



## Minutes

Maryland State Commission on Criminal Sentencing Policy  
Judiciary Education and Conference Center  
Annapolis, MD 21401  
May 7, 2019

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

Honorable Glenn T. Harrell, Jr., Chair  
Senator Robert G. Cassilly  
Delegate Luke H. Clippinger  
LaMonte E. Cooke  
Martha Danner, *representing Acting Secretary J. Michael Zeigler*  
Barbara Dorsey Domer  
Richard A. Finci, Esquire  
Brian D. Johnson, Ph.D.  
Senator Delores G. Kelley  
William E. Koutroumpis  
Honorable Patrice E. Lewis  
Kathleen C. Murphy, Esquire, *representing Attorney General Brian E. Frosh*  
Honorable James P. Salmon

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

Sarah Bowles  
Stacy Najaka, Ph.D.  
Katharine Pembroke  
David Soulé, Ph.D.  
Molly Triece  
Elizabeth Geary, MSCCSP Intern

**Visitors:** Linda Forsyth, Chief of Staff for Senator Kelley; Dr. Russell Kelley; Claire Rossmark, Department of Legislative Services

### **1. Call to order**

Judge Harrell called the meeting to order.

### **2. Roll call and declaration of quorum**

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

### **3. Introduction of new Commissioner: Delegate Luke Clippinger**

Judge Harrell introduced a new Commission member, Delegate Luke Clippinger, as well as Martha Danner, who was representing the Acting Secretary of the Department of Public Safety and Correctional Services, J. Michael Zeigler.



#### 4. **Approval of minutes from the December 11, 2018 MSCCSP business meeting**

The Commission approved the minutes as submitted.

#### 5. **Approval of minutes from the December 11, 2018 public comments hearing**

The Commission approved the minutes as submitted.

#### 6. **Guidelines Subcommittee Report – Dr. David Soulé**

Judge Harrell noted that Judge Avery, Guidelines Subcommittee Chair, was overseeing a medical malpractice trial in Baltimore City and was unable to attend the meeting. In her absence, Dr. Soulé presented the details of the Guidelines Subcommittee report.

Dr. Soulé noted that the Guidelines Subcommittee met via teleconference on April 25, 2019. The fourth and newest member of the Subcommittee, Mr. DeLeonardo, was unable to attend the meeting but shared his thoughts in advance via email.

##### a. Review of instructions for scoring Part A of the Offender Score for multiple criminal offense sentencing events (**Action Item**)

Dr. Soulé referred the Commission to the corresponding memo entitled, *Review of Instructions for Scoring Part A of the Offender Score for Multiple Criminal Offense Sentencing Events*. Dr. Soulé noted that the staff has received questions relating to the scoring of part A of the offender score in sentencing events that involve multiple criminal offenses. Part A of the offender score measures relationship to the criminal justice system (CJS) when the instant offense occurred.

The Maryland Sentencing Guidelines Manual (MSGM) instructs that if an offender was in the CJS as the result of an adjudication of guilt as an adult, the offender score shall be increased by 1 point. Chapter 3.4 of the MSGM further instructs that the offender score is calculated the same for each offense in a sentencing event, which necessitates that parts A, B, C, and D of the offender score be calculated the same across multiple criminal offenses and events contained within a single sentencing event. The instructions for part A reference when the instant offense occurred, but do not provide guidance for a scenario in which multiple offenses are being sentenced together, each of which was committed on a different date, and one of which was committed while the defendant was under CJS supervision and the other while the defendant was not under CJS supervision.

Dr. Soulé noted that the only guidance offered in the MSGM for this type of scenario comes from two sample cases. Specifically, Sample Case 6 and Sample Case 7 both note that, “The offender score used in computing guidelines for multiple criminal events is the same for each event. The highest score for any event at the time of this sentencing should be used throughout.” These sample cases advise that a point should be applied to part A of the offender score if the defendant was under CJS at the time any of the instant offenses occurred. The sample cases in the MSGM, however, were not subject to the same COMAR review process as other guidelines rules. Further, staff reviewed Commission meeting minutes and could not find any indication that the Commission deliberated the instructions provided in the sample cases. As such, staff asked the



Guidelines Subcommittee to examine the issue and recommend whether additional instructions should be provided.

Dr. Soulé noted that approximately 8.8% of sentencing events in calendar year 2018 involved multiple criminal offense dates. The median number of days between the minimum and maximum offense dates among those sentencing events with multiple offense dates was 36.5 days. Dr. Soulé noted that it is not known how many of these sentencing events involve criminal offenses with differing CJS supervision. However, it may be reasonable to speculate that a relatively low number of cases would have offenses with differing CJS supervision since the average time between offenses is just over a month.

Dr. Soulé noted that the Guidelines Subcommittee discussed potential options to revise the instructions with respect to part A of the offender score and narrowed the possibility down to two options. Option #1 would codify the current guidance provided in the MSGM sample cases and specifically indicate that one point should be awarded for part A of the offender score if the defendant is part of the CJS when the instant offense occurred or, if there is more than one instant offense, at the time one or more of the instant offenses occurred. Option #2 would allow part A of the offender score to differ between offenses based on the defendant's relationship to the CJS at the time of each offense.

Dr. Soulé noted that the memo provides two sample cases to illustrate how option #1 and option #2 would affect the overall guidelines range calculation. Dr. Soulé reviewed Example Case #1. In this example, the defendant was convicted of two offenses. First, the defendant was convicted of distribution of cocaine committed on September 4, 2018. Second, the defendant was convicted of distribution of heroin committed on February 1, 2019. The defendant was on probation from October 1, 2016 through October 1, 2018, and, therefore, the defendant was under CJS supervision when the first offense was committed, but not when the second offense was committed. The two offenses are sentenced together, in front of the same judge, on May 10, 2019.

Dr. Soulé noted that the table in the memo illustrates the difference in guidelines based on the application of one point to part A of the offender score. The first score illustrates how the guidelines would be calculated under option #1 where one point is awarded under part A of the offender score for both offenses because the defendant was under CJS supervision when one of the convicted offenses occurred. The second score illustrates how the guidelines would be calculated under option #2 where one point is awarded under part A for the first offense, but no points are awarded under part A for the second offense. When the overall guidelines are calculated for the sentencing event under each of these two options, the guidelines are 3Y to 8Y under option #1 and 2.5Y to 7Y under option #2.

Mr. Finci commented that this example is a very unlikely scenario. Mr. Finci noted that if a defendant is on probation when the first offense is committed, probation will most likely continue into the second offense, as probation cannot end while a violation is



pending. Mr. Finci suggested that a much more common scenario is one in which a defendant gets arrested for a first offense (a misdemeanor), then gets arrested for a felony. The first offense (a misdemeanor) is disposed. Then, while the felony charge is pending, the defendant gets arrested for a second felony. Both felonies are then sentenced together on the same day. In this scenario, the second offense was committed while the defendant was under CJS supervision and the first offense was committed while not under CJS supervision. Dr. Soulé noted that the second example provided in the memo illustrates the scenario Mr. Finci described.

Mr. Finci noted that the Guidelines Subcommittee disagreed about the issue because members did not agree as to the likely scenario in which this issue would present itself. Senator Kelley stated that the Guidelines Subcommittee noted the relatively small sample of cases that would involve this scenario.

Dr. Soulé noted that the Guidelines Subcommittee discussed the options, but did not reach a consensus. Dr. Soulé noted that Mr. Finci expressed his opposition to option #1 as he believed this option would unfairly penalize the defendant by increasing the guidelines for an offense that was not committed while under CJS supervision. In his comments relayed via e-mail, Mr. DeLeonardo expressed his support for option #1, indicating that one point should be assigned if any of the offenses occurred while under court supervision as to do otherwise would mean someone who kept committing offenses even after that ended would be treated better. Finally, Dr. Soulé noted that the Guidelines Subcommittee discussed how option #1 may impact plea negotiations and judicial economy. Under option #1, the defense may argue against a global plea or combined sentencing for multiple offenses, instead opting for separate sentencing events so that the offender score may be calculated differently for each offense, thereby increasing the court's workload.

Dr. Soulé noted that, in preparation for the meeting, the Subcommittee asked the staff to elaborate on the practicality of implementing option #2 as it would require significant programming changes be made to the Maryland Automated Guidelines System (MAGS) to permit the offender score to differ across offenses. Dr. Soulé noted that the staff identified all of the potential programming changes that would be necessary to implement option #2 in MAGS and shared these programming changes with the MAGS programmers at the Department of Public Safety and Correctional Services (DPSCS) so they could assess the scope of the work. After the meeting materials were distributed to the Commission, the staff received a response from DPSCS. The programmers estimate 240 hours of work at a cost of \$42,000 to implement option #2 in MAGS. Dr. Soulé emphasized that the Commission should focus on the policy question of whether option #1 or option #2 are appropriate revisions, rather than cost. It should, however, be noted that if option #2 is adopted by vote of the Commission, the MSCCSP would likely need to delay implementation of this revision to allow time to secure funding to make the necessary changes to MAGS.

Dr. Soulé noted that staff discussed the possibility of having users complete a paper worksheet, instead of MAGS, in these scenarios. Staff agreed that paper worksheets



would not be ideal as MAGS will be implemented statewide as of October 2019. Additionally, requiring paper worksheets in these scenarios would necessitate programming changes to the Access database used to manage paper worksheet data. The offender score variable would have to be converted from a sentencing event-level variable to an offense-level variable.

Senator Kelley suggested that the public and criminal justice practitioners would have the right to criticize the Commission if it were to make a decision based on cost and technology concerns. Senator Kelley noted that the decision should be based on whether this issue occurs with frequency.

Dr. Soulé noted that it is unknown exactly how many sentencing events involve this scenario, as those data are not available. However, based on the percentage of sentencing events that involve multiple offense dates, Dr. Soulé concluded that it would involve less than 9% of sentencing events. Dr. Soulé noted that this issue presents typically to staff when users initiate separate guidelines worksheets in MAGS so that part A of the offender score may vary by offense. Because the separate worksheets involve the same defendant, sentenced on the same day, the user is able to submit only one worksheet. At that point, the user contacts staff to resolve the issue.

Senator Kelley suggested that, if the Commission adopts option #2, the General Assembly members on the Commission could work together to request funding for programming changes to MAGS. Senator Kelley reiterated that this decision should be based on the frequency with which this scenario occurs.

Mr. Finci noted that the difference in the ranges, from one cell to the next, increases as the offender score increases. In some cases, there are differences of five years in the low end of the guidelines when the offender score increases by just one point. Mr. Finci noted that he was unsure how many people would have to be impacted by this scenario for the Commission to be concerned with its effect. Mr. Finci stated that the right thing to do would be to apply the one point to the offense that was committed while under CJS supervision and apply no points to the offense that was committed while not under CJS supervision.

Mr. Finci suggested that there is a third possible option to address this issue, at least until MAGS can be programmed to accommodate option #2. Under this option, the point would not be applied to part A for either offense in scenarios where one offense was committed while under CJS supervision and the other offense committed while not under CJS supervision. Rather, the instructions would provide that, in this scenario, the judge shall be informed as to which of the instant offenses the point should have been applied and may take that into account when sentencing.

Senator Cassilly asked why Mr. Finci's approach would be the proper or just way to account for these scenarios. Mr. Finci stated that it would be unjust to apply the point to an offense that was not committed while under CJS supervision because it would unfairly



increase the defendant's guidelines. Senator Cassilly suggested that a defendant being sentenced for two criminal events should be awarded the extra point.

Senator Kelley noted that economy of time should factor into the decision. Senator Kelley suggested that option #1 may lead to a decrease in global pleas and combined sentencing events, which would result in time and financial costs to the court. Senator Cassilly noted that to take into account courtroom efficiency would go against Senator Kelley's previous assertion that cost should not factor into this decision.

Senator Cassilly stated that the guidelines rules as they currently exist are a good system and have been working for many years. Senator Cassilly suggested that the Commission "should not let the perfect become the enemy of the good."

Judge Lewis asked whether the memo presented to Commissioners indicated that 8.8% of sentencing events involved multiple offense dates, rather than simply multiple offenses. Dr. Soulé stated that Judge Lewis' understanding was correct and noted that the memo contained a typo.

Mr. Finci asked how many of the 8.8% of sentencing events that involve multiple offense dates were scored with one point on part A of the offender score. Dr. Johnson and Mr. Finci both agreed that this figure would provide a closer estimate as to the frequency of this scenario. Dr. Soulé stated that he did not have that answer immediately available but would obtain it.

Judge Lewis suggested that this is an issue of advocacy. These issues should be presented to the judge at sentencing, with each side arguing as to why certain points were assessed. Judge Lewis noted that judges take into consideration whether they have before them a first-time offender or one who has been under CJS supervision. Judges also take into account the length of time one has been under CJS supervision and type of supervision (e.g., supervised versus unsupervised). Each case is different.

Dr. Johnson asked whether, instead of Mr. Finci's proposal to not count the point in these scenarios and have the prosecutor bring the issue to the attention of the judge, should the Commission take the opposite approach. Under this approach, the point would be counted, though the defense attorney could note to the judge that the defendant was not under CJS supervision at the time of one offense. Judge Lewis noted that the defense attorney should already be calculating the guidelines as they would be under both scenarios so that they can present this information to the court. Dr. Soulé noted that the Guidelines Calculator Tool (GLCT) may be used to calculate sample guidelines under multiple scenarios. Judge Lewis noted that she now sees many District Court cases running the guidelines using the GLCT.

Ms. Domer noted that the guidelines provide a recommended range and the defense and State are able to argue why the judge should sentence anywhere within, above, or below the guidelines. Ms. Domer suggested that the guidelines should be consistent, with one point awarded for both offenses in this scenario.



Mr. Finci noted that Ms. Domer's proposal to argue these issues to the judge at sentencing is possible when a case goes to trial, however the guidelines are most often used by the defense and State at plea negotiations. The guidelines are used to provide a sentence cap or agreed upon range that both parties will then present to the judge for approval. The guidelines provide the foundation for an efficient courtroom process. Mr. Finci noted that, without the guidelines, the State might experience a scenario like that observed in Washington, D.C. prior to the implementation of their guidelines system. At that time, the D.C. courts were overwhelmed with trial requests because defendants did not want to plead guilty and face an uncertain sentence from the judge.

Senator Cassilly noted that Mr. Finci's statements support the notion that the guidelines system in Maryland is working. Mr. Finci noted that the State had a system and the Justice Reinvestment Act (JRA) modified that system. Further, the Federal guidelines have undergone modifications, such as adjustments made due to disparities in laws involving cocaine versus crack cocaine. Mr. Finci noted that beliefs regarding fairness are always evolving and systems change accordingly. Mr. Finci further noted that, by statute, circuit court judges are required to consider the guidelines at sentencing. Mr. Finci suggested that the Commission is allowing the guidelines to be calculated incorrectly due to programming issues. Mr. Finci stated that he does not want to see such a rule codified in COMAR.

Mr. Cassilly noted that the examples Mr. Finci provided, such as the JRA, were laws rather than guidelines. The Commission cannot expect perfection from the guidelines.

Senator Kelley suggested that keeping the system as is will deter defendants from global pleas and combined sentencing events.

Dr. Johnson asked whether there was an option to sentence separately the offenses in these scenarios, thus eliminating the issue. Mr. Finci noted that global pleas do not happen unless both parties agree to it. If the defendant feels disadvantaged by a global plea, they will not agree to it. Mr. Finci noted that global pleas, when agreed upon, are advantageous to all parties.

Mr. Koutroumpis asked which option would prevent the defendant from committing another crime. Mr. Koutroumpis suggested that the Commission should choose the option that best prevents the defendant from committing another crime. Mr. Finci stated that any of these sentences should prevent the defendant from committing another crime. Mr. Finci noted that Mr. Koutroumpis was suggesting that a harsher penalty would better prevent crime. Mr. Koutroumpis suggested that it was problematic for the Commission to explore reducing the point system in scenarios involving a defendant who has committed multiple crimes. Mr. Finci stated that he is unsure as to whether longer incarceration periods lead to reduced crime.

Judge Lewis noted that this issue was presented to the Guidelines Subcommittee and they came back with no consensus. Judge Lewis further noted that it is rare that the Guidelines



Subcommittee does not provide to the full Commission a recommendation. The lack of consensus illustrates that this is a complicated issue. Because the issue is complicated, Judge Lewis suggested that the Commission should note that this issue is a point of reasonable advocacy, rather than clarifying the guidelines instructions. Judge Lewis noted that advocacy was not an option presented to the Commission. Senator Cassilly noted that advocacy is always an option. Dr. Johnson noted that, regardless of advocacy, a decision would have to be made as to how to score the guidelines in these scenarios.

Judge Harrell noted that the memo stated that, “a number of practitioners” have contacted the Commission regarding this issue. Judge Harrell asked how many practitioners had contacted the staff. Dr. Soulé noted that there were at least 16 questions about this issue asked via email. Ms. Pembroke noted that these questions were asked over the course of approximately two years.

Mr. Finci made a motion to table the issue until the next MSCCSP meeting because the Guidelines Subcommittee did not know, at the time of their teleconference, the cost of reprogramming MAGS. Additionally, Mr. Finci noted that two of the Guidelines Subcommittee members (Judge Avery and Mr. DeLeonardo) were not present at the full Commission meeting. Mr. DeLeonardo was also unavailable for the Guidelines Subcommittee teleconference, and Mr. Finci stated that he would like to have the opportunity to discuss the issue with him. Mr. Finci suggested that his alternative proposal could be discussed at the next Guidelines Subcommittee meeting as well. A better recommendation could possibly be brought forth to the Commission at its next meeting. Senator Kelley seconded the motion.

Ms. Domer asked to clarify exactly what the \$42,000 was funding. Dr. Soulé clarified that the \$42,000 is the estimate to program MAGS to accommodate option #2, allowing the offender score to vary by offense.

Mr. Koutroumpis stated that he would vote to keep the system as is.

**The Commission voted to table the issue until the July meeting.**

b. Clarifying the juvenile delinquency scoring instructions (Action Item)

Dr. Soulé referred the Commission to the corresponding memo entitled, *Clarifying the Juvenile Delinquency Scoring Instructions*. Dr. Soulé noted that a parole and probation agent recently contacted staff for clarification regarding the juvenile delinquency scoring instructions in a scenario in which the defendant is being sentenced for multiple offenses committed on different dates.

Dr. Soulé noted that the instructions for the juvenile delinquency score were revised effective July 2018. The current instructions provide that the juvenile delinquency score takes into account two factors: (1) the age of the defendant on the date they committed the offense for which they are being sentenced (i.e., 23 years or older or under 23 years); and (2) the number of findings of a delinquent act within five years of the date of the offense being sentenced. The later reference period is referred to as the “five-year



lookback window.” For scenarios in which a defendant is being sentenced for multiple offenses, the current instructions are clear that the five-year look back window refers to the five-year period prior to the most recent instant offense. However, the instructions do not specify how the offender’s age “by the date of the offense” is to be calculated. For instance, a defendant receives zero points on the juvenile delinquency score if they are 23 years or older by the date of the offense or have zero findings of a delinquent act within five years of the date of the most recent instant offense—the “most recent instant offense” in this instruction qualifying the 5-year lookback window, not the defendant’s age.

Dr. Soulé stated that, to provide greater clarity to practitioners, the Guidelines Subcommittee unanimously recommends adoption of the proposed language noted on page 2 of the memo to clarify the instructions to indicate that the defendant’s age by the date of the most recent instant offense (i.e., 23 year or older or under 23 years) is to be used to calculate the juvenile delinquency score.

Senator Cassilly made a motion to adopt the Guidelines Subcommittee’s recommendation. Mr. Cooke seconded the motion. **The Commission voted unanimously to adopt the Guidelines Subcommittee’s recommendation to clarify the juvenile delinquency score instructions.**

c. Proposal to examine guidelines compliance for individual matrix cells (Action Item)

Dr. Soulé referred the Commission to the corresponding memo entitled, *Proposal to Examine Guidelines Compliance for Individual Matrix Cells*. Dr. Soulé noted that one of the Commission’s primary responsibilities is to review guidelines compliance. In addition to routinely examining aggregate compliance, the MSCCSP every three to five years conducts detailed reviews of compliance within individual cells of each sentencing matrix. The last detailed review was authorized by the Commission in May 2014 and concluded in December 2015 with the vote to approve revisions to the sentencing matrix for seriousness categories IV and V drug offenses, effective July 1, 2016. As such, the Commission is due to conduct an updated analysis of compliance by individual matrix cells.

Dr. Soulé noted that, given the recent revisions to the drug matrix, as well as the significant revisions to the seriousness categories for many common property offenses and drug possession offenses in response to the JRA that took effect on October 1, 2017, the Guidelines Subcommittee agreed that a review of the affected drug and property matrix cells should be postponed until sufficient data have been collected to fully capture the impact of the guidelines changes on these cells. The Subcommittee considered two approaches to a review of the remaining matrix cells.

Dr. Soulé noted that the first approach was to move forward now with examining the cells for seriousness categories III and II drug offenses and all person offenses using sentencing guidelines data from calendar years 2014 through 2018 (i.e., the most recent five-year period for which sentencing guidelines data are available). Examination of the excluded cells for seriousness categories VII, V, and IV drug offenses and all property



offenses would wait until sufficient data have been collected. It is anticipated that the soonest the review of these cells could be initiated would be in early 2021, at which time there would be three full calendar years of post-JRA sentencing guidelines data (i.e., calendar years 2018 through 2020).

Dr. Soulé noted that the second approach considered by the Subcommittee was to postpone all analyses until early 2021, rather than conducting a partial analysis now and a partial analysis later. The Subcommittee asked for input on the staff's preference with consideration for the practicality of conducting a partial analysis now and/or a full analysis in a few years. Because the review is a time-consuming and tedious process, the Subcommittee discussed the benefits of conducting two partial reviews. Ultimately, the Subcommittee agreed that it would be better to postpone the entire review to a later date so that all findings could be reviewed at once, rather than in a piecemeal approach. Therefore, Dr. Soulé noted that it is the recommendation of the Guidelines Subcommittee that the review of guidelines compliance for individual cells be postponed until early 2021.

Senator Kelley made a motion to postpone a review of guidelines compliance for individual cells until early 2021. Senator Cassilly seconded the motion. **The Commission voted unanimously to postpone until early 2021 a review of guidelines compliance for individual cells.**

d. Proposed policy for the MSCCSP response to legislative proposals (Action Item)

Dr. Soulé referred the Commission to the corresponding memo entitled, *Proposed Policy for the MSCCSP Response to Legislative Proposals*.

Dr. Soulé noted that, during the past two legislative sessions, several bills with the potential to affect the MSCCSP have been introduced. Most recently, Senate Bill (SB) 176/House Bill (HB) 229 were introduced in the 2019 legislative session. Dr. Soulé noted that the Commission first became aware of SB 176 bill nine days before its hearing in the Senate Judicial Proceedings Committee, giving the Commission a relatively short period to determine its position on the bill and prepare testimony. The Commission does not meet typically during the legislative session. Therefore, the position of Commission members had to be determined via an email poll. At the time of the Senate hearing, the MSCCSP had received input from 10 of the Commission's then 17 members. A perceived low response rate was noted by a member of the Judicial Proceedings Committee during the Senate hearing.

Dr. Soulé noted that, following this year's legislative session, Judge Harrell (MSCCSP Chair) requested that the Commission develop a proposal to guide future responses to legislation. Staff, in consultation with Judge Harrell, developed the following seven-step proposal, outlined on page 2 of the memo, to respond to future legislation with the potential to affect the MSCCSP.



1. The MSCCSP staff is charged with identifying, reviewing, and tracking legislative proposals with the potential to affect the sentencing guidelines and/or the MSCCSP's operations.
2. The staff shall notify promptly the MSCCSP Chair and the Sentencing Guidelines Subcommittee of such proposals and the hearing dates before the relevant legislative committees.
3. The MSCCSP Chair and the Sentencing Guidelines Subcommittee should convene timely (via teleconference, email, or in-person) to consider relevant bills.
4. The MSCCSP Chair and the Sentencing Guidelines Subcommittee will vote whether the MSCCSP should take a formal position on the bill and if so, whether to support (with or without amendments) or oppose the bill or bills.
5. If the MSCCSP Chair and Sentencing Guidelines Subcommittee vote is unanimous, the group will present to the legislative committees, legislative leadership, or Governor, as relevant, the formal position of the Commission.
6. If the MSCCSP Chair and Sentencing Guidelines Subcommittee vote is not unanimous, the group will solicit (time permitting) feedback from the full Commission (via email or phone) and request each member to vote whether to support (with or without amendments), oppose, or take no position on the proposed legislation. The MSCCSP will adopt the majority position of the voting Commission members, provided that a quorum of Commission members participates.
7. The MSCCSP staff, in conjunction with the MSCCSP Chair and the Sentencing Guidelines Subcommittee, will prepare and approve formal testimony for relevant Senate and House bill hearings.

Dr. Soulé presented this policy to the full Commission as the recommendation of the Guidelines Subcommittee.

Judge Lewis asked whether, during this most recent legislative session, information was solicited from all Commissioners regarding relevant bills and, if so, were responses received. Judge Harrell stated that the majority of Commissioners responded to a solicitation for input on SB 176. Judge Lewis noted that the 7-step proposal does not allow for the full Commission to provide input to the Guidelines Subcommittee before they meet. Judge Lewis suggested that input from the full Commission should be solicited before the Guidelines Subcommittee meets to discuss legislation. To this end, Mr. Finci suggested that item #6 on the proposal could be placed before item #5.

Judge Harrell stated that the input received from Commissioners regarding SB 176 was helpful and that the majority opinion on the matter crystallized quickly, though the opinion was not unanimous and not everyone responded. Judge Harrell suggested that a



rapid response team is necessary in these situations because response time is limited and it is not practical to convene the entire Commission. Judge Harrell further noted that a number of agencies, including the Judiciary and the Bar, have legislative committees. Senator Cassilly noted that the difference between the MSCCSP and the agencies Judge Harrell cited is that the Commission is not a top-down organization and is composed of members from multiple areas of the criminal justice system. Senator Cassilly suggested that four members should not be selected to represent the views of the full Commission. Senator Cassilly suggested that a response from any number of Commissioners would be relevant to legislators, regardless of whether all members respond. Senator Cassilly further suggested that reaction to the Commission's testimony on SB 176 should not be reason to devise a new legislative response protocol.

Senator Kelley noted that hearings are not scheduled generally immediately after a bill is filed. Senator Kelley suggested that it would be useful to have a member of staff review legislation on a daily basis for bills relevant to the MSCCSP and distribute them accordingly to Commission members, soliciting their feedback.

Dr. Johnson suggested that it would be useful to solicit the opinion of all Commission members, as the Commission would not want a scenario where the Guidelines Subcommittee makes a decision with which the majority of other Commissioners disagrees. Dr. Johnson noted, however, that it is rare for the full Commission to disagree with the recommendation of the Guidelines Subcommittee. Dr. Johnson further noted that the Guidelines Subcommittee is composed of members representing a variety of interests. Dr. Johnson stated that he agreed with Judge Lewis' suggestion that input be sought from the full Commission prior to the Guidelines Subcommittee meeting, which the Guidelines Subcommittee could then factor in their decision. Dr. Johnson also noted that legislation relevant to the Commission is filed rarely.

Senator Kelley, too, suggested that input be sought from the full Commission. If less than a majority respond or there is not a majority decision, then the issue could be decided by the Guidelines Subcommittee. Senator Cassilly suggested that even in the event that there is no majority opinion, the results could still be presented to the legislature and weighed accordingly.

Dr. Johnson noted that it would have been useful to have a discussion with other Commission members prior to providing input on SB 176, as he would have appreciated hearing the opinions of other parties, particularly judges. In that respect, having the Subcommittee discuss legislative issues would ensure that a group of members is able to discuss and reach a consensus on matters, rather than having multiple Commission members provide independent opinions.

Judge Harrell asked how many Commissioners would be comfortable with some form of delegation to the Guidelines Subcommittee versus a polling of the Commission each time relevant legislation is filed. Judge Harrell noted that the idea behind this proposal is to formalize a response protocol, whether that is delegation to the Subcommittee or no delegation.



Senator Kelley asked whether, under item #2, the entire Commission, instead of just the Chair and Guidelines Subcommittee, could be notified of relevant legislation and asked to provide feedback by a certain date. Senator Cassilly noted that the Joint Committee on Administrative, Executive, and Legislative Review (AELR) solicits feedback in such a manner. Senator Cassilly further noted that the General Assembly is not bound by the position of affected agencies, rather those opinions are weighed along with other information relevant to that particular legislation.

Senator Kelley suggested that the entire Commission should be notified and asked for a response by a certain date. That information would then be shared with the Subcommittee. The Subcommittee could then move forward with their decision.

Senator Cassilly suggested that the opposite approach be taken if the Commission opts to delegate the decision to the Guidelines Subcommittee. The Subcommittee would review legislation, vote, and then disseminate their position to the full Commission.

Judge Harrell stated that he would not testify, as Chair of the Commission, in front of a legislative committee without a majority position.

Mr. Finci stated that the Guidelines Subcommittee noted that some bills are inappropriate for certain parties, such as judges, to comment. Senator Kelley noted that the Commission would not be reviewing all criminal justice related legislation, only that which affects the Commission's operations. Mr. Finci asked whether it would be appropriate for a legislator to provide feedback to the Commission on a bill that he or she sponsored. Mr. Cassilly stated that the only ethical limitation would be against a legislator trying to influence a bill that affects him or her personally. Delegate Clippinger, Chair of the House Judiciary Committee, stated that he would never take a position on a bill that would come before the Judiciary Committee, as that would presuppose the opinion of his Committee. Delegate Clippinger noted that member recusals would affect the ability to obtain a majority opinion from the full Commission.

Dr. Soulé asked whether a hybrid approach could be taken. Under this scenario, the Chair and Guidelines Subcommittee would discuss the legislation, vote, and then present their recommendation to the full Commission.

Judge Harrell noted that whatever approach the Commission decides on, it must be an approach that can be implemented in a short time frame. Mr. Koutroumpis asked how often these scenarios occur. Judge Harrell noted that Commission-related bills were filed in each of the past two legislative sessions.

Mr. Koutroumpis stated that he agreed with Dr. Johnson when he said that a full discussion could aid members in their understanding of the legislation and may influence some members to change their opinions, though Mr. Koutroumpis is unsure how often this would occur. Dr. Soulé suggested that providing details from the Guidelines Subcommittee's discussion to the entire Commission would achieve the same end.



Senator Kelley suggested if a member of the Commission sponsors a bill, they should recuse themselves from taking a position on the bill. Judge Harrell suggested that, alternatively, their sponsorship of the bill could be counted as support of it.

Senator Cassilly suggested that the Commission's discussion indicates that item #5 and the first line of item #6 of the proposal be removed. Senator Kelley seconded Senator Cassilly's suggestion.

Judge Lewis noted that this proposal would not accomplish what she initially suggested, which was to reach out to the entire Commission immediately after a relevant bill is filed. Judge Lewis suggested that the Guidelines Subcommittee should have the input of all members before convening for a discussion. Senator Cassilly agreed that it would be feasible to notify all members of a relevant bill, note when the Guidelines Subcommittee would meet to discuss it, and ask for feedback prior to that date. Judge Lewis asked the Commission to consider that proposal. Judge Harrell asked Dr. Soulé if the proposal could be rewritten to accommodate Judge Lewis's suggestions. Dr. Soulé agreed that staff would revise the proposal accordingly.

## 7. Executive Director Report – Dr. David Soulé

### a. Introduction of undergraduate student intern (Status report)

Dr. Soulé introduced the MSCCSP's undergraduate intern from the University of Maryland, Elizabeth Geary. Dr. Soulé noted that Ms. Geary worked with the Commission staff for the Spring 2019 semester. Dr. Soulé thanked Ms. Geary for her contributions. Dr. Soulé further noted that the Commission is fortunate to have bright students like Ms. Geary and that both the Commission and the students benefit greatly from the internship program. Dr. Soulé additionally thanked Dr. Brian Johnson for arriving early to meet with Ms. Geary to provide a Commissioner's insight into the work of the MSCCSP.

### b. Update on the Maryland Automated Guidelines System (Status report)

Dr. Soulé reported MAGS deployment in two counties since the Commission last met, Carroll County on January 1<sup>st</sup> and Anne Arundel County on April 8<sup>th</sup>. Dr. Soulé added that Baltimore City is the single remaining jurisdiction awaiting MAGS deployment on October 1<sup>st</sup>. Dr. Soulé further noted that Judge Avery assisted with early discussions with Baltimore City regarding MAGS deployment and that thus far the application has been received well by jurisdictions.

### c. Update on recent/upcoming feedback meetings and trainings (Status report)

Dr. Soulé reported that, since the last MSCCSP meeting in December 2018, he met with the judges in the First Circuit comprised of Dorchester, Somerset, Wicomico, and Worcester Counties to provide feedback on the sentencing guidelines in their jurisdiction. Dr. Soulé stated that he is scheduled to meet with the judges in the Second Circuit on May 21<sup>st</sup>. Dr. Soulé noted that his goal is to meet with the judges in each jurisdiction



once every two to three years to provide feedback on data relative to their individual jurisdiction.

Additionally, Dr. Soulé reported that the MSCCSP's training coordinator, Katharine Pembroke, provided MAGS orientation sessions for the Office of the Attorney General, Calvert County's State's Attorney's Office, and Anne Arundel County.

d. Update on review of new and revised penalties from 2019 Legislative Session (Status report)

Dr. Soulé reported that the MSCCSP staff is currently reviewing legislation from the recently concluded General Assembly session to identify new and/or amended criminal penalties. Dr. Soulé stated that the staff will present this information, along with staff recommendations for seriousness category classifications, to the Guidelines Subcommittee in preparation to bring forward recommendations to the full Commission at the July 2019 meeting. Assuming that the Commission adopts the proposed classifications at the July meeting, the staff will then complete a timely submission of the classifications as proposed regulations to be adopted on or about November 1, 2019.

e. Update on COMAR promulgation process for revisions adopted at the December 11, 2019 MSCCSP meeting (Status report)

Dr. Soulé noted that at the December 2018 MSCCSP meeting the Commission modified the definition of guidelines-eligible cases to exclude cases adjudicated in juvenile court. Dr. Soulé stated the Commission also voted to expand the definition of corrections options to include problem-solving courts, work release, and weekend or other discontinuous incarceration. Dr. Soulé additionally stated that the Commission modified the race categories on the sentencing guidelines worksheets so they are consistent with State Government Article, § 10-603. Dr. Soulé reported that the modifications were submitted for approval through the COMAR review process and that he anticipates the revisions will be adopted July 1<sup>st</sup>, 2019. Dr. Soulé reported the MSCCSP staff would release a new version of MAGS, new sentencing guidelines worksheets, and new training materials that will reflect the modifications.

## 8. Date, Time, and location for remaining 2019 meetings

Judge Harrell reminded Commissioners of the dates for the remaining 2019 meetings. The remaining 2019 meetings will be held as follows:

July 9, 2019

September 17, 2019

December 10, 2019

## 9. Old Business

None.



**10. New business and announcements**

None.

The meeting adjourned at 6:58 pm.