



Minutes

Maryland State Commission on Criminal Sentencing Policy
Judiciary Education and Conference Center
Annapolis, MD 21401
September 20, 2016

Commission Members in Attendance:

Delegate Curtis S. Anderson
Senator Robert G. Cassilly
William M. Davis, Esquire, *representing Public Defender Paul B. DeWolfe*
Honorable Brian L. DeLeonardo
Barbara Dorsey Domer
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
Honorable James P. Salmon
Delegate Joseph F. Vallario, Jr.

Staff Members in Attendance:

Sarah Bowles
Stacy Najaka, Ph.D.
Katharine Pembroke
David Soulé, Ph.D.
Elizabeth Mullin, MSCCSP Intern

Visitors:

Linda Forsyth, Community Liaison for Senator Kelley; Claire Rossmark, Department of Legislative Services

1. Call to order

Senator Kelley, acting Chair, called the meeting to order.

2. Roll call and declaration of quorum

The meeting began at 5:30 p.m. when attendance reached a quorum.

3. Approval of minutes, July 12, 2016 meeting

The Commission approved the minutes as submitted.

4. Guidelines Subcommittee report – Laura Martin

Ms. Martin presented the report of the Guidelines Subcommittee on behalf of Judge Avery.



- a. Review of penalty revisions from the Justice Reinvestment Act (Action item)
 Ms. Martin reported that the Guidelines Subcommittee reviewed the revised penalty structures going into effect October 1, 2017 for offenses pursuant to the Justice Reinvestment Act (JRA). She referred the Commissioners to the memoranda containing the Subcommittee's recommended seriousness categories for the offenses with revised penalties. She noted that at the Subcommittee's September 7th teleconference, the staff provided the Subcommittee with recommended seriousness categories based on comparable offenses. The Subcommittee agreed with all of the staff's suggested revisions and recommended that the Commission do the same. Ms. Martin highlighted two recommendations of note: (1) expanding the definition of corrections options and (2) an increase in the seriousness category for *felony bad check, \$100,000 or greater* and *felony credit card crimes, \$100,000 or greater*. She asked Dr. Soulé to summarize those recommendations. Following a brief discussion, the Commission adopted the Guidelines Subcommittee's recommendations as a whole, without opposition. The criminal penalties revised pursuant to the JRA are summarized below with the revised (or maintained) seriousness category noted in bold underline print next to the respective offense. Finally, the adopted revision to the definition of corrections options is presented following the list of impacted offense penalties.

NOTE: In some instances, the change to the penalty only impacted the fine and not the statutory maximum period of incarceration (e.g., some of the CDS distribution, PWID, etc., offenses) and therefore the MSCCSP did not believe a change in the offense seriousness category was warranted, whereas with respect to other offenses, the change in statutory maximum penalty was sufficient as to warrant a revised seriousness category (e.g., possession of non-marijuana offenses). In other instances, the change was related to a specific attribute of the offense itself (e.g., a revision to the threshold loss amount for a theft- or fraud-related offense) and the MSCCSP reasoned that the change was consistent with the existing seriousness category, and therefore no change to the seriousness category was necessary.

Revised Drug Offenses

- Possession—non-marijuana, 1st conviction, CR, § 5-601(c)(1)(i), **VII**
- Possession—non-marijuana, 2nd or 3rd conviction, CR, § 5-601(c)(1)(ii), **VII**
- Possession—non-marijuana, 4th and subsequent convictions, CR, § 5-601(c)(1)(iii), **VII**
- Possession—marijuana, CR, § 5-601(c)(2)(i), **VII** (*no change*)
- Unlawful distribution, manufacture, etc.—narcotics and hallucinogenics, CR, § 5-608(a), CR, § 5-609(a), **IIIB** (*no change*)
- Unlawful distribution, manufacture, etc.—narcotics and hallucinogenics, subsequent, CR, § 5-608(b), CR, § 5-609(b), **IIIB** (*no change*)
- Distribution-Unlawful distribution, manufacture, etc.—MDMA/ecstasy 750 grams or more, CR, § 5-609(a), **IIIA** (*no change*)



- Distribution-Unlawful distribution, manufacture, etc.—MDMA/ecstasy 750 grams or more, subsequent, CR, § 5-609(a), **IIIA** (*no change*)
- Unlawful distribution, manufacture, etc.—non-narcotics, subsequent, CR, § 5-607(a), **IV** (*no change*)
- Manufacture, distribute, dispense, or possess certain Schedule I or II controlled dangerous substances, large amounts as specified in CR, § 5-612, CR, § 5-612, **IIIB** (*no change*)

Revised Property Offenses

- Felony theft or theft-scheme, \$100,000 or greater, CR, § 7-104(g)(1)(iii), **III**
- Felony theft or theft-scheme, at least \$25,000 but less than \$100,000, CR, § 7-104(g)(1)(ii), **V**
- Felony theft or theft-scheme, at least \$1,500 but less than \$25,000, CR, § 7-104(g)(1)(i), **VI**
- Misdemeanor theft or theft-scheme, at least \$100 but less than \$1,500, 1st conviction, CR, § 7-104(g)(2)(i)(1), **VII** (*no change*)
- Misdemeanor theft or theft-scheme, at least \$100 but less than \$1,500, 2nd and subsequent convictions, CR, § 7-104(g)(2)(i)(2), **VII** (*no change*)
- Misdemeanor theft or theft-scheme, less than \$1,500, 5th and subsequent convictions, CR, § 7-104(g)(4), **VI** (*no change*)
- Felony bad check, \$100,000 or greater, CR, § 8-103, CR, § 8-106(a)(3), **III**
- Felony bad check, at least \$25,000 but less than \$100,000, CR, § 8-103, CR, § 8-106(a)(2), **V** (*no change*)
- Felony bad check, at least \$1,500 but less than \$25,000, CR, § 8-103, CR, § 8-106(a)(1), **VI**
- Misdemeanor bad check, at least \$100 but less than \$1,500, CR, § 8-103, CR, § 8-106(c), **VII** (*no change*)
- Multiple bad checks within a 30-day period, each at least \$1,500 but less than \$25,000 and totaling at least \$1,500 but less than \$25,000, CR, § 8-103, CR, § 8-106(b), **VI**
- Felony credit card crimes, \$100,000 or greater, CR, § 8-206(c)(1)(iii), CR, § 8-207(c)(1)(iii), **III**
- Felony credit card crimes, at least \$25,000 but less than \$100,000, CR, § 8-206(c)(1)(ii), CR, § 8-207(c)(1)(ii), CR, § 8-209(c)(1)(ii), **V** (*no change*)
- Felony credit card crimes, at least \$1,500 but less than \$25,000, CR, § 8-206(c)(1)(i), CR, § 8-207(c)(1)(i), CR, § 8-209(c)(1)(i), **VI**
- Misdemeanor credit card crimes, at least \$100 but less than \$1,500, CR, § 8-206(c)(2), CR, § 8-207(c)(2), CR, § 8-209(c)(2), **VII** (*no change*)
- Misdemeanor credit card crimes, less than \$100, CR, § 8-206(c)(2), CR, § 8-207(c)(2), CR, § 8-209(c)(2), **VII** (*no change*)



- Possess, obtain personally identifying information or willfully assume the identity of another, benefit \$100,000 or greater, CR, § 8-301(b), (c), CR, § 8-301(g)(1)(iii) (penalty), **III**
- Possess, obtain personally identifying information or willfully assume the identity of another, benefit at least \$25,000 but less than \$100,000, CR, § 8-301(b), (c), CR, § 8-301(g)(1)(ii) (penalty), **V**
- Possess, obtain personally identifying information or willfully assume the identity of another, benefit at least \$1,500 but less than \$25,000, CR, § 8-301(b), (c), CR, § 8-301(g)(1)(i) (penalty), **VI**
- Possess, obtain personally identifying information or willfully assume the identity of another, benefit at least \$100 but less than \$1,500, CR, § 8-301(b), (c), CR, § 8-301(g)(2) (penalty), **VII** (*no change*)
- Use a re-encoder or skimming device for purpose of identity theft, benefit \$100,000 or greater, CR, § 8-301(d), CR, § 8-301(g)(1)(iii) (penalty), **III**
- Use a re-encoder or skimming device for purpose of identity theft, benefit at least \$25,000 but less than \$100,000, CR, § 8-301(d), CR, § 8-301(g)(1)(ii) (penalty), **V**
- Use a re-encoder or skimming device for purpose of identity theft, benefit at least \$1,500 but less than \$25,000, CR, § 8-301(d), CR, § 8-301(g)(1)(i) (penalty), **VI**
- Use a re-encoder or skimming device for purpose of identity theft, benefit at least \$100 but less than \$1,500, CR, § 8-301(d), CR, § 8-301(g)(2) (penalty), **VII** (*no change*)
- Intent to manufacture, distribute, or dispense personally identifying information, CR, § 8-301(g)(3), **V** (*no change*)
- Falsely represent self as another person, CR, § 8-301(c)(1), (f), CR, § 8-301(g)(4) (penalty), **VII** (*no change*)
- Use an interactive computer service to disclose personal identifying information of an individual in order to annoy, threaten, embarrass, or harass, CR, § 8-301(b-1), CR, § 8-301(g)(4) (penalty), **VII** (*no change*)
- Possess, obtain, or help another obtain a re-encoder or skimming device for purpose of identity theft, CR, § 8-301(e), CR, § 8-301(g)(4) (penalty), **VII** (*no change*)
- State health plan fraud, \$1,500 or greater, CR, § 8-509, CR, § 8-510, CR, § 8-511, CR, § 8-512, CR, § 8-513, CR, § 8-514, CR, § 8-515, CR, § 8-516(c) (penalty), **V** (*no change*)
- State health plan fraud, less than \$1,500, CR, § 8-509, CR, § 8-510, CR, § 8-511, CR, § 8-512, CR, § 8-513, CR, § 8-514, CR, § 8-515, CR, § 8-516(d) (penalty), **VII** (*no change*)
- Trademark counterfeiting, \$1,500 or greater, CR, § 8-611(c), **V** (*no change*)
- Trademark counterfeiting, less than \$1,500, CR, § 8-611(d), **VII** (*no change*)



- Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, \$100,000 or greater, CR, § 8-801(c)(1)(iii), **III**
- Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, at least \$25,000 but less than \$100,000, CR, § 8-801(c)(1)(ii), **V**
- Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, at least \$1,500 but less than \$25,000, CR, § 8-801(c)(1)(i), **VI**
- Obtain property of vulnerable adult or an individual at least 68 years old by deception, intimidation, or undue influence, at least \$100 but less than \$1,500, CR, § 8-801(c)(2), **VII** (*no change*)

Revised Person Offenses

- Murder, 2nd degree, CR, § 2-204, **II** (*no change*)
- Murder, 2nd degree, attempted, CR, § 2-204, **III** (*no change*)
- Child Abuse—physical, with death, victim younger than 13 years old, CR, § 3-601(b)(2)(iii), **I**
- Child Abuse—physical, with death, victim at least 13 years old, CR, § 3-601(b)(2)(ii), **II** (*no change*)
- Child Abuse—physical, with death, previous conviction for child abuse, CR, § 3-601(c)(2), **I**
- Use of or threat of force to coerce participation or prevent leaving gang, CR, § 9-802, **VII** (*no change*)
- Use of or threat of force to coerce participation or prevent leaving gang in school or within 1,000 feet of school property, CR, § 9-803, **VI** (*no change*)
- Participate as member of criminal gang in commission of crime; in receipt and use or investment, of proceeds of \$10,000 or more from underlying crime in the acquisition of real property or establishment or operation of any enterprise; in acquisition or maintenance of any interest or control of any enterprise or property through an underlying crime, CR, § 9-804(f)(1)(i), **One category more serious than most serious underlying offense. If no conviction on underlying offense, category=IV** (*no change*)
- Participate as member of criminal gang in commission of crime; in receipt and use or investment, of proceeds of \$10,000 or more from underlying crime in the acquisition of real property or establishment or operation of any enterprise; in acquisition or maintenance of any interest or control of any enterprise or property through an underlying crime—resulting in death of victim, CR, § 9-804(f)(1)(ii), **One category more serious than most serious underlying offense. If no conviction on underlying offense, category=III** (*no change*)



- Organize, supervise, finance, or manage a criminal gang, CR, § 9-805, **III** (*no change*)

Revision to the Definition of Corrections Options

Revision #1 - MSGM ¶ 2, Definitions (Corresponding to COMAR 14.22.01.02(B)(4))

[Correctional] **Corrections** Options

- Home detention;
- A Corrections Options program under law which requires the individual to participate in home detention, inpatient treatment, or other similar programs involving terms and conditions that constitute the equivalent of confinement;
- Inpatient drug or alcohol counseling under Health General Article (HG), Title 8, Subtitle 5, Annotated Code of Maryland; [or]
- Participation in a drug court or HIDTA substance abuse treatment program[.]; **or**
- **A sentence, with required substance abuse treatment, for the possession, administration, obtainment, etc. of controlled dangerous substances (CDS) currently outlined in CR, § 5-601(c) and pursuant to CR, § 5-601(e)(3).¹**
- [Correctional] **Corrections** Options includes programs established by the State Division of Correction, provided that the program meets the Commission's criteria, as described above.

¹ Before imposing a sentence for the possession, administration, obtainment, etc. of a CDS under CR, § 5-601(c), the court may order the Department of Health and Mental Hygiene (DHMH) or a designee to conduct an assessment of the defendant for substance use disorder. If a substance use disorder assessment is ordered, the court shall consider the results of the assessment when imposing a sentence under CR, § 5-601(c) and suspend the execution of the sentence, order probation and, if the assessment shows that the defendant is in need of substance abuse treatment, require the DHMH or the designee to provide the medically appropriate level of treatment; or the court may impose a term of imprisonment and order the DOC or local correctional facility to facilitate the medically appropriate level of treatment. (CR, § 5-601(e)).

Revision #2 - MSGM ¶ 12.4, Corrections Options Program

Based on the definition provided in chapter 2, the person completing the sentencing guidelines worksheet shall record if the offender was sentenced to a Corrections Options program. Please specify whether the offender was ordered to participate in drug court treatment (yes/no) or any other [Correctional] **Corrections** Options program, such as home detention **or a sentence, with required substance abuse treatment, for the possession, administration, obtainment, etc. of controlled dangerous substances currently outlined in CR, § 5-601(c) and pursuant to CR, § 5-601(e)(3)** (yes/no).



Ms. Martin noted that the Subcommittee also discussed when to publicize the revisions. Specifically, the Subcommittee debated when the revisions should be promulgated through COMAR. Some Subcommittee members took the position that the revisions should be published in the Maryland Register as soon as possible (with a pending COMAR enactment date of October 1, 2017). Others argued that the MSCCSP should postpone starting the promulgation process until closer to the enactment date in the event that the 2017 Legislative Session produces additional JRA-related revisions or any other criminal penalty revisions. Additionally, the MSCCSP staff questioned whether the COMAR promulgation rules would allow for the submission of proposed amendments far in advance of their enactment date and whether the submission of proposed amendments now with a pending enactment date of October 1, 2017 would prevent the Commission from submitting additional proposed amendments to the same regulation in the interim. Given the complexity of the rules surrounding the COMAR promulgation process, the Subcommittee asked the staff to reach out to the Office of the Attorney General (OAG) for advice. The staff did so and solicited input from the Division of State Documents (DSD) as well.

Dr. Soulé summarized the responses. Based upon the advice of the OAG and the DSD, the MSCCSP can start the COMAR promulgation process now even if the regulation will not take effect until October 1, 2017. Additionally, starting the process now for these proposed amendments will not prevent the MSCCSP from submitting additional proposed amendments to the same regulation prior to October 1, 2017. The question then becomes whether the Commission *should* take such action. Ms. Martin added that this was not something the Subcommittee agreed upon.

Mr. Finci stated that he believes many judges want to exercise their discretion to apply what will be the law under JRA and not treat defendants before them today differently or more harshly than they will treat defendants a year from now. Publicizing what the guidelines will look like a year from now gives the judges better information about how to exercise that discretion.

Ms. Martin noted that we do not know what is going to happen with JRA in the upcoming Legislative Session, and we may be spinning our wheels earlier than needed, doing a lot of unnecessary work that is going to have to change. Senator Kelley recommended that the MSCCSP start drafting the changes to the MSCCSP regulations since there is a lot of work involved. Further, she noted that she does not expect there will be significant changes to JRA in the 2017 General Assembly given the scope of what occurred in 2016. Delegate Anderson concurred. Ms. Martin asked why the Legislature set the enactment date in 2017 as opposed to 2016. Delegate Anderson and Senator Cassilly replied that it was done to give the various agencies and entities affected by JRA ample time to plan for the changes.

Dr. Soulé stated that from an administrative standpoint, it is difficult to draft proposed amendments to a regulation that has revisions already pending (the key regulation in this instance is 14.22.02.02 which contains the Guidelines Offense Table). Even if there are no additional changes to JRA, there likely will be other new and revised penalties



resulting from the 2017 Legislative Session that will impact the Guidelines Offense Table. If the Commission agrees that the JRA-related revisions should be published in advance of their enactment date, Dr. Soulé suggested an alternate approach whereby the staff publishes the proposed amendments directly on the MSCCSP website. This permits the MSCCSP to simultaneously promulgate through COMAR (at a later date) the JRA-related revisions noted above and any revisions resulting from the 2017 Legislative Session. Dr. Soulé further noted that the MSCCSP website would seem the most logical place for judges and attorneys to look for pending guidelines revisions, and the format the MSCCSP website would use to describe the proposed revisions would be easier to read than the format that must be used for proposed changes in the Maryland Register.

Ms. Domer asked how practitioners would be made aware of the pending revisions. Dr. Soulé responded that the MSCCSP could follow the protocol used to announce the recent changes to the drug matrix. In that instance we notified key criminal justice stakeholders of the pending revisions via email.

Judge Salmon made a motion to post the pending JRA-related revisions to the MSCCSP website and to wait to begin the COMAR promulgation process until after the Commission has reviewed any new and revised penalties resulting from the 2017 Legislative Session so that all revisions with an effective date of October 1, 2017 can be promulgated together. The Commission adopted the proposed action, without opposition.

b. Review of whether sex offender registration should be counted as “criminal justice involvement” for purposes of determining application of the criminal record decay factor (Status report)

Ms. Martin reported that the Guidelines Subcommittee discussed whether sex offender registration constitutes criminal justice system (CJS) involvement, and whether the Maryland Sentencing Guidelines Manual should be amended to include specific instructions pertaining to the criminal record decay factor and sex offender registration.

At the July 12, 2016, MSCCSP meeting, Mr. Finci brought to the Commission’s attention a question he received from a Maryland public defender pertaining to the application of the decay factor to Part C (*prior adult criminal record*) of the Offender Score. Mr. Finci requested that the Subcommittee further investigate this issue. Specifically, the public defender inquired whether a defendant’s inclusion on the sex offender registry would preclude application of the decay factor when calculating a defendant’s prior criminal record score. In addition to this question, the Subcommittee also considered whether sex offender registration would constitute criminal justice supervision when scoring Part A (*relationship to CJS when instant offense occurred*) of the Offender Score.

The Subcommittee questioned whether this issue was raised with any frequency and asked Mr. Finci to reach out to the Maryland State Bar Association and Ms. Martin to reach out the State’s Attorney’s Association for input. Neither received feedback that would indicate that this is a recurring issue. After a brief discussion of what constitutes criminal justice involvement and criminal justice supervision, the Commission agreed



with the Subcommittee's recommendation to table the issue and to revisit it only if there are sufficient practitioner questions.

5. Executive Director Report – Dr. David Soulé

a. Introduction of new policy analyst/interns (Status report)

Dr. Soulé announced that Jennifer Lafferty joined the MSCCSP staff as a Policy Analyst, Graduate Research Assistant and introduced Liz Mullen, an undergraduate intern, to the Commission.

b. Update on study on alternatives to incarceration (Status report)

The Justice Reinvestment Act directed the MSCCSP to study how alternatives to incarceration may be included in the sentencing guidelines and to submit a report of their findings with recommendations to the Justice Reinvestment Oversight Board, Governor, and General Assembly by January 1, 2018. Dr. Soulé discussed the two primary focuses of the study. First, the MSCCSP staff plans to conduct research on how other states and the federal system incorporated alternatives into their guidelines. The report will include best practices on types of successful alternatives to incarceration, while also discussing how other jurisdictions explicitly incorporated these alternatives into their sentencing guidelines. There are at least two other states, along with the federal guidelines, that incorporated alternatives to incarceration into their guidelines. Dr. Soulé reached out to his colleagues at Sentencing Commissions in other jurisdictions to gather further information as to how other states incorporated alternatives into their guidelines. The staff will also create an inventory of alternate sentencing options currently available in Maryland. Accordingly, the staff drafted a survey to be distributed to the circuit courts, to each parole and probation field office, and to each county corrections administrator. Dr. Soulé directed the Commission's attention to the draft survey distributed prior to the Commission meeting.

The survey will be distributed by the Administrative Office of the Courts via e-mail as a web-based application. The survey will come from the Judiciary in hopes of getting a better response rate and it will include a cover letter explaining its purpose. Judge Harrell and State Court Administrator Pam Harris will sign the survey's cover letter.

Mr. Finci suggested that the survey should be narrowed and exclude probation and restitution as these options are available statewide. Judge Lewis agreed, noting that restitution and fines exist as a matter of statute. Mr. Finci also suggested that the survey should differentiate between private or jail-based electronic home monitoring. Ms. Martin suggested that home confinement be treated in the same manner. Judge Lewis agreed that it was important to determine if a program is jail-based or private.

Dr. Johnson expressed that in his opinion the Justice Reinvestment Act is about diverting people from incarceration and he therefore questioned whether collecting data concerning conditions of probation really confronts the question as to what options judges are using in lieu of incarceration. Mr. DeLeonardo indicated that judges may be more willing to release an offender from incarceration in order to allow participation in alternative programs, such as home detention. He further noted that while it may not divert people



from incarceration entirely, it does shorten some sentences. There was a general agreement that split-sentences should be included in the alternatives study.

Judge Lewis noted that she would like to see a question asking the judges to list the top five programs utilized with a split sentence or probation. Judges want programs that are successful and, as there is no accreditation, judges sometimes use trial and error to determine which programs have a positive impact on defendants' lives. These are the programs that are worth sinking money into because the return will be beneficial. Senator Kelley agreed as there will be a wide universe of responses and the survey will result in programs not previously considered. Senator Kelley added that the survey should ask judges to share any formats they use to evaluate a program's success.

Dr. Soulé indicated that Mr. Cooke provided feedback on the survey and he noted that the survey did not include any pre-trial services or pre-trial supervision. Dr. Soulé stated that the staff excluded pre-trial programming because, as previously noted, they were focusing on programs that judges could utilize at sentencing. However, Mr. Cooke previously noted, while judges cannot technically sentence an offender after the fact to pre-trial programming, it may make sense to include such programming in our list of alternatives if it diverts offenders from jail or prison as one could make the argument that judges take into account programming that occurs between charging and sentencing when deciding on a sentence. Dr. Soulé asked for feedback from the Commissioners as to how judges are using pre-trial services and if charges are being dropped after completion of the program.

Judge Lewis suggested an open-ended question asking for pre-trial diversion programs that judges employ that result in a non-prosecution. Ms. Martin stated that Calvert County uses a pre-trial diversion program for cases in which a civilian is charging a civilian. Before the charges go through, cases are screened and pulled out for mediation. If all parties agree, they attend mediation and the case will be nolle prosequi. Dr. Soulé questioned whether these type of programs could be incorporated into the guidelines as these offenders are not being sentenced. Judge Lewis stated these programs could be incorporated because some of these programs may be used post-plea. Judge Lewis indicated that she believes the importance of a program is its quality; both what it does for the defendant and what it does for betterment of the community. Judge Lewis therefore asked whether the Commission should bloom a program to have a post-plea component if it's successful. She noted the Commission should think about whether the program would be a good use of resources.

Mr. DeLeonardo questioned whether the focus should be on alternative programs that are currently available at sentencing or finding programs that should be created. Dr. Soulé indicated that he does not see the broader scope of identifying additional programs that should be added at sentencing as part of the task for the Commission (noting that others may disagree).

Senator Kelley indicated that correctional options are not always part of the judge's sentence, but they are still options. Ms. Martin reminded the Commission that State's



Attorney's Offices decide when pre-trial options turn a case into a non-prosecution and, therefore, to be consistent with the Commission's mandate from the JRA, the Commission should focus on sentencing options. Delegate Anderson stated that he did not believe the legislature wanted the Commission to stay within its box. By virtue of who the Commission is and its knowledge, he believes that legislators want to hear more than what can be acted upon.

Dr. Johnson indicated that mediation could be incorporated at sentencing as an alternative even if mediation is not being currently used. Senator Kelley questioned if there were any active restorative justice programs in Maryland and stated that she would like the survey to question opinions on restorative justice programs.

Judge Lewis stated that the MADD Victim Impact Panels are restorative justice. Dr. Johnson stated that certain mediation programs also qualify as restorative justice. Ms. Martin referenced a post-mediation program that is used for vehicular homicides when victim's family members want to meet with the defendants. Judge Lewis suggested that asking about these pre-trial programs could help determine programs that could also be used post-trial.

Senator Kelley discussed how the Commission could use successful pre-trial programs to develop correctional options. Dr. Soulé indicated that there was disagreement among the initial members of the Sentencing Commission as to whether the Commission was tasked with developing corrections options programs to identifying appropriate offenders for corrections options and incorporating these alternative programs into the guidelines after they have been established. Dr. Soulé further noted that when the Study Commission discussed this, there was a plan in place to adopt a Corrections Options Authority but the planned was never finalized as there were too many unresolved issues especially regarding the MSCCSP's role (develop programs or guidelines based on other agency's program), program availability, who would administer corrections options, and funding.

Ms. Domer questioned how administrative judges would find statistics as to how many defendants are sentenced to a given program. Dr. Soulé indicated that the staff included this question in the draft as an attempt to gather information on the scope of the program, and whether, for example, it is used once a year or regularly. Mr. DeLeonardo suggested that words, such as regular or frequent, be used instead of numbers.

Delegate Vallario questioned the use of pre-trial services and cited an example concerning an individual who had been on pre-trial services for two years (the defendant checked in every Friday without incident) and this proved to be very helpful to the judge when making a determination. Pre-trial services vary in different areas and there would be benefits to making services uniform throughout the state. For example, St. Mary's county had many options, such as meeting with a counselor or urinalysis once a week. There are many things happening throughout the state that are helpful when judges are making determinations.



Dr. Johnson inquired whether the guidelines worksheets collected information on alternatives. Dr. Soulé responded that the worksheets collect limited information on corrections options (drug courts or other). Dr. Johnson expressed concern that asking judges how many people they sentence to a given program may not provide accurate information and suggested that after the survey is complete, the guidelines worksheets be amended to include the most commonly used alternatives. Dr. Soulé agreed that the next logical step would be to include a drop-down menu in MAGS to allow those filling out the worksheets to provide more detailed information on sentencing alternatives imposed. Dr. Soulé further indicated that half of the jurisdictions are using paper worksheets and half are using MAGS. The paper worksheets have no room for additional information. Dr. Soulé reminded the Commission that MAGS will not be fully deployed until 2020.

Dr. Soulé surmised that it seems that the majority of the Commissioners would like the survey and corresponding report to have a broad scope and identify a wide range of potential options including options that are not currently available at the point of sentencing, such as pre-trial initiatives that may lead to potential post-trial programming options. The Commission will then have to determine which of these, if any, may be appropriate to incorporate in the guidelines.

Dr. Johnson asked if any information would be collected concerning the amount of money invested in each program. He also noted that the person responding may not know this information. According to studies in other states, the strongest predictor of an alternative program's use is the amount of state dollars invested in the program. Dr. Johnson asked if it would be possible to collect information on the financial support for these programs. Dr. Najaka indicated that the staff discussed following up with the programs for questions about their financials and to gather additional information that may not be readily accessible to those completing the surveys. Dr. Soulé stated that once the programs were identified, the staff would follow up with the programs.

c. MAGS Update (Status report)

Dr. Soulé informed the Commission that MAGS will be deployed in Baltimore County on October 1, 2016. At that time, Baltimore County will become the 9th jurisdiction to use MAGS and, since many of the larger jurisdictions use MAGS, 50% of all guidelines worksheets will be completed and submitted via the online system.

The MSCCSP staff will provide multiple training sessions for judges, court staff, state's attorneys, public defenders, and parole and probation agents on September 23rd and 30th.

d. Update on JRA implementation (Status report)

Dr. Soulé noted that the JRA work group is scheduled to meet for the first time tomorrow, September 21st, and he expects to be able to provide further updates on the JRA implementation process at subsequent MSCCSP meetings.

e. Update on guidelines worksheet submission rate (Status report)

Dr. Soulé stated that in 2014, the MSCCSP started receiving data from the Administrative Office of the Courts allowing the staff to identify guidelines-eligible



cases. Since that time, the staff has been able to produce jurisdiction specific reports to help identify cases that are missing guidelines worksheets. The data identifying guidelines cases has been particularly helpful for creating a monthly feedback process in those jurisdictions that are using MAGS.

Dr. Soulé further indicated that the guidelines worksheet submission rate has steadily climbed in the past few years and it was 83% for FY 2016. This represents approximately an 11% increase in worksheets received in the past 4 years. In terms of absolute number of worksheets received, this equals approximately 1,100 more worksheets which means the MSCCSP has data on 1,100 more sentencing events on a yearly basis. Dr. Soulé indicated that is a substantial increase in information to help inform the Commission's policy decisions.

MAGS and the corresponding monthly feedback reports are largely responsible for this improvement, but Dr. Soulé recognized the MSCCSP staff who work diligently to analyze the data received from the guidelines worksheets and also the data received from the AOC to provide timely feedback to all of the jurisdictions. Ms. Martin agreed that the reports are useful, detailed and extremely helpful.

Mr. DeLeonardo questioned whether the jurisdictions not using MAGS receive monthly feedback. Dr. Soulé indicated that they typically receive feedback on an annual basis, but the staff focuses this feedback on jurisdictions that have lower worksheet submission rates. Due to delays related to the routing and data entry of the paper worksheets for non-MAGS jurisdictions, it is not practical to send monthly feedback reports to the jurisdictions that are not yet utilizing MAGS. In the non-MAGS jurisdictions, the staff focuses on working closely with jurisdictions with low submission rates.

Delegate Anderson questioned whether there was a consensus concerning who inputs information into MAGS. Dr. Soulé stated that this varies by jurisdiction but that the state's attorneys and probation and parole agents initiate the worksheets in every jurisdiction. Either the judges' administrative assistants or law clerks complete the sentencing information and submit the completed worksheet.

6. Date, time, and location of annual Public Comments Hearing

The annual Public Comments Hearing will take place on Tuesday December 13, 2016 at 5:00pm in the House of Delegates Office Building, Judiciary Committee Room. The Commission's business meeting will follow at 6:30 pm.

7. Old business

Dr. Soulé noted that a presentation from the Maryland Data Analysis Center on the Juvenile Delinquency Score Project is expected at the December 13, 2016 business meeting.

8. New business and announcements

None.

The meeting adjourned at 6:47 p.m.