completed in every case.

Senator Kelley questioned whether there were certain variables or external factors commonly observed among youth charged as juveniles (for example, untreated mental illness or trauma). Ms. Shapiro agreed that many youth involved in the juvenile justice system have special education needs and mental health needs. The DJS recognizes this finding and, in response, they created a new pilot program, the Behavioral Health Initiative, which looks at both the “front end” and the “deep end” in terms of addressing the youth’s mental health needs. Senator Kelley added



that some of these individuals are back in court as an adult because of the collateral consequences of their juvenile charges. Senator Kelley questioned whether every county in Maryland requires a home visit for individuals initially charged with a status offense who later violate a court order. Ms. Shapiro was not aware of any such requirement.

Judge Avery clarified that when the Commission was looking at the impact of the newly adopted juvenile delinquency score, specifically the shift in definition from commitment to adjudication, the Commission was looking at the number of juveniles who had a previous adjudication or commitment and who were, within five years of said adjudication or commitment, found guilty of a new offense in a circuit court. MDAC's projected impact figures were lower than those estimated by Ms. Shapiro using the DJS data because the MDAC figures correctly exclude those not convicted in circuit courts within five years of their juvenile adjudication or commitment. The estimates provided by Ms. Shapiro include all juvenile adjudications for a given year, but the majority of juveniles adjudicated delinquent will not be convicted for a new circuit court offense within five years, and therefore the majority will not have a calculated guidelines score.

***The Honorable Joseph Cassilly, State's Attorney for Harford County and Kim Y. Oldham, Deputy State's Attorney for Howard County, Maryland State's Attorneys' Association***

Mr. Cassilly began his testimony with a story of a father of three, who was the manager of a pizza parlor and wanted to make extra money at Christmas. He decided to sell a gaming console, and someone who was interested in purchasing the console contacted him. He arranged to meet two individuals to purchase the console at a local gas station. Two individuals approached him at the gas station and handed him cash, but he realized that the cash was counterfeit. When he approached the two young men, one pulled out a silver handgun and said, "Back off or you are dead!" The state police became involved and realized that the father had the two individuals' phone numbers from their communications. Additionally, the state police were able to find the individual with the handgun on Facebook and obtain a search warrant for his house. They found the game console's box (with matching serial numbers) and a loaded semi-automatic handgun in the 17-year old suspect's bedroom.

This 17-year old was charged as an adult in Harford County and, before being allowed to waive his case back to juvenile court, a juvenile study was conducted. The Harford County State's Attorney's Office discovered that this individual was on probation for several juvenile thefts in Baltimore City and was supposed to be on community detention at the time the new offense was committed. Additionally, in the week before the search warrant was served, the Baltimore City Police found this individual in possession of handguns and counterfeit cash. There was also an additional robbery for which this individual was later identified. Mr. Cassilly stated that this individual's defense attorney argued that he should be waived backed to juvenile court because the juvenile court had failed to teach him that there were any meaningful consequences for his actions.

Mr. Cassilly stated that sentencing judges in circuit courts need this information regarding juvenile delinquency. The pre-sentence investigation (PSI) includes a section on juvenile history and, whether or not the guidelines worksheet includes this information, the sentencing judge will have access to this information. However, Mr. Cassilly emphasized that this information is



relevant to sentencing and that, if the Commission does not include the juvenile delinquency score, this would be unfair to the other 18-year olds who have not committed offenses as juveniles. A judge needs to consider whether an 18-year old is being sentenced for his or her first offense or whether this is someone who has already failed on probation. Mr. Cassilly indicated that if this information, which is relevant for a sentencing judge, is not included on the sentencing worksheet, then the worksheet will become irrelevant.

Ms. Oldham added that any juvenile delinquency finding that occurred in the five-year look back window is a significant factor in a prosecutor's sentencing recommendation, as delinquency represents the defendant's likelihood of recidivism. The juvenile delinquency score should not be limited to crimes of violence because, when an individual has repeated adjudications, it indicates that they do not want to conform their behavior to the law and that they do not want to abide by the rules of society. A judge wants to know whether a defendant can conform to the law or whether they will be a danger to society. Ms. Oldham additionally indicated that the new scoring system alleviates confusion over the word "commitment."

Ms. Oldham noted that while Ms. Shapiro stated that the purpose of juvenile court was rehabilitation, DJS cannot rehabilitate everyone. Ms. Oldham stated that when a juvenile's crimes occurred in the recent past, they should be considered by the sentencing judge. Ms. Oldham further stated that it cannot be assumed that everyone with a juvenile record did not understand what he or she was doing at the time. If the goal of the sentencing guidelines is consistency throughout the state, it is relevant whether an individual has one or more delinquent findings. If the judge is provided with a guidelines worksheet that does not indicate the defendant's potential for recidivism, and the judge, subsequently, does not follow the guidelines because they do not believe they are fair and accurate, the guidelines no longer achieve their ultimate goal of consistency.

Judge Avery noted that the Commission's research showed that the use of commitment instead of adjudication to define delinquency led to greater racial disparity, and the Commission wanted to reduce disparity. Judge Avery also noted that the goal of the sentencing guidelines is not just consistency, but the goal is also to reduce disparity. Thus, the aforementioned reduction in disparity observed when using adjudications versus commitments to define delinquency persuaded the Commission to adopt the new scoring system.

Delegate Anderson asked if Ms. Oldham had ever been a State's Attorney in juvenile court in any county. Ms. Oldham replied that she had not. Delegate Anderson then asked if she was familiar with the terms adjudication and commitment. Ms. Oldham indicated that she was. Delegate Anderson asked Ms. Oldham what the term "commitment" means in Howard County. Ms. Oldham stated that the term means that a juvenile is committed in a detention facility. Delegate Anderson then asked what the term "adjudication" means. Ms. Oldham stated that the term means that there was a delinquent finding by a magistrate.

Delegate Anderson then asked Ms. Oldham whether a judge could adjudicate a child delinquent for truancy. Ms. Oldham replied there must be a petition alleging a crime filed, a delinquent finding, or an admission of guilt. Ms. Oldham indicated that she has had to call DJS in the past to determine whether an individual was ordered to an actual commitment because the



documentation on a juvenile's record is not always clear as to whether they were committed to a facility or on home detention. Delegate Anderson questioned what the judge's choices were once the judge adjudicated the juvenile as a delinquent. Ms. Oldham indicated that, depending upon the juvenile's history, the extreme action would be commitment to a facility, but that the sentence could include community service or home monitoring. Ms. Oldham stated that, similar to adult court, there was a range of possibilities.

Delegate Anderson confirmed that before a child could be sent to a detention facility, they must be adjudicated as a delinquent. However, not every child who is adjudicated as a delinquent is sent to a detention facility. Therefore, there are far more adjudications than commitments.

Senator Kelley asked if a judge in the adult court has access to the juvenile record and whether a judge also needed this information on the sentencing worksheet. Mr. Cassilly stated that the sentencing guidelines should determine what a judge would find relevant to sentencing and that the guidelines should take into account the same relevant factors. Senator Kelley noted that Ms. Oldham stated that judges already have access to what they need from juvenile records to make individualized assessments.

Ms. Oldham stated that judges obtain access to juvenile records when a PSI is ordered. Senator Kelley asked whether geographic disparities are also a problem, as the MDAC study identified disparities between races and counties. Ms. Oldham stated that she has not observed any geographic disparity in Howard County but that using the broader term "adjudication" in the definition of delinquency will relieve any potential disparity.

Senator Kelley then stated that it has been suggested that when a child is adjudicated or committed and, in five years or less, they are in adult court, it indicates that the child has not found their way. Senator Kelley then discussed a judge in Maryland who sentenced many juveniles to community service. There are fees associated with community service in Maryland. As such, indigent juveniles could not afford to pay. Senator Kelley stated that sometimes the collateral consequences of these sentences impact individuals in many aspects of their life. Senator Kelley noted that while some individuals may be lost causes, the goal of the juvenile court is to rehabilitate. However, the courts continue to hold juvenile records against individuals. Senator Kelley stated that many schools are not allowing youth to return to school after they are released from commitment and asked whether there was any concern about the school-to-prison pipeline.

Mr. Cassilly indicated that he was not concerned because the juvenile delinquency score only applies when the individual is being sentenced in circuit court. Therefore, the court should determine differences in the defendant's background from those who are otherwise similarly situated. Senator Kelley questioned whether the individual's circuit court conviction was due to collateral consequences. Mr. Cassilly referred to the juvenile from the beginning of his testimony and indicated that he had been accepted to a vocational high school that he was not attending. This juvenile had been through every treatment program available through DJS. Senator Kelley stated that she knew there would be some individuals who could not be saved but that statistically, certain individuals cannot get legal jobs or advance in other ways because of their juvenile record.



Ms. Oldham noted that juvenile delinquency is not about what the *court* has done, but rather, what the *juvenile* did. The magistrate looks at all of the factors that bring the juvenile to the court, and there are plenty of circumstances where the magistrate does not include additional findings or violations. Rather, delinquent findings happen when other circumstances are present, for example, the individual commits another crime. Senator Kelley indicated that the courts are looking at what happened, but not at why it happened. Ms. Oldham disagreed and noted that magistrates do consider what should happen with the juvenile, especially if there is a financial issue such that the juvenile is not able to pay for a program or if the juvenile just does not comply with the terms of probation.

Delegate Vallario questioned whether a juvenile court can commit a juvenile to home confinement, allowing them only to attend school and, if so, does this constitute a “commitment.” Ms. Oldham stated that she did not believe home detention was considered a “commitment” under the guidelines. Delegate Vallario stated that the new scoring system is increasing the guidelines for adults, but judges can look at a defendant’s prior history and sentence him or her at the higher end, or even above, the guidelines range. Mr. Cassilly replied that he did not believe the guidelines were being changed, but rather, those who are adjudicated delinquent will now receive a point on the juvenile delinquency score. Delegate Vallario indicated that this will change the guidelines, as it will increase the number of individuals who receive points during sentencing. Mr. Cassilly stated that the study done by the University of Maryland did not support Delegate Vallario’s assertion and that the new scoring system is more predictive of criminal behavior than the previous system.

Mr. Cassilly noted that the new scoring method is a more just system because the term “commitment” is used differently in different jurisdictions, as can be seen by the home detention example. Adjudication is a better measurement of delinquency than is commitment. Delegate Vallario noted that the new scoring system still adds a point to an individual’s score when they otherwise would not have received a point, which will change the number of defendants who score points on the juvenile delinquency score. Mr. Cassilly noted that the new system is still a better way to determine who should be awarded points.

Mr. Finci noted that the term “commitment” was originally used to reflect the severity of the juvenile adjudication. Mr. Cassilly stated that the term “commitment” does not mean the same thing everywhere and that adjudications are more predictive of the outcome of the case.

Judge Avery asked Mr. Cassilly to expand upon his previous statement that removing the juvenile delinquency score would render the guidelines irrelevant. Further, Judge Avery asked Mr. Cassilly what would happen if circuit court judges needed to circumvent the guidelines to do their own inquiry as to the existence and severity of a juvenile record. Mr. Cassilly stated that he does not consider this circumventing the guidelines because judges have a responsibility to learn as much as they can about the defendant. Prosecutors can inform judges about juvenile history, and judges can consider this information regardless of the guidelines. Further, prosecutors may have additional information beyond adjudications (for example, this individual was unable to previously complete probation, so probation may not be appropriate). The sentencing guidelines need to continue to be relevant in furnishing guidelines ranges to judges and if juvenile backgrounds are not considered, judges may not consider them.



Delegate Vallario asked whether one could receive a probation before judgement on a juvenile adjudication. Mr. Cassilly indicated that juvenile magistrates can continue the case without finding and order the juvenile into treatment. If the juvenile completes the required programs or treatment, the magistrate can then enter a non-finding. Delegate Vallario indicated that he did not believe this was proper, and Mr. Cassilly indicated that this was happening. Delegate Vallario noted that there is no process for removing adjudications from a juvenile record. Mr. Cassilly noted that the juvenile records are sealed. Delegate Vallario replied that, even though the records are sealed, the guidelines count juvenile records against defendants. Mr. Cassilly noted that juvenile records are not sealed for defense attorneys, prosecutors, and judges. Delegate Vallario noted that if the adjudications could be removed from the record, the points on the juvenile delinquency score would not count against them. Further, Delegate Vallario stated that if an individual is 18 years old, they can receive a probation before judgment and, therefore, not have a conviction that could be counted against them at a subsequent sentencing. Mr. Cassilly noted that prosecutors can still tell the judge that the defendant received a previous probation before judgment. Delegate Vallario noted that the difference is whether the individual receives a point on the juvenile delinquency score. Mr. Cassilly noted that there is a five-year lookback window, but after the five years, adjudications are not considered.

Mr. DeLeonardo noted that the data showed that DJS resolves most minor cases during intake and that minor cases never get to court. Further, the number of juveniles adjudicated has been declining over the past few years. Mr. Cassilly noted that in his county, if a youth is adjudicated, it is very rarely his or her first offense because generally DJS first tries to work with the juvenile. Ms. Oldham agreed that she typically sees many juvenile cases resolved at intake.

Senator Kelley asked whether having a private attorney, instead of a public defender, affects whether the juvenile is adjudicated. Mr. Cassilly noted that cases resolved at intake do not involve attorneys. DJS meets with the parents and the juvenile and they resolve the case informally. Typically, an attorney is not involved until the juvenile's third or fourth run-in with the law. Further, Mr. Cassilly indicated that the juvenile public defenders in his county are more knowledgeable and dedicated than private attorneys who rarely deal with juveniles.

Senator Kelley indicated that in more diverse counties, she has heard that private attorneys can help juveniles navigate the system. Mr. Cassilly indicated that families with more resources can pay for more private treatment, so it is not a matter of access to an attorney, but access to more resources. Senator Kelley noted that many parents do not have knowledge regarding available programs. Mr. Cassilly indicated that juvenile public defenders have better knowledge about programming available to juveniles than do private attorneys. Senator Kelley indicated that families must pay for these programs and this remains a concern. Families with economic means can receive community-based services and never have to go before the judge. Mr. Cassilly indicated that they do still have to stand before the judge, but they may have better outcomes. Senator Kelley disagreed and stated that she has been told that certain juveniles' cases are not going before judges.



### *Two Maryland Residents*

A concerned Maryland resident stated that he wanted to review the State's pardon policy, specifically the "20-year impact" of the Maryland State Governor's pardon. He noted that the Maryland Governor's pardon requires that individuals convicted of certain non-violent offenses, including controlled dangerous substance violations, cannot apply for a pardon for 20 years after they are released from incarceration or from parole, whichever first occurs. During this time, the individual must also remain crime free. The Maryland resident further noted that the Parole Board has some discretion after 15 years has lapsed. Essentially, non-violent offenders are required to wait 20 years before applying for a Governor's pardon. The Maryland resident emphasized that these individuals could have been convicted of possession of a controlled substance or theft.

The Maryland resident provided the Commission with background information. He stated that this requirement was born from a 1986 federal mandate, which followed the passing of the Federal Crime Bill. This bill mandated a minimum sentence of five years without parole for possession of five grams of crack cocaine. However, the same mandatory minimum applied to 500 grams of powdered cocaine. These mandatory minimums promoted racial disparities in prison populations. Under President Obama, these rules were redefined. The Obama Administration's Sentencing Reform Bill was a huge step forward for federal offenders convicted of nonviolent federal offenses. However, these changes did not trickle down to the Maryland State Governor's pardon policy.

The Maryland resident indicated that a petition has been generated to raise awareness about this matter. The Maryland resident indicated that many individuals view this policy as a form of disenfranchisement that can have long lasting effects on individuals and families, including lack of employment opportunities, broken family structures, and increased recidivism rates. Further, during this 20-year span of time, individuals are more likely to be investigated and flagged by officials.

Delegate Anderson introduced himself and noted he did not believe that this 20-year wait period existed in Maryland law. Delegate Anderson asked the Maryland resident what he wanted the Commission to consider and requested clarification.

The Maryland resident indicated that he wanted to provide information about different sentencing policies. For example, under the United States Constitution, the President cannot pardon non-violent state offenders. However, federal non-violent offenders can apply for a pardon or expungement after only five years. Maryland requires a 20-year waiting period for a non-violent offense before applying for a Governor's pardon.

Delegate Anderson questioned where the Maryland resident found this law. The Maryland resident indicated that it was part of the Governor's Pardon Application Packet. Delegate Anderson requested to see said application. Delegate Anderson further explained that he did not believe there should be a 20-year waiting period, but that he was not aware of this requirement.



The Maryland resident indicated that many supporters believe the 20-year waiting period should be changed so that offenders are given a sense of wellness and receive more employment opportunities. Further, change to the policy will help restore the volatile economic shortcomings of the state and federal government. The Maryland resident believes that recidivism rates will also decrease. The Maryland resident indicated that families are burdened by this 20-year waiting period, and he did not believe that pleading guilty to a non-violent offense should require a 20-year delay. He further noted that a fellow supporter suggested the policy be amended as follows: first time, non-violent offenders should have a five-year waiting period; second time, non-violent offenders should have a ten-year waiting period, and so forth. This fellow supporter further suggested that the severity and circumstances of the non-violent offense should be considered.

The Maryland resident thanked the supporters of his petition to remove the 20-year waiting period from the Governor's pardon policy. He then stated that the offenders contemplating a Governor's pardon have already pled guilty, served time, and completed probation. The Maryland resident handed a copy of his petition to Commission members and others in attendance.

Delegate Anderson said that the regulations concerning pardons are promulgated by the Maryland Parole Commission. Delegate Anderson noted that the MSCCSP cannot change a rule promulgated by the Parole Commission. However, the Maryland General Assembly may be able to change this rule, and Delegate Anderson indicated that his office would be willing to help the Maryland resident through this process. The Maryland resident indicated that he knew the Commission could not change this policy directly, but he believed that the opportunity to address the Commission was still valuable, as most individuals are not aware of this waiting period.

Judge Harrell asked the second Maryland resident if he wanted to add anything. The second Maryland resident stated that justice and mercy go hand and hand. He stated that once someone serves their time, they should be reintegrated back into society and they should be able to get a job. Further, he believes that communities should show mercy and bring offenders back into their community.

Senator Kelley stated that the Maryland Governor has total discretion in issuing a pardon. Therefore, even removing the Maryland Parole Commission's waiting period may not have the desired effect. Senator Kelley further stated that a bill was just passed requiring the Governor to pardon someone who was found innocent of the crime for which they were convicted. Senator Kelley emphasized that further steps would likely be needed to get the Maryland residents to their desired goals.

Judge Harrell declared the Hearing concluded at 6:49 pm.